

Chapter 31.45 RCW
CHECK CASHERS AND SELLERS

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RCW 31.45.010 Definitions. 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.

(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. [2012 c 17 § 7; 2009 c 510 § 2; 2003 c 86 § 1; 1995 c 18 § 1; 1994 c 92 § 274; 1993 c 143 § 1; 1991 c 355 § 1.]

Finding—Intent—Liberal construction—2009 c 510: "The legislature finds that some small loan borrowers are unable to pay the entire loaned amount when it is due. Many of these borrowers take out multiple loans to pay off the original borrowed sum.

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

This act shall be liberally construed to effectuate the legislature's intent to protect borrowers." [2009 c 510 § 1.]

RCW 31.45.020 Application of chapter. (1) This chapter does not apply to:

(a) Any financial institution or trust company authorized to do business in Washington;

(b) The cashing of checks, drafts, or money orders by any person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of

not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the director, the director may exempt a person from any or all provisions of this chapter upon a finding by the director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public. [2003 c 86 § 2; 1994 c 92 § 275; 1991 c 355 § 2.]

RCW 31.45.022 Privacy or confidentiality of any information or material—Federal or other state's laws. (1) The requirements under any federal law or laws of another state regarding the privacy or confidentiality of any information or material provided to the department [of financial institutions], and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the department [of financial institutions]. If consistent with applicable law, the information and material may be shared with all state and federal regulatory officials without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) When the department [of financial institutions] is a party to a memoranda of understanding or enforcement order issued by the consumer financial protection bureau, the privacy, confidentiality, or privilege accorded to the document by federal law continues to apply even after the memoranda or order has been signed by the director or a designee.

(3) Any requirement under chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) or (2) of this section that is inconsistent with subsection (1) or (2) of this section is superseded by the requirements of this section. [2014 c 36 § 8.]

RCW 31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties.

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in

determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional

security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [2005 c 274 § 255; 2003 c 86 § 3; 2001 c 177 § 11; 1995 c 18 § 4; 1994 c 92 § 276; 1993 c 176 § 1; 1991 c 355 § 3.]

Effective date—2001 c 177: See note following RCW 43.320.080.

Effective date—1993 c 176: "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 shall take effect immediately [April 30, 1993]." [1993 c 176 § 2.]

Examination reports and information from financial institutions exempt: RCW 42.56.400.

RCW 31.45.040 Application for license or small loan endorsement—Financial responsibility—Director's investigation. (1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant has satisfied the requirements of RCW 31.45.030;

(b) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(c) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, sole proprietor, owner, or controlling person of the applicant, has been convicted of a felony in any jurisdiction within seven years of filing the present application or is associating or consorting with any person who has been convicted of a felony in any jurisdiction within seven years of filing the present application. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) A license or small loan endorsement may not be issued to an applicant:

(a) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(b) Who has been banned from the industry by an administrative order issued by the director or the director's designee, for the period specified in the administrative order; or

(c) When any person who is a sole proprietor, owner, director, officer, partner, agent, or controlling person of the applicant has been banned from the industry in an administrative order issued by the director, for the period specified in the administrative order.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual assessment fee. [2003 c 86 § 4; 1996 c 13 § 1; 1995 c 18 § 5; 1994 c 92 § 277; 1991 c 355 § 4.]

RCW 31.45.043 Multistate licensing system—Director's discretion. Applicants may be required to make application through a multistate licensing system as prescribed by the director. Existing licensees may be required to transition onto a multistate licensing system as prescribed by the director. [2012 c 17 § 8.]

RCW 31.45.045 Reports—Nationwide licensing system. Each licensee on a nationwide licensing system shall submit reports of condition which must be in the form and must contain the information as the director may require. [2014 c 36 § 9.]

RCW 31.45.050 Investigation or examination fee and annual assessment fee required—Amounts determined by rule—Failure to pay—Notice requirements of licensee. (1) Each applicant and licensee shall pay to the director an investigation or examination fee as established in rule and an annual assessment fee for the coming year in an amount determined by rule as necessary to cover the operation of the program. The annual assessment fee is due upon the annual assessment fee due date as established in rule. Nonpayment of the annual assessment fee may result in expiration of the license as provided in subsection (2) of this section. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee does not pay its annual assessment fee by the annual assessment fee due date as specified in rule, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment fee as established in rule by the director. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, in which case the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring day that the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, then the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date. The director or the director's designee may reinstate the

license if, within twenty days after the effective date of expiration, the licensee:

(a) Pays both the annual assessment fee and the late fee; and

(b) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired, as confirmed by an investigation by the director or the director's designee.

