

Chapter 208-630 WAC

REGULATION OF CHECK CASHERS AND SELLERS (~~(--REGULATION OF)~~) AND
SMALL LOANS (PAYDAY LENDERS)

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07,
effective 12/21/07)

WAC 208-630-110 What definitions are required to understand these rules? The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means chapter 31.45 RCW.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with another person.

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 226 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"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 clearing house transactions.

"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.

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

purpose.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"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 within ten days after the date upon which the installment was scheduled to be paid.

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"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.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

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

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

"RCW" means the *Revised Code of Washington*.

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

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;

- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would ~~((impair))~~ materially impair the net worth of a licensee or create an abnormal risk of loss to its customers.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-120 What does a business have to do to operate as a check casher and seller~~((7))~~ or to make small loans as a payday lender? (1) In order to engage in the business of check cashing and selling, a business must apply for and obtain from the department a check cashing or selling license.

(2) In order to make payday loans (small loans), a business must first obtain a license as a check casher or seller ~~((must first))~~ and then obtain a small loan endorsement to ~~((its))~~ that license ~~((to make small loans in accordance with chapter 31.45 RCW and this chapter))~~.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-180 Is there a bond requirement for ~~((licensees))~~ my license? ~~((A licensee engaged in any business))~~ If you sell checks, drafts, or money orders or if you have a small loan endorsement under chapter 31.45 RCW you must obtain and maintain a bond. The bond must run to the benefit of the state and any person or persons who suffer loss. ~~((The licensee))~~ You must file the bond with the director at the beginning of each calendar year. The bond must be issued by a surety ~~((which))~~ that meets the requirements of chapter 48.28 RCW. The bond form must be acceptable to the director. ~~((The licensee))~~ You may obtain a copy of an acceptable form from the department.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-190 What type of bond is necessary and what are the conditions? The bond (~~((shall))~~) must be continuous and conditioned upon (~~((the licensee faithfully abiding by))~~) your compliance with chapter 31.45 RCW and all rules in this chapter. (~~((It shall))~~) The bond must also be conditioned upon (~~((the licensee))~~) you paying (~~((all))~~) to persons who purchase monetary instruments (~~((from the licensee))~~) the face value of any monetary instrument dishonored by the drawee financial institution due to insufficient funds or by reason of the account having been closed. The surety (~~((shall))~~) is only (~~((be))~~) liable for the face value of the dishonored monetary instrument, and (~~((shall))~~) not (~~((be liable))~~) for any interest or consequential damages. (~~((For a licensee with))~~) If you have a small loan endorsement, the bond (~~((shall))~~) must run to the benefit of the state and any person or persons who suffer loss due to (~~((the licensee's))~~) your violation of chapter 31.45 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-230 What must I do if there are claims against the bond? (~~((The licensee))~~) You must notify the department of any claim against the bond within ten days (~~((after))~~) of receiving notice of a claim.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-260 (~~((Does a licensee))~~) Do I have any alternative to maintaining a surety bond? (~~((In lieu of the surety bond required in this rule, an applicant or licensee))~~) With the approval of the director, you may substitute one of the following alternatives (~~((with the approval of the director))~~) for the surety bond required under this chapter. Any alternative to the surety bond (~~((shall))~~) must secure the same obligations (~~((as would))~~) the surety bond would. The amount of alternative substituted under subsection (1) or (2) of this section must be equal to or greater than the amount of the required surety bond.

(1) **Time deposit.** (~~((An assignment))~~) A certificate of deposit assigned in favor of the director (~~((of a certificate of deposit))~~). The certificate of deposit must be issued by a financial

institution in the state and whose deposits or shares are insured by an agency of the government of the United States. The deposit must be in an amount equal to or greater than the required surety bond. The depositor is entitled to receive all interest and dividends on the certificate of deposit.

(2) **Demonstration of sufficient net worth.** (~~(A licensee or applicant for a small loan endorsement may)~~) You must demonstrate net worth (~~(in excess)~~) of at least three times the amount of the required bond. (~~(The licensee shall)~~) You must notify the director within ten business days of any date upon which (~~(its)~~) your net worth decreases below the required amount. (~~(A licensee that)~~) If you fail(~~(s)~~) to maintain the required level of net worth and continue(~~(s)~~) to operate under a small loan endorsement (~~(will be required to)~~), you must immediately obtain a surety bond and maintain it for five years after the date of noncompliance. During this five-year period, the director will not accept a demonstration of net worth in lieu of a surety bond.

