

ESSB 5312 - H COMM AMD

By Committee on Business & Financial Services

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
4 section apply throughout this chapter unless the context clearly  
5 requires otherwise.

6 (1) "Authenticate" means the same as defined in RCW 62A.9A-102.

7 (2) "Borrower" means a natural person who receives a small consumer  
8 installment loan.

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

14 (4) "Director" means the director of financial institutions.

15 (5) "Final payment date" means the date of the borrower's last  
16 scheduled payment on a small consumer installment loan.

17 (6) "Gross monthly income" means a borrower's or potential  
18 borrower's gross monthly income as demonstrated by documentation of  
19 income, including, but not limited to, a pay stub, documentation  
20 reflecting receipt of public benefits, tax returns, bank statements, or  
21 other documentation showing the source of income. A lender shall  
22 require a borrower or potential borrower to provide a pay stub or other  
23 evidence of income at least once each twelve-month period. This  
24 evidence must not be over forty-five days old when presented.

25 (7) "License" means a license issued by the director under this  
26 chapter.

27 (8) "Licensee" means a single small consumer installment lender  
28 licensed by the director to engage in business in accordance with this  
29 chapter. "Licensee" also means a small consumer installment lender,

1 whether located within or outside of this state, who fails to obtain a  
2 license required by this chapter.

3 (9) "Loaned amount" means the initial principal amount of the loan  
4 exclusive of any interest, fees, penalties, or charges authorized by  
5 this chapter.

6 (10) "Military borrower" means:

7 (a) A "covered borrower" as defined in 32 C.F.R. Sec. 232.3; and

8 (b)(i) A member of the reserve components of the United States  
9 army, navy, air force, marine corps, coast guard, army national guard,  
10 or air national guard; and

11 (ii) A spouse or dependent child of a person under (b)(i) of this  
12 subsection.

13 (11) "Person" means an individual, partnership, association,  
14 limited liability company, limited liability partnership, trust,  
15 corporation, and any other legal entity.

16 (12) "Record" means the same as defined in RCW 62A.1-201.

17 (13) "Scheduled payment" means any single payment disclosed in a  
18 payment schedule on a federal truth in lending act disclosure.  
19 "Scheduled payment" does not mean an actual payment on a date different  
20 than a payment on the loan payment schedule, or the payment in full of  
21 a loan before the final payment date on the loan payment schedule.

22 (14) "Small consumer installment loan" means a loan made to a  
23 natural person in a single advance with terms as provided for in this  
24 chapter.

25 (15) "Truth in lending act" means the truth in lending act, 15  
26 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Part 1026.

27 NEW SECTION. **Sec. 2.** APPLICABILITY. (1) Any small consumer  
28 installment loan made to a resident of this state is subject to the  
29 authority and restrictions of this chapter.

30 (2) This chapter does not apply to the following:

31 (a) Any person doing business under, and as permitted by, any law  
32 of this state or of the United States relating to banks, savings banks,  
33 trust companies, savings and loan or building and loan associations, or  
34 credit unions; or

35 (b) Loans made under chapters 19.60, 31.04, and 31.45 RCW.

1        NEW SECTION.    **Sec. 3.**    LICENSE REQUIRED.    No person may engage in  
2 advertising or making small consumer installment loans without first  
3 obtaining a license from the director in accordance with this chapter.  
4 A license is required for each location where a licensee engages in the  
5 business of making small consumer installment loans.

6        NEW SECTION.    **Sec. 4.**    LICENSE--APPLICATION--FEE--BOND--INFORMATION  
7 FROM APPLICANTS.    (1) Each application for a license must be in writing  
8 in a form prescribed by the director and must contain the following  
9 information:

10        (a) The legal name, residence, and business address of the  
11 applicant and, if the applicant is a partnership, association, limited  
12 liability company, limited liability partnership, or corporation, of  
13 every member, officer, principal, or director thereof;

14        (b) The location where the initial registered office of the  
15 applicant will be located;

16        (c) The complete address of any other locations at which the  
17 applicant currently proposes to engage in making small consumer  
18 installment loans; and

19        (d) Such other data, financial statements, and pertinent  
20 information as the director may require with respect to the applicant,  
21 its members, principals, or officers.

22        (2) As part of or in connection with an application for any license  
23 under this section, or periodically upon license renewal, each officer,  
24 director, and owner applicant shall furnish information concerning his  
25 or her identity, including fingerprints for submission to the  
26 Washington state patrol or the federal bureau of investigation for a  
27 state and national criminal history background check, personal history,  
28 experience, business record, purposes, and other pertinent facts, as  
29 the director may reasonably require. As part of or in connection with  
30 an application for a license under this chapter, or periodically upon  
31 license renewal, the director is authorized to receive criminal history  
32 record information that includes nonconviction data as defined in RCW  
33 10.97.030. The director may only disseminate nonconviction data  
34 obtained under this section to criminal justice agencies. This section  
35 does not apply to financial institutions regulated under chapters 31.12  
36 and 31.13 RCW and Titles 30, 32, and 33 RCW.

1 (3) Any information in the application regarding the personal  
2 residential address or telephone number of the applicant, any financial  
3 information about the applicant and entities owned or controlled by the  
4 applicant, and any trade secret as defined in RCW 19.108.010 including  
5 any financial statement that is a trade secret, is exempt from the  
6 public records disclosure requirements of chapter 42.56 RCW.

7 (4) The application must be filed together with an application fee  
8 established by rule by the director. The fees collected must be  
9 deposited to the credit of the financial services regulation fund in  
10 accordance with RCW 43.320.110.

