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HOUSE BILL 2083

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State of Washington

68th Legislature

2024 Regular Session

By Representatives Ryu and Volz

Prefiled 01/02/24.

1 AN ACT Relating to making modifications to small loans under  
2 payday lending laws; amending RCW 31.45.010, 31.45.073, and  
3 31.45.105; adding a new section to chapter 31.45 RCW; and declaring  
4 an emergency.

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

6 **Sec. 1.** RCW 31.45.010 and 2012 c 17 s 7 are each amended to read  
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (21) "Small loan" means a loan of up to the maximum amount and  
17 for a period of time up to the maximum term specified in RCW  
18 31.45.073. "Small loan" includes an advance of money or credit that  
19 is by contract to be repaid from an asset the payee owns or from  
20 income or a payment that the payee expects to receive, whether earned  
21 or to be earned, and whether or not the payee is made personally  
22 liable for repayment or the transaction carries required charges or  
23 payments.

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

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

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

30 **Sec. 2.** RCW 31.45.073 and 2009 c 510 s 3 are each amended to  
31 read as follows:

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

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

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

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

30 (5) ((A)) Notwithstanding any other law, for small loans made or  
31 renewed after the effective date of this section, a licensee that has  
32 obtained the required small loan endorsement may ((charge interest or  
33 fees for small loans not to exceed in the aggregate fifteen percent  
34 of the first five hundred dollars of principal. If the principal  
35 exceeds five hundred dollars, a licensee may charge interest or fees  
36 not to exceed in the aggregate ten percent of that portion of the  
37 principal in excess of five hundred dollars. If a licensee makes more  
38 than one loan to a single borrower, and the aggregated principal of  
39 all loans made to that borrower exceeds five hundred dollars at any  
40 one time, the licensee may charge interest or fees not to exceed in

1 ~~the aggregate ten percent on that portion of the aggregated principal~~  
2 ~~of all loans at any one time that is in excess of five hundred~~  
3 ~~dollars. The director may determine by rule which fees, if any, are~~  
4 ~~not subject to the interest or fee limitations described in this~~  
5 ~~section. It is a violation of this chapter for any licensee to~~  
6 ~~knowingly loan to a single borrower at any one time, in a single loan~~  
7 ~~or in the aggregate, more than the maximum principal amount described~~  
8 ~~in this section)) not charge, contract for, or receive, directly or~~  
9 ~~indirectly, charges or amounts exceeding an annual percentage rate of~~  
10 ~~36 percent on the unpaid balance of the amount financed. For the~~  
11 ~~purposes of this subsection, "annual percentage rate" includes all~~  
12 ~~amounts, charges, and payments made directly or indirectly, incident~~  
13 ~~to, ancillary to, or as a condition of a small loan, whether~~  
14 ~~voluntary, optional, or required, including any amount paid to a~~  
15 ~~broker or credit services organization. The annual percentage rate~~  
16 ~~includes, but is not limited to, all interest, fees, charges, and~~  
17 ~~other payments as set forth in the regulations to implement the~~  
18 ~~military lending act, 10 U.S.C. Sec. 987, and 32 C.F.R. Sec. 232.1 et~~  
19 ~~seq. (2015). The annual percentage rate must be calculated as~~  
20 ~~specified in 32 C.F.R. Sec. 232.1 et seq. (2015).~~

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

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

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

39 (9) A person may not solicit, broker, or engage in any other  
40 activity intended to facilitate or result in, or that in fact

1 facilitates or results in, the origination of a small loan that  
2 violates this section.

3 **Sec. 3.** RCW 31.45.105 and 2012 c 17 s 10 are each amended to  
4 read as follows:

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

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

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

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

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

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

22 (f) Solicit, make, contract for, offer, assist, broker, or  
23 arrange for a borrower to obtain a small loan with a higher annual  
24 percentage rate or amount of interest, consideration, charge, or  
25 other payment received incident to the loan than is permitted by RCW  
26 31.45.073;

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

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

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

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

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

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

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

9 NEW SECTION. Sec. 4. A new section is added to chapter 31.45  
10 RCW to read as follows:

11 If a small loan exceeds the annual percentage rate permitted by  
12 RCW 31.45.073, a person is a lender subject to the requirements of  
13 this chapter notwithstanding the fact that the person purports to act  
14 as an agent, service provider, or in another capacity for another  
15 entity that is exempt from this chapter, if, among other things:

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

19 (2) The person:

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

22 (b) Holds, or has the right, requirement, or first right of  
23 refusal to acquire small loans, a share of receivables, or another  
24 direct or indirect interest in small loans or a small loan program;  
25 or

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

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

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

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

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

1        NEW SECTION.    **Sec. 5.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect immediately.

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