
SUBSTITUTE SENATE BILL 5452

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Financial Services, Insurance & Housing
(originally sponsored by Senators Winsley, Benton, Prentice, Keiser
and Reardon; by request of Governor Locke)

READ FIRST TIME 02/07/03.

1 AN ACT Relating to check cashers and sellers; amending RCW
2 31.45.010, 31.45.020, 31.45.030, 31.45.040, 31.45.050, 31.45.060,
3 31.45.070, 31.45.073, 31.45.077, 31.45.090, 31.45.100, 31.45.110, and
4 31.45.120; adding new sections to chapter 31.45 RCW; repealing RCW
5 31.45.170; and providing an effective date.

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

7 **Sec. 1.** RCW 31.45.010 and 1995 c 18 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Applicant" means a person that files an application for a
12 license under this chapter, including the applicant's sole proprietor,
13 owners, directors, officers, partners, members, and controlling
14 persons.

15 (2) "Borrower" means a natural person who receives a small loan.

16 (3) "Business day" means any day that the licensee is open for
17 business in at least one physical location.

18 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for

1 purposes of conducting the business of making small loans, includes
2 other electronic forms of payment, including stored value cards,
3 internet transfers, and automated clearing house transactions.

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

8 ((+2)) (6) "Check seller" means an individual, partnership,
9 unincorporated association, or corporation that, for compensation,
10 engages, in whole or in part, in the business of or selling checks,
11 drafts, money orders, or other commercial paper serving the same
12 purpose.

13 ((+3)) (7) "Collateral" means the same as defined in chapter
14 62A.9A RCW.

15 (8) "Controlling person" means a person owning or controlling ten
16 percent or more of the total outstanding shares of the applicant or
17 licensee, if the applicant or licensee is a corporation, and a member
18 who owns ten percent or more of a limited liability company or limited
19 liability partnership.

20 (9) "Default" means the borrower's failure to repay the small loan
21 in compliance with the terms contained in the small loan agreement or
22 note or failure to make payments in compliance with a loan payment
23 plan.

24 (10) "Director" means the director of financial institutions.

25 (11) "Financial institution" means a commercial bank, savings bank,
26 savings and loan association, or credit union.

27 (12) "Licensee" means a check casher or seller licensed by the
28 director to engage in business in accordance with this chapter. For
29 purposes of the enforcement powers of this chapter, including the power
30 to issue cease and desist orders under RCW 31.45.110, "licensee" also
31 means a check casher or seller who fails to obtain the license required
32 by this chapter.

33 ((+4)) (13) "Origination date" means the date upon which the
34 borrower and the licensee initiate a small loan transaction.

35 (14) "Outstanding principal balance" of a small loan means any of
36 the principal amount that has not been paid by the borrower.

37 (15) "Paid" means that moment in time when the licensee deposits

1 the borrower's check or accepts cash for the full amount owing on a
2 valid small loan.

3 (16) "Person" means an individual, partnership, association,
4 limited liability company, limited liability partnership, trust,
5 corporation, and any other legal entity.

6 (17) "Principal" means the loan proceeds advanced for the benefit
7 of the borrower in a small loan, excluding any fee or interest charge.

8 (18) "Rescission" means annulling the loan contract and, with
9 respect to the small loan contract, returning the borrower and the
10 licensee to their financial condition prior to the origination date of
11 the loan.

12 (19) "Small loan" means a loan of up to (~~five hundred dollars for~~
13 a ~~period of thirty one days or less~~) the maximum amount and for a
14 period of time up to the maximum term specified in RCW 31.45.073.

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

16 (20) "Successive loans" means a series of loans made by the same
17 licensee to the same borrower in such a manner that no more than three
18 business days separate the termination date of any one loan and the
19 origination date of any other loan in the series.

20 (21) "Termination date" means the date upon which payment for the
21 small loan transaction is due or paid to the licensee, whichever occurs
22 first.

23 (22) "Total of payments" means the principal amount of the small
24 loan plus all fees or interest charged on the loan.

25 (23) "Trade secret" means the same as defined in RCW 19.108.010.

