

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5279

54th Legislature
1995 Regular Session

Passed by the Senate February 27, 1995
YEAS 48 NAYS 1

President of the Senate

Passed by the House April 4, 1995
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5279** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5279

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Prentice, Roach, Prince, Spanel, Hale, Heavey, Kohl, Sellar and C. Anderson)

Read first time 02/09/95.

1 AN ACT Relating to small loans by licensed check cashers and
2 sellers; amending RCW 31.45.010, 31.45.030, 31.45.040, 31.45.050,
3 31.45.070, and 42.17.313; and adding new sections to chapter 31.45 RCW.

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

5 **Sec. 1.** RCW 31.45.010 and 1994 c 92 s 274 are each amended to read
6 as follows:

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

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

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

17 (3) "Licensee" means a check casher or seller licensed by the
18 director to engage in business in accordance with this chapter. For
19 purposes of the enforcement powers of this chapter, including the power

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

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

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

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

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

17 (2) A licensee that has obtained the required small loan
18 endorsement may charge interest or fees for small loans not to exceed
19 in the aggregate fifteen percent of the principal amount borrowed. The
20 director may determine by rule which fees, if any, are not subject to
21 the fifteen percent limitation.

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

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

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 31.45 RCW
33 to read as follows:

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

1 (a) The legal name, residence, and business address of the
2 applicant, and if the applicant is a partnership, corporation, or
3 association, the name and address of every member, partner, officer,
4 and director thereof;

5 (b) The street and mailing address of each location where the
6 licensee will engage in the business of making small loans;

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

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

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

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

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

21 (1) Except as provided in RCW 31.45.020, no check casher or seller
22 may engage in business without first obtaining a license from the
23 director in accordance with this chapter. A license is required for
24 each location where a licensee engages in the business of cashing or
25 selling checks or drafts.

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

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

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

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

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

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

4 (4) The application shall be filed together with an investigation
5 and supervision fee established by rule by the director. Such fees
6 collected shall be deposited to the credit of the banking examination
7 fund in accordance with RCW 43.320.110.

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

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

38 (c) The bond shall be continuous and may be canceled by the surety
39 upon the surety giving written notice to the director and licensee of

1 its intent to cancel the bond. The cancellation is effective thirty
2 days after the notice is received by the director. Whether or not the
3 bond is renewed, continued, reinstated, reissued, or otherwise
4 extended, replaced, or modified, including increases or decreases in
5 the penal sum, it shall be considered one continuous obligation, and
6 the surety upon the bond shall not be liable in an aggregate or
7 cumulative amount exceeding the penal sum set forth on the face of the
8 bond. In no event shall the penal sum, or any portion thereof, at two
9 or more points in time be added together in determining the surety's
10 liability. The bond shall not be liable for any liability of the
11 licensee for tortious acts, whether or not such liability is imposed by
12 statute or common law, or is imposed by contract. The bond shall not
13 be a substitute or supplement to any liability or other insurance
14 required by law or by the contract. If the surety desires to make
15 payment without awaiting court action against it, the penal sum of the
16 bond shall be reduced to the extent of any payment made by the surety
17 in good faith under the bond.

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

36 ((b)) (e) In lieu of the surety bond required by this section,
37 the applicant for a check seller license may file with the director a
38 deposit consisting of cash or other security acceptable to the director
39 in an amount equal to the penal sum of the required bond. ((The

1 ~~director may adopt rules necessary for the proper administration of the~~
2 ~~security. A deposit given instead of the bond required by this section~~
3 ~~shall not be deemed an asset of the licensee for the purpose of~~
4 ~~complying with the liquid asset provisions of this chapter.)) In lieu
5 of the surety bond required by this section, the applicant for a small
6 loan endorsement may file with the director a deposit consisting of
7 cash or other security acceptable to the director in an amount equal to
8 the penal sum of the required bond, or may demonstrate to the director
9 net worth in excess of three times the amount of the penal sum of the
10 required bond.~~

11 The director may adopt rules necessary for the proper
12 administration of the security or to establish reporting requirements
13 to ensure that the net worth requirements continue to be met. A
14 deposit given instead of the bond required by this section is not an
15 asset of the licensee for the purpose of complying with the liquid
16 asset provisions of this chapter. A deposit given instead of the bond
17 required by this section is a fund held in trust for the benefit of
18 eligible claimants under this section and is not an asset of the estate
19 of any licensee that seeks protection voluntarily or involuntarily
20 under the bankruptcy laws of the United States.

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

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

1 (1) The director shall conduct an investigation of every applicant
2 to determine the financial responsibility, experience, character, and
3 general fitness of the applicant. The director shall issue the
4 applicant a license to engage in the business of cashing or selling
5 checks, or both, or a small loan endorsement, if the director
6 determines to his or her satisfaction that:

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

11 (b) The applicant has the required bonds, or has provided an
12 acceptable alternative form of financial security.

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

21 (3) No license or small loan endorsement may be issued to an
22 applicant whose license to conduct business under this chapter had been
23 revoked by the director within the twelve-month period preceding the
24 application.

25 (4) A license or small loan endorsement issued under this chapter
26 shall be conspicuously posted in the place of business of the licensee.
27 The license is not transferable or assignable.

28 (5) A license or small loan endorsement issued in accordance with
29 this chapter remains in force and effect (~~((through the remainder of the~~
30 ~~calendar year following its date of issuance))~~ for a period of five
31 years from the date it is issued unless earlier surrendered, suspended,
32 or revoked. However, the initial small loan endorsement is effective
33 until the next expiration date of the underlying license, unless
34 earlier surrendered, suspended, or revoked.

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

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

3 (1) A license or small loan endorsement may be renewed upon the
4 filing of an application containing such information as the director
5 may require and by the payment of a fee in an amount determined by the
6 director as necessary to cover the costs of supervision. Such fees
7 collected shall be deposited to the credit of the banking examination
8 fund in accordance with RCW 43.320.110. The director shall renew the
9 license in accordance with the standards for issuance of a new license.

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

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

17 (1) (~~Except for the activities of a pawnbroker as defined in RCW~~
18 ~~19.60.010,~~) No licensee may engage in a loan business or the
19 negotiation of loans or the discounting of notes, bills of exchange,
20 checks, or other evidences of debt on the same premises where a check
21 cashing or selling business is conducted, unless ((such loan business
22 is a properly licensed consumer finance company or industrial loan
23 company office or other lending activity permitted in the state of
24 Washington and is physically separated from the check cashing or
25 selling business in a manner approved by the director)) the licensee:

26 (a) Is conducting the activities of pawnbroker as defined in RCW
27 19.60.010;

28 (b) Is a properly licensed consumer loan company;

29 (c) Is conducting other lending activity permitted in the state of
30 Washington; or

31 (d) Has a small loan endorsement.

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

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

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

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

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

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

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

20 **Sec. 8.** RCW 42.17.313 and 1991 c 355 s 22 are each amended to read
21 as follows:

22 Information in an application for licensing or a small loan
23 endorsement under ((RCW 31.45.030)) chapter 31.45 RCW regarding the
24 personal residential address, telephone number of the applicant, or
25 financial statement is exempt from disclosure under this chapter.

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