
HOUSE BILL 2690

State of Washington

54th Legislature

1996 Regular Session

By Representatives Pelesky, Benton, Dyer, L. Thomas, Huff, D. Sommers, Kessler and Grant

Read first time 01/16/96. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to authorizing the collection of fees and
2 prepayment penalties for consumer loans; and amending RCW 31.04.105 and
3 31.04.115.

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

5 **Sec. 1.** RCW 31.04.105 and 1994 c 92 s 167 are each amended to read
6 as follows:

7 Every licensee may:

8 (1) Lend money at a rate that does not exceed twenty-five percent
9 per annum as determined by the simple interest method of calculating
10 interest owed;

11 (2) In connection with the making of a loan, charge the borrower a
12 nonrefundable, prepaid, loan origination fee not to exceed four percent
13 of the first twenty thousand dollars and two percent thereafter of the
14 principal amount of the loan advanced to or for the direct benefit of
15 the borrower, which fee may be included in the principal balance of the
16 loan;

17 (3) Agree with the borrower for the payment of fees (~~for title~~
18 ~~insurance, appraisals, recording, reconveyance, and releasing~~) to
19 third parties who provide goods or services in connection with the

1 preparation of the borrower's loan, including, but not limited to,
2 credit reporting agencies, title companies, appraisers, structural and
3 pest inspectors, and escrow companies, when such fees are actually paid
4 by the licensee to a third party for such services or purposes and may
5 include such fees in the amount of the loan. However, no charge may be
6 collected unless a loan is made, except for reasonable fees properly
7 incurred in connection with the appraisal of property by a qualified,
8 independent, professional, third-party appraiser selected by the
9 borrower and approved by the lender or in the absence of borrower
10 selection, selected by the lender;

11 (4) Charge and collect a penalty of ten cents or less on each
12 dollar of any installment payment delinquent ten days or more;

13 (5) Collect from the debtor reasonable attorneys' fees, actual
14 expenses, and costs incurred in connection with the collection of a
15 delinquent debt, a repossession, or a foreclosure when a debt is
16 referred for collection to an attorney who is not a salaried employee
17 of the licensee;

18 (6) Make open-end loans as provided in this chapter;

19 (7) Charge and collect a fee for dishonored checks in an amount
20 approved by the director; ((and))

21 (8) In accordance with Title 48 RCW, sell insurance covering real
22 and personal property, covering the life or disability or both of the
23 borrower, and covering the involuntary unemployment of the borrower;
24 and

25 (9) With respect to a loan that is primarily secured by an interest
26 in real estate, contract for a penalty for prepayment of the loan in
27 full:

28 (a) For closed-end loans, the maximum prepayment charge is an
29 amount equal to six months' interest calculated on the average balance
30 for the prior six months at the rate of charge. If the life of the
31 loan at the time of prepayment is less than six months, the prepayment
32 charge may be calculated in the same manner except using the number of
33 months that the loan has existed.

34 (b) For open-end loans, the maximum prepayment charge is an amount
35 equal to six months' finance charge at the annual percentage rate in
36 effect at the time of prepayment, calculated on the average of the
37 average daily balances on the account for the last six billing periods
38 prior to prepayment. If the account has been open for less than six
39 billing periods, the prepayment charge may be calculated in the same

1 manner except using the number of billing periods that the account has
2 been open.

3 (c) A penalty may not be imposed:

4 (i) If the loan is refinanced or consolidated with the same lender;
5 or

6 (ii) After two years from the contract date.

7 **Sec. 2.** RCW 31.04.115 and 1994 c 92 s 168 are each amended to read
8 as follows:

9 (1) As used in this section, "open-end loan" means an agreement
10 between a licensee and a borrower that expressly states that the loan
11 is made in accordance with this chapter and that provides that:

12 (a) A licensee may permit the borrower to obtain advances of money
13 from the licensee from time to time, or the licensee may advance money
14 on behalf of the borrower from time to time as directed by the
15 borrower;

16 (b) The amount of each advance and permitted charges and costs are
17 debited to the borrower's account, and payments and other credits are
18 credited to the same account;

19 (c) The charges are computed on the unpaid principal balance, or
20 balances, of the account from time to time; and

21 (d) The borrower has the privilege of paying the account in full at
22 any time without prepayment penalty except as provided in RCW
23 31.04.105(9) or, if the account is not in default, in monthly
24 installments of fixed or determinable amounts as provided in the
25 agreement.

