State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–2564/1
MDK&MES:jld&bjk:md

2009 BILL

1 AN ACT *to amend* 49.857 (1) (d) 12., 73.0301 (1) (d) 6., 138.04, 138.09 (1m) (a),
2 138.09 (3) (f), 138.10 (2m), 138.10 (15), 220.02 (2) (b), 220.04 (10), 220.285 (1),
3 321.60 (1) (a) 12., 403.414 (7), 422.201 (3) and 425.301 (4); and *to create* 59.69
4 (4h), 62.23 (7) (hi), 138.09 (1a), 138.09 (3) (e) 1. g. and 138.14 of the statutes;
5 **relating to:** regulating consumer small loans, limiting the areas in which a
6 payday lender may operate, granting rule–making authority, and providing a
7 penalty.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a financial institution (i.e., a bank, savings bank, savings and loan association, or credit union) generally must obtain a license from the Division of Banking (division) in the Department of Financial Institutions (DFI) to assess a finance charge greater than 18 percent. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a loan entered into by a licensed lender. A lender who makes payday loans is typically required to be a licensed lender. In a standard payday loan transaction, the lender accepts a personal check from the borrower, pays the borrower the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Except for the requirement to obtain a license as a licensed lender, current law does not specifically regulate payday loan transactions.

Licenses. This bill creates requirements for regulating certain payday loan and similar transactions by prohibiting a person from originating or servicing a "consumer small loan" involving a Wisconsin resident unless the division issues a new license, that is created in the bill, to the person. The bill defines "consumer small loan" as an unsecured consumer loan, including an indebtedness evidenced by a promissory note or an agreement to defer presenting a check or debiting a consumer's bank account for a fee. A separate license is required for each place of business at which a person originates or services a consumer small loan involving a Wisconsin resident. Financial institutions and their affiliates are exempt from the requirement to be licensed under the bill. Also, a person who is licensed under the bill is not required to be licensed as a licensed lender.

Fees. As under the current law, the bill does not impose any limit on the interest that may charged on a consumer small loan before the maturity date of the loan. The bill defines "maturity date" as the date specified when originating the loan on which the loan is required to be paid in full. However, if a consumer small loan is not paid in full on or before the maturity date, the bill limits the amount of interest that a licensee can charge after the maturity date to not more than 2.75 percent per month. Also, interest may not be assessed on any post–maturity date interest earned by the licensee. The bill also allows a borrower to prepay a consumer small loan in whole or in part. If a loan is prepaid in full, the licensee must, as specified in the bill, refund any unearned interest that has been assessed. In addition, the bill prohibits a licensee from assessing a fee or charge for accessing or using the statewide database described below. Except for a returned check fee, discussed below, the bill does not otherwise affect the fees, charges, or interest that may be assessed by a licensee.

Maximum liability and database. The bill prohibits a licensee from making a consumer small loan to a borrower that results in the borrower having an outstanding aggregate liability of more than [redacted] to all licensees who have made loans to the borrower. The bill requires DFI to contract with a third–party provider to operate a single statewide database that licensees may access to determine compliance with the foregoing prohibition. The division must, by rule or order, specify a transaction fee that the database operator must charge licensees for accessing the database. In addition, the bill requires licensees to provide information to the database operator regarding the consumer small loans that they make and close. The bill also creates procedures that licensees must follow in the event that the database is not fully operational or that licensees are unable to access the database. The bill provides that any information in the database regarding a person's transactional history is confidential and not subject to the open records law.

Licensee requirements. The bill prohibits a licensee from doing any of the following: 1) making a consumer small loan to a borrower with an invalid social security number and 2) making false or deceptive statements regarding consumer small loans. The bill requires a licensee to do all of the following: 1) maintain in force a bond of no more than $5,000 for each place of business at which the licensee makes loans to Wisconsin residents; 2) post their license at each place of business or make them easily viewed on their Internet Web sites; 3) provide written notice to the

division of changes of address for places of business; 4) comply with specified record–keeping and reporting requirements; and 5) provide borrowers with specified disclosures in both English and Spanish. The bill allows a licensee to charge a borrower a fee not exceeding $15 for a returned check. Also, while the bill allows a licensee to bring an action against the borrower to collect the amount of a returned check, the bill prohibits a licensee from threatening or pursuing criminal action against the borrower.

Zoning requirements. Generally under current law, a city, village, town, or county (political subdivision) may engage in zoning and land use planning. This bill imposes some limitations on the locations in which a business, owned by a licensee, that makes consumer small loans (payday lender) may operate. Generally under the bill, a payday lender may not operate in a political subdivision unless it receives a permit to do so from the political subdivision's governing body or zoning agency, and the governing body or zoning agency may not issue a permit to a payday lender if the business would be located within 1,500 feet of another payday lender or if the business would be located within 150 feet of certain residential zoning districts. A political subdivision may, however, enact a zoning ordinance that contains provisions even more restrictive than the conditions established in the bill. Also, if a political subdivision has enacted an ordinance regulating payday lenders that is in effect on the bill's effective date, the political subdivision may continue to enforce that ordinance.