26 **Sec. 2.** RCW 31.45.020 and 1994 c 92 s 275 are each amended to read
27 as follows:

28 (1) This chapter does not apply to:

29 (a) Any (~~bank, trust company, savings bank, savings and loan~~
30 ~~association, or credit union~~) financial institution or trust company
31 authorized to do business in Washington;

32 (b) The cashing of checks, drafts, or money orders by any
33 (~~corporation, partnership, association, or~~) person who cashes checks,
34 drafts, or money orders as a convenience, as a minor part of its
35 customary business, and not for profit;

36 (c) The issuance or sale of checks, drafts, or money orders by any

1 corporation, partnership, or association that has a net worth of not
2 less than three million dollars as shown by audited financial
3 statements; and

4 (d) The issuance or sale of checks, drafts, money orders, or other
5 commercial paper serving the same purpose by any agent of a
6 corporation, partnership, or association described in (c) of this
7 subsection.

8 (2) Upon application to the director, the director may exempt a
9 (~~corporation, partnership, association, or other~~) person from any or
10 all provisions of this chapter upon a finding by the director that
11 although not otherwise exempt under this section, the applicant is not
12 primarily engaged in the business of cashing or selling checks and a
13 total or partial exemption would not be detrimental to the public.

14 **Sec. 3.** RCW 31.45.030 and 2001 c 177 s 11 are each amended to read
15 as follows:

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

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

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

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

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

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

34 (3) Any information in the application regarding the personal
35 residential address or telephone number of the applicant, and any trade
36 secret as defined in RCW 19.108.010 including any financial statement

1 that is a trade secret, is exempt from the public records disclosure
2 requirements of chapter 42.17 RCW.

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

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

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

37 (c) The bond shall be continuous and may be canceled by the surety
38 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 (e) In lieu of the surety bond required by this section, the
37 applicant for a check seller license may file with the director a
38 deposit consisting of cash or other security acceptable to the director

1 in an amount equal to the penal sum of the required bond. In lieu of
2 the surety bond required by this section, the applicant for a small
3 loan endorsement may file with the director a deposit consisting of
4 cash or other security acceptable to the director in an amount equal to
5 the penal sum of the required bond, or may demonstrate to the director
6 net worth in excess of three times the amount of the penal sum of the
7 required bond.

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

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

33 **Sec. 4.** RCW 31.45.040 and 1996 c 13 s 1 are each amended to read
34 as follows:

35 (1) The director shall conduct an investigation of every applicant
36 to determine the financial responsibility, experience, character, and
37 general fitness of the applicant. The director shall issue the

1 applicant a license to engage in the business of cashing or selling
2 checks, or both, or a small loan endorsement, if the director
3 determines to his or her satisfaction that:

4 (a) The applicant has satisfied the requirements of RCW 31.45.030;

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

9 ~~((b))~~ (c) The applicant has the required bonds, or has provided
10 an acceptable alternative form of financial security.

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

22 (3) ~~((No))~~ A license or small loan endorsement may not be issued to
23 an applicant ~~((whose license to conduct business under this chapter had~~
24 ~~been revoked by the director within the twelve month period preceding~~
25 ~~the application))~~ :

26 (a) Whose license to conduct business under this chapter, or any
27 similar statute in any other jurisdiction, has been suspended or
28 revoked within five years of the filing of the present application;

29 (b) Who has been banned from the industry by an administrative
30 order issued by the director or the director's designee, for the period
31 specified in the administrative order; or

32 (c) When any person who is a sole proprietor, owner, director,
33 officer, partner, agent, or controlling person of the applicant has
34 been banned from the industry in an administrative order issued by the
35 director, for the period specified in the administrative order.

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

1 (5) A license or small loan endorsement issued in accordance with
2 this chapter remains in force and effect until surrendered, suspended,
3 or revoked, or until the license expires as a result of nonpayment of
4 the annual assessment fee.

