

**2009 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB530)**

Received: 03/22/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Nicole**

May Contact:

Drafter: **mkunkel**

Subject: **Fin. Inst. - int. rates/loans**

Addl. Drafters: **mshovers**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Regulation of payday lenders

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/25/2010			_____			
/1		nmatzke 03/26/2010	phenry 03/26/2010	_____	cduerst 03/26/2010	cduerst 03/26/2010 sbasford 03/26/2010	
/2	mkunkel	nmatzke	rschluet	_____	lparisi	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/30/2010	03/30/2010	03/30/2010	_____	03/30/2010	03/30/2010	
/3	mkunkel	nnatzke	rschluet	_____	cduerst	cduerst	
	03/31/2010	03/31/2010	03/31/2010	_____	03/31/2010	03/31/2010	
	mkunkel	nnatzke		_____			
	04/01/2010	04/01/2010		_____			
/4			jfrantze	_____	cduerst	cduerst	
			04/01/2010	_____	04/01/2010	04/01/2010	

FE Sent For:

<END>

**2009 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB530)**

Received: **03/22/2010**

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Nicole**

May Contact:

Drafter: **mkunkel**

Subject: **Fin. Inst. - int. rates/loans**

Adl. Drafters: **mshovers**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Regulation of payday lenders

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/25/2010			_____			
/1		nmatzke 03/26/2010	phenry 03/26/2010	_____	cdurst 03/26/2010	cdurst 03/26/2010	
				_____		<del>sbasford</del> <del>03/26/2010</del>	
/2	mkunkel	nmatzke 1/4 nwn 4/1	rschluet 4/1	_____	lparisi	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/30/2010	03/30/2010	03/30/2010 _____		03/30/2010	03/30/2010	
/3	mkunkel	nmatzke	rschluet _____		cduerst	cduerst	
	03/31/2010	03/31/2010	03/31/2010 _____		03/31/2010	03/31/2010	

FE Sent For:

<END>

**2009 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB530)**

Received: 03/22/2010

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Jim Sullivan (608) 266-2512

By/Representing: Nicole

May Contact:

Drafter: mkunkel

Subject: Fin. Inst. - int. rates/loans

Adl. Drafters: mshovers

Extra Copies: ARG

Submit via email: YES

Requester's email: Sen.Sullivan@legis.wisconsin.gov

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Regulation of payday lenders

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/25/2010			_____			
/1		nmatzke 03/26/2010	phenry 03/26/2010	_____	cduerst 03/26/2010	cduerst 03/26/2010 <del>chaseford</del> <del>03/26/2010</del>	
/2	mkunkel	nmatzke 1/3 nwn 3/31	rschluet 3/31/10	km 3 J7 31	lparisi	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/30/2010	03/30/2010	03/30/2010	_____	03/30/2010	03/30/2010	

FE Sent For:

<END>

## 2009 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB530)

Received: 03/22/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Nicole**

May Contact:

Drafter: **mkunkel**

Subject: **Fin. Inst. - int. rates/loans**

Addl. Drafters: **mshovers**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Regulation of payday lenders

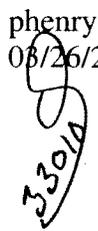
---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/25/2010			_____			
/1		nmatzke 03/26/2010 1/2 nwn 3/30	pherry 03/26/2010 	_____	cduerst 03/26/2010	cduerst 03/26/2010 <del>Blasford</del> <del>03/26/2010</del>	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB530)

Received: 03/22/2010

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Jim Sullivan (608) 266-2512

By/Representing: Nicole

May Contact:

Drafter: mkunkel

Subject: Fin. Inst. - int. rates/loans

Addl. Drafters: mshovers

Extra Copies: ARG

Submit via email: YES

Requester's email: Sen.Sullivan@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of payday lenders

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel	1 <sup>rwn</sup> 3/25	3 bc ph	3 bc ph/ks			

FE Sent For:

<END>

~~Substantive amendment~~

middle of next wk

Call -  
concern about grandfathering locat-s  
so that DFI may not  
refuse to grant license bases  
on locat -  
in Iowa as of the date

~~2) payday loans vs consumer loan  
use ASA1 to AB 447~~

~~3) 17-15  
\$900 is max limit on amt borrowed  
sim to 7-16 of ASA1  
but apply only principal not interest~~

charges to  
40% of gross  
monthly income  
only

~~4) 18-13-15  
great debt collector's act → x-ref Ch 427  
consistency w/ Federal law  
if Fed law has no federal collector's act~~

~~5~~ ~~Prohibit wage garnishment~~

~~6~~ ~~Prohibit SSNs in database~~  
database can't include or use SSN  
(see ASA 1)

~~7~~ ~~4 prep~~  
Add sim to ASA 11-8-11-12  
parent  
↓  
add to pl6 ltr 6 etc.

