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**HOUSE BILL 2083**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Ryu, Volz, Walen, Ramel, Reed, Ormsby, Timmons, Riccelli, and Fosse

AN ACT Relating to making modifications to small loans under payday lending laws; amending RCW 31.45.010, 31.45.073, and 31.45.105; adding a new section to chapter 31.45 RCW; and declaring an emergency.

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

**Sec.**  RCW 31.45.010 and 2012 c 17 s 7 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(12) "Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

(13) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. "Licensee" also means a check casher or seller, whether located within or outside of this state, who fails to obtain the license or small loan endorsement required by this chapter.

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 31.45.073 and 2009 c 510 s 3 are each amended to read as follows:

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

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

(3) A licensee is prohibited from making a small loan to a borrower in an installment plan with any licensee until after the plan is paid in full or two years have passed from the origination date of the installment plan, whichever occurs first.

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

(5) ((~~A~~)) Notwithstanding any other law, for small loans made or renewed after the effective date of this section, a licensee that has obtained the required small loan endorsement may ((~~charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal. If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may determine by rule which fees, if any, are not subject to the interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section~~)) not charge, contract for, or receive, directly or indirectly, charges or amounts exceeding an annual percentage rate of 36 percent on the unpaid balance of the amount financed. For the purposes of this subsection, "annual percentage rate" 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. The annual percentage rate includes, but is not limited to, all interest, fees, charges, and other payments as set forth in the regulations to implement the military lending act, 10 U.S.C. Sec. 987, and 32 C.F.R. Sec. 232.1 et seq. (2015). The annual percentage rate must be calculated as specified in 32 C.F.R. Sec. 232.1 et seq. (2015).

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

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

(8) This section applies to any small loan made to a consumer physically located in the state, whether the transaction is conducted in person, by internet, facsimile, telephone, kiosk, mail, or other means.

(9) A person may not solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, the origination of a small loan that violates this section.

**Sec.**  RCW 31.45.105 and 2012 c 17 s 10 are each amended to read as follows:

(1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement; ((~~and~~))

(e) Sell in a retail installment transaction under chapter 63.14 RCW open loop prepaid access (prepaid access as defined in 31 C.F.R. Part 1010.100(ww) and not closed loop prepaid access as defined in 31 C.F.R. Part 1010.100(kkk));

(f) Solicit, make, contract for, offer, assist, broker, or arrange for a borrower to obtain a small loan with a higher annual percentage rate or amount of interest, consideration, charge, or other payment received incident to the loan than is permitted by RCW 31.45.073;

(g) Charge for or receive interest, fees, charges, or other payments in excess of those permitted whether voluntary, optional, or required; or

(h) Engage in or facilitate any device, subterfuge, or pretense to evade the requirements of this chapter.

(2) It is a violation of this chapter for any person subject to this chapter to:

(a) Advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or ((~~broadcast [broadcasted]~~)) broadcasted any statement or representation that is false, misleading, or deceptive, or that omits material information;

(b) Fail to pay the annual assessment by the date and time as specified in RCW 31.45.050;

(c) Fail to pay any other fee, assessment, or moneys due the department.

(3) In addition to any other penalties, any transaction in violation of subsection (1) of this section is uncollectible and unenforceable, and the borrower shall be entitled to restitution of any amounts paid.

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

If a small loan exceeds the annual percentage rate permitted by RCW 31.45.073, a person is a lender subject to the requirements of this chapter 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 this chapter, if, among other things:

(1) The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk, or reward in the small loan;

(2) The person:

(a) Markets, solicits, brokers, arranges, facilitates, or services small loans; and

(b) 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

(3) The totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being a lender include, without limitation, when the person:

(a) Indemnifies, insures, or protects an exempt entity from any costs or risks related to a small loan;

(b) Predominantly designs, controls, or operates a small loan program;

(c) Holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of a small loan program; or

(d) Purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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