5 **Sec. 5.** RCW 31.45.050 and 2001 c 177 s 12 are each amended to read
6 as follows:

7 (1) Each applicant and licensee shall pay to the director an
8 investigation or examination fee as established in rule and an annual
9 assessment fee for the coming year in an amount determined by rule (~~of~~
10 ~~the director~~)) as necessary to cover the operation of the program. The
11 annual assessment fee is due upon the annual assessment fee due date as
12 established in rule. Nonpayment of the annual assessment fee may
13 result in expiration of the license as provided in subsection (2) of
14 this section. In establishing the fees, the director shall
15 differentiate between check cashing and check selling and making small
16 loans, and consider at least the volume of business, level of risk, and
17 potential harm to the public related to each activity. The fees
18 collected shall be deposited to the credit of the financial services
19 regulation fund in accordance with RCW 43.320.110.

20 (2) If a licensee does not pay its annual assessment fee by the
21 annual assessment fee due date as specified in rule, the director or
22 the director's designee shall send the licensee a notice of suspension
23 and assess the licensee a late fee not to exceed twenty-five percent of
24 the annual assessment fee as established in rule by the director. The
25 licensee's payment of both the annual assessment fee and the late fee
26 must arrive in the department's offices by 5:00 p.m. on the tenth day
27 after the annual assessment fee due date, unless the department is not
28 open for business on that date, in which case the licensee's payment of
29 both the annual assessment fee and the late fee must arrive in the
30 department's offices by 5:00 p.m. on the next occurring day that the
31 department is open for business. If the payment of both the annual
32 assessment fee and the late fee does not arrive prior to such time and
33 date, then the expiration of the licensee's license is effective at
34 5:00 p.m. on the thirtieth day after the assessment fee due date. The
35 director or the director's designee may reinstate the license if,
36 within twenty days after the effective date of expiration, the
37 licensee:

1 (a) Pays both the annual assessment fee and the late fee; and
2 (b) Attests under penalty of perjury that it did not engage in
3 conduct requiring a license under this chapter during the period its
4 license was expired, as confirmed by an investigation by the director
5 or the director's designee.

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

11 **Sec. 6.** RCW 31.45.060 and 1994 c 92 s 279 are each amended to read
12 as follows:

13 (1) A schedule of the fees and the charges for the cashing and
14 selling of checks, drafts, money orders, or other commercial paper
15 serving the same purpose shall be conspicuously and continuously posted
16 in every location licensed under this chapter. The licensee shall
17 provide to its customer a receipt for each transaction. The receipt
18 must include the name of the licensee, the type and amount of the
19 transaction, and the fee or fees charged for the transaction.

20 (2) Each licensee shall keep and maintain such business books,
21 accounts, and records as the director may require to fulfill the
22 purposes of this chapter. Every licensee shall preserve such books,
23 accounts, and records as required in rule by the director for at least
24 two years from the completion of the transaction. Records may be
25 maintained on an electronic, magnetic, optical, or other storage media.
26 However, the licensee must maintain the necessary technology to permit
27 access to the records by the department for the period required under
28 this chapter.

29 (3) A check, draft, or money order sold by a licensee shall be
30 drawn on an account of a licensee maintained (~~(at a bank, savings bank,~~
31 ~~or savings and loan association)) in a federally insured financial~~
32 institution authorized to do business in the state of Washington.

33 **Sec. 7.** RCW 31.45.070 and 1995 c 18 s 7 are each amended to read
34 as follows:

35 (1) No licensee may engage in a loan business or the negotiation of

1 loans or the discounting of notes, bills of exchange, checks, or other
2 evidences of debt on the same premises where a check cashing or selling
3 business is conducted, unless the licensee:

4 (a) Is conducting the activities of pawnbroker as defined in RCW
5 19.60.010;

6 (b) Is a properly licensed consumer loan company under chapter
7 31.04 RCW;

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

10 (d) Has a small loan endorsement.

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

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

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

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

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

29 (5) No licensee may advertise, print, display, publish, distribute,
30 or broadcast or cause or permit to be advertised, printed, displayed,
31 published, distributed, or broadcast, any statement or representation
32 that is false, misleading, or deceptive, or that omits material
33 information, or that refers to the supervision of the licensee by the
34 state of Washington or any department or official of the state.

