BILL ANALYSIS

Financial Institutions & Insurance Committee

HB 1851

Brief Description: Requiring the disclosure to potential borrowers of alternatives to a small loan.

Sponsors: Representatives Kelley and Nelson.

Brief Summary of Bill

- Requires a licensee to provide a disclosure statement that informs a potential small loan borrower about possible alternatives to a small loan.

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 option of either redeeming the check by paying the face amount to the lender or allowing the

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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 (Director) 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:

A licensee must provide a disclosure statement that informs a potential small loan borrower that possible alternatives to a small loan exist and that the borrower may qualify for other assistance or loans. The statement must:
- be a separate document;
- be in at least 12-point type;
- be provided to the potential borrower along with or prior to an application;
- provide examples of possible alternatives and contact information;
- provide a list of independent financial counseling agencies in the area or region; and
- be approved by the Director prior to use. If the Director later withdraws approval, the licensee must cease using the disapproved statement.

The examples of possible alternatives and contact information, including:
- the Army Emergency Relief Program;
- the Navy-Marine Corps Relief Society Quick Assist Loan Program;
- the Air Force Aid Society Falcon Loan Program;
- the Coast Guard Mutual Assistance Program;
- the Diversion Cash Assistance Program offered by the Department of Social and Health Services; and
- other alternatives required by the Director.

The Director may adopt rules to implement these requirements.

Appropriation: None.

Fiscal Note: Requested on February 4, 2009.

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