Other requirements. The bill creates other requirements for consumer small loans, including the following:

1. The bill specifies requirements for license applications, including the payment of a $300 application investigation fee and an annual $500 fee.

2. The bill requires the database to report invalid social security numbers to licensees or the division.

3. The bill allows the division to revoke or suspend licenses based on violations, promulgate rules and issue orders to enforce the bill's requirements, and assess administrative forfeitures of $100 per day against licensees who fail to notify the database operator about loans that are closed.

4. The bill provides that a violation of any of the bill's requirements is a misdemeanor subject to a fine of not more than $500, imprisonment for not more than six months, or both.

5. The bill allows a borrower to recover damages of $250 or the amount of the consumer small loan, whichever is greater, as well as costs and attorney fees, from a person who makes a consumer small loan to the borrower in violation of the bill's requirements.

6. The bill voids any consumer small loan made by a person who does not have a license required under the bill and allows a borrower to recover any amounts paid to such a person.

7. The bill provides that licensees are not subject to civil forfeitures as a result of relying on inaccurate information contained in the database.

8. The bill allows a borrower to repay a consumer small loan with proceeds of a subsequent consumer small loan made by the same or another licensee or an

affiliate of the same or another licensee. In addition, if a licensee makes such a subsequent consumer small loan, the bill prohibits the borrower from repaying the subsequent consumer small loan with another consumer small loan made by the same or another licensee or affiliate.

9. The bill allows the division to operate the database described above, as an alternative to contracting with a third–party provider.

Finally, the bill eliminates a requirement under current law that certain annual reports made by licensed lenders to the division must be verified by oath or affirmation. Instead, the bill requires the reports to be made in the form and manner prescribed by the division.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.857 (1) (d) 12. of the statutes, as affected by 2009 Wisconsin Act
2 2, is amended to read:

3 49.857 **(1)** (d) 12. A license or certificate of registration issued under ss. 138.09,
4 138.12, <u>138.14,</u> 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72,
5 224.725, 224.93 or subch. IV of ch. 551.

6 **SECTION 2.** 59.69 (4h) of the statutes is created to read:

7 59.69 **(4h)** PAYDAY LENDERS. (a) *Definitions.* In this subsection:

8 1. "Consumer small loan" has the meaning given in s. 138.14 (1) (c).

9 2. "Licensee" has the meaning given in s. 138.14 (1) (i).

10 3. "Payday lender" means a business, owned by a licensee, that makes
11 consumer small loans.

12 (b) *Limits on locations of payday lenders.* Except as provided in par. (c), no
13 payday lender may operate in a county unless it receives a permit to do so from the

county zoning agency, and the county zoning agency may not issue a permit to a payday lender if any of the following applies:

1. The payday lender would be located within 1,500 feet of another payday lender.

2. The payday lender would be located within 150 feet of a single–family or 2–family residential zoning district.

(c) *Exceptions.* 1. Paragraph (b) only applies in the unincorporated parts of the county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).

2. A county may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in par. (b).

3. If a county has enacted an ordinance regulating payday lenders that is in effect on the effective date of this subdivision .... [LRB inserts date], the ordinance continues to apply and the county may enforce the ordinance.

SECTION 3. 62.23 (7) (hi) of the statutes is created to read:

62.23 **(7)** (hi) *Payday lenders.* 1. In this paragraph:

a. "Consumer small loan" has the meaning given in s. 138.14 (1) (c).

b. "Licensee" has the meaning given in s. 138.14 (1) (i).

c. "Payday lender" means a business, owned by a licensee, that makes consumer small loans.

2. Except as provided in subds. 3. and 4., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:

a. The payday lender would be located within 1,500 feet of another payday lender.

b. The payday lender would be located within 150 feet of a single–family or 2–family residential zoning district.

3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.

4. If a city has enacted an ordinance regulating payday lenders that is in effect on the effective date of this subdivision .... [LRB inserts date], the ordinance continues to apply and the city may enforce the ordinance.

SECTION 4. 73.0301 (1) (d) 6. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

73.0301 **(1)** (d) 6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

SECTION 5. 138.04 of the statutes is amended to read:

138.04 Legal rate. The rate of interest upon the loan or forbearance of any money, goods or things in action shall be $5 upon the $100 for one year and according to that rate for a greater or less sum or for a longer or a shorter time; but parties may contract for the payment and receipt of a rate of interest not exceeding the rate allowed in ss. 138.041 to 138.056, 138.09 to ~~138.12~~ 138.14, 218.0101 to 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

SECTION 6. 138.09 (1a) of the statutes is created to read:

138.09 **(1a)** This section does not apply to any of the following:

(a) Banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates.

(b) Consumer small loans made under s. 138.14.

