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HOUSE BILL 1638

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Mielke, Dellwo, Thompson, Campbell and Dyer

Read first time 02/02/95.      Referred to Committee on Financial  
Institutions & Insurance.

1            AN ACT Relating to fees for making small loans; amending RCW  
2 31.45.010, 31.45.030, 31.45.040, 31.45.050, and 31.45.070; adding new  
3 sections to chapter 31.45 RCW; and adding a new section to chapter  
4 42.17 RCW.

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

6            **Sec. 1.** RCW 31.45.010 and 1994 c 92 s 274 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) "Check casher" means an individual, partnership, unincorporated  
11 association, or corporation that, for compensation, engages, in whole  
12 or in part, in the business of cashing checks, drafts, money orders, or  
13 other commercial paper serving the same purpose.

14            (2) "Check seller" means an individual, partnership, unincorporated  
15 association, or corporation that, for compensation, engages, in whole  
16 or in part, in the business of or selling checks, drafts, money orders,  
17 or other commercial paper serving the same purpose.

18            (3) "Licensee" means a check casher or seller licensed by the  
19 director to engage in business in accordance with this chapter. For

1 purposes of the enforcement powers of this chapter, including the power  
2 to issue cease and desist orders under RCW 31.45.110, "licensee" also  
3 means a check casher or seller who fails to obtain the license required  
4 by this chapter.

5 (4) "Small loan" means a loan of up to five hundred dollars for a  
6 period of thirty-one days or less.

7 (5) "Director" means the director of financial institutions.

8 NEW SECTION. Sec. 2. A new section is added to chapter 31.45 RCW  
9 to read as follows:

10 (1) No licensee may engage in the business of making small loans  
11 without first obtaining an endorsement to its license from the director  
12 in accordance with this chapter. An endorsement will be required for  
13 each location where a licensee engages in the business of making small  
14 loans, but a small loan endorsement may authorize a licensee to make  
15 small loans at a location different than the licensed location. A  
16 licensee may have more than one endorsement.

17 (2) A licensee who has obtained the required endorsement may charge  
18 a fee for small loans not to exceed fifteen percent of the principal  
19 amount borrowed.

20 (3) In connection with making a small loan, a licensee may advance  
21 moneys on the security of a postdated check or draft provided the time  
22 period between the date the loan is granted and the date of the  
23 postdated check does not exceed thirty-one days. A licensee shall  
24 deposit all postdated checks or drafts as soon as practicable after the  
25 date of the check or draft has passed.

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

30 NEW SECTION. Sec. 3. A new section is added to chapter 31.45 RCW  
31 to read as follows:

32 (1) Each application for a small loan endorsement to a check casher  
33 or check seller license must be in writing and in a form prescribed by  
34 the director and shall contain the following information:

35 (a) The legal name, residence, and business address of the  
36 applicant, and if the applicant is a partnership, corporation, or

1 association, the name and address of every member, partner, officer,  
2 and director thereof;

3 (b) Each location where the licensee will engage in the business of  
4 making small loans;

5 (c) A surety bond, or other security allowed under RCW 31.45.030,  
6 in the amount required; and

7 (d) Any other pertinent information, including financial  
8 statements, as the director may require with respect to the licensee  
9 and its directors, officers, trustees, members, or employees.

10 (2) Any information in the application regarding the licensee's  
11 personal residential address or telephone number is exempt from the  
12 public records disclosure requirements of chapter 42.17 RCW.

13 (3) The application shall be filed together with an investigation  
14 and supervision fee established by rule by the director. Fees  
15 collected shall be deposited to the credit of the banking examination  
16 fund in accordance with RCW 43.320.110.

17 **Sec. 4.** RCW 31.45.030 and 1994 c 92 s 276 are each amended to read  
18 as follows:

19 (1) Except as provided in RCW 31.45.020, no check casher or seller  
20 may engage in business without first obtaining a license from the  
21 director in accordance with this chapter.

