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**SUBSTITUTE HOUSE BILL 1838**

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**State of Washington**                      **62nd Legislature**                      **2011 Regular Session**

**By** House Business & Financial Services (originally sponsored by  
Representatives Kelley and Ryu)

READ FIRST TIME 02/17/11.

1            AN ACT Relating to small loan lead generation; amending RCW  
2 31.45.010, 31.45.073, 31.45.088, 31.45.105, and 31.45.180; adding a new  
3 section to chapter 31.45 RCW; and prescribing penalties.

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

5            **Sec. 1.** RCW 31.45.010 and 2009 c 510 s 2 are each amended to read  
6 as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Applicant" means a person that files an application for a  
10 license under this chapter, including the applicant's sole proprietor,  
11 owners, directors, officers, partners, members, and controlling  
12 persons.

13            (2) "Borrower" means a natural person who receives a small loan.

14            (3) "Business day" means any day that the licensee is open for  
15 business in at least one physical location.

16            (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for  
17 purposes of conducting the business of making small loans, includes  
18 other electronic forms of payment, including stored value cards,  
19 internet transfers, and automated clearing house transactions.

1 (5) "Check casher" means an individual, partnership, unincorporated  
2 association, or corporation that, for compensation, engages, in whole  
3 or in part, in the business of cashing checks, drafts, money orders, or  
4 other commercial paper serving the same purpose.

5 (6) "Check seller" means an individual, partnership, unincorporated  
6 association, or corporation that, for compensation, engages, in whole  
7 or in part, in the business of or selling checks, drafts, money orders,  
8 or other commercial paper serving the same purpose.

9 (7) "Collateral" means the same as defined in chapter 62A.9A RCW.

10 (8) "Controlling person" means a person owning or controlling ten  
11 percent or more of the total outstanding shares of the applicant or  
12 licensee, if the applicant or licensee is a corporation, and a member  
13 who owns ten percent or more of a limited liability company or limited  
14 liability partnership.

15 (9) "Default" means the borrower's failure to repay the small loan  
16 in compliance with the terms contained in the small loan agreement or  
17 note or failure to pay any installment plan payment on an installment  
18 plan within ten days after the date upon which the installment was  
19 scheduled to be paid.

20 (10) "Director" means the director of financial institutions.

21 (11) "Financial institution" means a commercial bank, savings bank,  
22 savings and loan association, or credit union.

23 (12) "Installment plan" is a contract between a licensee and  
24 borrower that provides that the loaned amount will be repaid in  
25 substantially equal installments scheduled on or after a borrower's pay  
26 dates and no less than fourteen days apart.

27 (13) "Licensee" means a check casher or seller licensed by the  
28 director to engage in business in accordance with this chapter. For  
29 purposes of the enforcement powers of this chapter, including the power  
30 to issue cease and desist orders under RCW 31.45.110, "licensee" also  
31 means a check casher or seller who fails to obtain the license required  
32 by this chapter.

33 (14) "Loaned amount" means the outstanding principal balance and  
34 any fees authorized under RCW 31.45.073 that have not been paid by the  
35 borrower.

36 (15) "Origination date" means the date upon which the borrower and  
37 the licensee initiate a small loan transaction.

1 (16) "Outstanding principal balance" of a small loan means any of  
2 the principal amount that has not been paid by the borrower.

3 (17) "Paid" means that moment in time when the licensee deposits  
4 the borrower's check or accepts cash for the full amount owing on a  
5 valid small loan. If the borrower's check is returned by the  
6 borrower's bank for insufficient funds, the licensee shall not consider  
7 the loan paid.

8 (18) "Person" means an individual, partnership, association,  
9 limited liability company, limited liability partnership, trust,  
10 corporation, and any other legal entity.

11 (19) "Principal" means the loan proceeds advanced for the benefit  
12 of the borrower in a small loan, excluding any fee or interest charge.

13 (20) "Rescission" means annulling the loan contract and, with  
14 respect to the small loan contract, returning the borrower and the  
15 licensee to their financial condition prior to the origination date of  
16 the loan.

17 (21) "Small loan" means a loan of up to the maximum amount and for  
18 a period of time up to the maximum term specified in RCW 31.45.073.