~~8~~ Add loc 15 5 - see ASA 1 p 1-3

~~9~~ Add fee limit -  
ASA 1 p 8-3

~~10~~ ASA p 13 15-18  
include sim  
sim  
default, prepared  
or late payment prohibited

INS

**SECTION 1.** 59.69 (4h) of the statutes is created to read:

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

1. "Consumer small loan" has the meaning given in s. 138.14 (1) (c).
2. "Licensee" has the meaning given in s. 138.14 (1) (i).
3. "Payday lender" means a business, owned by a licensee, that makes consumer small loans.

(b) *Limits on locations of payday lenders.* Except as provided in par. (c), no 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.

Did  
Sweet

4.

If a payday lender that is doing business on the effective date of this subdivision .... [LRB inserts date] from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

**SECTION 2.** 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., 4., and 5., 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.

5. If a payday lender that is doing business on the effective date of this subdivision .... [LRB inserts date] from a location that does not comply with the

provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

## Kunkel, Mark

---

**From:** Hudzinski, Nicole  
**Sent:** Monday, March 22, 2010 4:06 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Debt collection practices

One more change. We would like to change the effective date to 6 months after publication. Thanks Mark.

---

**From:** Kunkel, Mark  
**Sent:** Monday, March 22, 2010 10:28 AM  
**To:** Hudzinski, Nicole; Worcester, Barbara  
**Subject:** RE: Debt collection practices

Okay, will do.

---

**From:** Hudzinski, Nicole  
**Sent:** Monday, March 22, 2010 10:18 AM  
**To:** Kunkel, Mark; Worcester, Barbara  
**Subject:** RE: Debt collection practices

Mark, I think that is a great recommendation. Please add that to the amendment. Thank you.

Nicole

---

**From:** Kunkel, Mark  
**Sent:** Monday, March 22, 2010 10:04 AM  
**To:** Hudzinski, Nicole; Worcester, Barbara  
**Subject:** Debt collection practices

I was discussing this issue with another attorney here, and she suggested that perhaps, in applying for a license, a payday lender should be required to sign a form acknowledging that the lender understands that ch. 427, as well as the federal requirements, will apply to debt collection on a payday loan. As we discussed, ch. 427 will in fact apply, and I will confirm that the federal law applies.

You may or may not want to pursue the suggestion, but I thought I'd bring it to your attention.

-- Mark



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2564/4  
MDK&MES:jld:rs

SSA to

2009 SENATE BILL 530

O-NOTE

SO352/1

Tomorrow  
Friday  
3-26  
NOON

February 9, 2010 - Introduced by Senators SULLIVAN, HANSEN, MILLER, LEHMAN and ROBSON, cosponsored by Representative FIELDS. Referred to Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions.

SAV

gen cat

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~~ <sup>payday</sup> 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.

customer

customer

SENATE BILL 530

Substitute amendment

INSEPT 2A

97 TH MAIN requires a

*payday*

**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.

payday  
payday

Substitute amendment

Payday

Substitute amendment

**Fees.** As under the current law, the ~~bill~~ does not impose any limit on the interest that may be 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.~~

Substitute amendment

payday

payday

customer

payday

INSEPT 2B

Substitute amendment

**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 \$500~~ 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.

customer

payday

in principal

substitute amendment

customer

INSEPT 2C

customer

Substitute amendment

payday

**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

customer identification

payday

payday

Substitute amendment

INSEPT 2D

customer



SENATE BILL 530

**INSERT 4A**

affiliate of the same or another licensee. In addition, if a licensee makes such a subsequent ~~consumer~~ <sup>payday</sup> small loan, the ~~bill~~ prohibits the ~~borrower~~ <sup>customer</sup> from repaying the subsequent ~~consumer~~ <sup>payday</sup> small loan with another ~~consumer~~ <sup>payday</sup> small loan made by the same or another licensee or affiliate.

