
HOUSE BILL 1709

State of Washington 61st Legislature 2009 Regular Session

By Representatives Nelson, White, Cody, Carlyle, Orwall, McCoy, Darneille, and Ormsby

Read first time 01/27/09. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to fee and installment plan assistance for
2 borrowers at risk of default on small loans; amending RCW 31.45.010,
3 31.45.073, and 31.45.084; and adding a new section to chapter 31.45
4 RCW.

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

6 **Sec. 1.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read
7 as follows:

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

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

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

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

17 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for
18 purposes of conducting the business of making small loans, includes

1 other electronic forms of payment, including stored value cards,
2 internet transfers, and automated clearing house transactions.

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

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

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

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

17 (9) "Default" means the borrower's failure to repay the small loan
18 in compliance with the terms contained in the small loan agreement or
19 note or failure to make payments in compliance with a loan payment
20 plan.

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

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

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

30 (13) "Origination date" means the date upon which the borrower and
31 the licensee initiate a small loan transaction.

32 (14) "Outstanding principal balance" of a small loan means any of
33 the principal amount that has not been paid by the borrower.

34 (15) "Paid" means that moment in time when the licensee deposits
35 the borrower's check or accepts cash for the full amount owing on a
36 valid small loan.

37 (16) "Person" means an individual, partnership, association,

1 limited liability company, limited liability partnership, trust,
2 corporation, and any other legal entity.

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

5 (18) "Rescission" means annulling the loan contract and, with
6 respect to the small loan contract, returning the borrower and the
7 licensee to their financial condition prior to the origination date of
8 the loan.

9 (19) "Small loan" means a loan of up to the maximum amount and for
10 a period of time up to the maximum term specified in RCW 31.45.073.

11 ~~((("Successive loans" means a series of loans made by the same
12 licensee to the same borrower in such a manner that no more than three
13 business days separate the termination date of any one loan and the
14 origination date of any other loan in the series.~~

15 ~~(+21+))~~ "Termination date" means the date upon which payment for the
16 small loan transaction is due or paid to the licensee, whichever occurs
17 first.

18 ~~((+22+))~~ (21) "Total of payments" means the principal amount of the
19 small loan plus all fees or interest charged on the loan.

20 ~~((+23+))~~ (22) "Trade secret" means the same as defined in RCW
21 19.108.010.

22 **Sec. 2.** RCW 31.45.073 and 2003 c 86 s 8 are each amended to read
23 as follows:

24 (1) No licensee may engage in the business of making small loans
25 without first obtaining a small loan endorsement to its license from
26 the director in accordance with this chapter. An endorsement will be
27 required for each location where a licensee engages in the business of
28 making small loans, but a small loan endorsement may authorize a
29 licensee to make small loans at a location different than the licensed
30 locations where it cashes or sells checks. A licensee may have more
31 than one endorsement.

32 (2) The termination date of a small loan may not exceed the
33 origination date of that same small loan by ~~((more than forty five))~~
34 less than sixty days, including weekends and holidays~~((, unless the
35 term of the loan is extended by agreement of both the borrower and the
36 licensee and no additional fee or interest is charged))~~. The maximum

1 principal amount of any small loan, or the outstanding principal
2 balances of all small loans made by a licensee to a single borrower at
3 any one time, may not exceed seven hundred dollars.

4 (3) 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)) ten percent of principal. The licensee may not charge~~
18 ~~any penalty, fee, or charge to the borrower for prepayment of the loan~~
19 ~~by the borrower.~~ It is a violation of this chapter for any licensee to
20 knowingly loan to a single borrower at any one time, in a single loan
21 or in the aggregate, more than the maximum principal amount described
22 in this section.

23 (4) In connection with making a small loan, a licensee may advance
24 moneys on the security of a postdated check. The licensee may not
25 accept any other property, title to property, or other evidence of
26 ownership of property as collateral for a small loan. The licensee may
27 accept only one postdated check per loan as security for the loan. A
28 licensee may permit a borrower to redeem a postdated check with a
29 payment of cash or the equivalent of cash. The licensee must return
30 any postdated check when the borrower enters into a payment plan as
31 provided for in RCW 31.45.084. The licensee may disburse the proceeds
32 of a small loan in cash, in the form of a check, or in the form of the
33 electronic equivalent of cash or a check.

