

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE HOUSE BILL 1709**

Chapter 510, Laws of 2009

61st Legislature  
2009 Regular Session

SMALL LOAN BORROWERS--INSTALLMENT PLANS

EFFECTIVE DATE: 01/01/10

Passed by the House March 9, 2009  
Yeas 84 Nays 10

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate April 22, 2009  
Yeas 26 Nays 23

BRAD OWEN

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**President of the Senate**

Approved May 15, 2009, 2:21 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1709** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

May 18, 2009

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 1709**

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Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Financial Institutions & Insurance (originally sponsored by Representatives Nelson, White, Cody, Carlyle, Orwall, McCoy, Darneille, and Ormsby)

READ FIRST TIME 02/19/09.

1            AN ACT Relating to fee and installment plan assistance for  
2 borrowers at risk of default on small loans; amending RCW 31.45.010,  
3 31.45.073, 31.45.084, and 42.56.230; adding new sections to chapter  
4 31.45 RCW; creating new sections; and providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that some small loan  
7 borrowers are unable to pay the entire loaned amount when it is due.  
8 Many of these borrowers take out multiple loans to pay off the original  
9 borrowed sum.

10           It is the legislature's intent to reduce or limit the number of  
11 borrowers taking out multiple loans by providing for installment plans  
12 that give a borrower a better opportunity to pay off their original  
13 small loan without having to resort to taking out a subsequent loan or  
14 loans.

15           This act shall be liberally construed to effectuate the  
16 legislature's intent to protect borrowers.

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

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

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

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

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

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

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

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

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

23 (8) "Controlling person" means a person owning or controlling ten  
24 percent or more of the total outstanding shares of the applicant or  
25 licensee, if the applicant or licensee is a corporation, and a member  
26 who owns ten percent or more of a limited liability company or limited  
27 liability partnership.

28 (9) "Default" means the borrower's failure to repay the small loan  
29 in compliance with the terms contained in the small loan agreement or  
30 note or failure to ~~((make payments in compliance with a loan payment  
31 plan))~~ pay any installment plan payment on an installment plan within  
32 ten days after the date upon which the installment was scheduled to be  
33 paid.

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

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

37 (12) "Installment plan" is a contract between a licensee and

1 borrower that provides that the loaned amount will be repaid in  
2 substantially equal installments scheduled on or after a borrower's pay  
3 dates and no less than fourteen days apart.

4 (13) "Licensee" means a check casher or seller licensed by the  
5 director to engage in business in accordance with this chapter. For  
6 purposes of the enforcement powers of this chapter, including the power  
7 to issue cease and desist orders under RCW 31.45.110, "licensee" also  
8 means a check casher or seller who fails to obtain the license required  
9 by this chapter.

10 ((+13+)) (14) "Loaned amount" means the outstanding principal  
11 balance and any fees authorized under RCW 31.45.073 that have not been  
12 paid by the borrower.

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

15 ((+14+)) (16) "Outstanding principal balance" of a small loan means  
16 any of the principal amount that has not been paid by the borrower.

17 ((+15+)) (17) "Paid" means that moment in time when the licensee  
18 deposits the borrower's check or accepts cash for the full amount owing  
19 on a valid small loan. If the borrower's check is returned by the  
20 borrower's bank for insufficient funds, the licensee shall not consider  
21 the loan paid.

22 ((+16+)) (18) "Person" means an individual, partnership,  
23 association, limited liability company, limited liability partnership,  
24 trust, corporation, and any other legal entity.

25 ((+17+)) (19) "Principal" means the loan proceeds advanced for the  
26 benefit of the borrower in a small loan, excluding any fee or interest  
27 charge.

28 ((+18+)) (20) "Rescission" means annulling the loan contract and,  
29 with respect to the small loan contract, returning the borrower and the  
30 licensee to their financial condition prior to the origination date of  
31 the loan.

32 ((+19+)) (21) "Small loan" means a loan of up to the maximum amount  
33 and for a period of time up to the maximum term specified in RCW  
34 31.45.073.

35 ((+20+)) ~~"Successive loans" means a series of loans made by the same~~  
36 ~~licensee to the same borrower in such a manner that no more than three~~  
37 ~~business days separate the termination date of any one loan and the~~  
38 ~~origination date of any other loan in the series.~~

1       ~~(21))~~ (22) "Termination date" means the date upon which payment  
2 for the small loan transaction is due or paid to the licensee,  
3 whichever occurs first.