(3) **Reports required.** (~~(A licensee that)~~) If you maintain(~~(s)~~) net worth in lieu of a surety bond (~~(shall)~~), you must submit (~~(annually)~~) to the director an annual audited financial statement and (~~(within forty-five days after the close of each quarter)~~) within forty-five days after the close of each quarter, both prepared in accordance with generally accepted accounting principles. The financial statements must include at a minimum a statement of assets and liabilities and a profit and loss statement. The director may continue to require other documents, agreements or information necessary to properly evaluate and ensure that (~~(the licensee remains in compliance)~~) you comply with this section.

(4) **Bad debts and judgments.** (~~(A licensee that)~~) If you maintain(~~(s)~~) net worth in lieu of a surety bond (~~(may)~~) you are not required to consider bad debts and certain judgments as assets. The director may approve exceptions in writing. (~~(The licensee)~~) You must charge off (~~(its)~~) your books any debt upon which any payment is six months or more past due. (~~(The licensee)~~) You may not count as an asset any unpaid judgment more than two years old (~~(which has not been paid)~~). Time consumed by an appeal from a judgment is not counted in the two-year limit.

(5) **Noncompliance.** (~~(A licensee that does)~~) If you do not comply with this section you must obtain and file with the director a surety bond in the required amount in WAC (~~(208-630-030)~~) 208-630-240 and 208-630-250 by the date specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-360 (~~(Whether a business has a license or not, what should the business know about)~~) When may the director conduct an investigation? The director or designee may conduct investigations at any time, in or outside of the state, to determine whether any person has violated or is about to violate chapter 31.45 RCW, these rules, or any order issued under these laws and rules. This includes a licensee or a business that may be conducting transactions requiring a license. For ~~((that))~~ these purposes the director or designee may conduct inquiries, interviews and examinations of any person relevant to the investigation.

ANNUAL ASSESSMENTS (~~(AND REPORTING REQUIREMENTS)~~)

SMALL LOAN REQUIREMENTS (~~(FOR CHECK CASHING AND MAKING SMALL LOANS)~~)
(PAYDAY LENDING)

NEW SECTION

WAC 208-630-461 **What is the maximum amount that all licensees may lend to a borrower at any one time?** The outstanding principals 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.

NEW SECTION

WAC 208-630-462 **What documentation is acceptable as proof of the borrower's gross monthly income?** (1) A copy of the borrower's pay stub or payroll receipt for the period thirty days prior to the date on which the loan is made;
(2) A copy of the borrower's receipt documenting payment of government benefits, for the period thirty days prior to the date

on which the loan is made.

- (3) Other documentation as approved by the director.

NEW SECTION

WAC 208-630-463 What is the maximum number of small loans that may be made to a single borrower in any twelve-month period?

The maximum number of loans that all licensees may make to a single borrower in any twelve-month period is eight loans.

NEW SECTION

WAC 208-630-464 What documentation must I accept as proof of the borrower's identity? You must accept one of the following forms of identity which must contain a photograph of the borrower:

- (1) Driver's license issued in the United States, Canada, or Mexico;
- (2) Washington state identification card;
- (3) Matricula consular;
- (4) Tribal identification;
- (5) Passport; or
- (6) Military ID.

You must keep a photocopy of the identification you accepted as proof of the borrower's identity in the loan file.

NEW SECTION

WAC 208-630-466 What fees can I charge on a small loan? (1) You may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal.

(2) If the principal exceeds five hundred dollars, you may charge interest or fees not to exceed in the aggregate ten percent of the portion of the principal in excess of five hundred dollars.

(3) If you make 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, you may charge interest or fees not to exceed in the aggregate ten percent on the portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars.

NEW SECTION

WAC 208-630-501 How must I determine the due date on the loan? (1) The earliest due date for repayment is on or after the borrower's next pay date unless that date is within seven days of the date of the small loan. If the due date falls within the seven days, you must set the repayment date on or after the borrower's second pay date after the date of the small loan.

