

# SENATE BILL REPORT

## ESSB 5312

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As Passed Senate, February 20, 2013

**Title:** An act relating to small consumer installment loans.

**Brief Description:** Authorizing small consumer installment loans.

**Sponsors:** Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Harper, Eide, Benton, Hatfield, Schoesler, Roach, Keiser and Tom).

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 1/29/13, 2/07/13 [DPS, DNP].

Passed Senate: 2/20/13, 30-18.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5312 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Benton, Ranking Member; Fain, Hatfield and Roach.

**Minority Report:** Do not pass.

Signed by Senators Mullet, Vice Chair; Nelson.

**Staff:** Alison Mendiola (786-7483)

**Background:** One type of loan product offered in Washington and regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act) is a small loan, commonly referred to as a payday loan. A business is authorized to provide this product by receiving an endorsement to a license issued by DFI.

Payday loans are a type of short-term, unsecured loan 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 lender to cash the check after the loan period has expired.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Terms of Small Loans.

- A borrower may not take out more than \$700 in small loans at any time from all lenders.
- A borrower may not borrow more than 30 percent of the borrower's gross monthly income.
- Fees are limited by the dollar amount borrowed; the maximum fee is \$95.00.
- A borrower may not receive more than eight small loans in a 12-month period.
- The minimum term of a loan is the borrower's next paycheck unless that is less than seven days. If it is less than seven days, the minimum term is the date of the next following pay date.
- A borrower can enter into an installment plan, with no additional fee, if the borrower feels that they cannot repay the loan when it is due. A borrower has up to six months to repay the loan in an installment plan. There are limitations on receiving subsequent small loans while in an installment plan.
- Other than a post-dated check, a licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan.
- A borrower has one business day to rescind the loan, in which case the licensee may not collect any fees.

A violation of the Act is a per se violation of the Consumer Protection Act.

**Summary of Engrossed Substitute Bill:** The Small Consumer Installment Act is created.

Licensees. Businesses offering the small consumer installment loan are regulated by DFI and must be licensed to offer this product.

Applications for a license must include the name, residence, and business address of the applicant, the location of the initial registered location, the complete address of any additional locations, a fingerprint for the purpose of a criminal background check by the Washington State Patrol or Federal Bureau of Investigation, and any other data as the Director of DFI may require. A fee must be paid for a license as determined by the director. A licensee must have a surety bond, based on the the dollar amount of loans originated, between \$35,000 and \$250,000.

Each location where this loan is offered must be licensed.

When a loan is made, the licensee is to document the transaction in writing which includes the name and address of the borrower and licensee; the transaction date; the loaned amount; a statement of the total amount of finances charged, expressed as both a dollar amount and an annual percentage rate; the installment payment schedule; the right to rescind; terms of delinquency; and the manner in which payments may be made.

Licensees may advertise and accept applications for loans via the internet. Nonlicensees may not. Licensees keep and maintain business books, as required, for at least two years from the completion date of the transaction.

Licenses must file annual reports with DFI, including additional relevant information as required.

The Director of DFI, or their designee, may at any time examine and investigate the business' books, accounts, records, files, and other information of any licensee who the Director has reason to believe is engaging in the business of making small consumer installment loans. The Director must collect from the licensee the actual cost of the examination or investigation.

Small Consumer Installment Loans. A small consumer installment loan may not exceed \$1,500. A licensee may provide more than one loan to a borrower as long as all scheduled payments in any month to all licensees does not exceed 15 percent of a borrower's gross monthly income.

The maximum interest rate is 36 percent, excluding fees, penalties, and other authorized charges, and an origination fee may not exceed 15 percent of the loaned amount. The minimum repayment term is six months. Payments are to be substantially equal and consistent with payments every 14-35 days. A licensee may charge a monthly maintenance fee of \$7.50 per \$100 loaned. There is no penalty for prepaying the loan. Licensees may not condition a loan based on the borrower's repayment by preauthorized electronic fund transfers. The licensee is to provide the borrower with a written disclosure that states, "a small consumer installment loan is not intended to meet long-term financial goals. A small consumer installment loan should be used only to meet short-term cash needs."