11 (5) Each applicant shall file and maintain a surety bond, approved  
12 by the director, executed by the applicant as obligor and by a surety  
13 company authorized to do a surety business in this state as surety,  
14 whose liability as a surety does not exceed, in the aggregate, the  
15 penal sum of the bond. The penal sum of the bond must be a minimum of  
16 thirty thousand dollars and a maximum of two hundred fifty thousand  
17 dollars based on the annual dollar amount of loans originated. The  
18 bond must run to the state of Washington as obligee for the use and  
19 benefit of the state and of any person or persons who may have a cause  
20 of action against the obligor under this chapter. The bond must be  
21 conditioned that the obligor as licensee will faithfully conform to and  
22 abide by this chapter and all the rules adopted under this chapter.  
23 The bond will pay to the state and any person or persons having a cause  
24 of action against the obligor all moneys that may become due and owing  
25 to the state and those persons under and by virtue of this chapter.

26 NEW SECTION. **Sec. 5.** APPLICATION FOR LICENSE--FINANCIAL  
27 RESPONSIBILITY--DIRECTOR'S INVESTIGATION. (1) The director shall  
28 conduct an investigation of every applicant to determine the financial  
29 responsibility, experience, character, and general fitness of the  
30 applicant. The director shall issue the applicant a license to engage  
31 in the business of making small consumer installment loans, if the  
32 director determines that:

33 (a) The applicant has satisfied the licensing requirements of this  
34 chapter;

35 (b) The applicant is financially responsible and appears to be able  
36 to conduct the business of making small consumer installment loans in

1 an honest, fair, and efficient manner with the confidence and trust of  
2 the community and in accordance with this chapter; and

3 (c) The applicant has the required bond.

4 (2) The director may refuse to issue a license if he or she finds  
5 that the applicant, or any person who is a director, officer, partner,  
6 agent, sole proprietor, owner, or controlling person of the applicant,  
7 has been convicted of a felony in any jurisdiction within seven years  
8 of filing the present application or is associating or consorting with  
9 any person who has been convicted of a felony in any jurisdiction  
10 within seven years of filing the present application.

11 (3) A license may not be issued to an applicant:

12 (a) Whose license to conduct business under this chapter, or any  
13 similar statute in any other jurisdiction, has been suspended or  
14 revoked within five years of the filing of the present application;

15 (b) Who has been banned from the industry by an administrative  
16 order issued by the director or the director's designee, for the period  
17 specified in the administrative order; or

18 (c) Who has advertised or made internet loans in violation of this  
19 chapter.

20 (4) A license issued in accordance with this chapter remains in  
21 force and effect until surrendered, suspended, or revoked, or until the  
22 license expires as a result of nonpayment of the annual assessment fee  
23 as defined in this chapter.

24 NEW SECTION. **Sec. 6.** MULTISTATE LICENSING SYSTEM--DIRECTOR'S  
25 DISCRETION. Applicants may be required to make application through a  
26 multistate licensing system as prescribed by the director. Existing  
27 licensees may be required to transition onto a multistate licensing  
28 system as prescribed by the director.

29 NEW SECTION. **Sec. 7.** TERMS OF LOANS. A small consumer  
30 installment loan must include the following terms:

31 (1) The interest charged on the loaned amount is less than or equal  
32 to thirty-six percent per annum, exclusive of fees, penalties, or  
33 charges authorized by this chapter;

34 (2) A maximum loaned amount of one thousand five hundred dollars;

35 (3) The loaned amount is fully repayable in substantially equal and

1 consecutive installments according to a payment schedule agreed to by  
2 the parties with not less than fourteen days and not more than thirty-  
3 five days between each scheduled payment;

4 (4) A minimum loan term of six months;

5 (5) A maximum loan term of twelve months;

6 (6) The loan amortizes;

7 (7) The borrower's repayment obligations are not secured by a lien  
8 on any real or personal property; and

9 (8) The loan is made primarily for personal, family, or household  
10 purposes.

11 NEW SECTION. **Sec. 8.** LIMITATIONS ON INTEREST AND CHARGES.

12 Notwithstanding any other provision of law, a licensee:

13 (1) May charge, contract for, and receive interest of no more than  
14 thirty-six percent per annum on the outstanding unpaid principal  
15 balance of the loaned amount, exclusive of fees, penalties, or charges  
16 authorized by this chapter;

17 (2) May charge a loan origination fee not to exceed fifteen percent  
18 of the loaned amount. The fee is earned at the time the loan is made  
19 and up to one-half of which is subject to a pro rata refund. If the  
20 loan is paid in full prior to the final payment date, the borrower is  
21 entitled to a refund equal to fifty percent of the loan origination fee  
22 multiplied by a fraction whose numerator is the number of days between  
23 the date on which the loan is paid in full and the final payment date,  
24 and whose denominator is the number of days in the original loan term.  
25 Notwithstanding this subsection, a licensee must provide a full refund  
26 of all charges after rescission as provided in section 12 of this act;

27 (3) May charge a monthly maintenance fee not to exceed seven  
28 dollars and fifty cents per one hundred dollars of the loaned amount on  
29 the thirtieth day after the day when the loan is originated. The fee  
30 may be charged after every subsequent thirty-day period when there is  
31 an outstanding balance. The fee may not exceed a maximum of ninety  
32 dollars in any month;

33 (4) Is prohibited from making a small consumer installment loan to  
34 a borrower if the total of all scheduled payments to be made in any  
35 month exceeds fifteen percent of the borrower's gross monthly income;

36 (5) May, in the event that any scheduled payment is delinquent ten  
37 days or more:

1 (a) Charge and collect a penalty of not more than twenty-five  
2 dollars per loan; and

3 (b) Declare the entire loan due and payable and proceed to collect  
4 the loan in accordance with this chapter;

5 (6) May collect from the borrower reasonable attorneys' fees,  
6 actual expenses, and costs incurred in connection with the collection  
7 of any amounts due to a licensee with respect to a small consumer  
8 installment loan;

9 (7) Is prohibited from charging a prepayment fee. A borrower is  
10 allowed to pay all or part of a loan before the maturity date without  
11 incurring any additional fee;

12 (8) Is prohibited from requiring a borrower to purchase add-on  
13 products such as credit insurance; and

14 (9) Is prohibited from charging any other interest, fees,  
15 penalties, or charges, except those provided in subsections (1) through  
16 (3), (5), and (6) of this section.