(2) The last due date of the loan may not be set more than forty-five days from the origination date on the loan unless the term of the loan is extended by agreement between you and the borrower at no additional cost to the borrower.

(3) Each due date must be scheduled on a date that the business is open to the public.

(4) For purposes of this section, "pay date" includes the date the borrower receives any direct deposit or other electronic transfer of funds into their bank account.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-505 What process must ~~((a licensee))~~ I follow when a borrower pays off a small loan, or makes a payment toward ~~((a payment))~~ an installment plan, with cash? ~~((A licensee))~~ You must prepare a receipt with information that includes, but is not limited to, the date of the payment, the borrower's name, the amount of ~~((the))~~ cash received, an indication that the payment was made in cash, an indication that the payment was made ~~((either))~~ on a loan~~((r))~~ or towards ~~((a payment))~~ an installment plan, the borrower's signature, and an authorized signature, stamp, or other authenticating mark ~~((of the licensee))~~ confirming ~~((that the licensee))~~ you received the payment.

NEW SECTION

WAC 208-630-506 What are my obligations if the borrower notifies me that he or she will be or is unable to pay the small loan on time? You must notify the borrower that he or she has a right to convert the small loan to an installment plan. See WAC

208-630-520.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-510 When does a borrower have a right to enter into ~~((a statutory payment))~~ an installment plan? ~~((A))~~ The borrower has ((a)) the right to convert a small loan ((to a statutory payment plan after four successive loans and prior to default on the last loan)) into an installment plan upon request made on or before the small loan's due date. If the request is made on the small loan's due date, it must be made before the close of business.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-520 If a borrower and licensee enter into ~~((a statutory payment))~~ an installment plan, what ((is)) are the terms of the ((payment)) installment plan? ~~((A payment))~~ An installment plan under ((the provisions of)) RCW 31.45.084 must contain the following terms:

- (1) The plan must be in writing;
- (2) If the small loan amount is four hundred dollars or less the term must be for a period of at least ((sixty)) ninety days ((unless a shorter period is agreed to by both the borrower and the licensee));
- (3) If the small loan is over four hundred dollars the term must be for a period of at least one hundred eighty days; and
- (4) The borrower may pay off the total amount due at any time without additional penalty, fee, or charge for prepayment.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-530 If a borrower and licensee enter into ~~((a statutory payment))~~ an installment plan, how must the payments be structured? ~~((A))~~ All payments on an installment plan under the provisions of RCW 31.45.084 must ((provide for at least three separate payments which, unless otherwise requested by the borrower

~~and agreed to in writing by the lender, shall be)):~~

~~(1) Provide for at least three payments;~~

~~(2) Be equal to the total amount of the ((payment)) installment plan balance divided by the number of payments ((+))subject to reasonable rounding((+)); and~~

~~((+2)) (3) Be due at substantially equivalent intervals on or after the borrower's pay dates but at least fourteen days apart. ((For example, a sixty-day, three hundred fifty dollar payment plan entered into on May 1 providing for payments of one hundred twenty dollars on May 20, one hundred twenty dollars on June 11, and one hundred ten dollars on June 29, complies with this rule.))~~

NEW SECTION

WAC 208-630-531 May I charge any fees if a borrower decides to convert their loan to an installment plan? You may not charge any fee, interest charge, or other charge on the borrower as a result of converting the small loan to an installment plan as provided under RCW 31.45.084, other than the terms and conditions expressly authorized by RCW 31.45.084.

NEW SECTION

WAC 208-630-532 May I make a small loan to a borrower who is in default on another small loan? No. You are prohibited from making a small loan to a borrower who is in default on another small loan originated on or after January 1, 2010.

NEW SECTION

WAC 208-630-533 May I make a small loan to a borrower who is in an installment plan? No. You are prohibited from making a small loan to a borrower who is making payments as part of an installment plan with any licensee until after that loan is paid in full or two years have passed from the initiation date of the installment plan, whichever occurs first.

