
HOUSE BILL 1838

State of Washington

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By Representatives Kelley and Ryu

Read first time 02/04/11. Referred to Committee on Business & Financial Services.

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; and
3 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 about potential Washington
21 borrowers that is sold or distributed to (a) a licensee with a small
22 loan endorsement; or (b) a person or entity that is required to have a
23 license and a small loan endorsement under this chapter, but does not
24 have the license or does not have the endorsement before an application
25 for a small loan is directly received by a person or entity that is
26 required to have a license and a small loan endorsement under this
27 chapter but does not have the license or does not have the endorsement.
28 "Small loan lead generation" includes activities that do not result in
29 the making of a small loan, but does not include the use of a web site
30 that does not permit residents of this state to provide their personal
31 or financial information.

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

35 ((+23+)) (24) "Total of payments" means the principal amount of the
36 small loan plus all fees or interest charged on the loan.

37 ((+24+)) (25) "Trade secret" means the same as defined in RCW
38 19.108.010.

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

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

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

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

33 (4) A borrower is prohibited from receiving more than eight small
34 loans from all licensees in any twelve-month period. A licensee is
35 prohibited from making a small loan to a borrower if making that small
36 loan would result in a borrower receiving more than eight small loans
37 from all licensees in any twelve-month period.

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

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

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

31 **Sec. 3.** RCW 31.45.088 and 2003 c 86 s 14 are each amended to read
32 as follows:

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

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

6 (3) When making a small loan, each licensee shall disclose to the
7 borrower the terms of the small loan, including the principal amount of
8 the small loan, the total of payments of the small loan, the fee or
9 interest rate charged by the licensee on the small loan, and the annual
10 percentage rate resulting from this fee or interest rate.

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

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

18 (a) They are not the entity that will be providing a small loan to
19 the consumer; and

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

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

25 **Sec. 4.** RCW 31.45.105 and 2007 c 81 s 1 are each amended to read
26 as follows:

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

29 (a) Directly or indirectly employ any scheme, device, or artifice
30 to defraud or mislead any borrower, to defraud or mislead any lender,
31 or to defraud or mislead any person;

32 (b) Directly or indirectly engage in any unfair or deceptive
33 practice toward any person;

34 (c) Directly or indirectly obtain property by fraud or
35 misrepresentation; (~~and~~)

36 (d) Make a small loan to any person physically located in

1 Washington through use of the internet, facsimile, telephone, kiosk, or
2 other means without first obtaining a small loan endorsement; or

3 (e) Engage in small loan lead generation through use of the
4 internet, facsimile, telephone, kiosk, or other means without first
5 obtaining a license and small loan endorsement under this chapter.

6 (2) In addition to any other penalties, any transaction in
7 violation of subsection (1) of this section is uncollectible and
8 unenforceable.

9 **Sec. 5.** RCW 31.45.180 and 1994 c 92 s 290 are each amended to read
10 as follows:

11 (1) Any person who violates or participates in the violation of any
12 provision of the rules or orders of the director or any provision of
13 this chapter, except RCW 31.45.105(1)(e), is guilty of a misdemeanor.

14 (2) Any person who violates or participates in the violation of RCW
15 31.45.105(1)(e) is guilty of a class B felony.

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