17 NEW SECTION. **Sec. 9.** LOAN AGREEMENT--REQUIRED CONTENTS. A  
18 licensee making a small consumer installment loan must document the  
19 transaction by use of a record authenticated by the licensee and the  
20 borrower. This record must set forth the terms and conditions of the  
21 loan, including, but not limited to:

22 (1) The name and address of the borrower and the licensee;

23 (2) The transaction date;

24 (3) The loaned amount;

25 (4) A statement of the total amount of finance charges charged,  
26 expressed both as a dollar amount and an annual percentage rate,  
27 calculated in accordance with the truth in lending act;

28 (5) The installment payment schedule;

29 (6) The right to rescind the loan on or before the close of  
30 business on the next day of business at the location where the loan was  
31 originated;

32 (7) A notice to the borrower that delinquency on one scheduled  
33 payment may result in a penalty of not more than twenty-five dollars  
34 per delinquent loan and/or acceleration of the loan;

35 (8) A notice to the borrower that early repayment of a small  
36 consumer installment loan will result in a refund as provided in  
37 section 8(2) of this act;

1 (9) The notice regarding the repayment plan required by section 16  
2 of this act;

3 (10) A description of the manner and methods by which loan payments  
4 may be made, which include cash, check, automatic clearing house  
5 transactions, debit authorization, or additional method of loan payment  
6 authorized by the director after rule making; and

7 (11) A notice to the borrower in at least twelve-point type that  
8 states:

9 A SMALL CONSUMER INSTALLMENT LOAN IS NOT INTENDED TO MEET LONG-TERM  
10 FINANCIAL NEEDS.

11 A SMALL CONSUMER INSTALLMENT LOAN SHOULD BE USED ONLY TO MEET  
12 SHORT-TERM CASH NEEDS.

13 WHILE YOU ARE NOT REQUIRED TO REPAY THIS LOAN BEFORE ITS DUE DATE,  
14 IT IS IN YOUR BEST INTEREST TO DO SO. THE SOONER YOU REPAY THE LOAN,  
15 THE LESS IN INTEREST, FEES, AND OTHER CHARGES YOU WILL PAY.

16 No licensee may condition an extension of credit under a small  
17 consumer installment loan on the borrower's repayment by preauthorized  
18 electronic fund transfers. Payment options including, but not limited  
19 to, automatic clearing house transactions and other electronic fund  
20 transfers may be offered to borrowers as a choice with the method or  
21 methods of payment chosen by the borrower.

22 NEW SECTION. **Sec. 10.** NOTICE OF FEES AND CHARGES--RECEIPT. (1)  
23 A schedule of the fees, penalties, and charges for taking out a small  
24 consumer installment loan must be conspicuously and continuously posted  
25 in every location licensed under this chapter.

26 (2) The licensee shall provide to its customer a receipt for each  
27 transaction. The receipt must include the name of the licensee, the  
28 type and amount of the transaction, and the fees and charges charged  
29 for the transaction.

30 NEW SECTION. **Sec. 11.** DISBURSEMENT OF PROCEEDS. A licensee may  
31 disburse the proceeds of a small consumer installment loan in the form  
32 of a check drawn on the licensee's bank account, in cash, by money  
33 order, by prepaid card, by electronic funds transfer, or by other  
34 method authorized by the director after rule making.



1           NEW SECTION.   **Sec. 12.**   RESCISSION.   A borrower may rescind a small  
2 consumer installment loan, on or before the close of business on the  
3 next day of business at the location where the loan was originated, by  
4 returning the principal in cash, the original check disbursed by the  
5 licensee, or the other disbursement of loan proceeds from the licensee  
6 to fund the loan.   The licensee may not charge the borrower for  
7 rescinding the loan and must refund any loan fees and interest  
8 received.   The licensee shall conspicuously disclose to the borrower  
9 the right of rescission in writing in the loan agreement.

10           NEW SECTION.   **Sec. 13.**   DELINQUENT SMALL CONSUMER INSTALLMENT  
11 LOAN--RESTRICTIONS ON COLLECTION BY LICENSEE OR THIRD PARTY.   (1) A  
12 licensee shall comply with all applicable state and federal laws when  
13 collecting a delinquent small consumer installment loan.   A licensee  
14 may take civil action to collect principal, interest, fees, penalties,  
15 charges, and costs allowed under this chapter.   A licensee may not  
16 threaten criminal prosecution as a method of collecting a delinquent  
17 small consumer installment loan or threaten to take any legal action  
18 against the borrower which the licensee may not legally take.

19           (2) Unless invited by the borrower, a licensee may not visit a  
20 borrower's residence or place of employment for the purpose of  
21 collecting a delinquent small consumer installment loan.   A licensee  
22 may not impersonate a law enforcement official, or make any statements  
23 which might be construed as indicating an official connection with any  
24 federal, state, county, or city law enforcement agency, or any other  
25 governmental agency, while engaged in collecting a small consumer  
26 installment loan.

27           (3) A licensee may not communicate with a borrower in such a manner  
28 as to harass, intimidate, abuse, or embarrass a borrower, including but  
29 not limited to communication at an unreasonable hour, with unreasonable  
30 frequency, by threats of force or violence, or by use of offensive  
31 language.   A communication is presumed to have been made for the  
32 purposes of harassment if it is initiated by the licensee for the  
33 purposes of collection and:

34           (a) It is made with a borrower, spouse, or domestic partner in any  
35 form, manner, or place, more than three times in a single week;

36           (b) It is made with a borrower at his or her place of employment

1 more than one time in a single week or made to a borrower after the  
2 licensee has been informed that the borrower's employer prohibits these  
3 communications;

4 (c) It is made with the borrower, spouse, or domestic partner at  
5 his or her place of residence between the hours of 9:00 p.m. and 7:30  
6 a.m.; or

7 (d) It is made to a party other than the borrower, the borrower's  
8 attorney, the licensee's attorney, or a consumer reporting agency if  
9 otherwise permitted by law except for purposes of acquiring location or  
10 contact information about the borrower.