NEW SECTION

WAC 208-630-542 What fees may I charge or collect when a borrower defaults on a small loan? If the small loan is not in an installment plan, you may charge or collect a fee equal to or less than twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. See WAC 208-630-549 for allowable default fees charged on small loans in an installment plan. On any one loan you can only charge the borrower an additional twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

NEW SECTION

WAC 208-630-543 What are the specifications required of the communication log in RCW 31.45.082(4)? The communication log must contain:

(1) The date, time, and brief description of all telephone communications, including identification of the parties to the communication; and

(2) The date and brief description of all written communications. The log may be in written or electronic form, and must indicate the borrower's name.

(3) The log must be maintained in a manner that will allow the examiner to review all collection communications covered under RCW 31.45.082 made during a period of time.

NEW SECTION

WAC 208-630-544 May I allow a borrower to refinance or "rollover" a small loan with another small loan? You may not allow a borrower to use a new small loan to pay off an existing small loan by the same lender or an affiliate of the lender. Licensees may not apply the proceeds from any small loan to any other loan from the same lender or affiliate of the lender.

NEW SECTION

WAC 208-630-545 May I use a name or place of business other than that named on the license or small loan endorsement? No. You may not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement.

NEW SECTION

WAC 208-630-546 What is the limit on the number of checks I may hold from one borrower? You may not hold more than one check per small loan unless the loan is in an installment plan.

(1) If a licensee has made multiple loans to a single borrower, a licensee may not hold checks that total more than the lower of:

(a) Seven hundred dollars plus the allowable fees; or

(b) Thirty percent of the borrower's gross monthly income plus allowable fees.

(2) For purposes of this section, to "hold a check" does not include a check that has been deposited in the licensee's bank and subsequently returned unpaid by the customer's bank.

NEW SECTION

WAC 208-630-547 May I continue to hold the borrower's original check once the borrower has converted the loan to an installment plan? No. You must either return or, at the borrower's request, destroy any postdated check or automated clearing house (ACH) authorization for the original small loan at the initiation of an installment plan.

NEW SECTION

WAC 208-630-548 May I hold postdated checks for the installment plan payments? Yes. You may take postdated checks at the time the installment plan is originated. The checks may not be written for a value more than the amount of the borrower's installment plan payments. If any of the checks are later dishonored, you may not charge the borrower any fee for the

dishonored check or checks. Exception, see WAC 208-630-549.

NEW SECTION

WAC 208-630-549 May I charge the borrower additional fees if the borrower defaults on an installment plan? Yes. You may charge the borrower a one time default fee of twenty-five dollars. A borrower defaults on an installment plan when the borrower fails to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. On any one loan you can only charge the borrower an additional twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

NEW SECTION

WAC 208-630-551 May I charge additional fees to cash monetary instruments issued as part of a small loan? You may not charge an additional fee to cash a monetary instrument issued as part of a small loan made under chapter 31.45 RCW by you or any affiliate.

NEW SECTION

WAC 208-630-555 What is the purpose of the data base? The purpose of this data base is to:

- (1) Prevent the practice of rollover transactions;
- (2) Prevent multiple licensees from making simultaneous small loans to an individual borrower;
- (3) Prevent licensees from making more than eight loans to any one borrower in any twelve-month period;
- (4) Prevent a licensee from making a loan to a borrower who already has an outstanding small loan principal balance of the lesser of seven hundred dollars or thirty percent of their gross monthly income;
- (5) Prevent licensees from making a loan to a borrower who is in default on a small loan or is in an installment plan; and
- (6) Ensure that licensees set the small loan due date no earlier than the borrower's next pay date that is more than seven

days from the origination date.

NEW SECTION

WAC 208-630-556 How do I use the data base for small loan transactions? (1) Each small loan transaction must be registered with the data base and receive a data base-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been recorded in the data base prior to a licensee giving currency or a payment instrument to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the data base?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response.

(3) **How and when may I access the data base?**

(a) The data base is the means by which real-time access to the data is made available to you through your internet connection.

(b) The data base will be accessible twenty-four hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the data base vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the data base?** In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the data base using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless connections, or other connections that are not secure. You must maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the data base, including but not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

(5) **How do I use the data base to determine a borrower's eligibility for a small loan?** You must:

(a) Access the data base using the assigned user identification and password provided by the security administrator of your company;

(b) Conduct a search of the data base based upon the borrower's Social Security number, or individual tax identification number (ITIN) and the borrower's gross monthly income.