22 (2) Each application for a license shall be in writing in a form  
23 prescribed by the director and shall contain the following information:

24 (a) The legal name, residence, and business address of the  
25 applicant and, if the applicant is a partnership, association, or  
26 corporation, of every member, officer, and director thereof;

27 (b) The location where the initial registered office of the  
28 applicant will be located in this state;

29 (c) The complete address of any other locations at which the  
30 applicant proposes to engage in business as a check casher or seller;

31 (d) Such other data, financial statements, and pertinent  
32 information as the director may require with respect to the applicant,  
33 its directors, trustees, officers, members, or agents.

34 (3) Any information in the application regarding the personal  
35 residential address or telephone number of the applicant is exempt from  
36 the public records disclosure requirements of chapter 42.17 RCW.

37 (4) The application shall be filed together with an investigation  
38 and supervision fee established by rule by the director. Such fees

1 collected shall be deposited to the credit of the banking examination  
2 fund in accordance with RCW 43.320.110.

3 (5)(a) Before granting a license to sell checks, drafts, or money  
4 orders under this chapter, the director shall require that the licensee  
5 file with the director a surety bond running to the state of  
6 Washington, which bond shall be issued by a surety insurer which meets  
7 the requirements of chapter 48.28 RCW, and be in a format acceptable to  
8 the director. The director shall adopt rules to determine the penal  
9 sum of the bond that shall be filed by each licensee. The bond shall  
10 be conditioned upon the licensee paying all persons who purchase  
11 checks, drafts, or money orders from the licensee the face value of any  
12 check, draft, or money order which is dishonored by the drawee bank,  
13 savings bank, or savings and loan association due to insufficient funds  
14 or by reason of the account having been closed. The bond shall only be  
15 liable for the face value of the dishonored check, draft, or money  
16 order, and shall not be liable for any interest or consequential  
17 damages.

18 Before granting a small loan endorsement under this chapter, the  
19 director shall require that the licensee file with the director a  
20 surety bond running to the state of Washington, which bond shall be  
21 issued by a surety insurer that meets the requirements of chapter 48.28  
22 RCW, and be in a format acceptable to the director. The director shall  
23 adopt rules to determine the penal sum of the bond that shall be filed  
24 by each licensee. A licensee who wishes to engage in both check  
25 selling and making small loans may combine the penal sums of the  
26 bonding requirements and file one bond in a form acceptable to the  
27 director. The bond shall run to the state of Washington as obligee,  
28 and shall run to the benefit of the state and any person or persons who  
29 suffer loss by reason of the licensee's violation of this chapter or  
30 any rules adopted under this chapter. The bond shall only be liable  
31 for damages suffered by borrowers as a result of the licensee's  
32 violation of this chapter or rules adopted under this chapter, and  
33 shall not be liable for any interest or consequential damages.

34 The bond shall be continuous and may be canceled by the surety upon  
35 the surety giving written notice to the director and licensee of its  
36 intent to cancel the bond. The cancellation is effective thirty days  
37 after the notice is received by the director. Whether or not the bond  
38 is renewed, continued, reinstated, reissued, or otherwise extended,  
39 replaced, or modified, including increases or decreases in the penal

1 sum, it shall be considered one continuous obligation, and the surety  
2 upon the bond shall not be liable in an aggregate or cumulative amount  
3 exceeding the penal sum set forth on the face of the bond. In no event  
4 shall the penal sum, or any portion thereof, at two or more points in  
5 time be added together in determining the surety's liability. The bond  
6 shall not be liable for any liability of the licensee for tortious  
7 acts, whether or not such liability is imposed by statute or common  
8 law, or is imposed by contract. The bond shall not be a substitute or  
9 supplement to any liability or other insurance required by law or by  
10 the contract. If the surety desires to make payment without awaiting  
11 court action against it, the penal sum of the bond shall be reduced to  
12 the extent of any payment made by the surety in good faith under the  
13 bond.