4       ~~((22))~~ (23) "Total of payments" means the principal amount of the  
5 small loan plus all fees or interest charged on the loan.

6       ~~((23))~~ (24) "Trade secret" means the same as defined in RCW  
7 19.108.010.

8       **Sec. 3.** RCW 31.45.073 and 2003 c 86 s 8 are each amended to read  
9 as follows:

10       (1) No licensee may engage in the business of making small loans  
11 without first obtaining a small loan endorsement to its license from  
12 the director in accordance with this chapter. An endorsement will be  
13 required for each location where a licensee engages in the business of  
14 making small loans, but a small loan endorsement may authorize a  
15 licensee to make small loans at a location different than the licensed  
16 locations where it cashes or sells checks. A licensee may have more  
17 than one endorsement.

18       (2) A licensee must set the due date of a small loan on or after  
19 the date of the borrower's next pay date. If a borrower's next pay  
20 date is within seven days of taking out the loan, a licensee must set  
21 the due date of a small loan on or after the borrower's second pay date  
22 after the date the small loan is made. The termination date of a small  
23 loan may not exceed the origination date of that same small loan by  
24 more than forty-five days, including weekends and holidays, unless the  
25 term of the loan is extended by agreement of both the borrower and the  
26 licensee and no additional fee or interest is charged. The maximum  
27 principal amount of any small loan, or the outstanding principal  
28 balances of all small loans made by ~~((a))~~ all licensees to a single  
29 borrower at any one time, may not exceed seven hundred dollars or  
30 thirty percent of the gross monthly income of the borrower, whichever  
31 is lower. A licensee is prohibited from making a small loan to a  
32 borrower who is in default on another small loan until after that loan  
33 is paid in full or two years have passed from the origination date of  
34 the small loan, whichever occurs first.

35       (3) A licensee is prohibited from making a small loan to a borrower  
36 in an installment plan with any licensee until after the plan is paid

1 in full or two years have passed from the origination date of the  
2 installment plan, whichever occurs first.

3 (4) A borrower is prohibited from receiving more than eight small  
4 loans from all licensees in any twelve-month period. A licensee is  
5 prohibited from making a small loan to a borrower if making that small  
6 loan would result in a borrower receiving more than eight small loans  
7 from all licensees in any twelve-month period.

8 (5) A licensee that has obtained the required small loan  
9 endorsement may charge interest or fees for small loans not to exceed  
10 in the aggregate fifteen percent of the first five hundred dollars of  
11 principal. If the principal exceeds five hundred dollars, a licensee  
12 may charge interest or fees not to exceed in the aggregate ten percent  
13 of that portion of the principal in excess of five hundred dollars. If  
14 a licensee makes more than one loan to a single borrower, and the  
15 aggregated principal of all loans made to that borrower exceeds five  
16 hundred dollars at any one time, the licensee may charge interest or  
17 fees not to exceed in the aggregate ten percent on that portion of the  
18 aggregated principal of all loans at any one time that is in excess of  
19 five hundred dollars. The director may determine by rule which fees,  
20 if any, are not subject to the interest or fee limitations described in  
21 this section. It is a violation of this chapter for any licensee to  
22 knowingly loan to a single borrower at any one time, in a single loan  
23 or in the aggregate, more than the maximum principal amount described  
24 in this section.

25 ~~((+4))~~ (6) In connection with making a small loan, a licensee may  
26 advance moneys on the security of a postdated check. The licensee may  
27 not accept any other property, title to property, or other evidence of  
28 ownership of property as collateral for a small loan. The licensee may  
29 accept only one postdated check per loan as security for the loan. A  
30 licensee may permit a borrower to redeem a postdated check with a  
31 payment of cash or the equivalent of cash. The licensee may disburse  
32 the proceeds of a small loan in cash, in the form of a check, or in the  
33 form of the electronic equivalent of cash or a check.

34 ~~((+5))~~ (7) No person may at any time cash or advance any moneys on  
35 a postdated check or draft in excess of the amount of goods or services  
36 purchased without first obtaining a small loan endorsement to a check  
37 cashier or check seller license.