11 (4) A licensee is required to maintain a communication log of all  
12 telephone and written communications with a borrower initiated by the  
13 licensee regarding any collection efforts including date, time, and the  
14 nature of each communication.

15 (5) If a dishonored check is assigned to any third party for  
16 collection, this section applies to the third party for the collection  
17 of the dishonored check.

18 (6) For the purposes of this section, "communication" includes any  
19 contact with a borrower, initiated by the licensee, in person, by  
20 telephone, or in writing (including e-mails, text messages, and other  
21 electronic writing) regarding the collection of a delinquent small  
22 consumer installment loan, but does not include any of the following:

23 (a) Communication while a borrower is physically present in the  
24 licensee's place of business;

25 (b) An unanswered telephone call in which no message (other than a  
26 caller ID) is left, unless the telephone call violates subsection  
27 (3)(c) of this section; and

28 (c) An initial letter to the borrower that includes disclosures  
29 intended to comply with the federal fair debt collection practices act.

30 (7) For the purposes of this section:

31 (a) A communication occurs at the time it is initiated by a  
32 licensee regardless of the time it is received or accessed by the  
33 borrower; and

34 (b) A call to a number that the licensee reasonably believes is the  
35 borrower's cell phone will not constitute a communication with a  
36 borrower at the borrower's place of employment.

37 (8) For the purposes of this section, "week" means a series of  
38 seven consecutive days beginning on a Sunday.

1           NEW SECTION.       **Sec. 14.**       LOAN FREQUENCY LIMITATIONS.       (1) No

2 licensee may extend to or have open with a borrower more than one small  
3 consumer installment loan at any time unless:

4           (a) The total of all scheduled payments to be made in any month  
5 under all of the small consumer installment loans made by any licensee  
6 to a borrower does not exceed fifteen percent of the borrower's gross  
7 monthly income; and

8           (b) The unpaid principal balance of any and all small consumer  
9 installment loans to a borrower does not exceed one thousand five  
10 hundred dollars.

11           (2) A borrower is prohibited from receiving more than twelve small  
12 consumer installment loans from all licensees in any twelve-month  
13 period. A licensee is prohibited from making a small consumer  
14 installment loan to a borrower if making that small consumer  
15 installment loan would result in a borrower receiving more than twelve  
16 small consumer installment loans from all licensees in any twelve-month  
17 period.

18           (3) A licensee is prohibited from extending a small consumer  
19 installment loan to a borrower who:

20           (a) Has an outstanding small consumer installment loan with another  
21 licensee; or

22           (b) Is in a repayment plan for a small consumer installment loan  
23 with another licensee.

24           (4) A licensee is prohibited from extending a small consumer  
25 installment loan at any time to a borrower who:

26           (a) Has a small loan made by a licensee under chapter 31.45 RCW; or

27           (b) Is in an installment plan under RCW 31.45.088.

28           (5) The director has broad rule-making authority to adopt and  
29 implement a database system to carry out subsections (1) through (4) of  
30 this section. This includes, but is not limited to, taking the steps  
31 necessary to contract a database vendor, and set licensee fees to  
32 operate and administer the database system.

33           (6) The information in the database described in this section is  
34 exempt from public disclosure under chapter 42.56 RCW.

35           NEW SECTION.       **Sec. 15.**       MILITARY BORROWERS.       (1) A licensee is

36 prohibited from extending a small consumer installment loan to any  
37 military borrower. In determining if a borrower is a military borrower

1 and is ineligible to obtain a small consumer installment loan, a  
2 licensee may rely upon a statement provided by a borrower on a form  
3 prescribed by rule by the director. The form must apply standards to  
4 all military borrowers that are similar to the covered borrower  
5 identification statement standards of 32 C.F.R. Sec. 232.5(a)(1).

6 (2) The director must adopt rules to implement this section.

7 NEW SECTION. **Sec. 16.** REPAYMENT PLAN. (1) Before a licensee may  
8 bring a civil action to collect the outstanding balance on a small  
9 consumer installment loan in default, the licensee must offer that  
10 borrower an opportunity to enter into a repayment plan.

11 (2) A licensee is required to make the repayment plan offer  
12 available for a period of at least thirty days after the date of the  
13 original offer to the borrower. The licensee is not required to make  
14 such an offer more than once for each loan.

15 (3) The repayment plan offer must:

16 (a) Be in writing;

17 (b) Be sent to the borrower's last known address;

18 (c) State the date by which the borrower must act to enter into a  
19 repayment plan;

20 (d) Explain the procedures the borrower must follow to enter into  
21 a repayment plan;

22 (e) If a licensee requires the borrower to make an initial payment  
23 to enter into a repayment plan as allowed in subsection (4) of this  
24 section, explain the requirement and state the amount of the initial  
25 payment and the date the initial payment must be made;

26 (f) State that the borrower has the opportunity to enter into a  
27 repayment plan with a term of at least ninety days after the date the  
28 repayment plan is entered into; and

29 (g) State the following amounts:

30 (i) The total of payments or the remaining balance on the original  
31 loan;

32 (ii) Any payments made on the loan;

33 (iii) Any charges added to the loan amount allowed under this  
34 chapter; and

35 (iv) The total amount due if the borrower enters into a repayment  
36 plan.

37 (4) Under the terms of any repayment plan:

1 (a) The borrower must enter into the repayment plan not later than  
2 thirty days after the date of the repayment plan offer, unless the  
3 licensee allows a longer period;

4 (b) The period for the repayment plan must be at least ninety days  
5 after the date the repayment plan is entered into, unless the borrower  
6 agrees to a shorter term; and

7 (c) The licensee may require the borrower to make an initial  
8 payment of not more than twenty percent of the total amount due under  
9 the terms of the repayment plan.