14 Any person who is a purchaser of a check, draft, or money order  
15 from the licensee having a claim against the licensee for the dishonor  
16 of any check, draft, or money order by the drawee bank, savings bank,  
17 or savings and loan association due to insufficient funds or by reason  
18 of the account having been closed, or who obtained a small loan from  
19 the licensee and was damaged by the licensee's violation of this  
20 chapter or rules adopted under this chapter, may bring suit upon such  
21 bond or deposit in the superior court of the county in which the check,  
22 draft, or money order was purchased, or in the superior court of a  
23 county in which the licensee maintains a place of business.  
24 Jurisdiction shall be exclusively in the superior court. Any such  
25 action must be brought not later than one year after the dishonor of  
26 the check, draft, or money order on which the claim is based. In the  
27 event valid claims against a bond or deposit exceed the amount of the  
28 bond or deposit, each claimant shall only be entitled to a pro rata  
29 amount, based on the amount of the claim as it is valid against the  
30 bond, or deposit, without regard to the date of filing of any claim or  
31 action.

32 (b) In lieu of the surety bond required by this section, the  
33 applicant for a check seller license may file with the director a  
34 deposit consisting of cash or other security acceptable to the director  
35 in an amount equal to the penal sum of the required bond. The director  
36 may adopt rules necessary for the proper administration of the  
37 security. A deposit given instead of the bond required by this section  
38 shall not be deemed an asset of the licensee for the purpose of  
39 complying with the liquid asset provisions of this chapter. A deposit

1 given instead of the bond required by this section is a fund held in  
2 trust for the benefit of eligible claimants under this section and is  
3 not an asset of the estate of any licensee who files a petition for  
4 protection under the bankruptcy laws of the United States. In lieu of  
5 the surety bond required by this section, the applicant for a small  
6 loan endorsement to a check casher license or a check seller license  
7 may file with the director a deposit consisting of cash or other  
8 security acceptable to the director in an amount equal to the penal sum  
9 of the required bond, or may demonstrate to the director net worth in  
10 excess of three times the amount of the penal sum of the required bond.  
11 The director may adopt rules necessary for the proper administration of  
12 the security or to establish reporting requirements to ensure that the  
13 net worth requirements continue to be met.

14 (c) Such security may be sold by the director at public auction if  
15 it becomes necessary to satisfy the requirements of this chapter.  
16 Notice of the sale shall be served upon the licensee who placed the  
17 security personally or by mail. If notice is served by mail, service  
18 shall be addressed to the licensee at its address as it appears in the  
19 records of the director. Bearer bonds of the United States or the  
20 state of Washington without a prevailing market price must be sold at  
21 public auction. Such bonds having a prevailing market price may be  
22 sold at private sale not lower than the prevailing market price. Upon  
23 any sale, any surplus above amounts due shall be returned to the  
24 licensee, and the licensee shall deposit with the director additional  
25 security sufficient to meet the amount required by the director. A  
26 deposit given instead of the bond required by this section shall not be  
27 deemed an asset of the licensee for the purpose of complying with the  
28 liquid asset provisions of this chapter.

29 **Sec. 5.** RCW 31.45.040 and 1994 c 92 s 277 are each amended to read  
30 as follows:

31 (1) The director shall conduct an investigation of every applicant  
32 to determine the financial responsibility, experience, character, and  
33 general fitness of the applicant. The director shall issue the  
34 applicant a license to engage in the business of cashing or selling  
35 checks, or both, or small loan endorsements to a check casher or check  
36 seller license, if the director determines to his or her satisfaction  
37 that:

1 (a) The applicant is financially responsible and appears to be able  
2 to conduct the business of cashing or selling checks or making small  
3 loans in an honest, fair, and efficient manner with the confidence and  
4 trust of the community; and

5 (b) The applicant has the required bonds, or has provided a  
6 permitted alternative form of financial security.

7 (2) The director may refuse to issue a license or endorsement if he  
8 or she finds that the applicant, or any person who is a director,  
9 officer, partner, agent, or substantial stockholder of the applicant,  
10 has been convicted of a felony in any jurisdiction or is associating or  
11 consorting with any person who has been convicted of a felony in any  
12 jurisdiction. The term "substantial stockholder" as used in this  
13 subsection, means a person owning or controlling ten percent or more of  
14 the total outstanding shares of the applicant corporation.