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

1 **Sec. 8.** RCW 31.45.073 and 1995 c 18 s 2 are each amended to read
2 as follows:

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

11 (2) The termination date of a small loan may not exceed the
12 origination date of that same small loan by more than forty-five days,
13 including weekends and holidays, unless the term of the loan is
14 extended by agreement of both the borrower and the licensee and no
15 additional fee or interest is charged. The maximum principal amount of
16 any small loan, or the outstanding principal balances of all small
17 loans made by a licensee to a single borrower at any one time, may not
18 exceed seven hundred dollars.

19 (3) A licensee that has obtained the required small loan
20 endorsement may charge interest or fees for small loans not to exceed
21 in the aggregate fifteen percent of the first five hundred dollars of
22 principal (~~(amount borrowed)~~). If the principal exceeds five hundred
23 dollars, a licensee may charge interest or fees not to exceed in the
24 aggregate ten percent of that portion of the principal in excess of
25 five hundred dollars. If a licensee makes more than one loan to a
26 single borrower, and the aggregated principal of all loans made to that
27 borrower exceeds five hundred dollars at any one time, the licensee may
28 charge interest or fees not to exceed in the aggregate ten percent on
29 that portion of the aggregated principal of all loans at any one time
30 that is in excess of five hundred dollars. The director may determine
31 by rule which fees, if any, are not subject to the (~~(fifteen percent~~
32 limitation)) interest or fee limitations described in this section. It
33 is a violation of this chapter for any licensee to knowingly loan to a
34 single borrower at any one time, in a single loan or in the aggregate,
35 more than the maximum principal amount described in this section.

36 (~~(+3)~~) (4) In connection with making a small loan, a licensee may
37 advance moneys on the security of a postdated check (~~(or draft provided~~
38 ~~the time period between the date the loan is granted and the date of~~

1 ~~the postdated check does not exceed thirty one days. A licensee shall~~
2 ~~deposit all postdated checks or drafts as soon as practicable after the~~
3 ~~date of the check or draft has passed)).~~ The licensee may not accept
4 any other property, title to property, or other evidence of ownership
5 of property as collateral for a small loan. The licensee may accept
6 only one postdated check per loan as security for the loan. A licensee
7 may permit a borrower to redeem a postdated check with a payment of
8 cash or the equivalent of cash. The licensee may disburse the proceeds
9 of a small loan in cash, in the form of a check, or in the form of the
10 electronic equivalent of cash or a check.

11 ((+4)) (5) No person may at any time cash or advance any moneys on
12 a postdated check or draft in excess of the amount of goods or services
13 purchased without first obtaining a small loan endorsement to a check
14 casher or check seller license.

15 **Sec. 9.** RCW 31.45.077 and 2001 c 177 s 13 are each amended to read
16 as follows:

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

20 (a) The legal name, residence, and business address of the
21 applicant, and if the applicant is a partnership, corporation, or
22 association, the name and address of every member, partner, officer,
23 and director thereof;

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

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

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

31 (2) Any information in the application regarding the licensee's
32 personal residential address or telephone number, and any trade secrets
33 of the licensee as defined under RCW 19.108.010 including any financial
34 statement that is a trade secret, is exempt from the public records
35 disclosure requirements of chapter 42.17 RCW.

36 (3) The application shall be filed together with an investigation

1 and (~~supervision~~) review fee established by rule by the director.
2 Fees collected shall be deposited to the credit of the financial
3 services regulation fund in accordance with RCW 43.320.110.

4 NEW SECTION. Sec. 10. A new section is added to chapter 31.45 RCW
5 to read as follows:

6 A person may not engage in the business of making small loans as an
7 agent for a licensee or exempt entity without first obtaining a small
8 loan endorsement to a check casher or check seller license under this
9 chapter. An agent of a licensee or exempt entity engaged in the
10 business of making small loans is subject to this chapter. To the
11 extent that federal law preempts the applicability of any part of this
12 chapter, all other parts of this chapter remain in effect.

