
HOUSE BILL 3167

State of Washington

59th Legislature

2006 Regular Session

By Representatives Clements and Morrell

Read first time 01/24/2006. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to small loans; amending RCW 31.45.010, 31.45.070,
2 31.45.084, 42.56.400, and 31.45.210; adding a new section to chapter
3 31.45 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 31.45 RCW
6 to read as follows:

7 (1) The director shall implement a common data base with real-time
8 access through an internet connection for licensees who make small
9 loans. The data base must allow the licensees and the department of
10 financial institutions to verify whether any small loans are
11 outstanding for a particular person.

12 (2)(a) Licensees shall submit required data before entering into a
13 small loan or payment plan. The data elements must include:

14 (i) The prospective borrower's name;

15 (ii) The prospective borrower's social security number or
16 employment authorization alien number;

17 (iii) The prospective borrower's address;

18 (iv) The prospective borrower's driver's license number or other
19 identification required by the licensee;

- 1 (v) The amount of the transaction;
- 2 (vi) The date of the transaction;
- 3 (vii) The date that the transaction is closed;
- 4 (viii) Whether the borrower has defaulted on a loan or payment
- 5 plan; and

6 (ix) Additional information as is required by the director by rule.

7 (b) The data shall be in a format established by the director by
8 rule.

9 (3) The director may impose a fee not to exceed one dollar per
10 transaction when data is required to be submitted by a licensee under
11 subsection (2) of this section.

12 (4) A licensee may rely on the information contained in the data
13 base as accurate and is not subject to any administrative penalty or
14 civil liability as a result of relying on inaccurate information
15 contained in the data base.

16 (5) Identifying information contained in the data base is
17 confidential and exempt from public disclosure. The information may
18 only be accessed by licensees to verify whether any small loans are
19 outstanding for a particular person and by the department for the
20 purpose of enforcing this section.

21 (6) The director may adopt rules to implement this section.

22 **Sec. 2.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

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

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

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

33 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for
34 purposes of conducting the business of making small loans, includes
35 other electronic forms of payment, including stored value cards,
36 internet transfers, and automated clearing house transactions.

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

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

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

10 (8) "Controlling person" means a person owning or controlling ten
11 percent or more of the total outstanding shares of the applicant or
12 licensee, if the applicant or licensee is a corporation, and a member
13 who owns ten percent or more of a limited liability company or limited
14 liability partnership.

15 (9) "Default" means the borrower's failure to repay the small loan
16 in compliance with the terms contained in the small loan agreement or
17 note or failure to make payments in compliance with a loan payment
18 plan.

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

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

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

28 (13) "Origination date" means the date upon which the borrower and
29 the licensee initiate a small loan transaction.

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

32 (15) "Paid" means that moment in time when the licensee deposits
33 the borrower's check or accepts cash for the full amount owing on a
34 valid small loan.

35 (16) "Person" means an individual, partnership, association,
36 limited liability company, limited liability partnership, trust,
37 corporation, and any other legal entity.

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

3 (18) "Rescission" means annulling the loan contract and, with
4 respect to the small loan contract, returning the borrower and the
5 licensee to their financial condition prior to the origination date of
6 the loan.

7 (19) "Small loan" means a loan of up to the maximum amount and for
8 a period of time up to the maximum term specified in RCW 31.45.073.

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

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

16 ~~((22))~~ (21) "Total of payments" means the principal amount of the
17 small loan plus all fees or interest charged on the loan.

18 ~~((23))~~ (22) "Trade secret" means the same as defined in RCW
19 19.108.010.

20 **Sec. 3.** RCW 31.45.070 and 2003 c 86 s 7 are each amended to read
21 as follows:

22 (1) No licensee may engage in a loan business or the negotiation of
23 loans or the discounting of notes, bills of exchange, checks, or other
24 evidences of debt on the same premises where a check cashing or selling
25 business is conducted, unless 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 under chapter
29 31.04 RCW;

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

32 (d) Has a small loan endorsement.

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

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

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

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

10 (4) A licensee must access the data base established in section 1
11 of this act and verify that the potential borrower does not have an
12 outstanding loan or payment plan. A licensee may not make a loan to a
13 person who has:

14 (a) An outstanding small loan or an outstanding payment plan; or

15 (b) Defaulted on a small loan or payment plan within the last
16 twelve months.