19 (22) "Small loan lead generation" means directly or indirectly  
20 collecting personal or financial information from a Washington borrower  
21 or potential borrower and selling or distributing that information to  
22 a licensee for the purpose of making a small loan, prior to that  
23 licensee receiving an application for a small loan from that borrower  
24 or potential borrower. "Small loan lead generation" does not require  
25 the making of a small loan. "Small loan lead generation" does not  
26 include directly or indirectly collecting personal or financial  
27 information from a Washington borrower or potential borrower and  
28 distributing or selling that information to a licensee if (a) the  
29 licensee has received an application for a small loan from the borrower  
30 or potential borrower before the information is sold or distributed to  
31 that licensee and (b) the information is provided for use by the  
32 licensee in determining whether to make a loan to the borrower or  
33 potential borrower.

34 (23) "Termination date" means the date upon which payment for the  
35 small loan transaction is due or paid to the licensee, whichever occurs  
36 first.

37 ((+23+)) (24) "Total of payments" means the principal amount of the  
38 small loan plus all fees or interest charged on the loan.

1           (~~(24)~~) (25) "Trade secret" means the same as defined in RCW  
2 19.108.010.

3           **Sec. 2.** RCW 31.45.073 and 2009 c 510 s 3 are each amended to read  
4 as follows:

5           (1) No (~~(licensee)~~) person may engage in the business of making  
6 small loans without first obtaining the license required in RCW  
7 31.45.030 and a small loan endorsement to its license from the director  
8 in accordance with this chapter. An endorsement will be required for  
9 each location where a licensee engages in the business of making small  
10 loans, but a small loan endorsement may authorize a licensee to make  
11 small loans at a location different than the licensed locations where  
12 it cashes or sells checks. A licensee may have more than one  
13 endorsement.

14           (2) A licensee must set the due date of a small loan on or after  
15 the date of the borrower's next pay date. If a borrower's next pay  
16 date is within seven days of taking out the loan, a licensee must set  
17 the due date of a small loan on or after the borrower's second pay date  
18 after the date the small loan is made. The termination date of a small  
19 loan may not exceed the origination date of that same small loan by  
20 more than forty-five days, including weekends and holidays, unless the  
21 term of the loan is extended by agreement of both the borrower and the  
22 licensee and no additional fee or interest is charged. The maximum  
23 principal amount of any small loan, or the outstanding principal  
24 balances of all small loans made by all licensees to a single borrower  
25 at any one time, may not exceed seven hundred dollars or thirty percent  
26 of the gross monthly income of the borrower, whichever is lower. A  
27 licensee is prohibited from making a small loan to a borrower who is in  
28 default on another small loan until after that loan is paid in full or  
29 two years have passed from the origination date of the small loan,  
30 whichever occurs first.

31           (3) A licensee is prohibited from making a small loan to a borrower  
32 in an installment plan with any licensee until after the plan is paid  
33 in full or two years have passed from the origination date of the  
34 installment plan, whichever occurs first.

35           (4) A borrower is prohibited from receiving more than eight small  
36 loans from all licensees in any twelve-month period. A licensee is

1 prohibited from making a small loan to a borrower if making that small  
2 loan would result in a borrower receiving more than eight small loans  
3 from all licensees in any twelve-month period.

4 (5) A licensee that has obtained the required small loan  
5 endorsement may charge interest or fees for small loans not to exceed  
6 in the aggregate fifteen percent of the first five hundred dollars of  
7 principal. If the principal exceeds five hundred dollars, a licensee  
8 may charge interest or fees not to exceed in the aggregate ten percent  
9 of that portion of the principal in excess of five hundred dollars. If  
10 a licensee makes more than one loan to a single borrower, and the  
11 aggregated principal of all loans made to that borrower exceeds five  
12 hundred dollars at any one time, the licensee may charge interest or  
13 fees not to exceed in the aggregate ten percent on that portion of the  
14 aggregated principal of all loans at any one time that is in excess of  
15 five hundred dollars. The director may determine by rule which fees,  
16 if any, are not subject to the interest or fee limitations described in  
17 this section. It is a violation of this chapter for any licensee to  
18 knowingly loan to a single borrower at any one time, in a single loan  
19 or in the aggregate, more than the maximum principal amount described  
20 in this section.

21 (6) In connection with making a small loan, a licensee may advance  
22 moneys on the security of a postdated check. The licensee may not  
23 accept any other property, title to property, or other evidence of  
24 ownership of property as collateral for a small loan. The licensee may  
25 accept only one postdated check per loan as security for the loan. A  
26 licensee may permit a borrower to redeem a postdated check with a  
27 payment of cash or the equivalent of cash. The licensee may disburse  
28 the proceeds of a small loan in cash, in the form of a check, or in the  
29 form of the electronic equivalent of cash or a check.