(6) **What information will the data base give me when an eligibility search is conducted?** The data base will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the data base will provide the dollar amount the borrower is eligible for.

(7) **What must I do once the initial search determines that the**

borrower is eligible for a small loan?

(a) If you receive an initial indication from the data base vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the data base.

(b) When the required information has been submitted to the data base, the data base will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the data base. You must place the transaction authorization number on the small loan agreement.

(8) **What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support number of the data base vendor. You must provide a copy of the printable message to the borrower.

(9) **If I make a mistake entering data and must void the transaction, what do I do?** Follow the data base vendor's instructions to administratively void the transaction.

(10) **If the data base is inaccessible via the internet, how do I access the data base?**

(a) You will be given at least twenty-four hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the web site.

(b) In the event the data base is unavailable, you must adhere to the following procedures:

(i) Confirm that the data base remains unavailable by attempting to access the data base with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the data base vendor of an expected period of time necessary to correct whatever problem is causing the data base to remain unavailable;

(ii) Contact the data base vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the data base vendor; and

(iii) Enter the remaining transactional data into the data base within twenty-four hours of obtaining the temporary transaction authorization number from the data base vendor.

(c) In the event that either the department of financial institutions or the data base vendor notifies you that the data base is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the data base vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions

conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the data base within twenty-four hours of notification that the data base is available; provided, however, that if the data base is unavailable for more than twenty-four hours, then the period for registration shall be extended by twenty-four hours for each additional twenty-four-hour period of unavailability.

(e) Once the transaction has been registered with the data base, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

(11) Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086? A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close the transaction on the data base as soon as possible after the borrower rescinds the small loan transaction.

(12) When must I update information on the data base?

(a) When a borrower's small loan is paid, you must update open transactions on the data base as soon as possible to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a loan is in default, you must mark the loan in the database as in default as soon as possible but in no event longer than twelve hours after the default.

(13) How much will each data base transaction cost me? The data base transaction fee is one dollar per loan registered. You will be assessed this fee for each transaction that has been both registered and recorded on the data base.

(14) What happens if I do not pay the data base fees? You will be locked out of the data base.

(15) What happens if I do not receive training and become certified in using the data base? If you or another designated person in the company do not receive training and certification to use the data base, you will not be given an access number for the data base.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-560 What ((types of)) disclosures must ((a licensee)) I make to a borrower? (1) ~~((A licensee))~~ You must deliver to the borrower at the time ((the licensee)) you make((s)) a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act. Compliance with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this subsection.

(2) ~~((A licensee))~~ You must deliver to the borrower at the time ((the licensee)) you make((s)) the small loan a disclosure of the right to rescind the loan and the right to convert the loan to ((a payment)) an installment plan.

(3) ~~((A licensee who complies with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this act.))~~ You must include a statement on the front page of the application for a small loan 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 enter the installment plan offered in connection with this loan."

(4) You must deliver to the borrower at the time of taking a small loan application or any form used by the payday lender to initiate a loan from the borrower, or upon request by a borrower that has not yet made application for a small loan, a written notice with content produced by the department, that describes the changes to the payday lending law due to ESHB 1709 (chapter 510, Laws of 2009).

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-570 What must be included in the disclosure((s)) referred to in WAC 208-630-560(2)? The disclosure ~~((referred to in WAC 208-630-560(2))~~) must be substantially in the following form:

Your right to rescind (cancel) this loan. You have the right to rescind this loan by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us.

Your right to a ((payment)) installment plan when you are unable to pay your small loan when it is due.

If ~~((this is your fourth (or greater) successive loan, and if~~

~~you are not in default)) you will be or are unable to pay your loan when it is due, you may convert your loan to ((a payment)) an installment plan with us by notifying us on or before the loan's due date. ("Successive loans" means loans made to you by us with no more than three business days between the repayment in full of one loan and the beginning date of the next loan.~~

~~A payment)) If your loan amount is four hundred dollars or less, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over ninety days. If your loan amount is more than four hundred dollars, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over one hundred eighty days.~~

~~An installment plan will allow you ((, by paying a one time fee equal to the finance charge on your loan,)) to pay all that you owe ((in at least three payments over a period of at least sixty days.~~

~~Your right to rescind (cancel) this loan. You have the right to rescind (cancel) this loan by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us)) without having to pay any additional fees, interest charges or other charge for converting your small loan into an installment plan.~~

NEW SECTION

WAC 208-630-571 What must I obtain from a small loan applicant or recipient before disbursing the proceeds of a small loan? (1) An acknowledgment by the borrower that they can only receive eight small loans in a twelve-month period, and that with this loan, they have not exceeded eight small loans.