(3) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business. [2003 c 86 § 5; 2001 c 177 § 12; 1996 c 13 § 2; 1995 c 18 § 6; 1994 c 92 § 278; 1991 c 355 § 5.]

Effective date—2001 c 177: See note following RCW 43.320.080.

RCW 31.45.060 Licensee—Schedule of fee and charges—

Recordkeeping. (1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records as required in rule by the director for at least two years from the completion of the transaction. Records may be maintained on an electronic, magnetic, optical, or other storage media. However, the licensee must maintain the necessary technology to permit access to the records by the department for the period required under this chapter.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained in a federally insured financial institution authorized to do business in the state of Washington. [2003 c 86 § 6; 1994 c 92 § 279; 1991 c 355 § 6.]

RCW 31.45.070 Licensee—Permissible transactions—Restrictions.

(1) No licensee may engage in a loan business; the negotiation of loans; or the discounting of notes, bills of exchange, checks, or other evidences of debt in the same premises where a check cashing or selling business is conducted, unless the licensee:

(a) Is conducting the activities of pawnbroker as defined in RCW 19.60.010;

(b) Is a properly licensed consumer loan company under chapter 31.04 RCW;

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

(d) Has a small loan endorsement issued under this chapter.

(2) Except as otherwise permitted in this chapter, no licensee may at any time cash or advance any moneys on a postdated check or

draft. However, a licensee may cash a check payable on the first banking day following the date of cashing if:

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

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

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

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

(5) Each licensee shall comply with all applicable state and federal statutes relating to the activities governed by this chapter. [2012 c 17 § 9; 2003 c 86 § 7; 1995 c 18 § 7; 1994 c 92 § 280; 1991 c 355 § 7.]

RCW 31.45.073 Making small loans—Endorsement required—Due date—Termination date—Maximum amount—Installment plans—Interest—Fees—Postdated check or draft as security.

(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 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 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.

(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. [2009 c 510 § 3; 2003 c 86 § 8; 1995 c 18 § 2.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

RCW 31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees. (1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110. [2005 c 274 § 256; 2003 c 86 § 9; 2001 c 177 § 13; 1995 c 18 § 3.]

Effective date—2001 c 177: See note following RCW 43.320.080.

RCW 31.45.079 Making small loans—Agent for a licensee or exempt entity—Federal preemption. A person may not engage in the business of making small loans as an agent for a licensee or exempt entity without first obtaining a small loan endorsement to a check casher or check seller license under this chapter. An agent of a licensee or exempt entity engaged in the business of making small loans is subject to this chapter. To the extent that federal law preempts the applicability of any part of this chapter, all other parts of this chapter remain in effect. [2003 c 86 § 10.]

RCW 31.45.080 Trust funds—Deposit requirements—Rules. (1) All funds received by a licensee or its agents from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose constitute trust funds owned by and belonging to the person from whom they were received or to the person who has paid the checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) All such trust funds shall be deposited in a bank, savings bank, or savings and loan association located in Washington state in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or of its officers, employees, or agents. Such funds are not subject to attachment, levy of execution, or sequestration by order of a court except by a payee, assignee, or holder in due course of a check, draft, or money order sold by a licensee or its agent. Funds in the trust account, together with funds and checks on hand and in the hands of agents held for the account of the licensee at all times shall be at least equal to the aggregate liability of the licensee on account of checks, drafts, money orders, or other commercial paper serving the same purpose that are sold.

(3) The director shall adopt rules requiring the licensee to periodically withdraw from the trust account the portion of trust funds earned by the licensee from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose. If a licensee has accepted, in payment for a check, draft, money order, or commercial paper serving the same purpose issued by the licensee, a check or draft that is subsequently dishonored, the director shall prohibit the withdrawal of earned funds in an amount necessary to cover the dishonored check or draft.

(4) If a licensee or its agent commingles trust funds with its own funds, all assets belonging to the licensee or its agent are

impressed with a trust in favor of the persons specified in subsection (1) of this section in an amount equal to the aggregate funds that should have been segregated. Such trust continues until an amount equal to the necessary aggregate funds have been deposited in accordance with subsection (2) of this section.