10 (5)(a) If a licensee and borrower enter into a repayment plan, the  
11 licensee must honor the terms of the repayment plan;

12 (b) In a repayment plan, a licensee may recover the amount the  
13 borrower was required to pay the licensee under the contract prior to  
14 the default;

15 (c) A licensee may charge the initial payment portion of the  
16 borrower's existing debt allowed under subsection (4) of this section;

17 (d) A licensee is prohibited from charging any fee, penalty, or  
18 interest in connection with a payment plan unless that fee, penalty, or  
19 interest was incurred prior to the time of the default. For the  
20 purposes of this section, a delinquency fee allowed under section  
21 8(5)(a) of this act is incurred prior to the time of the default, and  
22 a licensee may charge and collect a fee as allowed under section  
23 8(5)(a) of this act;

24 (e) A licensee is prohibited from accepting any security or  
25 collateral from the borrower to enter into the repayment plan;

26 (f) A licensee is prohibited from selling to the borrower any  
27 insurance or require the borrower to purchase insurance or any other  
28 goods or services to enter into the repayment plan; and

29 (g) A licensee is prohibited from attempting to collect an amount  
30 that is greater than the amount owed under the terms of the repayment  
31 plan.

32 (6) If the licensee and borrower enter into a repayment plan, the  
33 agreement must be in writing. The written agreement must contain all  
34 of the terms of the repayment plan, including the total amount due  
35 under the terms of the repayment plan. The written repayment agreement  
36 must be signed by the licensee and borrower. The licensee must give  
37 the borrower a copy of the signed written repayment agreement.

1 (7) If a borrower defaults on a repayment plan, the licensee may  
2 bring a civil action and pursue any other remedy authorized by law to  
3 collect the outstanding balance owed by the borrower.

4 NEW SECTION. **Sec. 17.** RESTRICTION ON TRANSFER. No licensee may  
5 pledge, negotiate, sell, or assign a small consumer installment loan,  
6 except to another licensee or to a bank, savings bank, trust company,  
7 savings and loan or building and loan association, or credit union  
8 organized under the laws of Washington or the laws of the United  
9 States.

10 NEW SECTION. **Sec. 18.** PROHIBITED ACTS. (1) It is a violation of  
11 this chapter for a licensee, its officers, directors, employees, or  
12 independent contractors, or any other person subject to this chapter  
13 to:

14 (a) Fail to make disclosures to loan applicants as required by any  
15 applicable federal law;

16 (b) Directly or indirectly employ any scheme, device, or artifice  
17 to defraud or mislead any borrower, to defraud or mislead any lender,  
18 or to defraud or mislead any person;

19 (c) Directly or indirectly engage in any unfair or deceptive  
20 practice toward any person;

21 (d) Directly or indirectly obtain property by fraud or  
22 misrepresentation;

23 (e) Make a small consumer installment loan to any person physically  
24 located in Washington through the use of the internet, facsimile,  
25 telephone, kiosk, or other means without first obtaining a license;

26 (f) Make, in any manner, any false or deceptive statement or  
27 representation with regard to the rates, points, or other financing  
28 terms or conditions for a small consumer installment loan or engage in  
29 bait and switch advertising;

30 (g) Negligently make any false statement or knowingly and willfully  
31 make any omission of material fact in connection with any reports filed  
32 with the department of financial institutions by a licensee or in  
33 connection with any investigation conducted by the department of  
34 financial institutions;

35 (h) Advertise any rate of interest without conspicuously disclosing

1 the annual percentage rate implied by that rate of interest or  
2 otherwise fail to comply with any requirement of the truth in lending  
3 act, or any other applicable state or federal statutes or regulations;

4 (i) Make small consumer installment loans from any unlicensed  
5 location;

6 (j) Fail to comply with all applicable state and federal statutes  
7 relating to the activities governed by this chapter; or

8 (k) Fail to pay any other fee, assessment, or moneys due the  
9 department of financial institutions.

10 (2) In addition to any other penalties, any transaction in  
11 violation of subsection (1) of this section is uncollectible and  
12 unenforceable.

13 NEW SECTION. **Sec. 19.** INTERNET LENDING. (1) A licensee may  
14 advertise and accept applications for small consumer installment loans  
15 by any lawful medium, including the internet.

16 (2) Nonlicensees are prohibited from advertising or making small  
17 consumer installment loans via the internet.

18 NEW SECTION. **Sec. 20.** INVESTIGATION AND EXAMINATION FEES AND  
19 ANNUAL ASSESSMENT FEE REQUIRED--AMOUNTS DETERMINED BY RULE--FAILURE TO  
20 PAY--NOTICE REQUIREMENTS OF LICENSEE. (1) Each applicant and licensee  
21 shall pay to the director an investigation and examination fee as  
22 established in rule and an annual assessment fee for the coming year in  
23 an amount determined by rule as necessary to cover the operation of the  
24 program. The annual assessment fee is due upon the annual assessment  
25 fee due date as established in rule. Nonpayment of the annual  
26 assessment fee may result in expiration of the license as provided in  
27 subsection (2) of this section. In establishing the fees, the director  
28 shall consider at least the volume of business, level of risk, and  
29 potential harm to the public related to each activity. The fees  
30 collected shall be deposited to the credit of the financial services  
31 regulation fund in accordance with RCW 43.320.110.