The acknowledgment must be a separate document printed in 14-point bold type and must contain the following language:

(a) I understand that I can only receive small loans totaling the lesser of \$700 or 30 percent of my gross monthly income.

(b) I currently have . . . outstanding loan(s) with a total principal balance of \$

(c) I understand that I can only receive eight small loans in any twelve-month period.

(d) Over the last twelve months I have not taken out more than seven small loans from any payday lender, unless some of those loans were originated before (insert effective date).

(2) The consumer must complete and sign the form and the form must be retained in the loan file.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-580 In addition to providing disclosures to the borrower, does a licensee have to post any disclosures? (1) Licensees that make small loans must post the following notices conspicuously at each location where small loans are made:

(a) A (~~conspicuous~~) notice substantially in the form set forth in WAC 208-630-570; and

(b) A (~~conspicuous~~) notice of how consumers may contact the department, substantially in the following form: "If you have questions about your rights and responsibilities when taking out a payday loan, contact the Department of Financial Institutions at 1-800-RINGDFI (1-877-746-4334), or 360-902-8700, or 150 Israel Road S.W., Tumwater, Washington, 98501."

(2) Licensees that make small loans using the internet must post the notices required by subsections (1) and (2) of this section in a conspicuous location on their web sites.

(3) Licensees may download a copy of the notice required by subsection (1)(b) of this section from the department's web site or by contacting the department directly.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-590 How must I format disclosures? All disclosures must be presented in a manner and physical format that is clear, conspicuous and designed to call attention to each right and responsibility of the borrower and lender being disclosed. Except for the disclosure that is required on the application (see WAC 208-630-560(3)), such statements may be provided separately or included within the note or loan agreement.

REQUIREMENTS FOR ALL LICENSEES

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-610 What (~~are the~~) accounting and financial records (~~that a licensee must~~) must I keep? (~~Licensees~~) You

must maintain ~~((as a minimum))~~ the ~~((following))~~ records in this section for at least two years.

(1) A ~~((licensee must maintain a))~~ record of transactions conducted. ~~((Such a))~~ The record may be limited to the following provided a sufficient audit trail is available through records obtainable from ~~((the licensee's))~~ your bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) ~~((Payment))~~ Installment plan payment due dates;
- (l) ~~((The))~~ Application information as required ~~((to be maintained for applications in the))~~ by rule;
- (m) Records of cash payments made on small loans. The record must include the date of the payment, the borrower's name, the amount of cash received, the identity of the employee who received the cash, and whether the payment was applied to a loan or ~~((payment))~~ installment plan;
- (n) Copies of receipts required under WAC 208-630-505.

(2) ~~((Licensees))~~ You must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) You must keep records of the disbursement of loan proceeds and the receipts of all payments on the balance of small loans. The receipt must ~~((be kept and must))~~ indicate the date of the transaction, the borrower's name, amount of receipt, and whether the disbursement or payment is on a loan or ~~((payment))~~ installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-670 ~~((For licensees with))~~ If I have a small loan endorsement((s)) on my license, what information must ((the licensee)) I keep in every loan file? ~~((For licensees with))~~ (1) If you have a small loan endorsement((s)), each loan file must

contain at least a copy of the application, a copy of the note or loan agreement ~~((and))~~, a copy of the documentation used to substantiate the borrower's gross income, a copy of the borrower's photo ID and proof of identity, a copy of any disclosure statements, a copy of an installment plan entered into, and copies of the receipts required in WAC 208-630-505. As used in this section, "application" means any information you received ~~((by the licensee))~~ from the borrower for the purposes of making a lending decision, including, but not limited to, personal employment history and credit history;

(2) Records required to be maintained in a "loan file" may be in paper form or on any electronic, magnetic, optical or other storage media, or any combination thereof, so long as the licensee maintains the necessary technology to permit access to the records by the department for the period required by law.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-700 When may ~~((a licensee))~~ I deposit a monetary instrument accepted in the course of making a small loan? (1) ~~((A licensee with))~~ If you have a small loan endorsement you may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the termination date ~~((and))~~ of the small loan or any ~~((time))~~ date disclosed on the note or small loan agreement.