30 (7) No person may at any time cash or advance any moneys on a  
31 postdated check or draft in excess of the amount of goods or services  
32 purchased without first obtaining a small loan endorsement to a check  
33 cashier or check seller license.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 31.45 RCW  
35 to read as follows:

36 Any person in the business of small loan lead generation must be  
37 licensed under this chapter. The director may establish a different

1 yearly assessment for small loan lead generators and may waive certain  
2 licensing requirements for small loan lead generators by rule as  
3 necessary to implement this chapter and to protect consumers.

4 **Sec. 4.** RCW 31.45.088 and 2003 c 86 s 14 are each amended to read  
5 as follows:

6 (1) When advertising the availability of small loans, if a licensee  
7 includes in an advertisement the fee or interest rate charged by the  
8 licensee for a small loan, then the licensee shall also disclose the  
9 annual percentage rate resulting from this fee or interest rate.

10 (2) When advertising the availability of small loans, compliance  
11 with all applicable state and federal laws and regulations, including  
12 the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12  
13 C.F.R. Sec. (~~{Part}~~) Part 226 constitutes compliance with subsection  
14 (1) of this section.

15 (3) When making a small loan, each licensee shall disclose to the  
16 borrower the terms of the small loan, including the principal amount of  
17 the small loan, the total of payments of the small loan, the fee or  
18 interest rate charged by the licensee on the small loan, and the annual  
19 percentage rate resulting from this fee or interest rate.

20 (4) When making a small loan, disclosure of the terms of the small  
21 loan in compliance with all applicable state and federal laws and  
22 regulations, including the truth in lending act, 15 U.S.C. Sec. 1601  
23 and Regulation Z, 12 C.F.R. Sec. (~~{Part}~~) Part 226 constitutes  
24 compliance with subsection (3) of this section.

25 (5) When engaging in small loan lead generation, a person required  
26 to be licensed under this chapter must conspicuously disclose that:

27 (a) They are not the entity that will be providing a small loan to  
28 the consumer;

29 (b) The consumer's personal and financial information will be sold  
30 or provided to one or more licensees with a small loan endorsement; and

31 (c) The small loan lead generator is licensed by the state of  
32 Washington.

33 (6) When advertising the availability of small loans, a person  
34 required to be licensed under this chapter must disclose their  
35 Washington license number in the advertisement.

1       **Sec. 5.** RCW 31.45.105 and 2007 c 81 s 1 are each amended to read  
2 as follows:

3       (1) It is a violation of this chapter for any person subject to  
4 this chapter to:

5       (a) Directly or indirectly employ any scheme, device, or artifice  
6 to defraud or mislead any borrower, to defraud or mislead any lender,  
7 or to defraud or mislead any person;

8       (b) Directly or indirectly engage in any unfair or deceptive  
9 practice toward any person;

10       (c) Directly or indirectly obtain property by fraud or  
11 misrepresentation; (~~and~~)

12       (d) Make a small loan to any person physically located in  
13 Washington through use of the internet, facsimile, telephone, kiosk, or  
14 other means without first obtaining a small loan endorsement;

15       (e) Engage in small loan lead generation through use of the  
16 internet, facsimile, telephone, kiosk, or other means without first  
17 obtaining a license and small loan endorsement under this chapter; or

18       (f) Provide small loan lead generation for any person required to  
19 obtain a license or small loan endorsement under this chapter who has  
20 not obtained such a license or small loan endorsement, or any person  
21 whose license or small loan endorsement is expired, suspended, or  
22 revoked.

23       (2) In addition to any other penalties, any transaction in  
24 violation of subsection (1) of this section is uncollectible and  
25 unenforceable.

26       **Sec. 6.** RCW 31.45.180 and 1994 c 92 s 290 are each amended to read  
27 as follows:

28       (1) Any person who violates or participates in the violation of any  
29 provision of the rules or orders of the director or any provision of  
30 this chapter, except RCW 31.45.105(1) (e) and (f), is guilty of a  
31 misdemeanor.

32       (2) Any person who violates or participates in the violation of RCW  
33 31.45.105(1) (e) and (f) is guilty of a class B felony.

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