
SENATE BILL 5164

State of Washington

61st Legislature

2009 Regular Session

By Senators Berkey, Benton, Hobbs, and Parlette; by request of Department of Financial Institutions

Read first time 01/15/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to placing restrictions on check cashers' and
2 sellers' communications when collecting delinquent small loans; and
3 amending RCW 31.45.082.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 31.45.082 and 2003 c 86 s 11 are each amended to read
6 as follows:

7 (1) A licensee shall comply with all applicable state and federal
8 laws when collecting a delinquent small loan. A licensee may charge a
9 one-time fee as determined in rule by the director to any borrower in
10 default on any loan or loans where the borrower's check has been
11 returned unpaid by the financial institution upon which it was drawn.
12 A licensee may take civil action under Title 62A RCW to collect upon a
13 check that has been dishonored. If the licensee takes civil action, a
14 licensee may charge the borrower the cost of collection as allowed
15 under RCW 62A.3-515, but may not collect attorneys' fees or any other
16 interest or damages as allowed under RCW 62A.3-515. A licensee may not
17 threaten criminal prosecution as a method of collecting a delinquent
18 small loan or threaten to take any legal action against the borrower
19 which the licensee may not legally take.

1 (2) Unless invited by the borrower, a licensee may not visit a
2 borrower's residence or place of employment for the purpose of
3 collecting a delinquent small loan. A licensee may not impersonate a
4 law enforcement official, or make any statements which might be
5 construed as indicating an official connection with any federal, state,
6 county, or city law enforcement agency, or any other governmental
7 agency, while engaged in collecting a small loan.

8 (3) A licensee may not communicate with a borrower in such a manner
9 as to harass, intimidate, abuse, or embarrass a borrower, including but
10 not limited to communication at an unreasonable hour, with unreasonable
11 frequency, by threats of force or violence, or by use of offensive
12 language. A communication shall be presumed to have been made for the
13 purposes of harassment if it is initiated by the licensee for the
14 purposes of collection and:

15 (a) It is made with a borrower or spouse in any form, manner, or
16 place, more than three times in a single week;

17 (b) It is made with a borrower at his or her place of employment
18 more than one time in a single week or made to a borrower after the
19 licensee has been informed that the borrower's employer prohibits such
20 communications;

21 (c) It is made with the borrower or spouse at his or her place of
22 residence between the hours of 9:00 p.m. and 7:30 a.m.; or

23 (d) It is made to a party other than the borrower, the borrower's
24 attorney, the licensee's attorney, or a consumer reporting agency if
25 otherwise permitted by law except for purposes of acquiring location or
26 contact information about the borrower.

27 (4) A licensee is required to maintain a communication log of all
28 telephone and written communications with a borrower initiated by the
29 licensee regarding any collection efforts including date, time, and the
30 nature of each communication.

31 (5) If a dishonored check is assigned to any third party for
32 collection, this section applies to the third party for the collection
33 of the dishonored check.

34 (6) For the purposes of this section, "communication" includes any
35 contact with a borrower, initiated by the licensee, in person, by
36 telephone, or in writing (including e-mails, text messages, and other
37 electronic writing) regarding the collection of a delinquent small
38 loan, but does not include any of the following:

1 (a) Communication while a borrower is physically present in the
2 licensee's place of business;
3 (b) An unanswered telephone call in which no message (other than a
4 caller ID) is left, unless the telephone call violates subsection
5 (3)(c) of this section; and
6 (c) An initial letter to the borrower that includes disclosures
7 intended to comply with the federal fair debt collection practices act.
8 (7) For the purposes of this section, (a) a communication occurs at
9 the time it is initiated by a licensee regardless of the time it is
10 received or accessed by the borrower, and (b) a call to a number that
11 the licensee reasonably believes is the borrower's cell phone will not
12 constitute a communication with a borrower at the borrower's place of
13 employment.
14 (8) For the purposes of this section, "week" means a series of
15 seven consecutive days beginning on a Sunday.

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