BILL ANALYSIS

Consumer Protection & Business Committee

HB 2083

Brief Description: Making modifications to small loans under payday lending laws.

Sponsors: Representatives Ryu, Volz, Walen, Ramel, Reed, Ormsby, Timmons, Riccelli and Fosse.

Brief Summary of Bill

- Modifies the maximum fee that may be charged for a small loan to no more than an annual percentage rate of 36 percent.
- Modifies the definition of small loan to include advances of money or credit to be repaid from an asset or income, whether earned or to be earned, and whether the payee is made personally liable or the transaction carries required charges or payments.
- Sets forth additional violations for lenders under the Check Cashers and Sellers Act.

Hearing Date: 1/10/24

Staff: Megan Mulvihill (786-7304).

Background:

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

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lending practices and provides for regulation of licensees who are specifically authorized to issue small loans by applying for and receiving an endorsement to their check casher or check seller license.

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 postdated 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 time the borrower 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.

Under the Act, a small loan means a loan up to $700 or 30 percent of the gross monthly income of the borrower, whichever is less. The maximum fee that can be charged is 15 percent on the first $500 dollars and 10 percent above $500. The minimum loan term is the borrower's next paycheck unless the borrower's next paycheck is less than seven days away, in which case the minimum term is the next following pay date. The maximum loan term is 45 days. Borrowers are only permitted to take eight payday loans per 12-month period. The DFI maintains a database system that allows a lender to verify if the potential borrower is eligible for a small loan.

<u>Earned Wage Access</u>.
Earned wage access (EWA) is a service that allows employees access to wages that have been earned before their payday, but have not yet been paid, usually by paying a fee. There are generally two types of EWA programs. A direct-to-consumer model is offered to employees without an employer's involvement, whereas an employer-integrated model involves the EWA provider entering into a contract with an employer to offer the service as an employee benefit. Earned wage access programs are noncredit transactions and are not regulated as loans under state or federal law.

Summary of Bill:

<u>Modifications to Small Loans Under the Check Cashers and Sellers Act</u>.
The definition of small loan under the Act is expanded to include an advance of money or credit that is by contract to be repaid from an asset the payee owns or from income or a payment that the payee expects to receive, whether earned or to be earned, and whether or not the payee is made personally liable for repayment or the transaction carries required charges or payments.

The maximum fee that can be charged for a small loan is modified. A lender may not charge more than an annual percentage rate (APR) of 36 percent on any unpaid balance of the amount financed. The APR includes all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a small loan, whether voluntary, optional, or required, including any amount paid to a broker or credit services organization. A lender may not knowingly loan to a single borrower at any one time, whether in a single loan or in the aggregate, more than the maximum amount permitted.

Application of the Act applies to any consumer physically located in Washington, whether the transaction is conducted in person, by internet, facsimile, telephone, kiosk, mail, or other means.

Violations and Prohibitions Under the Check Cashers and Sellers Act.
A person is prohibited from soliciting, brokering, or engaging in any other activity intended to facilitate or result in, or that in fact facilitates or results in, the origination of a small loan in violation of the Act.

It is a violation for any person to:
- solicit, make, contract for, offer, assist, broker, or arrange for a borrower to obtain a small loan with a higher APR than permitted;
- charge for or receive interest, fees, charges, or other payments in excess of those permitted, whether voluntary, optional, or required; or
- engage in or facilitate any device, subterfuge, or pretense to evade the requirements of the Act.

If a small loan exceeds a 36 percent APR, a person is considered a lender and subject to the requirements of the Act, notwithstanding the fact that the person purports to act as an agent, service provider, or in another capacity for another entity that is exempt from the Act, if:
- the person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk, or reward in the small loan;
- the person markets, solicits, brokers, arranges, facilitates, or services small loans and holds, or has the right, requirement, or first right of refusal to acquire small loans, a share of receivables, or another direct or indirect interest in small loans or a small loan program; or
- the totality of circumstances indicate that the person is the lender, and the transaction is structured to evade the Act.

A borrower is entitled to restitution of any amounts paid if a transaction is in violation of the Act.

Appropriation: None.

Fiscal Note: Available.

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