1 **SECTION 7.** 138.09 (1m) (a) of the statutes is amended to read:

2 138.09 **(1m)** (a) Before any person may do business under this section ~~or~~, charge
3 the interest authorized by sub. (7) ~~and before any creditor other than a bank, savings~~
4 ~~bank, savings and loan association or credit union may~~, or assess a finance charge
5 on a consumer loan in excess of 18% per year, that person shall first obtain a license
6 from the division. Applications for a license shall be in writing and upon forms
7 provided for this purpose by the division. An applicant at the time of making an
8 application shall pay to the division a nonrefundable $300 fee for investigating the
9 application and a $500 annual license fee for the period terminating on the last day
10 of the current calendar year. If the cost of the investigation exceeds $300, the
11 applicant shall upon demand of the division pay to the division the amount by which
12 the cost of the investigation exceeds the nonrefundable fee.

13 **SECTION 8.** 138.09 (3) (e) 1. g. of the statutes is created to read:

14 138.09 **(3)** (e) 1. g. A consumer small loan licensee under s. 138.14.

15 **SECTION 9.** 138.09 (3) (f) of the statutes is amended to read:

16 138.09 **(3)** (f) Every licensee shall make an annual report to the division for
17 each calendar year on or before March 15 of the following year. The report shall ~~cover~~
18 include business transacted by the licensee under the provisions of this section and
19 shall give all reasonable and relevant information that the division may require. The
20 reports shall be made ~~upon forms furnished~~ in the form and manner prescribed by
21 the division ~~and shall be signed and verified by the oath or affirmation of the licensee~~
22 ~~if an individual, one of the partners if a partnership, a member or manager if a~~
23 ~~limited liability company or an officer of the corporation or association if a~~
24 ~~corporation or association~~. Any licensee operating under this section shall keep the

1 records affecting loans made pursuant to this section separate and distinct from the
2 records of any other business of the licensee.

3 **SECTION 10.** 138.10 (2m) of the statutes is amended to read:

4 138.10 **(2m)** PAWNBROKING BY LICENSED LENDERS. The division of banking may
5 promulgate rules regulating the conduct of pawnbroking by persons licensed under
6 s. 138.09 or 138.14.

7 **SECTION 11.** 138.10 (15) of the statutes is amended to read:

8 138.10 **(15)** EXCEPTION. This section does not apply to any person that is
9 licensed under s. 138.09 or 138.14.

10 **SECTION 12.** 138.14 of the statutes is created to read:

11 **138.14 Consumer small loans. (1)** DEFINITIONS. In this section:

12 (a) "Affiliate" means, with respect to a person, another person who owns or
13 controls, is owned or controlled by, or is under common ownership or control with,
14 such person. In this paragraph "control" means any of the following:

15 1. For a corporation, direct or indirect ownership of, or the right to control, 10
16 percent or more of the voting shares of the corporation, or the ability of a person to
17 elect a majority of the directors or otherwise effect a change in policy.

18 2. For any entity other than a corporation, the ability to change the active or
19 passive principals of the organization.

20 (b) "Check" has the meaning given in s. 403.104 (6).

21 (c) "Consumer small loan" means an unsecured consumer loan, including an
22 indebtedness evidenced by a promissory note or an agreement to defer presenting a
23 check or debiting a consumer's bank account for a fee.

24 (d) "Database" means the statewide database described in sub. (14).

1 (e) "Database provider" means a 3rd–party provider with whom the
2 department contracts to operate the database or, if the division elects to operate the
3 database, the division.
4 (f) "Department" means the department of financial institutions.
5 (g) "Division" means the division of banking.
6 (h) "General order" means an order that is not a special order.
7 (i) "Licensee" means a person holding a license issued by the division under sub.
8 (5).
9 (j) "Maturity date" means the date specified when originating a consumer small
10 loan on which the loan is required to be paid in full.
11 (k) "Special order" means an order against a person.
12 **(2)** LICENSE REQUIRED. A person may not originate or service a consumer small
13 loan involving a Wisconsin resident without first having obtained from the division
14 a license under sub. (5) for each place of business at which the person originates or
15 services consumer small loans involving Wisconsin residents. Such a license is
16 required for, and this section applies to, all consumer small loans made to a
17 Wisconsin resident, regardless of whether the loan is made by face–to–face contact,
18 mail, telephone, Internet, or any other means.
19 **(3)** EXEMPTIONS. This section does not apply to banks, savings banks, savings
20 and loan associations, trust companies, credit unions, or any of their affiliates.
21 **(4)** APPLICATIONS; FEES; BOND. (a) 1. Application for licenses under sub. (5) shall
22 be made to the division in writing in the form and manner prescribed by the division
23 and shall include all of the following:
24 a. Except as provided in subd. 3., if the applicant is an individual, the
25 applicant's social security number.

