Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Financial Institutions & Insurance Committee

HB 1684

Brief Description: Placing restrictions on small loans.

Sponsors: Representatives Kirby and Santos.

Brief Summary of Bill

- Limits the balances of all outstanding payday loans to 30 percent of the gross monthly income of a borrower.
- Authorizes an electronic enforcement system for payday loans.

Hearing Date: 2/10/09

Staff: Jon Hedegard (786-7127)

Background:

Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), chapter 31.45 RCW. 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 lending practices and provides for regulation of licensees who are specifically authorized to issue small loans.

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 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

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lender to cash the check after the loan period has expired.

Terms of Payday Loans.
No lender may lend more than $700 to a single borrower at any one time. The lender may charge up to 15 percent for the first $500. If the borrower has a loan in excess of $500, the lender can charge up to 10 percent on the amount over $500. For example, a lender could charge up to $30 for a $200 loan or up to $85 for a $600 loan.

There is no minimum loan term for a payday loan. There is a statutory maximum loan term of 45 days.

Right of Rescission.
A borrower may rescind a loan, on or before the close of business on the next business day at the location where the loan was made. The borrower must return the principal in cash or the original check of the licensee. A licensee may not charge the borrower a fee for rescinding the loan and must return any postdated check taken as security for the loan or any electronic equivalent.

Payment Plan.
Borrowers and lenders may agree to a payment plan for payday loans. After four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. A payment plan is subject to the following conditions:

- a written agreement is required;
- the lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- the agreement must allow the buyer not less than 60 days to pay off the loan; and
- the borrower must be allowed to pay off the loan in at least three payments.

Recordkeeping.
Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by chapter 31.45 RCW.

Agency Enforcement.
The Director of the DFI (Director) may impose the sanctions against any:

- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:

- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed $100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Consumer Protection Act.
A violation of the Act is a violation of the Consumer Protection Act (CPA). Remedies under the CPA do not affect any other remedy available to an injured party.

In a suit for a CPA violation, an injured party may sue for:
- the actual damages sustained;
- the costs of the suit;
- reasonable attorney's fees; and
- additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at $10,000 in superior court and $50,000 in district court.

The Attorney General may also sue to:
- prevent or restrain violations of the CPA; and
- seek restitution for persons injured by violation of the CPA.

Summary of Bill:

The combined principal of all outstanding small loan balances may not exceed 30 percent of the gross monthly income of a borrower.

The Director is authorized to develop and implement a system where a licensee can determine if a small loan can lawfully be made to a borrower. This includes
- whether a consumer has an outstanding small loan;
- the number of small loans the consumer has outstanding;
- whether the borrower is eligible for a loan; and
- any other information necessary to comply with chapter 31.45 RCW.

Any system must provide that the information entered into or stored by the system is:
- accessible to and usable by licensees and the Director from any location in this state; and
- secured against public disclosure, tampering, theft, or unauthorized acquisition or use.

If the system of this section is developed and implemented:
- a licensee making small loans must enter or update all required information in at the time that the small loan transaction is conducted by the licensee;
- the Director may specify the form and contents of the system by rule;
- the Director must adopt rules establishing standards for the retention, archiving, and deletion of information entered into or stored by the system;
- the Director must adopt a fee, by rule, that may be charged to a licensee making a small loan for use of the system. The fee may not exceed $1 per loan transaction.

Information in the system is not subject to public inspection or disclosure under chapter 42.56 RCW.

Appropriation: None.

Fiscal Note: Not requested.

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