If a scheduled payment is delinquent by at least ten days, the licensee may:

- charge and collect of penalty of up to 10 percent of the delinquent payment;
- declare the entire loan due and collect accordingly; and
- collect from the borrower reasonable attorneys' fees, and any actual costs and expenses incurred in connection with the collection of any amounts due.

A borrower has one business day to rescind the loan in which case the licensee is to refund the loan plus any loan fees and interest received.

The borrower's repayment obligations are not secured by a lien on any real or personal property. The loan is primarily for personal, family, or household purposes.

Collections. A licensee must comply with all applicable state and federal laws when collecting a delinquent small consumer installment loan. A licensee must maintain a communication log of all telephone and written communications with a borrower, when initiated by the licensee. If a dishonored check is assigned to a third party for collection, the same collection terms apply to the third party.

No licensee may pledge, negotiate, sell, or assign a small consumer installment loan except to another licensee or to a bank, savings, bank, trust company, savings and loan or building and loan association, or credit union organized under the laws of Washington or the laws of the United States.

Other. A violation of this Act is a per se violation of the Consumer Protection Act.

A database to monitor loans is authorized.

DFI must report to the Legislature on December 1, 2015, specific findings, including number of loans made, average amount of loan, average length of repayment, and average fees paid as well as any legislative recommendations.

The Director may serve a licensee or related party a statement of charges if they believe the party:

- is engaging or has engaged in unsafe or unsound financial practices as it relates to the loan;
- is violating the Act, or any rules or orders of subpoenas issued by the Director under the Act; or any written agreement made with the Director; or other reasons enumerated in statute, such as obtaining a license by fraud or misrepresentation or failing to pay an assessment as required by the Director or any multistate licensing system.

The Director may impose a temporary cease and desist order, apply to the appropriate superior court for an injunction, and petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee.

Proceedings to impose sanctions, including any hearing or appeal, are governed by the Administrative Procedures Act.

If any portion of this Act is vetoed by the Governor, this entire Act is null and void.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Customers want a longer period of time to pay back a short-term loan and this loan product addresses that need. Otherwise, customers turn to illegal offshore payday lenders. Doing nothing is allowing customers to be harmed by such unscrupulous lenders. This legislation is modeled after a law passed in Colorado three years ago that had the support of consumer advocates. The small consumer installment loan industry would be highly regulated, both by DFI and the federal government. Regulation is welcome to make sure loans are transparent and fair. There is no intent for this to be a car-title loan. There are consumer protections such as no prepayment penalties and a right of rescission. The U.S. Black Chamber of Commerce agrees that Washingtonians have few options for safe short-term credit. This loan would provide an alternative to borrowers who want a short-term loan but want a longer repayment period. A database would allow for tracking of the loans.

CON: In 2009 many protections were put into place to protect consumers. Even with interest capped at 36 percent with the additional fees this loan product is like a payday loan on steroids. How would this impact local military? This is a step in the wrong direction. There are already alternatives, such as credit unions that offer short-term loans with better terms than payday loans. There is concern that car titles would be required as collateral. Under this bill, a borrower is delinquent if they are ten days late in a payment. How many loans will just be refi roll-over loans where the borrower comes in at day nine to pay off the loan in order to get a new loan? Lowering interest fees but increasing fees is semantics.

OTHER: There is support for the concept of a database to track loans. This type of loan does extend the availability of credit. The Consumer Loan Act should have their rates increased and allow the ability to buy the loan like financial institutions.

**Persons Testifying:** PRO: Dennis Bassford, Trent Matson, Moneytree, Inc.

CON: Steve Breaux, SEIU Healthcare 775NW; Bruce Neas, Columbia Legal Services; Marcy Bowers, Statewide Poverty Action Network; David Siemmski, Seth Goldstein, citizens.

OTHER: Tom Echols, WA State Financial Services Assn.; Carrie Tellefson, Veritec.