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SENATE BILL 5600

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State of Washington

62nd Legislature

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By Senators Nelson, Hobbs, Harper, Pridemore, and Kline

Read first time 02/01/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to placing restrictions on, and enforcing the  
2 restrictions on, making small loans; amending RCW 31.45.010, 31.45.020,  
3 31.45.073, 31.45.088, 31.45.105, and 31.45.180; and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 31.45.010 and 2009 c 510 s 2 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 pay any installment plan payment on an installment  
20 plan within ten days after the date upon which the installment was  
21 scheduled to be paid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 31.45.020 and 2003 c 86 s 2 are each amended to read  
4 as follows:

5           (1) This chapter does not apply to:

6           (a) Any financial institution or trust company authorized to do  
7 business in Washington;

8           (b) A person or entity licensed under chapter 31.04 RCW acting in  
9 compliance with chapter 31.04 RCW;

10           (c) The cashing of checks, drafts, or money orders by any person  
11 who cashes checks, drafts, or money orders as a convenience, as a minor  
12 part of its customary business, and not for profit;

13           (~~(e)~~) (d) The issuance or sale of checks, drafts, or money orders  
14 by any corporation, partnership, or association that has a net worth of  
15 not less than three million dollars as shown by audited financial  
16 statements; and

17           (~~(d)~~) (e) The issuance or sale of checks, drafts, money orders,  
18 or other commercial paper serving the same purpose by any agent of a  
19 corporation, partnership, or association described in (~~(e)~~) (d) of  
20 this subsection.

21           (2) Upon application to the director, the director may exempt a  
22 person from any or all provisions of this chapter upon a finding by the  
23 director that although not otherwise exempt under this section, the  
24 applicant is not primarily engaged in the business of cashing or  
25 selling checks and a total or partial exemption would not be  
26 detrimental to the public.

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

29           (1) No (~~(licensee)~~) person may engage in the business of making  
30 small loans without first obtaining the license required in RCW  
31 31.45.030 and a small loan endorsement to its license from the director  
32 in accordance with this chapter. An endorsement will be required for  
33 each location where a licensee engages in the business of making small  
34 loans, but a small loan endorsement may authorize a licensee to make  
35 small loans at a location different than the licensed locations where

1 it cashes or sells checks. A licensee may have more than one  
2 endorsement.

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

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

24 (4) A borrower is prohibited from receiving more than eight small  
25 loans from all licensees in any twelve-month period. A licensee is  
26 prohibited from making a small loan to a borrower if making that small  
27 loan would result in a borrower receiving more than eight small loans  
28 from all licensees in any twelve-month period.

29 (5) A licensee that has obtained the required small loan  
30 endorsement may charge interest or fees for small loans not to exceed  
31 in the aggregate fifteen percent of the first five hundred dollars of  
32 principal. If the principal exceeds five hundred dollars, a licensee  
33 may charge interest or fees not to exceed in the aggregate ten percent  
34 of that portion of the principal in excess of five hundred dollars. If  
35 a licensee makes more than one loan to a single borrower, and the  
36 aggregated principal of all loans made to that borrower exceeds five  
37 hundred dollars at any one time, the licensee may charge interest or  
38 fees not to exceed in the aggregate ten percent on that portion of the

1 aggregated principal of all loans at any one time that is in excess of  
2 five hundred dollars. The director may determine by rule which fees,  
3 if any, are not subject to the interest or fee limitations described in  
4 this section. It is a violation of this chapter for any licensee to  
5 knowingly loan to a single borrower at any one time, in a single loan  
6 or in the aggregate, more than the maximum principal amount described  
7 in this section.

8 (6) In connection with making a small loan, a licensee may advance  
9 moneys on the security of a postdated check. The licensee may not  
10 accept any other property, title to property, or other evidence of  
11 ownership of property as collateral for a small loan. The licensee may  
12 accept only one postdated check per loan as security for the loan. A  
13 licensee may permit a borrower to redeem a postdated check with a  
14 payment of cash or the equivalent of cash. The licensee may disburse  
15 the proceeds of a small loan in cash, in the form of a check, or in the  
16 form of the electronic equivalent of cash or a check.

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

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

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

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

32 (3) When making a small loan, each licensee shall disclose to the  
33 borrower the terms of the small loan, including the principal amount of  
34 the small loan, the total of payments of the small loan, the fee or  
35 interest rate charged by the licensee on the small loan, and the annual  
36 percentage rate resulting from this fee or interest rate.

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

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

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

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

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

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

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

19 (a) Directly or indirectly employ any scheme, device, or artifice  
20 to defraud or mislead any borrower, to defraud or mislead any lender,  
21 or to defraud or mislead any person;

22 (b) Directly or indirectly engage in any unfair or deceptive  
23 practice toward any person;

24 (c) Directly or indirectly obtain property by fraud or  
25 misrepresentation; (~~and~~)

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

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

32 (f) Make a loan in excess of the small loan maximum amount and term  
33 provisions in RCW 31.45.073.

34 (2) In addition to any other penalties, any transaction in  
35 violation of subsection (1) of this section is uncollectible and  
36 unenforceable.

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

3       (1) Any person who violates or participates in the violation of any  
4 provision of the rules or orders of the director or any provision of  
5 this chapter, except RCW 31.45.105(1) (d) and (e), is guilty of a  
6 misdemeanor.

7       (2) Any person who violates or participates in the violation of any  
8 provision of RCW 31.45.105(1) (d) and (e) is guilty of a class B  
9 felony.

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