

SENATE BILL REPORT

SB 5600

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 16, 2011

Title: An act relating to placing restrictions on, and enforcing the restrictions on, making small loans.

Brief Description: Placing restrictions on, and enforcing the restrictions on, making small loans.

Sponsors: Senators Nelson, Hobbs, Harper, Pridemore and Kline.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/09/11, 2/16/11 [DPS, DNP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5600 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Haugen and Keiser.

Minority Report: Do not pass.

Signed by Senators Fain and Litzow.

Staff: Alison Mendiola (786-7483)

Background: Payday lending practices are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), Chapter 31.45 RCW. 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 consumer 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. The Act contains provisions for the licensing and regulation of businesses offering services

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related to check cashing and the selling of money orders, drafts, checks, and other commercial paper.

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. The lender may charge up to 10 percent on the amount over \$500 if the borrower has a loan in excess of \$500. For example, a lender could charge up to \$30 for a \$200 loan or up to \$95 for a \$700 loan. The minimum term of a loan is the borrower's next paycheck unless that is less than seven days in which case the minimum term is the date of the next following pay date. The maximum loan term is 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 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.

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, to defraud or mislead any lender, or to defraud or mislead any 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 Penalties. 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. A misdemeanor is punishable by imprisonment for not more than 90 days; a fine to \$1,000; or both.

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 (CPA). A violation of the Act is a violation of the 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 attorneys' 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. A Class B felony is punishable by imprisonment for not more than 12 months in jail; a maximum fine of \$20,000; or both.

Summary of Bill (Recommended Substitute): Small Loan Lead Generation. Small loan lead generation is defined as collecting personal or financial information from a Washington borrower or potential borrowers that is sold or distributed to a licensee with a small loan endorsement before an application for a small loan is directly received by the licensee.

Small loan lead generation does not include collecting personal or financial information from a Washington borrower or potential borrower and distributing or selling that information to a licensee if:

- the licensee has received an application for a small loan from the borrower or potential borrower before the information is sold or distributed to that licensee; or
- the information is provided for use by the licensee in determining whether to make a loan to the borrower or potential borrower.

Small loan lead generation does not require the making of a small loan.

A small loan lead generator must have a license and an endorsement. When engaging in small loan lead generation, a person must conspicuously disclose that:

- they are not the entity that will be providing a small loan to the consumer;
- the consumer's personal and financial information will be sold or provided to one or more licensees with a small loan endorsement; and
- the small loan lead generator is licensed by the state of Washington.

When advertising the availability of small loans, a person must disclose his or her Washington license number in the advertisement.

Prohibited Practices. It is a prohibited practice for a person to:

- engage in small loan lead generation through use of the Internet, facsimile, telephone, kiosk, or other means without first obtaining a license and small loan endorsement;
- make a loan in excess of the small loan maximum amount and term provisions; and
- provide small loan lead generation for a person that is required to obtain a license or small loan endorsement but does not have the license or small loan endorsement.

License Required.

Any person the small loan lead generator must be licensed. The Director may establish a different yearly assessment for small loan lead generators and may waive licensing requirements for small loan lead generators

Criminal Penalties. It is a Class B felony for any person to violate or participate in the violation of the prohibited practice of:

- engaging in small loan lead generation through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a license and small loan endorsement; or
- providing small loan lead generation for a person that is required to obtain a license or small loan endorsement but does not have the license or small loan endorsement.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): The definition of small loan lead generator is modified. The provisions requiring a license for small loan lead generators are modified. Disclosure provisions are modified. The provisions making it a prohibited practice and a crime for any person to provide small loan lead generation for an unlicensed person are added.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: You should to be licensed to collect a customer's personal and financial information and let the customer know if this information is going to be sold. These changes are necessary as we take another look at payday lending. We are working on fine tuning the language to make sure it only includes those doing lead generation for payday loans.

Persons Testifying: PRO: Senator Nelson, prime sponsor.