(5) Upon request of the director, a licensee shall furnish to the director an authorization for examination of financial records of any trust fund account established for compliance with this section.

(6) The director may adopt any rules necessary for the maintenance of trust accounts, including rules establishing procedures for distribution of trust account funds if a license is suspended, terminated, or not renewed. [1994 c 92 § 281; 1991 c 355 § 8.]

RCW 31.45.082 Delinquent small loan—Restrictions on collection by licensee or third party—Definitions. (1) A licensee shall comply with all applicable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan or threaten to take any legal action against the borrower which the licensee may not legally take.

(2) Unless invited by the borrower, a licensee may not visit a borrower's residence or place of employment for the purpose of collecting a delinquent small loan. A licensee may not impersonate a law enforcement official, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collecting a small loan.

(3) A licensee may not communicate with a borrower in such a manner as to harass, intimidate, abuse, or embarrass a borrower, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, or by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if it is initiated by the licensee for the purposes of collection and:

(a) It is made with a borrower or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a borrower at his or her place of employment more than one time in a single week or made to a borrower after the licensee has been informed that the borrower's employer prohibits such communications;

(c) It is made with the borrower or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.; or

(d) It is made to a party other than the borrower, the borrower's attorney, the licensee's attorney, or a consumer reporting agency if otherwise permitted by law except for purposes of acquiring location or contact information about the borrower.

(4) A licensee is required to maintain a communication log of all telephone and written communications with a borrower initiated by the licensee regarding any collection efforts including date, time, and the nature of each communication.

(5) If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check.

(6) For the purposes of this section, "communication" includes any contact with a borrower, initiated by the licensee, in person, by telephone, or in writing (including emails, text messages, and other electronic writing) regarding the collection of a delinquent small loan, but does not include any of the following:

(a) Communication while a borrower is physically present in the licensee's place of business;

(b) An unanswered telephone call in which no message (other than a caller ID) is left, unless the telephone call violates subsection (3)(c) of this section; and

(c) An initial letter to the borrower that includes disclosures intended to comply with the federal fair debt collection practices act.

(7) For the purposes of this section, (a) a communication occurs at the time it is initiated by a licensee regardless of the time it is received or accessed by the borrower, and (b) a call to a number that the licensee reasonably believes is the borrower's cell phone will not constitute a communication with a borrower at the borrower's place of employment.

(8) For the purposes of this section, "week" means a series of seven consecutive days beginning on a Sunday. [2009 c 13 § 1; 2003 c 86 § 11.]

RCW 31.45.084 Small loan installment plan—Terms—Restrictions.

(1) If a borrower notifies a licensee that the borrower will be or is unable to repay a loan when it is due, the licensee must inform the borrower that the borrower may convert their small loan to an installment plan. The licensee must convert the small loan to an installment plan at the borrower's request. Each agreement for a loan installment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into an installment plan. This installment plan must provide for the payment of the total of payments due on the small loan over a period not less than ninety days for a loan amount of up to and including four hundred dollars. For a loaned amount over four hundred dollars, the installment plan must be a period not less than one hundred eighty days. The borrower may pay the total of installments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan installment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such an installment plan. A licensee's violation of such an installment plan constitutes a violation of this chapter.

(2) The licensee must return any postdated checks that the borrower has given to the licensee for the original small loan at the initiation of the installment plan.

(3) A licensee may take postdated checks for installment plan payments at the time the installment plan is originated. If any check accepted as payment under the installment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check. If a borrower defaults on the installment plan, the licensee may charge the borrower a one-time installment plan default fee of twenty-five dollars.

(4) If the licensee enters into an installment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that installment plan constitutes a violation of this chapter. [2009 c 510 § 4; 2003 c 86 § 12.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

Effective date—2003 c 86 § 12: "Section 12 of this act takes effect October 1, 2003." [2003 c 86 § 20.]

RCW 31.45.085 Loan application—Required statement—Rules.

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

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

(2) The director may adopt rules to implement this section. [2009 c 510 § 5.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

RCW 31.45.086 Small loans—Right of rescission. A borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the licensee to fund the small loan. The licensee may not charge the borrower for rescinding the loan and shall return to the borrower any postdated check taken as security for the loan or any electronic equivalent. The licensee shall conspicuously disclose to the borrower this right of rescission in writing in the small loan agreement or small loan note. [2003 c 86 § 13.]