34 (5) No person may at any time cash or advance any moneys on a
35 postdated check or draft in excess of the amount of goods or services
36 purchased without first obtaining a small loan endorsement to a check
37 casher or check seller license.

1 **Sec. 3.** RCW 31.45.084 and 2003 c 86 s 12 are each amended to read
2 as follows:

3 (1) ~~((A licensee and borrower may agree to a payment plan for a~~
4 ~~small loan at any time. After four successive loans and prior to~~
5 ~~default upon the last loan, each)) If a borrower cannot repay a loan
6 when it is due, the lender must inform the borrower that the borrower
7 may convert their small loan to a payment plan. The lender must
8 convert the small loan to a payment plan at the borrower's request.
9 Each agreement for a loan payment plan must be in writing and
10 acknowledged by both the borrower and the licensee. The licensee may
11 charge the borrower(~~, at the time both parties enter into the payment~~
12 ~~plan, a one-time fee for the payment plan in)) an amount up to ~~((the~~
13 ~~fee or interest)) five percent on the outstanding principal of the loan~~
14 ~~((as allowed under RCW 31.45.073(3)))). The amount charged must be
15 financed in the payment plan. The licensee may not assess any other
16 fee, interest charge, or other charge on the borrower as a result of
17 converting the small loan into a payment plan. This payment plan must
18 provide for the payment of the total of payments due on the small loan
19 over a period not less than ~~((sixty)) thirty days per hundred dollars~~
20 ~~borrowed in ~~((three or more payments, unless the borrower and licensee~~
21 ~~agree to a shorter payment period)) equal, fifteen-day installments.~~
22 The borrower may pay the total of payments at any time. The licensee
23 may not charge any penalty, fee, or charge to the borrower for
24 prepayment of the loan payment plan by the borrower. Each licensee
25 shall conspicuously disclose to each borrower in the small loan
26 agreement or small loan note that the borrower has access to such a
27 payment plan ~~((after four successive loans))~~. A licensee's violation
28 of such a payment plan constitutes a violation of this chapter.~~~~~~~~

29 (2) The licensee ~~((may take)) must return any postdated checks that~~
30 ~~the borrower has given to the licensee at the initiation of the payment~~
31 ~~plan ~~((for the payments agreed to under the plan. If any check~~
32 ~~accepted by the licensee as payment under the payment plan is~~
33 ~~dishonored, the licensee may not charge the borrower any fee for the~~
34 ~~dishonored check))~~.~~

35 (3) A borrower defaults on a payment plan by failing to make two
36 consecutive installment payments. If the borrower defaults on the
37 payment plan, the licensee may ~~((initiate action to collect the total~~

1 ~~of payments under RCW 31.45.082. The licensee may charge the borrower~~
2 ~~a one-time payment plan default fee of twenty-five dollars))~~ collect
3 the entire outstanding amount.

4 (4) If the licensee enters into a payment plan with the borrower
5 through an accredited third party, with certified credit counselors,
6 that is representing the borrower, the licensee's failure to comply
7 with the terms of that payment plan constitutes a violation of this
8 chapter.

9 NEW SECTION. Sec. 4. A new section is added to chapter 31.45 RCW
10 to read as follows:

11 (1) The director must collect and submit the following information
12 in a report to the financial services committees of the senate and
13 house of representatives:

14 (a) The number of borrowers entered into a payment plan since the
15 effective date of this section;

16 (b) How the number of borrowers in payment plans compares to the
17 number of borrowers in payment plans in years previous to the effective
18 date of this section;

19 (c) The number of borrowers who have defaulted since the effective
20 date of this section;

21 (d) If known on the effective date of this section, how the number
22 of borrowers who have defaulted compares to the number of borrowers who
23 defaulted in years previous to the effective date of this section; and

24 (e) Any other information that the director believes is relevant or
25 useful.

26 (2) Failure to provide the director information required by this
27 section is a violation of this chapter.

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