Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Business & Financial Services Committee

HB 1678

Brief Description: Eliminating the cap on the total number of small loans a borrower may have in a twelve-month period.

Sponsors: Representatives Kirby, Bailey, Clibborn, Liias, Hurst, Maxwell, Ross, Haler, Orcutt, Condotta, Santos, Eddy and Springer.

Brief Summary of Bill

- Removes the provision limiting a borrower to eight small loans in a 12-month period.

Hearing Date: 2/3/11

Staff: Jon Hedegard (786-7127).

Background:

Payday Loans.
Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act). The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The Act regulates payday lending practices and provides for regulation of licensees who are specifically authorized to issue small loans by applying for and receiving an endorsement to their check casher or check seller license.

The phrase "payday loan" refers to a type of short-term, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the borrower writes the lender a post-dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Loan Terms.
A borrower may not take out more than $700 in small loans at any time from all lenders. A borrower may not borrow more than 30 percent of his or her gross monthly income. The lender may charge up to 15 percent for the first $500. If the borrower has a loan in excess of $500, the lender may charge up to 10 percent on the amount over $500. For example, a lender could charge up to $30 for a $200 loan or up to $85 for a $600 loan. The minimum term of a loan is the borrower's next paycheck unless that is less than seven days. If it is less than seven days, the minimum term is the date of the next following pay date. There is a statutory maximum loan term of 45 days.

A licensee is prohibited from making a small loan to a borrower that is in default on a small loan. This prohibition lasts until the loan is paid in full or for two years after the small loan was made, whichever is earlier. A licensee is prohibited from making a small loan to a borrower that is in an installment plan. This prohibition lasts until the installment plan is paid in full or for two years after the origination of the installment plan, whichever is earlier. A licensee is prohibited from making a small loan to a borrower if making that small loan would result in a borrower receiving more than eight small loans from all licensees in any 12-month period.

Enforcement System.
A database system is authorized to enforce the Act. The system allows a licensee to verify if the potential borrower is eligible for a small loan. The system is available in real-time and is secure against unauthorized acquisition or use, tampering, or theft. The system is funded by a fee established by Director of the DFI (Director) by rule. A lender may not charge an additional sum to recover the fee. Information in the system is exempt from public disclosure.

Agency Enforcement.
The Director may impose sanctions against any:
- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:
- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed $100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Consumer Protection Act.
A violation of the Act is a violation of the Consumer Protection Act (CPA). Remedies under the CPA do not affect any other remedy available to an injured party. In a suit for a CPA violation, an injured party may sue for:
- the actual damages sustained;
- the costs of the suit;
- reasonable attorney's fees; and
- additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at $25,000.

The Attorney General may also sue to:
- prevent or restrain violations of the CPA; and
- seek restitution for persons injured by violation of the CPA.

Summary of Bill:

The provision limiting a borrower to eight small loans in a 12-month period is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.