1 b. If the applicant is not an individual, the applicant's federal employer
2 identification number.
3 2. The division may not disclose any information received under subd. 1. a. or
4 b. to any person except as follows:
5 a. The division may disclose information under subd. 1. a. or b. to the
6 department of revenue for the sole purpose of requesting certifications under s.
7 73.0301.
8 b. The division may disclose information under subd. 1. a. to the department
9 of workforce development in accordance with a memorandum of understanding
10 under s. 49.857.
11 3. If an applicant who is an individual does not have a social security number,
12 the applicant, as a condition of applying for a license, shall submit a statement made
13 or subscribed under oath or affirmation to the division that the applicant does not
14 have a social security number. The form of the statement shall be prescribed by the
15 department of workforce development. Any license issued in reliance upon a false
16 statement submitted by an applicant is invalid.
17 (b) At the time of making application, an applicant for a license shall pay to the
18 division a nonrefundable $300 fee for investigating the application and a $500
19 annual license fee. If the cost of the investigation exceeds $300, the applicant shall
20 upon demand of the division pay to the division the amount by which the cost of the
21 investigation exceeds the nonrefundable fee.
22 (c) The division shall require any applicant or licensee to file and maintain in
23 force a bond in a sum not to exceed $5,000 for each place of business at which the
24 applicant or licensee makes consumer small loans to a Wisconsin resident. The bond
25 shall be in a form prescribed by and acceptable to the division.

1 **(5)** LICENSES. (a) Upon the filing of an application under sub. (4) and the
2 payment of the required fees, the division shall investigate the relevant facts. Except
3 as provided in par. (b), if the division finds that the character and general fitness and
4 the financial responsibility of the applicant, and the members thereof if the applicant
5 is a partnership, limited liability company, or association, and the officers and
6 directors thereof if the applicant is a corporation, warrant the belief that the business
7 will be operated in compliance with this section, the division shall issue a license to
8 the applicant. If the division does not make such finding, the division shall deny the
9 application.

10 (b) The division may not issue a license to an applicant if any of the following
11 applies:

12 1. The applicant fails to provide any information required under sub. (4) (a).

13 2. The department of revenue certifies under s. 73.0301 that the applicant is
14 liable for delinquent taxes.

15 3. The applicant fails to comply, after appropriate notice, with a subpoena or
16 warrant issued by the department of workforce development or a county child
17 support agency under s. 59.53 (5) and related to paternity or child support
18 proceedings.

19 4. The applicant is delinquent in making court–ordered payments of child or
20 family support, maintenance, birth expenses, medical expenses, or other expenses
21 related to the support of a child or former spouse, as provided in a memorandum of
22 understanding entered into under s. 49.857.

23 (c) A license shall remain in force and effect until suspended or revoked in
24 accordance with this section or surrendered by the licensee, and a licensee shall, on

1 or before each December 10, pay to the division the annual license fee for the next
2 succeeding calendar year.
3 (d) A license is not assignable and permits operation under it only at or from
4 the place of business specified in the license.
5 (e) A licensee shall conspicuously post a license at the place of business where
6 the licensee makes consumer small loans, or if conducting business through the
7 Internet, on the licensee's Web site so that the license is easily viewed by a consumer.
8 **(6)** RELOCATION; OTHER BUSINESS. (a) Whenever a licensee changes the address
9 of its place of business to another location within the same city, village, or town, the
10 licensee shall give written notice thereof, in a form and manner prescribed by the
11 division, to the division within 10 business days of the relocation and the division
12 shall replace the original license with an amended license showing the new address.
13 No change in the place of business of a licensee to a different city, village, or town is
14 permitted under the same license.
15 (b) 1. Except as provided in subd. 2., a licensee may conduct, and permit others
16 to conduct, at the place of business specified in its license, one or more of the following
17 businesses not subject to this section:
18 a. A currency exchange under s. 218.05.
19 b. A seller of checks business under ch. 217.
20 c. A loan business under s. 138.09.
21 d. A sales finance company under ss. 218.0101 to 218.0163.
22 2. A licensee may not sell merchandise or conduct other business at the place
23 of business specified in the license unless written authorization is granted to the
24 licensee by the division.

1 **(7)** RECORDS; REPORTS. (a) Except as provided in par. (b), a licensee shall keep
2 such books and records in the licensee's place of business that, in the opinion of the
3 division, will enable the division to determine compliance with this section. A
4 licensee shall preserve the records of final entry used in such business for a period
5 of at least 2 years after the making of any loan recorded therein.

6 (b) A licensee may keep the books and records specified in par. (a) at a single
7 location inside or outside of this state if the books and records are kept at a place of
8 business licensed under this section. A licensee shall organize the books and records
9 by the place of business where the records originated.

10 (c) A licensee shall keep the books and records affecting loans made pursuant
11 to this section separate and distinct from the records of any other business of the
12 licensee.

13 (d) A licensee shall make an annual report to the division for each calendar year
14 on or before March 15 of the following year. The report shall include business
15 transacted by the licensee under this section and shall give all reasonable and
16 relevant information that the division may require. The reports shall be made in the
17 form and manner prescribed by the division.

18 **(8)** POWERS OF THE DIVISION. (a) The division may issue any general or special
19 order in execution of or supplementary to this section.

20 (b) The division may promulgate such rules as it considers necessary for the
21 administration of this section, including rules establishing database transaction fees
22 and other fees considered reasonable and necessary by the division.

23 (c) The division shall have the same power to conduct hearings, take testimony,
24 and secure evidence as is provided in ss. 217.17 and 217.18.