13 NEW SECTION. Sec. 11. A new section is added to chapter 31.45 RCW
14 to read as follows:

15 A licensee shall comply with all applicable state and federal laws
16 when collecting a delinquent small loan. A licensee may charge a one-
17 time fee as determined in rule by the director to any borrower in
18 default on any loan or loans where the borrower's check has been
19 returned unpaid by the financial institution upon which it was drawn.
20 A licensee may take civil action under Title 62A RCW to collect upon a
21 check that has been dishonored. If the licensee takes civil action, a
22 licensee may charge the borrower the cost of collection as allowed
23 under RCW 62A.3-515, but may not collect attorneys' fees or any other
24 interest or damages as allowed under RCW 62A.3-515. A licensee may not
25 threaten criminal prosecution as a method of collecting a delinquent
26 small loan. If a dishonored check is assigned to any third party for
27 collection, this section applies to the third party for the collection
28 of the dishonored check.

29 NEW SECTION. Sec. 12. A new section is added to chapter 31.45 RCW
30 to read as follows:

31 (1) A licensee and borrower may agree to a payment plan for a small
32 loan at any time. After four successive loans and prior to default
33 upon the last loan, each borrower may convert their small loan to a
34 payment plan. Each agreement for a loan payment plan must be in
35 writing and acknowledged by both the borrower and the licensee. The

1 licensee may charge the borrower, at the time both parties enter into
2 the payment plan, a one-time fee for the payment plan in an amount up
3 to the fee or interest on the outstanding principal of the loan as
4 allowed under RCW 31.45.073(3). The licensee may not assess any other
5 fee, interest charge, or other charge on the borrower as a result of
6 converting the small loan into a payment plan. This payment plan must
7 provide for the payment of the total of payments due on the small loan
8 over a period not less than sixty days in three or more payments,
9 unless the borrower and licensee agree to a shorter payment period.
10 The borrower may pay the total of payments at any time. The licensee
11 may not charge any penalty, fee, or charge to the borrower for
12 prepayment of the loan payment plan by the borrower. Each licensee
13 shall conspicuously disclose to each borrower in the small loan
14 agreement or small loan note that the borrower has access to such a
15 payment plan after four successive loans. A licensee's violation of
16 such a payment plan constitutes a violation of this chapter.

17 (2) The licensee may take postdated checks at the initiation of the
18 payment plan for the payments agreed to under the plan. If any check
19 accepted by the licensee as payment under the payment plan is
20 dishonored, the licensee may not charge the borrower any fee for the
21 dishonored check.

22 (3) If the borrower defaults on the payment plan, the licensee may
23 initiate action to collect the total of payments under section 11 of
24 this act. The licensee may charge the borrower a one-time payment plan
25 default fee of twenty-five dollars.

26 (4) If the licensee enters into a payment plan with the borrower
27 through an accredited third party, with certified credit counselors,
28 that is representing the borrower, the licensee's failure to comply
29 with the terms of that payment plan constitutes a violation of this
30 chapter.

31 NEW SECTION. **Sec. 13.** A new section is added to chapter 31.45 RCW
32 to read as follows:

33 A borrower may rescind a loan, on or before the close of business
34 on the next day of business at the location where the loan was
35 originated, by returning the principal in cash or the original check
36 disbursed by the licensee to fund the small loan. The licensee may not
37 charge the borrower for rescinding the loan and shall return to the

1 borrower any postdated check taken as security for the loan or any
2 electronic equivalent. The licensee shall conspicuously disclose to
3 the borrower this right of rescission in writing in the small loan
4 agreement or small loan note.

5 NEW SECTION. **Sec. 14.** A new section is added to chapter 31.45 RCW
6 to read as follows:

7 (1) When advertising the availability of small loans, if a licensee
8 includes in an advertisement the fee or interest rate charged by the
9 licensee for a small loan, then the licensee shall also disclose the
10 annual percentage rate resulting from this fee or interest rate.

11 (2) When advertising the availability of small loans, compliance
12 with all applicable state and federal laws and regulations, including
13 the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12
14 C.F.R. Sec. 226 constitutes compliance with subsection (1) of this
15 section.

16 (3) When making a small loan, each licensee shall disclose to the
17 borrower the terms of the small loan, including the principal amount of
18 the small loan, the total of payments of the small loan, the fee or
19 interest rate charged by the licensee on the small loan, and the annual
20 percentage rate resulting from this fee or interest rate.

21 (4) When making a small loan, disclosure of the terms of the small
22 loan in compliance with all applicable state and federal laws and
23 regulations, including the truth in lending act, 15 U.S.C. Sec. 1601
24 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with
25 subsection (3) of this section.

