**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

# Financial Institutions & Insurance Committee

# HB 1685

**Brief Description**: Adding an additional sixty day payment plan option for small loans.

**Sponsors**: Representative Kirby.

**Brief Summary of Bill**

- Requires a lender to allow a borrower to convert the unpaid principal and fee with a lender into a payment plan once every 12 months. A licensee may not assess any additional charge to convert a loan into a payment plan.
- Extends the number of payments in a payment plan from three or more payments to four or more payments.

**Hearing Date**: 2/10/09

**Staff**: Jon Hedegard (786-7127)

**Background**:

Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), chapter 31.45 RCW. 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

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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 can 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.

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 chapter 31.45 RCW.

Agency Enforcement.
The Director of the DFI may impose the 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 of Bill**:

Payment plans must allow the borrower to pay the total amount borrowed off in four or more payments. A lender may not assess a fee for a payment plan at the time the payment plan is established; it must be paid off in installments over the term of the payment plan.

In addition to the existing payment plan option, once every 12 months a borrower may convert the unpaid principal and fee with a lender into a payment plan. A licensee may not assess any additional charge to convert a loan into a payment plan. A licensee is only required to extend to each borrower one no additional cost payment plan during any 12 month period of time. A new 12 month period begins on the date that the payment plan is paid in full.

A borrower must return to the licensee's point of sale location and request a payment plan prior to the close of business on the business day before the due date of the loan.

"Licensee's point of sale" is defined as:
- the licensee's store where the borrower obtained the loan;
- any other store operated by the licensee in Washington; or
- the method the borrower used to obtain the loan. This includes an internet web site, a telephone number, or any other remote means or method of communication.

An agreement for a payment plan must be in writing and acknowledged by the borrower and the licensee. Any agreement entered into after default on a small loan is not a payment plan. The payment plan options must be conspicuously disclosed to a borrower.

The disclosure must be:
- in 12-point type;
- surrounded by a border with no other loan term in that border; and
- located on the same page as information required to be disclosed by the Federal Truth in Lending Act.

**Appropriation**: None.

**Fiscal Note**: Not requested.

**Effective Date**: The bill takes effect 90 days after adjournment of the session in which the bill is passed.