1 (d) The division for the purpose of discovering violations of this section may
2 investigate the business of a licensee transacted under this section, and shall
3 investigate convictions reported to the division by any district attorney for violation
4 by a licensee of this section. The place of business, books of account, papers, records,
5 safes, and vaults of a licensee shall be open to inspection and examination by the
6 division for the purpose of such investigation and the division may examine under
7 oath all persons whose testimony the division may require relative to such
8 investigation.

9 (e) The cost of any investigation, examination, or hearing, including witness
10 fees or any other expenses, conducted by the division under this section involving a
11 licensee shall be paid by the licensee within 30 days after demand therefore by the
12 division, and the state may maintain an action for the recovery of such costs and
13 expenses.

14 (f) Actual costs incurred by the division to examine books and records
15 maintained outside of this state shall be paid by the licensee.

16 **(9)** REVOCATION AND SUSPENSION OF LICENSES. (a) The division may suspend or
17 revoke any license issued under this section if the division finds any of the following:

18 1. That the licensee has violated any provision of this section, any rule
19 promulgated thereunder, or any lawful order of the division made thereunder.

20 2. That the licensee has violated any of the provisions of chs. 421 to 427.

21 3. That any fact or condition exists which, if it had existed at the time of the
22 original application for such license, would have warranted the division in refusing
23 to issue such license.

24 4. That the licensee made a material misstatement in an application for a
25 license or in information furnished to the division.

1 5. That the licensee has failed to pay the annual license fee or to maintain in
2 effect the bond required under sub. (4) (c).
3 (b) The division shall restrict or suspend a license issued under this section if
4 the division finds that the licensee is an individual who fails to comply, after
5 appropriate notice, with a subpoena or warrant issued by the department of
6 workforce development or a county child support agency under s. 59.53 (5) and
7 related to paternity or child support proceedings or who is delinquent in making
8 court–ordered payments of child or family support, maintenance, birth expenses,
9 medical expenses, or other expenses related to the support of a child or former
10 spouse, as provided in a memorandum of understanding entered into under s.
11 49.857. A licensee whose license is restricted or suspended under this paragraph is
12 entitled to a notice and hearing only as provided in a memorandum of understanding
13 entered into under s. 49.857 and is not entitled to any other notice or hearing under
14 this section.
15 (c) The division shall revoke a license issued under this section if the
16 department of revenue certifies under s. 73.0301 that the licensee is liable for
17 delinquent taxes. A licensee whose license is revoked under this paragraph for
18 delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing
19 under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this
20 section.
21 (d) Except as provided in pars. (b) and (c), no license shall be revoked or
22 suspended except after a hearing under this section. A complaint stating the
23 grounds for suspension or revocation together with a notice of hearing shall be
24 delivered to the licensee at least 5 days in advance of the hearing. In the event the
25 licensee cannot be found, complaint and notice of hearing may be left at the place of

1 business stated in the license,which shall be considered the equivalent of delivering
2 the notice of hearing and complaint to the licensee.

3 **(10)** INTEREST AND FEES. (a) *Interest.* 1. This section imposes no limit on the
4 interest that a licensee may charge before the maturity date of a consumer small
5 loan.

6 2. If a consumer small loan is not paid in full on or before the maturity date,
7 a licensee may charge, after the maturity date, interest at a rate not exceeding 2.75
8 percent per month, except that if a licensee makes a subsequent consumer small loan
9 to the borrower under sub. (12) (a), and the borrower does not pay the subsequent
10 loan in full on or before the maturity date of the subsequent loan, the licensee may
11 charge, after the maturity date of the subsequent loan, interest at a rate not
12 exceeding 2.75 percent per month on the subsequent loan and the licensee may not
13 charge any interest under this subdivision on the prior loan. Interest earned under
14 this subdivision shall be calculated at the rate of one–thirtieth of the monthly rate
15 charged for each calendar day that the balance of the loan is outstanding. Interest
16 cannot be assessed on any interest earned under this subdivision.

17 (b) *Fees.* 1. A licensee may not assess a borrower any fee or charge for database
18 access or usage.

19 2. A licensee may charge a fee not to exceed $15 for each check presented for
20 payment to the licensee which is returned unsatisfied because the drawer does not
21 have an account with the drawee, does not have sufficient funds in his or her account,
22 or does not have sufficient credit with the drawee.

23 **(11)** PREPAYMENT. (a) A customer may pay a consumer small loan in whole or
24 in part prior to the maturity date of the loan.

1 (b) Upon prepayment in full, a refund of the unearned portion of any interest
2 assessed by the licensee must be allowed. The amount of such refund shall not be
3 less than the difference between the interest charged and the interest earned at the
4 agreed rate computed upon the unpaid principal balance of the loan from time to time
5 outstanding prior to repayment in full.