26 (2) Interest charges on an open-end loan shall not exceed twenty-
27 five percent per annum computed in each billing cycle by any of the
28 following methods:

29 (a) By converting the annual rate to a daily rate, and multiplying
30 the daily rate by the daily unpaid principal balance of the account, in
31 which case each daily rate is determined by dividing the annual rate by
32 three hundred sixty-five;

33 (b) By multiplying a monthly rate by the average daily unpaid
34 principal balance of the account in the billing cycle, in which case
35 the monthly rate is one-twelfth of the annual rate, and the average
36 daily unpaid principal balance is the sum of the amount unpaid each day
37 during the cycle divided by the number of days in the cycle; or

1 (c) By converting the annual rate to a daily rate, and multiplying
2 the daily rate by the average daily unpaid principal balance of the
3 account in the billing cycle, in which case the daily rate is
4 determined by dividing the annual rate by three hundred sixty-five, and
5 the average daily unpaid principal balance is the sum of the amount
6 unpaid each day during the cycle divided by the number of days in the
7 cycle.

8 For all of the methods of computation specified in this subsection,
9 the billing cycle shall be monthly, and the unpaid principal balance on
10 any day shall be determined by adding to the balance unpaid, as of the
11 beginning of that day, all advances and other permissible amounts
12 charged to the borrower, and deducting all payments and other credits
13 made or received that day. A billing cycle is considered monthly if
14 the closing date of the cycle is on the same date each month, or does
15 not vary by more than four days from that date.

16 (3) In addition to the charges permitted under subsection (2) of
17 this section, the licensee may contract for and receive an annual fee,
18 payable each year in advance, for the privilege of opening and
19 maintaining an open-end loan account. Except as prohibited or limited
20 by this section, the licensee may also contract for and receive on an
21 open-end loan any additional charge permitted by this chapter on other
22 loans, subject to the conditions and restrictions otherwise pertaining
23 to those charges.

24 (4)(a) If credit life or credit disability insurance is provided,
25 the additional charge for credit life insurance or credit disability
26 insurance shall be calculated in each billing cycle by applying the
27 current monthly premium rate for the insurance, at the rate approved by
28 the insurance commissioner to the entire outstanding balances in the
29 borrower's open-end loan account, or so much thereof as the insurance
30 covers using any of the methods specified in subsection (2) of this
31 section for the calculation of interest charges; and

32 (b) The licensee shall not cancel credit life or disability
33 insurance written in connection with an open-end loan because of
34 delinquency of the borrower in the making of the required minimum
35 payments on the loan, unless one or more of the payments is past due
36 for a period of ninety days or more; and the licensee shall advance to
37 the insurer the amounts required to keep the insurance in force during
38 that period, which amounts may be debited to the borrower's account.

1 (5) A security interest in real or personal property may be taken
2 to secure an open-end loan. Any such security interest may be retained
3 until the open-end account is terminated. The security interest shall
4 be promptly released if (a) there has been no outstanding balance in
5 the account for twelve months and the borrower either does not have or
6 surrenders the unilateral right to create a new outstanding balance; or
7 (b) the account is terminated at the borrower's request and paid in
8 full.

9 (6) The licensee may from time to time increase the rate of
10 interest being charged on the unpaid principal balance of the
11 borrower's open-end loans if the licensee mails or delivers written
12 notice of the change to the borrower at least thirty days before the
13 effective date of the increase unless the increase has been earlier
14 agreed to by the borrower. However, the borrower may choose to
15 terminate the open-end account and the licensee shall allow the
16 borrower to repay the unpaid balance incurred before the effective date
17 of the rate increase upon the existing open-end loan account terms and
18 interest rate unless the borrower incurs additional debt on or after
19 the effective date of the rate increase or otherwise agrees to the new
20 rate.

21 (7) The licensee shall deliver a copy of the open-end loan
22 agreement to the borrower at the time the open-end account is created.
23 The agreement must contain the name and address of the licensee and of
24 the principal borrower, and must contain such specific disclosures as
25 may be required by rule of the director. In adopting the rules the
26 director shall consider Regulation Z promulgated by the board of
27 governors of the federal reserve system under the federal consumer
28 credit protection act.

29 (8) Except in the case of an account that the licensee deems to be
30 uncollectible, or with respect to which delinquency collection
31 procedures have been instituted, the licensee shall deliver to the
32 borrower at the end of each billing cycle in which there is an
33 outstanding balance of more than one dollar in the account, or with
34 respect to which interest is imposed, a periodic statement in the form
35 required by the director. In specifying such form the director shall
36 consider Regulation Z promulgated by the board of governors of the

1 federal reserve system under the federal consumer credit protection
2 act.

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