17 (5) No licensee may issue or cause to be issued any check, draft,
18 or money order, or other commercial paper serving the same purpose,
19 that is drawn upon the trust account of a licensee without concurrently
20 receiving the full principal amount, in cash, or by check, draft, or
21 money order from a third party believed to be valid.

22 ~~((+5))~~ (6) No licensee may advertise, print, display, publish,
23 distribute, or broadcast or cause or permit to be advertised, printed,
24 displayed, published, distributed, or broadcast, any statement or
25 representation that is false, misleading, or deceptive, or that omits
26 material information, or that refers to the supervision of the licensee
27 by the state of Washington or any department or official of the state.

28 ~~((+6))~~ (7) Each licensee shall comply with all applicable federal
29 statutes governing currency transaction reporting.

30 **Sec. 4.** RCW 31.45.084 and 2003 c 86 s 12 are each amended to read
31 as follows:

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

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

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

21 (3) If the borrower defaults on the payment plan, the licensee may
22 initiate action to collect the total of payments under RCW 31.45.082.
23 The licensee may charge the borrower a one-time payment plan default
24 fee of twenty-five dollars.

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

30 **Sec. 5.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to
31 read as follows:

32 The following information relating to insurance and financial
33 institutions is exempt from disclosure under this chapter:

34 (1) Records maintained by the board of industrial insurance appeals
35 that are related to appeals of crime victims' compensation claims filed
36 with the board under RCW 7.68.110;

1 (2) Information obtained and exempted or withheld from public
2 inspection by the health care authority under RCW 41.05.026, whether
3 retained by the authority, transferred to another state purchased
4 health care program by the authority, or transferred by the authority
5 to a technical review committee created to facilitate the development,
6 acquisition, or implementation of state purchased health care under
7 chapter 41.05 RCW;

8 (3) The names and individual identification data of all viators
9 regulated by the insurance commissioner under chapter 48.102 RCW;

10 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

11 (5) Information provided under RCW 48.05.510 through 48.05.535,
12 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
13 through 48.46.625;

14 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328
15 that can be identified to a particular business;

16 (7) Examination reports and information obtained by the department
17 of financial institutions from banks under RCW 30.04.075, from savings
18 banks under RCW 32.04.220, from savings and loan associations under RCW
19 33.04.110, from credit unions under RCW 31.12.565, from check cashers
20 and sellers under RCW 31.45.030(3) and section 1 of this act, and from
21 securities brokers and investment advisers under RCW 21.20.100, all of
22 which is confidential and privileged information;

23 (8) Information provided to the insurance commissioner under RCW
24 48.110.040(3);

25 (9) Documents, materials, or information obtained by the insurance
26 commissioner under RCW 48.02.065, all of which are confidential and
27 privileged; and

28 (10) Confidential proprietary and trade secret information provided
29 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
30 48.31C.070.

31 **Sec. 6.** RCW 31.45.210 and 2005 c 256 s 1 are each amended to read
32 as follows:

33 (1) A licensee shall:

34 (a) Inform the military chain of command of a military borrower
35 when a loan is made to a military borrower;

36 (b) When collecting any delinquent small loan, not garnish any
37 wages or salary paid for service in the armed forces;

1 (~~(b)~~) (c) Defer for the duration of the posting all collection
2 activity against a military borrower who has been deployed to a combat
3 or combat support posting for the duration of the posting;

4 (~~(e)~~) (d) Not contact the military chain of command of a military
5 borrower in an effort to collect a delinquent small loan;

6 (~~(d)~~) (e) Honor the terms of any repayment agreement between the
7 licensee and any military borrower, including any repayment agreement
8 negotiated through military counselors or third party credit
9 counselors; and

10 (~~(e)~~) (f) Not make a loan from a specific location to a person
11 that the licensee knows is a military borrower when the military
12 borrower's commander has notified the licensee in writing that the
13 specific location is designated off-limits to military personnel under
14 their command.

15 (2) For purposes of this section, "military borrower" means any
16 active duty member of the armed forces of the United States, or any
17 member of the national guard or the reserves of the armed forces of the
18 United States who has been called to active duty.

19 NEW SECTION. **Sec. 7.** This act takes effect July 1, 2006.

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