(2) If the borrower notifies you that he or she will be late with a payment or is unable to repay the loan when it is due and an installment plan is initiated, you must return or destroy any postdated check or ACH authorization the borrower has given you prior to entering into the installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-740 What obligation ~~((does a licensee))~~ do I have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling? ~~((Each licensee shall))~~ (1) You must ensure that any employee or person who engages in business on your behalf ~~((of the licensee))~~ under the authority granted by chapter 31.45 RCW has sufficient understanding of the ~~((statutes))~~ law and rules ~~((applicable to its business))~~ to assure compliance ~~((with such statutes and rules)).~~

(2) You are legally responsible for the acts of your employees

under RCW 31.45.070(2) when those acts are within the scope of their employment.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-8201 What business practices are prohibited? (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;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073; ~~((and))~~

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073;

(g) Directly or indirectly pressure a borrower to not enter into an installment plan;

(h) Directly or indirectly pressure a borrower to borrow more money than they state they want; provided, it is not a violation of this subsection for a licensee to inform a borrower as to his or her maximum loan amount or that he or she is subject to a limit of eight loans per twelve-months period;

(i) Cash a postdated check before the date written on the check except as permitted by RCW 31.45.070(2);

(j) Make a loan without processing it through the data base except as specifically allowed in law or rule; and

(k) Refuse to provide an installment plan to a borrower who is eligible for one.

(2) In addition to any other penalties, any transaction in violation of ~~((this section))~~ subsection (1)(d) of this section is uncollectible and unenforceable.

REPORTING REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

WAC 208-630-830 What are ((a licensee's)) my annual reporting requirements? On or before April 15th of each year, ((each licensee)) you must submit ((financial statements for the calendar year just ended. If the licensee has established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.)) the following reports:

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles. If you have established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(2) Annual assessment report (AAR). ((Each licensee)) You must submit an AAR ((of its)) on your Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). ((Each licensee)) You must submit a CAR ((of its)) on your Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

(ii) The total number and dollar volume of transactions during the period;

(iii) The total dollar amount of fees collected during the period;

(iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

(v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

(vi) The total number and dollar amount of charge-offs

(losses), net of any recoveries, for the period; and

(vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plans made prior to December 31, 2009, and installment plans (~~(loans)~~) made after January 1, 2010;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) The number of borrowers (~~(entering)~~) who entered into a payment plan for 2009 or installment plans after January 1, 2010, and the dollar amount of loans financed;

(vii) The number of borrowers who defaulted;

(~~viii~~) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

(~~viii~~) (ix) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

(~~ix~~) (x) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

WAC 208-630-8301 What happens if ((a licensee is)) I am late filing the annual reports and paying the annual assessment? If ((a licensee does)) you do not file the financial statements, if due at that time, assessment report, consolidated annual report, and pay

~~((its)) the annual assessment fee by April 15 of each year, the director will send ((the licensee)) you a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The ((licensee's)) reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the ((licensee's)) reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business. ((If the reports and payment of both the annual assessment fee and any late fee do not arrive prior to such time and date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after April 15.))~~

NEW SECTION

WAC 208-630-835 When must I inform the director of significant changes in my business? (1) You must notify the director in writing within five days of the occurrence of any of the following significant developments:

- (a) Your company filing for bankruptcy or reorganization;
- (b) Your company receiving notification of a license revocation procedure against it in any state;
- (c) You, or a director, officer, partner, member or controlling person of the company being convicted of a crime;
- (d) You, or a director, officer, partner, member or controlling person of the company receiving notification of the filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities.

(2) You must notify the director in writing at least fifteen days prior to a change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire ten percent of the stock, or the ability of a person or group acting in concert to elect a majority of the board directors or otherwise effect a change in policy of the corporation. The director may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control means any change in controlling persons of the organization, either active or passive. Change of control investigation fees are billed to the persons or group at the rate billed for applications.