RCW 31.45.088 Small loans—Disclosure requirements—Advertising—Making loan. (1) When advertising the availability of small loans, if a licensee includes in an advertisement the fee or interest rate charged by the licensee for a small loan, then the licensee shall also disclose the annual percentage rate resulting from this fee or interest rate.

(2) When advertising the availability of small loans, compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. [Part] 226 constitutes compliance with subsection (1) of this section.

(3) When making a small loan, each licensee shall disclose to the borrower the terms of the small loan, including the principal amount of the small loan, the total of payments of the small loan, the fee or interest rate charged by the licensee on the small loan, and the annual percentage rate resulting from this fee or interest rate.

(4) When making a small loan, disclosure of the terms of the small loan in compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. [Part] 226 constitutes compliance with subsection (3) of this section. [2003 c 86 § 14.]

RCW 31.45.090 Report requirements—Disclosure of information—

Rules. (1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.56 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter. [2005 c 274 § 257; 2003 c 86 § 15; 1994 c 92 § 282; 1991 c 355 § 9.]

RCW 31.45.093 Information system—Access—Required information—

Fees—Rules. (1) The director must, by contract with a vendor or service provider or otherwise, develop and implement a system by means of which a licensee may determine:

- (a) Whether a consumer has an outstanding small loan;
- (b) The number of small loans the consumer has outstanding;
- (c) Whether the borrower is eligible for a loan under RCW

31.45.073;

- (d) Whether the borrower is in an installment plan; and
- (e) Any other information necessary to comply with this chapter.

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

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

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

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

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

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

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

(7) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure under chapter 42.56 RCW. [2009 c 510 § 6.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

RCW 31.45.100 Examination or investigation—Director's authority—Costs. The director or the director's designee may at any time examine and investigate the business and examine the books, accounts, records, and files, or other information, wherever located, of any licensee or person who the director has reason to believe is engaging in the business governed by this chapter. For these purposes, the director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of the investigation. The director or the director's designee may require the production of original books, accounts, records, files, or other information, or may make copies of such original books, accounts, records, files, or other information. The director or the director's designee may issue a subpoena or subpoena duces tecum requiring attendance and testimony, or the production of the books, accounts, records, files, or other information. The director shall collect from the licensee the actual cost of the examination or investigation. [2003 c 86 § 16; 1994 c 92 § 283; 1991 c 355 § 10.]

RCW 31.45.103 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 10.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

RCW 31.45.105 Violations of chapter—Enforceability of transaction. (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)).

(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] 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. [2012 c 17 § 10; 2007 c 81 § 1.]

RCW 31.45.110 Violations or unsound financial practices—Statement of charges—Hearing—Sanctions—Director's authority—Statute of limitations. (1) The director may issue and serve upon a licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant, a statement of charges if, in the opinion of the director, any licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting a business governed by this chapter;

(b) Is violating or has violated this chapter, including violations of:

(i) Any rules, orders, or subpoenas issued by the director under any act;

(ii) Any condition imposed in writing by the director in connection with the granting of any application or other request by the licensee; or

(iii) Any written agreement made with the director;

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause;

(d) Obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

(e) Provides false statements or omits material information on an application;

(f) Knowingly or negligently omits material information during or in response to an examination or in connection with an investigation by the director;

(g) Fails to pay a fee or assessment required by the director or any multistate licensing system prescribed by the director, or fails to maintain the required bond or deposit;

(h) Commits a crime against the laws of any jurisdiction involving moral turpitude, financial misconduct, or dishonest dealings. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

(i) Knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage;

(j) Converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;

(k) Fails to disclose any information within his or her knowledge or fails to produce any document, book, or record in his or her possession for inspection by the director upon demand;

(l) Commits any act of fraudulent or dishonest dealing. For the purposes of this section, a certified copy of the final holding of any

court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

(m) Commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public;

(n) Violates any applicable state or federal law relating to the activities governed by this chapter.

(2) The statement of charges must be issued under chapter 34.05 RCW. The director or the director's designee may impose the following sanctions against any licensee or applicant, or any directors, officers, sole proprietors, partners, controlling persons, or employees of a licensee or applicant:

(a) Deny, revoke, suspend, or condition a license or small loan endorsement;

(b) Order the licensee or person to cease and desist from practices that violate this chapter or constitute unsafe and unsound financial practices;

(c) Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter;

(d) Order restitution or refunds to borrowers or other parties for violations of this chapter or take other affirmative action as necessary to comply with this chapter; and

(e) Remove from office or ban from participation in the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(4) Unless the licensee or person personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the statement of charges and the sanctions imposed in the statement of charges.