6 **(12)** PROHIBITIONS. (a) A borrower may repay a consumer small loan with the
7 proceeds of a subsequent consumer small loan made by the same or another licensee
8 or an affiliate of the same or another licensee, but if the borrower does so, the
9 borrower may not repay the subsequent consumer small loan with the proceeds of
10 another consumer small loan made by the same or another licensee or an affiliate of
11 the same or another licensee. A repayment of a subsequent consumer small loan and
12 the origination of a new consumer small loan from the same or another licensee or
13 an affiliate of the same or another licensee within a 24–hour period shall be
14 considered proof of violation of the prohibition under this paragraph.

15 (b) No licensee may make a consumer small loan to a borrower that results in
16 the borrower having an outstanding aggregate liability of more than [redacted] to all
17 licensees who have made consumer small loans to the borrower. $900

18 (c) No licensee may make a consumer small loan to a borrower if ~~the licensee~~
19 determines, knows, or should have known, that the social security number the
20 borrower provided to the licensee is invalid, was issued within a period of time
21 specified by the division preceding the date of the inquiry, or is issued to a deceased
22 individual.

23 (d) No licensee may take a note, promise to pay, or any other instrument, in
24 which blanks are left to be filled in after the consumer small loan has been made.

1 (e) No licensee may advertise, print, display, publish, distribute, or broadcast,
2 or cause to be printed, displayed, published, distributed, or broadcast, in any
3 manner, any statement with regard to the rates, terms, or conditions of a consumer
4 small loan that is false or calculated to deceive. With respect to matters specifically
5 governed by s. 423.301, compliance with such section satisfies the requirements of
6 this paragraph.

7 (f) If a check held by a licensee as a result of a consumer small loan is returned
8 to the licensee from a payor financial institution due to insufficient funds, a closed
9 account, or a stop payment order, the licensee may bring an action to collect the
10 amount of the check, but may not threaten or pursue criminal action against a debtor
11 as a result of the debtor's check being returned unpaid or the debtor's consumer small
12 loan not being paid.

13 **(13)** OTHER PROVISIONS. (a) All consumer small loans shall be governed by chs.
14 421 to 427, but to the extent that chs. 421 to 427 are inconsistent with this section,
15 this section shall govern.

16 (b) A licensee shall deliver to the borrower, at the time a consumer small loan
17 is made, a statement in the English and Spanish languages including all the
18 disclosures required by the federal Consumer Credit Protection Act. The statement
19 shall disclose that the borrower may prepay the borrower's loan in whole or in part
20 and that if the loan is prepaid in full the borrower will receive a refund of interest
21 as provided by this section. The statement shall also clearly and conspicuously
22 indicate the percentage per year of interest charged for the consumer small loan.

23 (c) A licensee shall give to the borrower a plain and complete receipt for all cash
24 payments made on account of any consumer small loan at the time such payments
25 are made.

1 (d) No consumer small loan, wherever made, for which a greater rate or amount
2 of interest than is allowed under sub. (10) (a) 2. has been contracted for or received,
3 may be enforced in this state, and every person in any way participating therein in
4 this state shall be subject to this section. If a licensee makes an excessive charge of
5 such interest as the result of an unintentional mistake, but upon demand makes
6 correction of such mistake, the loan shall be enforceable and treated as if no violation
7 occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights
8 or remedies afforded in chs. 421 to 427 to a customer in a consumer credit
9 transaction.

10 **(14)** DATABASE. (a) The division or a database provider shall develop,
11 implement, and maintain a single statewide database that has real–time access
12 through an Internet connection, is accessible at all times to licensees and the
13 division, and otherwise meets the requirements of this section.

14 (b) The division may operate the database or may contract with a single
15 3rd–party provider to operate the database. If the division contracts with a
16 3rd–party provider for the operation of the database, the division shall do all the
17 following:

18 1. Ensure that the 3rd–party provider operates the database according to the
19 provisions of this section.

20 2. In selecting a 3rd–party provider, consider the cost of providing the service
21 and the 3rd–party provider's ability to meet all the requirements of this section.

22 3. In selecting a 3rd–party provider, give strong consideration to all of the
23 following:

1 a. The 3rd–party provider's ability to prevent fraud, abuse, and other unlawful
2 activity associated with consumer small loan transactions, and to provide additional
3 tools for the administration and enforcement of this section.
4 b. Whether the provider is currently providing a similar service for another
5 state.
6 (c) The database shall do all of the following:
7 1. Allow a licensee accessing the database to check a customer's social security
8 number, or other unique identification number specified by the division, and report
9 to the division or licensee if that social security number is invalid, was issued within
10 a period of time specified by the division preceding the date of the inquiry, or is issued
11 to a deceased individual.
12 2. Allow a licensee accessing the database to determine if making a new
13 consumer small loan would cause a violation of this section.
14 3. Provide information necessary to aid a licensee in complying with any
15 requirements imposed under federal law by the office of foreign assets control of U.S.
16 department of the treasury.
17 4. Provide any other information that the division determines is necessary and
18 requires by rule or contract with the database provider.
19 (d) The database provider shall do all the following:
20 1. Use the data collected under this section only as prescribed in this section
21 and, in the case of a 3rd–party provider, as prescribed in the contract with the
22 division, and for no other purpose.
23 2. Establish and maintain an alternate process for responding to transaction
24 authorization requests necessary because of technical difficulties occurring with the
25 database that prevent a licensee from accessing the database through the Internet.