26 **Sec. 15.** RCW 31.45.090 and 1994 c 92 s 282 are each amended to
27 read as follows:

28 (1) Each licensee shall submit to the director, in a form approved
29 by the director, a report containing financial statements covering the
30 calendar year or, if the licensee has an established fiscal year, then
31 for such fiscal year, within one hundred five days after the close of
32 each calendar or fiscal year. The licensee shall also file such
33 additional relevant information as the director may require. Any
34 information provided by a licensee in an annual report that constitutes
35 a trade secret under chapter 19.108 RCW is exempt from disclosure under
36 chapter 42.17 RCW, unless aggregated with information supplied by other

1 licensees in such a manner that the licensee's individual information
2 is not identifiable. Any information provided by the licensee that
3 allows identification of the licensee may only be used for purposes
4 reasonably related to the regulation of licensees to ensure compliance
5 with this chapter.

6 (2) A licensee whose license has been suspended or revoked shall
7 submit to the director, at the licensee's expense, within one hundred
8 five days after the effective date of such surrender or revocation, a
9 closing audit report containing audited financial statements as of such
10 effective date for the twelve months ending with such effective date.

11 (3) The director shall adopt rules specifying the form and content
12 of such audit reports and may require additional reporting as is
13 necessary for the director to ensure compliance with this chapter.

14 **Sec. 16.** RCW 31.45.100 and 1994 c 92 s 283 are each amended to
15 read as follows:

16 The director or the director's designee may at any time examine and
17 investigate the business and examine the books, accounts, records, and
18 files, or other information, wherever located, of any licensee or
19 person who the director has reason to believe is engaging in the
20 business governed by this chapter. For these purposes, the director or
21 the director's designee may require the attendance of and examine under
22 oath all persons whose testimony may be required about the business or
23 the subject matter of the investigation. The director or the
24 director's designee may require the production of original books,
25 accounts, records, files, or other information, or may make copies of
26 such original books, accounts, records, files, or other information.
27 The director or the director's designee may issue a subpoena or
28 subpoena duces tecum requiring attendance and testimony, or the
29 production of the books, accounts, records, files, or other
30 information. The director shall collect from the licensee((7)) the
31 actual cost of the examination or investigation.

32 **Sec. 17.** RCW 31.45.110 and 1994 c 92 s 284 are each amended to
33 read as follows:

34 (1) The director may issue and serve upon a licensee or applicant
35 a ((notice)) statement of charges if, in the opinion of the director,
36 any licensee or applicant:

1 (a) Is engaging or has engaged in an unsafe or unsound financial
2 practice in conducting the business of a check seller governed by this
3 chapter;

4 (b) Is violating or has violated (~~the law, rule~~) this chapter,
5 including rules, orders, or subpoenas, any rule adopted under this act,
6 any order issued under this act, any subpoena issued under this act, or
7 any condition imposed in writing by the director or the director's
8 designee in connection with the granting of any application or other
9 request by the licensee or any written agreement made with the
10 director; (~~or~~)

11 (c) Is about to do the acts prohibited in (a) or (b) of this
12 subsection when the opinion that the threat exists is based upon
13 reasonable cause;

14 (d) Obtains a license by means of fraud, misrepresentation,
15 concealment, or through mistake or inadvertence of the director;

16 (e) Provides false statements or omissions of material information
17 on the application that, if known, would have allowed the director to
18 deny the application for the original license;

19 (f) Fails to pay a fee required by the director or maintain the
20 required bond;

21 (g) Commits a crime against the laws of the state of Washington or
22 any other state or government involving moral turpitude, financial
23 misconduct, or dishonest dealings;

24 (h) Knowingly commits or is a party to any material fraud,
25 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
26 or device whereby any other person relying upon the word,
27 representation, or conduct acts to his or her injury or damage;

28 (i) Converts any money or its equivalent to his or her own use or
29 to the use of his or her principal or of any other person;

30 (j) Fails, upon demand by the director or the director's designee,
31 to disclose any information within his or her knowledge to, or to
32 produce any document, book, or record in his or her possession for
33 inspection of, the director or the director's designee;

34 (k) Commits any act of fraudulent or dishonest dealing, and a
35 certified copy of the final holding of any court, tribunal, agency, or
36 administrative body of competent jurisdiction regarding that act is
37 conclusive evidence in any hearing under this chapter; or

1 (1) Commits an act or engages in conduct that demonstrates
2 incompetence or untrustworthiness, or is a source of injury and loss to
3 the public.

