Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Business & Financial Services Committee

HB 1805

Brief Description: Increasing the criminal penalty for making unlicensed small loans.

Sponsors: Representatives Kelley, Fitzgibbon, Green, Stanford and Santos.

Brief Summary of Bill

- Makes unlicensed payday lending an unranked Class B felony.

Hearing Date: 2/15/11

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 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.

Licensing.
A person or entity must be licensed to engage in the business of check cashing or check selling unless exempt from licensing requirements. A licensee must have a small loan endorsement to their check cashing or check selling license to make small loans in the state. An endorsement is

required for each location where a licensee makes small loans. Applicants for a license or an endorsement must provide certain information and meet financial requirements.

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 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.

Prohibited Practices.
It is a violation of this chapter for any person to:
- directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, lender, or person;
- directly or indirectly engage in any unfair or deceptive practice toward any person;
- directly or indirectly obtain property by fraud or misrepresentation; and
- make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement.

Any transaction in violation of a prohibited practice is uncollectible and unenforceable.

Criminal Violations.
Any person who violates or participates in the violation of the Act or a rule or orders of the Director is guilty of a misdemeanor.

Criminal Penalties.
A misdemeanor is punishable by:
- imprisonment for not more than 90 days;
- a fine to $1,000; or

- both imprisonment and a fine.

A Class B felony is punishable by:
- imprisonment for not more than 12 months in jail;
- a maximum fine of $20,000; or
- both imprisonment and a fine.

Summary of Bill:

It is a Class B felony for any person to violate or participate in the violation of the prohibited practice of making a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement.

Appropriation: None.

Fiscal Note: Requested on 2/14/11.

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