1 3. Upon receiving notification that a consumer small loan is paid, designate the
2 transaction as closed in the database no later than 11:59 p.m. on the day that such
3 notification is received.

4 4. Automatically designate a consumer small loan as paid in the database 5
5 days after the maturity date of the loan unless a licensee reports to the database
6 provider before that time that the loan remains open because of the customer's
7 failure to make payment; that the loan is open because the customer's check or an
8 electronic redeposit is in the process of clearing the banking system; that the loan
9 remains open because the customer's check is being returned to the licensee for
10 insufficient funds, a closed account, or a stop payment order; or that any other factors
11 determined by the division are applicable. If a licensee makes such a report, the
12 database provider shall designate the consumer small loan as an open transaction
13 until the database provider is notified that the transaction is closed.

14 5. If a licensee stops making consumer small loans, designate all open
15 transactions with that licensee as closed in the database 60 days after the date on
16 which the licensee stops making consumer small loans, unless the licensee reports
17 to the database provider before the expiration of the 60–day period which of its
18 transactions remain open and the specific reason each transaction remains open.

19 6. In response to an inquiry from a licensee, state only that a person is eligible
20 or ineligible for a new consumer small loan and describe the reason for that
21 determination. Only the person seeking the loan may make a direct inquiry to the
22 database provider to request a more detailed explanation of an ineligibility
23 determination.

24 (e) If at any time the division determines that a licensee that has stopped
25 making consumer small loans is not updating the database in accordance with a plan

1 approved under par. (o), the division shall immediately close or instruct the database
2 provider to immediately close all remaining open transactions of that licensee.
3 (f) The division may, without cost, access the database for the purposes of
4 enforcing this section.
5 (g) The division shall, by order or rule, stipulate the period for which data is
6 to be retained in the database only as required to ensure licensee compliance with
7 this act or for enforcement or compliance purposes. The division may require that
8 any identifying customer information be deleted from the database when data is
9 archived. The division may maintain access to archived data for future legislative
10 or policy review.
11 (h) The division shall, by order or rule, specify a database transaction fee that
12 the database provider shall charge to licensees to cover the costs of developing and
13 implementing the database, and accessing the database to verify that a customer
14 does not have any consumer small loans with the licensee or others that in
15 combination with a new transaction will create a violation of this section. The
16 database fee is payable directly to the division in a manner prescribed by the division
17 and, if the department has contracted with a 3rd–party provider to operate the
18 database, the division shall remit the fee to the 3rd–party provider as specified in the
19 contract.
20 (i) A licensee shall verify a customer's eligibility to enter into a consumer small
21 loan by doing one of the following, as applicable:
22 1. If the database, as determined by the division, is not implemented or is not
23 fully operational, verifying that the customer does not have an open consumer small
24 loan with the licensee that in conjunction with a new consumer small loan would
25 cause a violation of this section. The licensee shall maintain a database of all of the

licensee's consumer small loans at all of its places of business and search that database to meet its obligation under this subdivision.

2. If the database, as determined by the division, is implemented and fully operational, accessing the database and verifying that the customer does not have an outstanding consumer small loan with the licensee and does not have open consumer small loans with other licensees that in conjunction with a new consumer small loan would cause a violation of this section.

(j) If the database, as determined by the division, is not fully operational, or the licensee is unable to access the database and, as determined under rules promulgated by the division, the alternate process established under par. (d) 2. is also unavailable, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 12–point type:

"I DO NOT HAVE ANY OUTSTANDING CONSUMER SMALL LOANS WITH THIS LICENSEE AND I DO NOT HAVE MORE CONSUMER SMALL LOANS WITH ANY OTHER LICENSED CONSUMER SMALL LOAN PROVIDER IN THIS STATE."

(k) If, as determined by the division, a licensee is unable to access the database due to technical difficulties occurring with the database, the licensee shall utilize the alternate process established under par. (d) 2.

(L) A licensee may rely on the information contained in the database as accurate and is not subject to any administrative forfeiture as a result of relying on inaccurate information contained in the database.

(m) Before entering into a consumer small loan, a licensee shall submit to the database provider the customer's name; social security number or other unique identifier prescribed by the division; address; driver license number or other method

1 of state identification; the amount of the transaction; the customer's check number;
2 the date of the transaction; the maturity date of the loan; and any other information
3 reasonably required by the division, in a format approved by the division.

4 (n) When a consumer small loan is closed, the licensee shall designate the
5 transaction as closed and notify the database provider no later than 11:59 p.m. on the
6 day on which the transaction is closed. The division shall assess an administrative
7 forfeiture of $100 for each day that the licensee fails to notify the database provider
8 that the consumer small loan has been closed. It is a defense to the assessment of
9 an administrative forfeiture that notifying the database provider was not possible
10 due to temporary technical problems with the database or to circumstances beyond
11 the licensee's control.