32 (2) If a licensee does not pay its annual assessment fee by the  
33 annual assessment fee due date as specified in rule, the director or  
34 the director's designee shall send the licensee a notice of expiration  
35 and assess the licensee a late fee not to exceed fifteen percent of the  
36 annual assessment fee as established in rule by the director. The

1 licensee's payment of both the annual assessment fee and the late fee  
2 must arrive in the department of financial institutions' offices by  
3 5:00 p.m. on the tenth day after the annual assessment fee due date,  
4 unless the department of financial institutions is not open for  
5 business on that date, in which case the licensee's payment of both the  
6 annual assessment fee and the late fee must arrive in the department of  
7 financial institutions' offices by 5:00 p.m. on the next occurring day  
8 that the department of financial institutions is open for business. If  
9 the payment of both the annual assessment fee and the late fee does not  
10 arrive prior to such time and date, then the expiration of the  
11 licensee's license is effective at 5:00 p.m. on the thirtieth day  
12 after the assessment fee due date. The director or the director's  
13 designee may reinstate the license if, within fifteen days after the  
14 effective date of expiration, the licensee pays the annual assessment  
15 fee and the late fee.

16 (3) If a licensee intends to do business at a new location, to  
17 close an existing place of business, or to relocate an existing place  
18 of business, the licensee shall provide written notification of that  
19 intention to the director no less than thirty days before the proposed  
20 establishing, closing, or moving of a place of business.

21 NEW SECTION. **Sec. 21.** LICENSEE--RECORDKEEPING. Each licensee  
22 shall keep and maintain the business books, accounts, and records the  
23 director may require to fulfill the purposes of this chapter. Every  
24 licensee shall preserve the books, accounts, and records as required in  
25 rule by the director for at least two years from the completion of the  
26 transaction. Records may be maintained on an electronic, magnetic,  
27 optical, or other storage media. However, the licensee must maintain  
28 the necessary technology to permit access to the records by the  
29 department of financial institutions for the period required under this  
30 chapter.

31 NEW SECTION. **Sec. 22.** EXAMINATION OR INVESTIGATION--DIRECTOR'S  
32 AUTHORITY--COSTS. The director or the director's designee may at any  
33 time examine and investigate the business and examine the books,  
34 accounts, records, and files, or other information, wherever located,  
35 of any licensee or person who the director has reason to believe is  
36 engaging in the business governed by this chapter. For these purposes,



1 the director or the director's designee may require the attendance of  
2 and examine under oath all persons whose testimony may be required  
3 about the business or the subject matter of the investigation. The  
4 director or the director's designee may require the production of  
5 original books, accounts, records, files, or other information, or may  
6 make copies of such original books, accounts, records, files, or other  
7 information. The director or the director's designee may issue a  
8 subpoena or subpoena duces tecum requiring attendance and testimony, or  
9 the production of the books, accounts, records, files, or other  
10 information. The director shall collect from the licensee the actual  
11 cost of the examination and investigation.

12 NEW SECTION. **Sec. 23.** SUBPOENA AUTHORITY--APPLICATION--CONTENTS--  
13 NOTICE--FEES. (1) The director or authorized assistants may apply for  
14 and obtain a superior court order approving and authorizing a subpoena  
15 in advance of its issuance. The application may be made in the county  
16 where the subpoenaed person resides or is found, or the county where  
17 the subpoenaed documents, records, or evidence are located, or in  
18 Thurston county. The application must:

19 (a) State that an order is sought under this section;

20 (b) Adequately specify the documents, records, evidence, or  
21 testimony; and

22 (c) Include a declaration made under oath that an investigation is  
23 being conducted for a lawfully authorized purpose related to an  
24 investigation within the director's authority and that the subpoenaed  
25 documents, records, evidence, or testimony are reasonably related to an  
26 investigation within the director's authority.

27 (2) When an application under this section is made to the  
28 satisfaction of the court, the court must issue an order approving the  
29 subpoena. An order under this subsection constitutes authority of law  
30 for the director to subpoena the documents, records, evidence, or  
31 testimony.

32 (3) The director or authorized assistants may seek approval and a  
33 court may issue an order under this section without prior notice to any  
34 person, including the person to whom the subpoena is directed and the  
35 person who is the subject of an investigation. An application for  
36 court approval is subject to the fee and process set forth in RCW  
37 36.18.012(3).

1        NEW SECTION.        **Sec. 24.**        REPORT REQUIREMENTS--DISCLOSURE OF  
2 INFORMATION--RULES. (1) Each licensee shall submit to the director, in  
3 a form approved by the director, a report containing financial  
4 statements covering the calendar year or, if the licensee has an  
5 established fiscal year, then for that fiscal year, within one hundred  
6 five days after the close of each calendar or fiscal year. The  
7 licensee shall also file additional relevant information as the  
8 director may require. Any information provided by a licensee in an  
9 annual report is exempt from disclosure under chapter 42.56 RCW, unless  
10 aggregated with information supplied by other licensees in a manner  
11 that the licensee's individual information is not identifiable. Any  
12 information provided by the licensee that allows identification of the  
13 licensee may only be used by the director for purposes reasonably  
14 related to the regulation of licensees to ensure compliance with this  
15 chapter.

16        (2) The director shall adopt rules specifying the form and content  
17 of annual reports and may require additional reporting as is necessary  
18 for the director to ensure compliance with this chapter.

19        (3) A licensee whose license has been suspended or revoked shall  
20 submit to the director, at the licensee's expense, within one hundred  
21 five days after the effective date of the suspension or revocation, a  
22 closing audit report containing audited financial statements as of the  
23 effective date for the twelve months ending with the effective date.

24        (4) The director is authorized to enter into agreements or sharing  
25 arrangements regarding licensee reports, examination, or investigation  
26 information with other governmental agencies, the conference of state  
27 bank supervisors, the American association of residential mortgage  
28 regulators, the national association of consumer credit administrators,  
29 or other associations representing governmental agencies as established  
30 by rule, regulation, or order of the director.

31        NEW SECTION.        **Sec. 25.**        DIRECTOR--BROAD ADMINISTRATIVE DISCRETION--  
32 RULE MAKING--ACTIONS IN SUPERIOR COURT. The director has the power,  
33 and broad administrative discretion, to administer, liberally construe,  
34 and interpret this chapter to facilitate the delivery of financial  
35 services to the citizens of this state by licensees subject to this  
36 chapter, and to effectuate the legislature's goal to protect borrowers.  
37 The director shall adopt all rules necessary to administer this

1 chapter, to establish and set fees authorized by this chapter, and to  
2 ensure complete and full disclosure by licensees of lending  
3 transactions governed by this chapter.