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

3       (1) ~~((A licensee and borrower may agree to a payment plan for a~~  
4 ~~small loan at any time. After four successive loans and prior to~~  
5 ~~default upon the last loan, each)) If a borrower notifies a licensee  
6 that the borrower will be or is unable to repay a loan when it is due,  
7 the licensee must inform the borrower that the borrower may convert  
8 their small loan to ~~((a payment))~~ an installment plan. The licensee  
9 must convert the small loan to an installment plan at the borrower's  
10 request. Each agreement for a loan ~~((payment))~~ installment plan must  
11 be in writing and acknowledged by both the borrower and the licensee.  
12 ~~((The licensee may charge the borrower, at the time both parties enter~~  
13 ~~into the payment plan, a one time fee for the payment plan in an amount~~  
14 ~~up to the fee or interest on the outstanding principal of the loan as~~  
15 ~~allowed under RCW 31.45.073(3).))~~ The licensee may not assess any  
16 other fee, interest charge, or other charge on the borrower as a result  
17 of converting the small loan into ~~((a payment))~~ an installment plan.  
18 This ~~((payment))~~ installment plan must provide for the payment of the  
19 total of payments due on the small loan over a period not less than  
20 ~~((sixty))~~ ninety days ~~((in three or more payments, unless the borrower~~  
21 ~~and licensee agree to a shorter payment period))~~ for a loan amount of  
22 up to and including four hundred dollars. For a loaned amount over  
23 four hundred dollars, the installment plan must be a period not less  
24 than one hundred eighty days. The borrower may pay the total of  
25 ~~((payments))~~ installments at any time. The licensee may not charge any  
26 penalty, fee, or charge to the borrower for prepayment of the loan  
27 ~~((payment))~~ installment plan by the borrower. Each licensee shall  
28 conspicuously disclose to each borrower in the small loan agreement or  
29 small loan note that the borrower has access to such ~~((a payment))~~ an  
30 installment plan ~~((after four successive loans))~~. A licensee's  
31 violation of such ~~((a payment))~~ an installment plan constitutes a  
32 violation of this chapter.~~

33       (2) The licensee ~~((may take))~~ must return any postdated checks that  
34 the borrower has given to the licensee for the original small loan at  
35 the initiation of the ~~((payment))~~ installment plan ~~((for the payments~~  
36 ~~agreed to under the plan. If any check accepted by the licensee as~~  
37 ~~payment under the payment plan is dishonored, the licensee may not~~  
38 ~~charge the borrower any fee for the dishonored check))~~.

1           (3) (~~If the borrower defaults on the payment plan, the licensee~~  
2 ~~may initiate action to collect the total of payments under RCW~~  
3 ~~31.45.082.~~) A licensee may take postdated checks for installment plan  
4 payments at the time the installment plan is originated. If any check  
5 accepted as payment under the installment plan is dishonored, the  
6 licensee may not charge the borrower any fee for the dishonored check.  
7 If a borrower defaults on the installment plan, the licensee may charge  
8 the borrower a one-time (~~payment~~) installment plan default fee of  
9 twenty-five dollars.

10           (4) If the licensee enters into (~~a payment~~) an installment plan  
11 with the borrower through an accredited third party, with certified  
12 credit counselors, that is representing the borrower, the licensee's  
13 failure to comply with the terms of that (~~payment~~) installment plan  
14 constitutes a violation of this chapter.

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

17           (1)(a) In addition to other disclosures required by this chapter,  
18 the application for a small loan must include a statement that is  
19 substantially similar to the following: "At the time you repay this  
20 loan, you should have sufficient funds to meet your other financial  
21 obligations. If you cannot pay other bills because you are paying off  
22 this debt, you should go into the installment plan offered in  
23 connection with this loan."

24           (b) The statement in (a) of this subsection must be on the front  
25 page of the loan application and must be in at least twelve point type.

26           (2) The director may adopt rules to implement this section.

27           NEW SECTION. Sec. 6. A new section is added to chapter 31.45 RCW  
28 to read as follows:

29           (1) The director must, by contract with a vendor or service  
30 provider or otherwise, develop and implement a system by means of which  
31 a licensee may determine:

32           (a) Whether a consumer has an outstanding small loan;

33           (b) The number of small loans the consumer has outstanding;

34           (c) Whether the borrower is eligible for a loan under RCW  
35 31.45.073;

36           (d) Whether the borrower is in an installment plan; and

1 (e) Any other information necessary to comply with chapter 31.45  
2 RCW.