12 (o) If the licensee stops making consumer small loans, the licensee shall provide
13 to the division a plan acceptable to the division that outlines how the licensee will
14 continue to update the database after it stops making consumer small loans. The
15 division shall approve or disapprove the plan and within 5 business days notify the
16 licensee of the decision. If a plan is disapproved, the licensee may submit a new or
17 modified plan for the division to approve or disapprove.

18 (p) Any information in the database regarding any person's transactional
19 history is confidential and is not subject to public copying or inspection under s. 19.35
20 (1).

21 **(15)** PENALTIES. (a) Any person, partnership, or corporation, or the officers or
22 employees thereof, who violates this section is guilty of a misdemeanor and shall be
23 fined not more than $500 or imprisoned for not more than 6 months or both.

24 (b) If a person who is not licensed under this section makes a consumer small
25 loan to a borrower, the loan is void, the borrower is not obligated to pay any amounts

1 owing on the loan, and the borrower may recover from the person all amounts the
2 borrower has paid to the person. An action to recover such amounts shall be
3 commenced within one year after the date of the last scheduled payment on the loan
4 or shall be barred.

5 **(16)** PRIVATE CAUSE OF ACTION. If a person makes a consumer small loan to a
6 borrower in violation of this section, the borrower may bring an action against the
7 person for damages of $250 or the amount of the consumer small loan, whichever is
8 greater, plus costs, and, notwithstanding s. 814.04 (1), reasonable attorney fees.

9 **SECTION 13.** 220.02 (2) (b) of the statutes is amended to read:

10 220.02 **(2)** (b) The lending of money under s. 138.09 <u>or 138.14,</u> or those relating
11 to finance companies, motor vehicle dealers, adjustment service companies,
12 community currency exchanges and collection agencies under ch. 218.

13 **SECTION 14.** 220.04 (10) of the statutes is amended to read:

14 220.04 **(10)** If it appears to the division that a person has engaged or is about
15 to engage in an act or practice constituting a violation of the laws of this state relating
16 to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and ss.
17 138.09 ~~and,~~ 138.12, <u>and 138.14,</u> or a rule promulgated or order issued under those
18 laws, the division may bring an action in the name of the state in the circuit court
19 of the appropriate county to enjoin the acts or practices and to enforce compliance
20 with the laws, rules or orders, or the division may refer the matter to the district
21 attorney of the appropriate county or, if the alleged violation may be enforced by the
22 attorney general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide
23 in nature, to the attorney general. Upon a proper showing, the court may grant a
24 permanent or temporary injunction or restraining order, appoint a receiver for the

1 defendant or the defendant's assets or order rescission of any acts determined to be
2 unlawful. The court may not require the division to post a bond.

3 **SECTION 15.** 220.285 (1) of the statutes, as affected by 2009 Wisconsin Act 2,
4 is amended to read:

5 220.285 **(1)** Any state bank, trust company bank, licensee under ss. 138.09,
6 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.725 or
7 ch. 217 may cause any or all records kept by such bank, licensee, or registered person
8 to be recorded, copied or reproduced by any photostatic, photographic or miniature
9 photographic process or by optical imaging if the process employed correctly,
10 accurately and permanently copies, reproduces or forms a medium for copying,
11 reproducing or recording the original record on a film or other durable material. A
12 bank, licensee, or registered person may thereafter dispose of the original record
13 after first obtaining the written consent of the division. This section, excepting that
14 part of it which requires written consent of the division, is applicable to national
15 banking associations insofar as it does not contravene federal law.

16 **SECTION 16.** 321.60 (1) (a) 12. of the statutes, as affected by 2009 Wisconsin Act
17 2, is amended to read:

18 321.60 **(1)** (a) 12. A license or certificate of registration issued by the
19 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
20 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, or
21 224.93 or subch. IV of ch. 551.

22 **SECTION 17.** 403.414 (7) of the statutes is amended to read:

23 403.414 **(7)** A person who issues a check or other draft that is not honored upon
24 presentment, because the drawer does not have an account with the drawee or
25 because the drawer does not have sufficient funds in his or her account or sufficient

credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written, except recovery is not permitted under this section if a person licensed under s. 138.09 or 138.14 or any other person collected or could have collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m).

SECTION 18. 422.201 (3) of the statutes is amended to read:

422.201 **(3)** For licensees under s. 138.09 ~~and~~ or 138.14 or under ss. 218.0101 to 218.0163, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.

SECTION 19. 425.301 (4) of the statutes is amended to read:

425.301 **(4)** The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability under the federal consumer credit protection act and ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation under chs. 421 to 427 may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

SECTION 20. Effective date.

(1) This act takes effect on the first day of the 13th month beginning after publication.

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2564/4dn
MDK:...:...
bjk

Date

aggregate
aggregate

Sen. Sullivan:

This version is identical to the previous version, except the maximum ~~outstanding~~ loan liability is $900, instead of $600.

e

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2564/4dn
MDK:bjk:rs

February 5, 2010

Sen. Sullivan:

This version is identical to the previous version, except the maximum aggregate loan liability is $900, instead of $600.

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