4 NEW SECTION. **Sec. 26.** VIOLATIONS OR UNSOUND FINANCIAL PRACTICES--  
5 STATEMENT OF CHARGES--HEARING--SANCTIONS--DIRECTOR'S AUTHORITY. (1)

6 The director may issue and serve upon a licensee or applicant, or any  
7 director, officer, sole proprietor, partner, or controlling person of  
8 a licensee or applicant, a statement of charges if, in the opinion of  
9 the director, any licensee or applicant, or any director, officer, sole  
10 proprietor, partner, or controlling person of a licensee or applicant:

11 (a) Is engaging or has engaged in an unsafe or unsound financial  
12 practice in conducting a business governed by this chapter;

13 (b) Is violating or has violated this chapter, including violations  
14 of:

15 (i) Any rules, orders, or subpoenas issued by the director under  
16 any act;

17 (ii) Any condition imposed in writing by the director in connection  
18 with the granting of any application or other request by the licensee;  
19 or

20 (iii) Any written agreement made with the director;

21 (c) Obtains a license by means of fraud, misrepresentation, or  
22 concealment;

23 (d) Provides false statements or omits material information on an  
24 application;

25 (e) Knowingly or negligently omits material information during or  
26 in response to an examination or in connection with an investigation by  
27 the director;

28 (f) Fails to pay a fee or assessment required by the director or  
29 any multistate licensing system prescribed by the director, or fails to  
30 maintain the required bond;

31 (g) Commits a crime against the laws of any jurisdiction involving  
32 moral turpitude, financial misconduct, or dishonest dealings. For the  
33 purposes of this section, a certified copy of the final holding of any  
34 court, tribunal, agency, or administrative body of competent  
35 jurisdiction is conclusive evidence in any hearing under this chapter;

36 (h) Knowingly commits or is a party to any material fraud,

1 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
2 or device whereby any other person relying upon the word,  
3 representation, or conduct acts to his or her injury or damage;

4 (i) Wrongly converts any money or its equivalent of any other  
5 person to his or her own use or to the use of his or her principal;

6 (j) Fails to disclose to the director any material information  
7 within his or her knowledge or fails to produce any document, book, or  
8 record in his or her possession for inspection by the director upon  
9 lawful demand;

10 (k) Commits any act of fraudulent or dishonest dealing. For the  
11 purposes of this section, a certified copy of the final holding of any  
12 court, tribunal, agency, or administrative body of competent  
13 jurisdiction is conclusive evidence in any hearing under this chapter;

14 (l) Commits an act or engages in conduct that demonstrates  
15 incompetence or untrustworthiness, or is a source of injury and loss to  
16 the public; or

17 (m) Violates any applicable state or federal law relating to the  
18 activities governed by this chapter.

19 (2) The director may issue and serve upon a licensee or applicant,  
20 or any director, officer, sole proprietor, partner, or controlling  
21 person of the licensee or applicant, a statement of charges if the  
22 director has reasonable cause to believe that the licensee or applicant  
23 is about to do acts prohibited in subsection (1) of this section.

24 (3) The statement of charges must be issued under chapter 34.05  
25 RCW. The director or the director's designee may impose the following  
26 sanctions against any licensee or applicant, or any directors,  
27 officers, sole proprietors, partners, controlling persons, or employees  
28 of a licensee or applicant:

29 (a) Deny, revoke, suspend, or condition a license;

30 (b) Order the licensee or person to cease and desist from practices  
31 that violate this chapter;

32 (c) Impose a fine not to exceed one hundred dollars per day per  
33 violation of this chapter;

34 (d) Order restitution or refunds to borrowers or other affected  
35 parties for violations of this chapter or take other affirmative action  
36 as necessary to comply with this chapter; and

37 (e) Remove from office or ban from participation in the affairs of

1 any licensee any director, officer, sole proprietor, partner,  
2 controlling person, or employee of a licensee.

3 (4) The proceedings to impose the sanctions described in subsection  
4 (3) of this section, including any hearing or appeal of the statement  
5 of charges, are governed by chapter 34.05 RCW.

6 (5) Unless the licensee or person personally appears at the hearing  
7 or is represented by a duly authorized representative, the licensee is  
8 deemed to have consented to the statement of charges and the sanctions  
9 imposed in the statement of charges.

10 (6) Except to the extent prohibited by another statute, the  
11 director may engage in informal settlement of complaints or enforcement  
12 actions including, but not limited to, payment to the department of  
13 financial institutions for purposes of financial literacy and education  
14 programs authorized under RCW 43.320.150.

15 NEW SECTION. **Sec. 27.** VIOLATIONS OR UNSOUND PRACTICES--TEMPORARY  
16 CEASE AND DESIST ORDER--DIRECTOR'S AUTHORITY. Whenever the director  
17 determines that the acts specified in section 26 of this act or their  
18 continuation is likely to cause insolvency or substantial injury to the  
19 public, the director may also issue a temporary cease and desist order  
20 requiring the licensee to cease and desist from the violation or  
21 practice. The order becomes effective upon service upon the licensee  
22 and remains effective unless set aside, limited, or suspended by a  
23 court under section 28 of this act pending the completion of the  
24 administrative proceedings under the notice and until the time the  
25 director dismisses the charges specified in the notice or until the  
26 effective date of a superior court injunction under section 28 of this  
27 act.

28 NEW SECTION. **Sec. 28.** TEMPORARY CEASE AND DESIST ORDER--  
29 LICENSEE'S APPLICATION FOR INJUNCTION. Within ten days after a  
30 licensee has been served with a temporary cease and desist order, the  
31 licensee may apply to the superior court in the county of its principal  
32 place of business for an injunction setting aside, limiting, or  
33 suspending the order pending the completion of the administrative  
34 proceedings pursuant to the notice served under section 27 of this act.  
35 The superior court has jurisdiction to issue the injunction.

