HOUSE BILL REPORT
HB 1678

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to eliminating the cap on the total number of small loans a borrower may have in a twelve-month period.

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 History:
Committee Activity:
Business & Financial Services: 2/3/11, 2/4/11, 2/17/11 [DP].

Brief Summary of Bill

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

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 9 members: Representatives Kirby, Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker and Rivers.

Minority Report: Do not pass. Signed by 4 members: Representatives Kelley, Vice Chair; Pedersen, Ryu and Stanford.

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

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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.

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 it 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 previous 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 (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 the 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.

Staff Summary of Public Testimony:

(In support) The 2009 law has always raised the concern that limiting the number of loans for consumers will prompt those consumers to borrow from illegal Internet lenders. This summer, the DFI issued a press release indicating that illegal Internet lending activity is on the rise as are complaints about illegal lenders. There is no way to know the precise amount of illegal activity in the market. An interest search brings up hundreds of thousands of unlicensed lenders and small loan lead generators. They are as far away as Europe. Experts estimate the increase in Internet lending at 30 percent a year. Statistics show that the average payday borrower is taking out eight loans a year. Because that borrower will get locked out of the ability to make a legal loan, the borrower must predict their needs accurately or they may have no ability to pay their bills. The law is out of sync with the needs of borrowers. Payday loan volume has dropped significantly.

Every state that has implemented borrowing restrictions has seen a 20 to 25 percent reduction in loan volume. This state saw a much higher decrease. When a person uses an illegal lender, they pay higher fees and lose the protections of state law. It is estimated that the fees for the estimated volume of illegal loans are about $5 million more than if the borrowers were getting loans from regulated lenders. The numbers aren't conclusive but the evidence shows that consumers are moving to illegal loans because they are not allowed to take out legal loans.

(Opposed) The current law is working. The eight-loan limit has contributed to the drop in volume of payday loans. The main component of the law that helps prevent people from being trapped in debt is the loan limit. Studies show that installment plans alone are not enough to stop the debt cycle. The eight-loan limit provides a stopping point. It is not clear that illegal Internet loans have risen. Studies have indicated that illegal loans may have decreased since 2008. There are better ways to address problems in illegal lending. The protections in the 2009 law should be built upon, not weakened. Not all of the lenders are disclosing the availability of the payment plan even though disclosure is required by law. There should be more education of consumers.

People who have access to unlimited loans can find themselves trapped in a cycle of debt. They will use loans to pay loans. The eight-loan limit provides a stopping point. Loans can be paid off and the person can have a fresh start. The 2009 law has helped people break the cycle of debt. The gross monthly income cap of 30 percent is very high. That is about how much most people pay for housing. If payday loans are for emergencies, why would a person need more than eight of them in a year? The state currently makes illegal loans unenforceable. The borrower needs to close the account or the illegal lender will simply pull out the money. The state should aggressively enforce the payday lending laws. Credit unions may offer similar types of loans with much better terms to their customers. Since the law was passed, there are fewer collection calls regarding credit-union members with outstanding payday loans. There used to be 10 collection calls a day. Now there are 10 collection calls a week. Payday loan collection costs can add up to the amount of debt that is owed. Consumers are not complaining that they cannot take out a ninth payday loan. If there is a problem with illegal lenders, it should be addressed directly. Some retirees use payday loans. It can be difficult to get a person living on a fixed income out of that payday debt.

(Information only) Most of the lead generators in the United States are likely to comply. There are probably some foreign companies that may choose non-compliance with the proposal. The industry estimates 300 to 500 offshore lenders that have hundreds of thousands of advertisements in the United States. This issue is not unique to the United States. Canada and countries in Western Europe are experiencing similar problems. In this state, there were over 3.2 million transactions before the 2009 law. After the law, the number fell to slightly over 1 million transactions. An online loan application can take as few as three minutes to complete. Unemployment can be a factor in the number of transactions but it is not a major factor. Most lenders still want a borrower to have a bank account and a paycheck. The average age of a borrower is about 38. The average income is in the $30,000 to $38,000 range. Payday lending storefronts are slightly disproportionately located in urban areas. That may be due to the need to have a certain amount of customers to make the overhead. Studies indicate the borrowers are generally representative of the population in terms of race and gender. Some lenders may have exceeded the eight-loan cap by not understanding how the rescission portions of the law and rules were to be interpreted. Complaints about illegal lenders often revolve around the lender debiting the account too many times. The regulator usually advises the borrower to close the bank account. Many states have null and void clauses concerning illegal loans. In some states, the state Attorney General has sought an injunction against Internet addresses. Of course, these Internet addresses can be changed quickly.

Persons Testifying: (In support) Representative Kirby, prime sponsor.

(Opposed) Bev Spears, Statewide Poverty Action Network; Margaret Engle; Julia Kellison, Northwest Justice Project; Norma Hernandez, Express Credit Union; Steve Breaux, Washington Public Interest Research Group; and Michael Warner, Washington Alliance for Retired Americans.

(Available for questions) Nathan Groff, Veritec.

Persons Signed In To Testify But Not Testifying: None.