FINAL BILL REPORT
ESHB 1709

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Synopsis as Enacted

Brief Description: Providing fee and installment plan assistance for borrowers at risk of default on small loans.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Nelson, White, Cody, Carlyle, Orwall, McCoy, Darneille and Ormsby).

House Committee on Financial Institutions & Insurance
Senate Committee on Labor, Commerce & Consumer Protection

Background:

Payday Loans.
Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act). The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The Act regulates payday lending practices and provides for regulation of licensees who are specifically authorized to issue small loans.

The phrase "payday loan" refers to a type of short-term, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the borrower writes the lender a post-dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

Terms of Payday Loans.
No lender may lend more than $700 to a single borrower at any one time. The lender may charge up to 15 percent for the first $500. If the borrower has a loan in excess of $500, the lender may charge up to 10 percent on the amount over $500. For example, a lender could charge up to $30 for a $200 loan or up to $85 for a $600 loan.

There is no minimum loan term for a payday loan. There is a statutory maximum loan term of 45 days.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Right of Rescission.
A borrower may rescind a loan, on or before the close of business on the next business day at the location where the loan was made. The borrower must return the principal in cash or the original check of the licensee. A licensee may not charge the borrower a fee for rescinding the loan and must return any postdated check taken as security for the loan or any electronic equivalent.

Payment Plan.
Borrowers and lenders may agree to a payment plan for payday loans. After four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. A payment plan is subject to the following conditions:

- a written agreement is required;
- the lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- the agreement must allow the buyer not less than 60 days to pay off the loan; and
- the borrower must be allowed to pay off the loan in at least three payments.

Recordkeeping.
Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by the Act.

Agency Enforcement.
The Director of the DFI 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.
A violation of the Act is a violation of the Consumer Protection Act (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 attorney's 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 $10,000 in superior court and $50,000 in district court.

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.

Summary:

Loan Terms.
The minimum term of a loan is the borrower's next paycheck unless that is less than seven days. If it is less than seven days, the minimum term is the date of the next following pay date. 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.

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.

Disclosure.
An application form for a small loan must disclose the installment plan to the borrower in a specified manner.

Installment Plan.
The existing payment plan is eliminated. A new installment plan is created. The lender must inform the borrower that if the borrower cannot repay a loan when the loan is due, then the borrower may convert the small loan to an installment plan. The lender must convert a small loan to an installment plan at the borrower's request. A loan of up to $400 has a minimum term of 90 days for a loan with payments in substantially equal installments on or after a borrower's pay dates and at least 14 days apart. A loan of over $400 has a minimum term of 180 days with payments in substantially equal installments on or after a borrower's pay dates and at least 14 days apart. A fee is not allowed for establishing an installment plan. The borrower may pay the total at any time without a penalty. The lender must return any postdated check from the borrower for the original small loan when the borrower enters into an installment plan. A licensee may take postdated checks for the installment plan. A licensee may not charge a fee for a dishonored check in connection to an installment plan but may charge a one-time $25 fee if the borrower defaults on the installment plan.

Enforcement System.
A system is authorized to enforce these provisions and other parts of the Act. The use of the system will enable a licensee to verify if the potential borrower is eligible for a small loan.

The system must be available in real-time and secure against unauthorized acquisition or use, tampering, or theft. The Director of the DFI (Director) must establish the fee by rule. A lender may not charge an additional sum to recover the fee. Information in the system is exempt from public disclosure.

Report.
The Director must collect and submit the following information to the Legislature:
- the number of borrowers entered into an installment plan since the effective date of this section;
- how the number of borrowers in installment plans compares to the number of borrowers in payment plans in years previous to the effective date of this section;
- the number of borrowers who have defaulted since the effective date of this section;
- the number of borrowers who have defaulted compared to the number of borrowers who defaulted in years previous to the effective date of the new installment plan; and
- any other information that the Director believes is relevant or useful.

Votes on Final Passage:

House	84	10	
Senate	40	8	(Senate amended)
House			(House refuses to concur)
Senate			(Senate insists on its position)
House			(House adheres to its position)
Senate	26	23	(Senate receded)

Effective: January 1, 2010