3 (2) The director may specify the form and contents of the system by  
4 rule. Any system must provide that the information entered into or  
5 stored by the system is:

6 (a) Accessible to and usable by licensees and the director from any  
7 location in this state; and

8 (b) Secured against public disclosure, tampering, theft, or  
9 unauthorized acquisition or use.

10 (3) If the system described in subsection (1) of this section is  
11 developed and implemented, a licensee making small loans under chapter  
12 31.45 RCW must enter or update the required information in subsection  
13 (1) of this section at the time that the small loan transaction is  
14 conducted by the licensee.

15 (4) A licensee must continue to enter and update all required  
16 information for any loans subject to chapter 31.45 RCW that are  
17 outstanding or have not yet expired after the date on which the  
18 licensee no longer has the license or small loan endorsement required  
19 by this chapter. Within ten business days after ceasing to make loans  
20 subject to chapter 31.45 RCW, the licensee must submit a plan for  
21 continuing compliance with this subsection to the director for  
22 approval. The director must promptly approve or disapprove the plan  
23 and may require the licensee to submit a new or modified plan that  
24 ensures compliance with this subsection.

25 (5) If the system described in subsection (1) of this section is  
26 developed and implemented, the director shall adopt rules to set the  
27 fees licensees shall pay to the vendor or service provider for the  
28 operation and administration of the system and the administration of  
29 this chapter by the department.

30 (6) The director shall adopt rules establishing standards for the  
31 retention, archiving, and deletion of information entered into or  
32 stored by the system described in subsection (1) of this section.

33 (7) The information in the system described in subsection (1) of  
34 this section is not subject to public inspection or disclosure under  
35 chapter 42.56 RCW.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 31.45 RCW  
37 to read as follows:

1 (1) The director must collect and submit the following information  
2 in a report to the financial services committees of the senate and  
3 house of representatives:

4 (a) The number of borrowers entered into an installment plan since  
5 the effective date of this section;

6 (b) How the number of borrowers in installment plans compares to  
7 the number of borrowers in installment plans in years previous to the  
8 effective date of this section;

9 (c) The number of borrowers who have defaulted since the effective  
10 date of this section;

11 (d) If known on the effective date of this section, how the number  
12 of borrowers who have defaulted compares to the number of borrowers who  
13 defaulted in years previous to the effective date of this section; and

14 (e) Any other information that the director believes is relevant or  
15 useful.

16 (2) Failure to provide the director information required by this  
17 section is a violation of this chapter.

18 **Sec. 8.** RCW 42.56.230 and 2008 c 200 s 5 are each amended to read  
19 as follows:

20 The following personal information is exempt from public inspection  
21 and copying under this chapter:

22 (1) Personal information in any files maintained for students in  
23 public schools, patients or clients of public institutions or public  
24 health agencies, or welfare recipients;

25 (2) Personal information in files maintained for employees,  
26 appointees, or elected officials of any public agency to the extent  
27 that disclosure would violate their right to privacy;

28 (3) Information required of any taxpayer in connection with the  
29 assessment or collection of any tax if the disclosure of the  
30 information to other persons would (a) be prohibited to such persons by  
31 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the  
32 taxpayer's right to privacy or result in unfair competitive  
33 disadvantage to the taxpayer;

34 (4) Credit card numbers, debit card numbers, electronic check  
35 numbers, card expiration dates, or bank or other financial account  
36 numbers, except when disclosure is expressly required by or governed by  
37 other law; (~~and~~)

1           (5) Personal and financial information related to a small loan or  
2 any system of authorizing a small loan in section 6 of this act; and

3           (6) Documents and related materials and scanned images of documents  
4 and related materials used to prove identity, age, residential address,  
5 social security number, or other personal information required to apply  
6 for a driver's license or identicard.

7           NEW SECTION. Sec. 9. The director or the director's designee may  
8 take the actions necessary to ensure this act is implemented on its  
9 effective date.

10           NEW SECTION. Sec. 10. This act takes effect January 1, 2010.

Passed by the House March 9, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 15, 2009.

Filed in Office of Secretary of State May 18, 2009.