(5) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. [2014 c 36 § 7; 2012 c 17 § 11; 2003 c 86 § 17; 1994 c 92 § 284; 1991 c 355 § 11.]

RCW 31.45.120 Violations or unsound practices—Temporary cease and desist order—Director's authority. Whenever the director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the director may also issue a temporary cease and desist order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110. [2003 c 86 § 18; 1994 c 92 § 285; 1991 c 355 § 12.]

RCW 31.45.130 Temporary cease and desist order—Licensee's application for injunction. Within ten days after a licensee has been served with a temporary cease and desist order, the licensee may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 31.45.120. The superior court has jurisdiction to issue the injunction. [1991 c 355 § 13.]

RCW 31.45.140 Violation of temporary cease and desist order—Director's application for injunction. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.45.120, the director may apply to the superior court of the county of the principal place of business of the licensee for an injunction. [1994 c 92 § 286; 1991 c 355 § 14.]

RCW 31.45.150 Licensee's failure to perform obligations—Director's duty. Whenever as a result of an examination or report it appears to the director that:

- (1) The capital of any licensee is impaired;
- (2) Any licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
- (3) Any licensee has suspended payment of its trust obligations;
- (4) Any licensee has refused to submit its books, papers, and affairs to the inspection of the director or the director's examiner;
- (5) Any officer of any licensee refuses to be examined under oath regarding the business of the licensee;
- (6) Any licensee neglects or refuses to comply with any order of the director made pursuant to this chapter unless the enforcement of such order is restrained in a proceeding brought by such licensee;

the director may immediately take possession of the property and business of the licensee and retain possession until the licensee resumes business or its affairs are finally liquidated as provided in RCW 31.45.160. The licensee may resume business upon such terms as the director may prescribe. [1994 c 92 § 287; 1991 c 355 § 15.]

RCW 31.45.160 Director's possession of property and business—Appointment of receiver. Whenever the director has taken possession of the property and business of a licensee, the director may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the director retains possession of the property and business of a licensee, the director has the same powers and authority with reference to the licensee as is vested in the director under chapter 31.04 RCW, and the licensee has the same rights to hearings and judicial review as are granted under chapter 31.04 RCW. [1997 c 101 § 4; 1994 c 92 § 288; 1991 c 355 § 16.]

RCW 31.45.180 Violation—Misdemeanor. Any person who violates or participates in the violation of any provision of the rules or

orders of the director or of this chapter is guilty of a misdemeanor. [1994 c 92 § 290; 1991 c 355 § 18.]

RCW 31.45.190 Violation—Consumer protection act—Remedies. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. Remedies available under chapter 19.86 RCW shall not affect any other remedy the injured party may have. [1991 c 355 § 19.]

RCW 31.45.200 Director—Broad administrative discretion. The director has the power, and broad administrative discretion, to administer and interpret the provisions of this chapter to ensure the protection of the public. [1994 c 92 § 291; 1991 c 355 § 20.]

RCW 31.45.210 Military borrowers—Licensee's duty—Definition.

(1) A licensee shall:

- (a) When collecting any delinquent small loan, not garnish any wages or salary paid for service in the armed forces;
- (b) Defer for the duration of the posting all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of the posting;
- (c) Not contact the military chain of command of a military borrower in an effort to collect a delinquent small loan;
- (d) Honor the terms of any repayment agreement between the licensee and any military borrower, including any repayment agreement negotiated through military counselors or third party credit counselors; and
- (e) Not make a loan from a specific location to a person that the licensee knows is a military borrower when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

(2) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the national guard or the reserves of the armed forces of the United States who has been called to active duty. [2005 c 256 § 1.]

RCW 31.45.900 Effective date, implementation—1991 c 355. This act shall take effect January 1, 1992. The director shall take such steps as are necessary to ensure that this act is implemented on its effective date. [1994 c 92 § 292; 1991 c 355 § 24.]

RCW 31.45.901 Effective date—2009 c 510. This act takes effect January 1, 2010. [2009 c 510 § 10.]