NEW SECTION

WAC 208-630-836 When ceasing business, what information must I file before I close the business? (1) You must notify the department at least thirty days before ceasing operations. The notice must be in writing, signed by a principal of the small loan licensee, and include the following:

(a) The date you will cease small loan activity;
(b) A list of all open and pending transactions; and
(c) Your contact address and e-mail address.
(d) Your plan for the orderly closure of open loans on the data base.

(2) For purposes of this section, the term "ceasing operations" means that you have closed the offices to the public or have removed public access to the web site, if such access is the sole means of communication with customers. This provision does not apply if you have given customers a reasonable alternative for communications and payments.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-880 ((What must)) As a check seller what must I report when ((surrendering)) my license is surrendered or ((revoking a license)) revoked? ((A licensee)) If you are engaged in the business of selling monetary instruments ((whose license has been surrendered or revoked shall)) you must submit to the director, at ((its)) your own expense, a closing annual report containing audited financial statements as of the effective date of the surrender or revocation. The director must receive the closing annual report on or before one hundred five days after the effective date of ((such)) the surrender or revocation((, a closing annual report containing audited financial statements as of such effective date)). ((This)) The closing annual report ((shall)) must cover the twelve months ending with ((such closure)) the surrender or revocation date or for such other time period as the director may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the director may require ((the licensee)) you to take such action as appropriate to permit an independent accountant to remove ((such)) any qualification from the report, certificate, or opinion. ((Such)) The report shall include relevant information specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-890 If I am not a check seller what must ((a licensee, other than a check seller,)) I report when ((surrendering or revoking a)) my license is surrendered or revoked? ((A licensee)) If you are not engaged in the business of selling monetary instruments ((whose license has been surrendered or revoked shall)) you must submit to the director at ((its)) your own expense((,)) a closing annual report covering the twelve months ending with the surrender or closure date, or for such other time period as the director may specify. The closing annual report must be received by the director on or before one hundred five days after the effective date of ((such)) surrender or revocation((, a closing annual report covering the twelve months ending with such closure date or for such other period as the director may specify)). Financial statements contained in this closing report may be prepared by outside accountants or by ((the licensee's)) your own accountants.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-910 May ((a licensee)) I request an extension of time to comply with the reporting requirements? For good cause and upon written request, the director may extend the time for compliance with reporting requirements if you make the request at least ten days prior to the date the report is due.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-950 What ((are the)) trust accounting requirements ((that)) must a ((licensee must)) I comply with? (1) At least monthly a licensee in the business of selling checks ((shall)) must withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of monetary instruments. The remaining balance of the trust account must be sufficient to cover all monetary instruments that remain outstanding and drawn against the trust account.

(2) A licensee is prohibited from allowing the ((bank of)) financial institution holding the trust account to charge back checks or drafts deposited to the trust account and subsequently dishonored against ((said)) the trust account.

(3) A licensee(~~(7)~~) whose license has expired or been suspended(~~(7)~~) or terminated(~~(7, or not renewed, shall)~~) must not make withdrawals from the trust account without the director's consent, until a closing report has been received according to these rules.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-630-430	When may a licensee expect a fee increase?
WAC 208-630-440	How will a licensee know about fee increases?
WAC 208-630-460	When must a licensee inform the director of significant changes in business?
WAC 208-630-540	Must a licensee comply with the federal Truth in Lending Act when entering into a payment plan?
WAC 208-630-550	May the licensee and the borrower enter into a payment plan prior to the fourth consecutive loan?
WAC 208-630-750	What fees may licensees charge to collect a delinquent small loan?
WAC 208-630-770	May a licensee allow a borrower to refinance or "rollover" a small loan with another small loan?
WAC 208-630-780	May a licensee use a name or place of business other than that named on the license or small loan endorsement?
WAC 208-630-790	What is the limit on the amount of checks a licensee may hold from one borrower?
WAC 208-630-800	May a licensee holding a borrower's check for a period longer than the statutory limit of forty-five days charge additional fees?
WAC 208-630-810	May a licensee charge additional fees to cash monetary instruments issued as part of a small loan?
WAC 208-630-820	May a licensee charge any fees if a borrower decides to convert their loan to a payment plan?