15 (3) No license or endorsement may be issued to an applicant whose  
16 license to conduct business under this chapter had been revoked by the  
17 director within the twelve-month period preceding the application.

18 (4) A license or endorsement issued under this chapter shall be  
19 conspicuously posted in the place of business of the licensee. The  
20 license is not transferable or assignable.

21 (5) A license or endorsement issued in accordance with this chapter  
22 remains in force and effect (~~((through the remainder of the calendar~~  
23 ~~year following its date of issuance))~~ for a period of five years from  
24 the date it is issued unless earlier surrendered, suspended, or  
25 revoked. The initial small loan endorsement is effective until the  
26 next expiration date of the underlying license.

27 (6) The director's investigation and fees required under this  
28 chapter shall differentiate between check cashing and check selling  
29 (~~((activities))~~) and making small loans, and take into consideration the  
30 level of risk and potential harm to the public related to each such  
31 activity.

32 **Sec. 6.** RCW 31.45.050 and 1994 c 92 s 278 are each amended to read  
33 as follows:

34 (1) A license or endorsement may be renewed upon the filing of an  
35 application containing such information as the director may require and  
36 by the payment of a fee in an amount determined by the director as  
37 necessary to cover the costs of supervision. Such fees collected shall  
38 be deposited to the credit of the banking examination fund in

1 accordance with RCW 43.320.110. The director shall renew the license  
2 in accordance with the standards for issuance of a new license.

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

8 **Sec. 7.** RCW 31.45.070 and 1994 c 92 s 280 are each amended to read  
9 as follows:

10 (1) Except for the activities of a pawnbroker as defined in RCW  
11 19.60.010 and the making of small loans under this chapter, no licensee  
12 may engage in a loan business or the negotiation of loans or the  
13 discounting of notes, bills of exchange, checks, or other evidences of  
14 debt on the same premises where a check cashing or selling business is  
15 conducted, unless such loan business is a properly licensed consumer  
16 finance company or industrial loan company office or other lending  
17 activity permitted in the state of Washington and is physically  
18 separated from the check cashing or selling business in a manner  
19 approved by the director.

20 (2) Except as otherwise permitted in this chapter, no licensee may  
21 at any time cash or advance any moneys on a postdated check or draft.  
22 However, a licensee may cash a check payable on the first banking day  
23 following the date of cashing if:

24 (a) The check is drawn by the United States, the state of  
25 Washington, or any political subdivision of the state, or by any  
26 department or agency of the state or its subdivisions; or

27 (b) The check is a payroll check drawn by an employer to the order  
28 of its employee in payment for services performed by the employee.

29 (3) Except as otherwise permitted in this chapter, no licensee may  
30 agree to hold a check or draft for later deposit. A licensee shall  
31 deposit all checks and drafts cashed by the licensee as soon as  
32 practicable.

33 (4) No licensee may issue or cause to be issued any check, draft,  
34 or money order, or other commercial paper serving the same purpose,  
35 that is drawn upon the trust account of a licensee without concurrently  
36 receiving the full principal amount, in cash, or by check, draft, or  
37 money order from a third party believed to be valid.



1 (5) No licensee may advertise, print, display, publish, distribute,  
2 or broadcast or cause or permit to be advertised, printed, displayed,  
3 published, distributed, or broadcast, any statement or representation  
4 that is false, misleading, or deceptive, or that omits material  
5 information, or that refers to the supervision of the licensee by the  
6 state of Washington or any department or official of the state.

7 (6) Each licensee shall comply with all applicable federal statutes  
8 governing currency transaction reporting.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 42.17 RCW  
10 to read as follows:

11 Information regarding a licensee's personal residential address or  
12 telephone number required under section 3 of this act is exempt from  
13 the disclosure requirements under this chapter.

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