1            NEW SECTION.    **Sec. 29.**    VIOLATION OF TEMPORARY CEASE AND DESIST  
2    ORDER--DIRECTOR'S APPLICATION FOR INJUNCTION.    In the case of a  
3    violation or threatened violation of a temporary cease and desist order  
4    issued under section 27 of this act, the director may apply to the  
5    superior court of the county of the principal place of business of the  
6    licensee for an injunction.

7            NEW SECTION.    **Sec. 30.**    APPOINTMENT OF RECEIVER.    The director may  
8    petition the superior court for the appointment of a receiver to  
9    liquidate the affairs of the licensee.

10          NEW SECTION.    **Sec. 31.**    VIOLATION--CONSUMER PROTECTION ACT--  
11    REMEDIES.    The legislature finds and declares that any violation of  
12    this chapter substantially affects the public interest and is an unfair  
13    and deceptive act or practice and an unfair method of competition in  
14    the conduct of trade or commerce as set forth in RCW 19.86.020.  
15    Remedies available under chapter 19.86 RCW do not affect any other  
16    remedy the injured party may have.

17          NEW SECTION.    **Sec. 32.**    ADJUSTMENT OF DOLLAR AMOUNTS.    The dollar  
18    amounts established in section 7(2) and 14(1)(b) of this act must,  
19    without discretion, be adjusted for inflation by the director on July  
20    1, 2014, and on each July 1st thereafter, based upon changes in the  
21    consumer price index during that time period, and then rounded up to  
22    the nearest five dollars.    "Consumer price index" means, for any  
23    calendar year, that year's annual average consumer price index, for  
24    Washington state, for wage earners and clerical workers, all items,  
25    compiled by the bureau of labor and statistics, United States  
26    department of labor.    If the bureau of labor and statistics develops  
27    more than one consumer price index for areas within the state, the  
28    index covering the greatest number of people, covering areas  
29    exclusively within the boundaries of the state, and including all items  
30    shall be used for the adjustments for inflation in this section.    The  
31    director must calculate the new dollar threshold and transmit it to the  
32    office of the code reviser for publication in the Washington State  
33    Register at least one month before the new dollar threshold is to take  
34    effect.

1        NEW SECTION.    **Sec. 33.**    REPORT TO LEGISLATURE.    The director must  
2 collect and submit the following information to the legislature by  
3 December 1, 2015, for data collected during 2014:

- 4        (1) The number of branches and total locations;
- 5        (2) The number of loans made during 2014;
- 6        (3) Loan volume;
- 7        (4) Average loan amount;
- 8        (5) Total fees charged, in total and by category of fee or other  
9 charge;
- 10       (6) Average payment per month, in total and by category of fee or  
11 other charge;
- 12       (7) Average income of borrower;
- 13       (8) The number of borrowers who are in the military;
- 14       (9) Borrower frequency;
- 15       (10) The number of unique customers;
- 16       (11) Average length of loan repayment;
- 17       (12) The number of borrowers taking out the maximum loan amount;
- 18       (13) The number of borrowers who went into default;
- 19       (14) Average length of time a borrower has a loan before a borrower  
20 goes into default;
- 21       (15) Any legislative recommendations by the director; and
- 22       (16) Any other information that the director believes is relevant  
23 or useful.

24       NEW SECTION.    **Sec. 34.**    For each small consumer installment loan  
25 that is made, a licensee must remit one dollar to the department of  
26 financial institutions for the purpose of financial literacy and  
27 education programs authorized under RCW 43.320.150.    The director shall  
28 adopt rules to implement this section.

29       NEW SECTION.    **Sec. 35.**    SHORT TITLE.    This act may be known and  
30 cited as the small consumer installment loan act.

31       NEW SECTION.    **Sec. 36.**    If any portion of this act is vetoed by the  
32 governor, this entire act is null and void.

33       NEW SECTION.    **Sec. 37.**    Sections 1 through 35 of this act  
34 constitute a new chapter in Title 31 RCW."

EFFECT: The maximum length of a small consumer installment loan is reduced to 12 months from 18 months. A portion of the loan origination fees may be refundable. If a borrower fully repays a loan prior to the date full repayment is due, a licensee must provide a refund. The refund is equal to 50% of the origination fee multiplied by a fraction based on how early the loan was repaid.

The monthly maintenance fee is earned after each 30 day period, not after the first day of each month. The monthly fee is capped at a maximum of \$90 for any month it is due. Delinquency fees are altered from 10 percent of the delinquent amount to a maximum of \$25 per delinquent loan.

A repayment plan is created for borrowers who cannot meet the terms of the agreement. A licensee must offer a borrower a repayment plan prior to bringing a civil action on a loan in default. The offer must be open to the borrower for at least 30 days. A repayment plan must be for at least 90 days unless the borrower agrees to a shorter term. A licensee may charge up to 20% of the total defaulted amount as an initial payment. A licensee may charge fees and sums incurred prior to the default and the applicable delinquency fees. A licensee may not charge any other fee or interest for a repayment plan. If a borrower defaults on a repayment plan, a licensee may pursue any legal remedy to collect the outstanding balance on the repayment plan. Additional disclosure language is prescribed.

Active and reserve duty military members, spouses of members, and dependent children of members are ineligible for a small consumer installment loan. A licensee may rely on a safe harbor, adopted by rule, in determining if a borrower is ineligible as a military borrower.

A borrower may not have simultaneous installment loans at multiple lenders even if the loans are within the aggregate limit and meet the gross monthly income restrictions. A borrower may not have a small loan (also known as a payday loan) and a small consumer installment loan simultaneously.

One dollar from each small consumer installment loan transaction must be remitted to the Department of Financial Institutions to be used for financial literacy and education.

--- END ---