4 ~~(2) The ((notice)) statement of charges shall ((contain a statement~~
5 ~~of the facts constituting the alleged violation or violations or the~~
6 ~~practice or practices and shall fix a time and place at which a hearing~~
7 ~~will be held to determine whether an order to cease and desist should~~
8 ~~be issued against the licensee. The hearing shall be set not earlier~~
9 ~~than ten days nor later than thirty days after service of the notice~~
10 ~~unless a later date is set by the director at the request of the~~
11 ~~licensee)) be issued under chapter 34.05 RCW. The director or the~~
12 ~~director's designee may impose the following sanctions against any~~
13 ~~licensee or applicant, or any director, officer, sole proprietor,~~
14 ~~partner, controlling person, or employee of a licensee or applicant:~~

15 (a) Deny, revoke, suspend, or condition the license;

16 (b) Order the licensee to cease and desist from practices in
17 violation of this chapter or practices that constitute unsafe and
18 unsound financial practices in the sale of checks;

19 (c) Impose a fine not to exceed one hundred dollars per day for
20 each day's violation of this chapter;

21 (d) Order restitution to borrowers or other parties damaged by the
22 licensee's violation of this chapter or take other affirmative action
23 as necessary to comply with this chapter; and

24 (e) Remove from office or ban from participation in the affairs of
25 any licensee any director, officer, sole proprietor, partner,
26 controlling person, or employee of a licensee.

27 (3) The proceedings to impose the sanctions described in subsection
28 (2) of this section, including any hearing or appeal of the statement
29 of charges, are governed by chapter 34.05 RCW.

30 Unless the licensee personally appears at the hearing or is
31 represented by a duly authorized representative, the licensee is deemed
32 to have consented to the ~~((issuance of the cease and desist order. In~~
33 ~~the event of this consent or if upon the record made at the hearing the~~
34 ~~director finds that any violation or practice specified in the notice~~
35 ~~of charges has been established, the director may issue and serve upon~~
36 ~~the licensee an order to cease and desist from the violation or~~
37 ~~practice. The order may require the licensee and its directors,~~

1 ~~officers, employees, and agents to cease and desist from the violation~~
2 ~~or practice and may require the licensee to take affirmative action to~~
3 ~~correct the conditions resulting from the violation or practice.~~

4 ~~(3) A cease and desist order becomes effective upon the expiration~~
5 ~~of ten days after the service of the order upon the licensee concerned,~~
6 ~~except that a cease and desist order issued upon consent becomes~~
7 ~~effective at the time specified in the order and remains effective as~~
8 ~~provided in the order unless it is stayed, modified, terminated, or set~~
9 ~~aside by action of the director or a reviewing court)) statement of~~
10 ~~charges and the sanctions imposed in the statement of charges.~~

11 **Sec. 18.** RCW 31.45.120 and 1994 c 92 s 285 are each amended to
12 read as follows:

13 Whenever the director determines that the acts specified in RCW
14 31.45.110 or their continuation is likely to cause insolvency or
15 substantial injury to the public, the director may also issue a
16 temporary cease and desist order requiring the licensee to cease and
17 desist from the violation or practice. The order becomes effective
18 upon service upon the licensee and remains effective unless set aside,
19 limited, or suspended by a court under RCW 31.45.130 pending the
20 completion of the administrative proceedings under the notice and until
21 such time as the director dismisses the charges specified in the notice
22 or until the effective date of the cease and desist order issued
23 against the licensee under RCW 31.45.110.

24 NEW SECTION. **Sec. 19.** RCW 31.45.170 (Violation--Penalty) and 1994
25 c 92 s 289 & 1991 c 355 s 17 are each repealed.

26 NEW SECTION. **Sec. 20.** Section 12 of this act takes effect October
27 1, 2003.

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