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**SUBSTITUTE SENATE BILL 5920 (Corrected Copy)**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Franklin, Berkey, Schoesler, Benton, Delvin, and Shin)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to increasing small loan borrower protections by  
2       restricting the underwriting of small loans by businesses with a small  
3       loan endorsement, including a cap on the combined outstanding principal  
4       balances of all small loans, providing for a payment plan, and creating  
5       a database; amending RCW 31.45.010, 31.45.073, 31.45.084, and  
6       42.56.230; adding new sections to chapter 31.45 RCW; and providing an  
7       effective date.

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

9       **Sec. 1.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read  
10      as follows:

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

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

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

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

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

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

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

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

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

19 (9) "Default" means the borrower's failure to repay the small loan  
20 in compliance with the terms contained in the small loan agreement or  
21 note or failure to make payments in compliance with a loan payment  
22 plan.

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

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

26 (12) "Licensee" means a check casher or seller licensed by the  
27 director to engage in business in accordance with this chapter. For  
28 purposes of the enforcement powers of this chapter, including the power  
29 to issue cease and desist orders under RCW 31.45.110, "licensee" also  
30 means a check casher or seller who fails to obtain the license required  
31 by this chapter.

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

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

36 (15) "Paid" means that moment in time when the licensee deposits  
37 the borrower's check or accepts cash for the full amount owing on a  
38 valid small loan.

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

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

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

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

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

16 ~~(+21))~~ "Termination date" means the date upon which payment for the  
17 small loan transaction is due or paid to the licensee, whichever occurs  
18 first.

19 ~~((+22))~~ (21) "Total of payments" means the principal amount of the  
20 small loan plus all fees or interest charged on the loan.

21 ~~((+23))~~ (22) "Trade secret" means the same as defined in RCW  
22 19.108.010.

23 **Sec. 2.** RCW 31.45.073 and 2003 c 86 s 8 are each amended to read  
24 as follows:

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

33 (2) A loan is not due before the time of the borrower's next  
34 paycheck. If a borrower is going to receive a paycheck within seven  
35 days of taking out the loan, the loan is not due until the borrower's  
36 second paycheck following the date of the loan. The termination date  
37 of a small loan may not exceed the origination date of that same small

1 loan by more than forty-five days, including weekends and holidays,  
2 unless the term of the loan is extended by agreement of both the  
3 borrower and the licensee and no additional fee or interest is charged.  
4 The maximum principal amount of any small loan, or the outstanding  
5 principal balances of all small loans made by ((a)) all licensees to a  
6 single borrower at any one time, may not exceed seven hundred dollars.  
7 At any time, the combined principal balances of all small loans to a  
8 single borrower may not exceed thirty percent of the gross monthly  
9 income of the borrower.

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

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

36 (5) No person may at any time cash or advance any moneys on a  
37 postdated check or draft in excess of the amount of goods or services

1 purchased without first obtaining a small loan endorsement to a check  
2 casher or check seller license.

3 **Sec. 3.** RCW 31.45.084 and 2003 c 86 s 12 are each amended to read  
4 as follows:

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

35 (2) The licensee ~~((may take))~~ must return any postdated checks that  
36 the borrower has given to the licensee at the initiation of the  
37 ~~((payment))~~ installment plan ~~((for the payments agreed to under the~~

1 plan. ~~If any check accepted by the licensee as payment under the~~  
2 ~~payment plan is dishonored, the licensee may not charge the borrower~~  
3 ~~any fee for the dishonored check)).~~

4 (3) A borrower defaults on a payment plan by failing to make two  
5 consecutive installment payments. If the borrower defaults on the  
6 ~~((payment))~~ installment plan, the licensee may ~~((initiate action to~~  
7 ~~collect the total of payments under RCW 31.45.082. The licensee may~~  
8 ~~charge the borrower a one-time payment plan default fee of twenty-five~~  
9 ~~dollars))~~ collect the entire outstanding amount.

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. 4. A new section is added to chapter 31.45 RCW  
16 to read as follows:

17 (1) The director may, by contract with a vendor or service provider  
18 or otherwise, develop and implement a system by means of which a  
19 licensee may determine:

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

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

22 (c) Whether the borrower is eligible for a loan under RCW  
23 31.45.073; and

24 (d) Any other information necessary to comply with chapter 31.45  
25 RCW.

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

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

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

33 (3) If the system described in subsection (1) of this section is  
34 developed and implemented, a licensee making small loans under chapter  
35 31.45 RCW must enter or update the required information in subsection  
36 (1) of this section at the time that the small loan transaction is  
37 conducted by the licensee.

1 (4) A licensee must continue to enter and update all required  
2 information for any loans subject to chapter 31.45 RCW that are  
3 outstanding or have not yet expired after the date on which the  
4 licensee no longer has the license or small loan endorsement required  
5 by this chapter. Within ten business days after ceasing to make loans  
6 subject to chapter 31.45 RCW, the licensee must submit a plan for  
7 continuing compliance with this subsection to the director for  
8 approval. The director must promptly approve or disapprove the plan  
9 and may require the licensee to submit a new or modified plan that  
10 ensures compliance with this subsection.

11 (5) If the system described in subsection (1) of this section is  
12 developed and implemented, the director shall adopt by rule a fee or  
13 fees that a vendor or service provider that operates or administers the  
14 system may charge a licensee in making a small loan for use of the  
15 system described in subsection (1) of this section.

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

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

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 31.45 RCW  
23 to read as follows:

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

27 (a) The number of borrowers entered into a payment plan since the  
28 effective date of this section;

29 (b) How the number of borrowers in payment plans compares to the  
30 number of borrowers in payment plans in years previous to the effective  
31 date of this section;

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

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

1 (e) Any other information that the director believes is relevant or  
2 useful.

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

5 **Sec. 6.** RCW 42.56.230 and 2008 c 200 s 5 are each amended to read  
6 as follows:

7 The following personal information is exempt from public inspection  
8 and copying under this chapter:

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

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

15 (3) Information required of any taxpayer in connection with the  
16 assessment or collection of any tax if the disclosure of the  
17 information to other persons would (a) be prohibited to such persons by  
18 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the  
19 taxpayer's right to privacy or result in unfair competitive  
20 disadvantage to the taxpayer;

21 (4) Credit card numbers, debit card numbers, electronic check  
22 numbers, card expiration dates, or bank or other financial account  
23 numbers, except when disclosure is expressly required by or governed by  
24 other law; (~~and~~)

25 (5) Personal and financial information related to a small loan or  
26 any system of authorizing a small loan in section 4 of this act; and

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

31 NEW SECTION. **Sec. 7.** This act takes effect January 1, 2010.

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