108. The ~~bill~~ allows the division to operate the database described above, as an alternative to contracting with a third-party provider. **INSERT 4B**

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, is amended to read:

3 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,  
4 138.12, 138.14, 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~~ <sup>Payday</sup> "small loan" has the meaning given in s. 138.14 (1) (c). *JK*

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

10 2. "Payday lender" means a business, owned by a licensee, that makes  
11 ~~consumer~~ <sup>payday</sup> 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

SENATE BILL 530

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

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

5 2. The payday lender would be located within 150 feet of a single-family or  
6 2-family residential zoning district.

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

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

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

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

15 62.23 (7) (hi) *Payday lenders.* 1. In this paragraph:

16 *ca.* "~~Consumer small loan~~ <sup>Payday</sup>" has the meaning given in s. 138.14 (1) (c). *8/15 ✓*

17 *ab.* "Licensee" has the meaning given in s. 138.14 (1) (i).

18 *bc.* "Payday lender" means a business, owned by a licensee, that makes  
19 ~~consumer small loans.~~ <sup>payday</sup>

20 2. Except as provided in subds. 3. ~~and~~ <sup>and 5.</sup> 4. no payday lender may operate in a  
21 city unless it receives a permit to do so from the city council, and the city council may  
22 not issue a permit to a payday lender if any of the following applies:

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

*INSERT 5-13 ✓*

SENATE BILL 530

INSEAT 6-7

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

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

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

8 SECTION 4. 73.0301 (1) (d) 6. of the statutes, as affected by 2009 Wisconsin Act  
9 2, is amended to read:

10 73.0301 (1) (d) 6. A license or certificate of registration issued by the  
11 department of financial institutions, or a division of it, under ss. 138.09, 138.12,  
12 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725,  
13 224.93 or under subch. IV of ch. 551.

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

15 **138.04 Legal rate.** The rate of interest upon the loan or forbearance of any  
16 money, goods or things in action shall be \$5 upon the \$100 for one year and according  
17 to that rate for a greater or less sum or for a longer or a shorter time; but parties may  
18 contract for the payment and receipt of a rate of interest not exceeding the rate  
19 allowed in ss. 138.041 to 138.056, 138.09 to ~~138.12~~ 138.14, 218.0101 to 218.0163, or  
20 422.201, in which case such rate shall be clearly expressed in writing.

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

22 138.09 (1a) This section does not apply to any of the following:

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

25 (b) ~~Consumer Small~~ loans made under s. 138.14. ✓

Payday  
=

## SENATE BILL 530

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~~ <sup>payday</sup> 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

**SENATE BILL 530**

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.

*Payday®*

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).

*INSERT 8-20*

SENATE BILL 530

INSEPT 9-5

1 ~~d~~(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 ~~e~~(f) "Department" means the department of financial institutions.✓

5 ~~f~~(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~~ <sup>pay day</sup> loan on which the loan is required to be paid in full.✓

11 ~~k~~(k) "Special order" means an order against a person.

12 = (2) LICENSE REQUIRED. A person may not originate or service a ~~consumer small~~ <sup>pay day</sup> loan involving a Wisconsin resident without first having obtained from the division  
13 a license under sub. (5) for each place of business at which the person originates or  
14 services ~~consumer small~~ <sup>pay day</sup> loans involving Wisconsin residents. Such a license is  
15 required for, and this section applies to, all ~~consumer small~~ <sup>pay day</sup> loans made to a  
16 Wisconsin resident, regardless of whether the loan is made by face-to-face contact,  
17 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.

INSEPT 9-10

SENATE BILL 530

INSEP 7 10-2 ✓

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~~ <sup>payday</sup> small loans to a Wisconsin resident. The bond  
25 shall be in a form prescribed by and acceptable to the division.

**SENATE BILL 530**

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

## SENATE BILL 530

## SECTION 12

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 <sup>payday</sup> 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.

**SENATE BILL 530**

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.

**SENATE BILL 530****SECTION 12**

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.

**SENATE BILL 530**

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

SENATE BILL 530

↑ PENALTIES (S) 5

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~~ <sup>payday</sup> 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~~ <sup>payday</sup> loan  
9 to the ~~customer~~ <sup>customer</sup> under sub. (12) (a), and the ~~customer~~ <sup>customer</sup> 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 ~~may~~ <sup>may not</sup> be assessed on any interest earned under this subdivision.

17 (b) Fees. 1. A licensee may not assess a ~~customer~~ <sup>customer</sup> 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~~ <sup>payday</sup> loan in whole or  
24 in part prior to the maturity date of the loan. ✓

INSEAT 16-16

INSEAT 16-22

SENATE BILL 530

INSERT 17-5

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~~ <sup>customer</sup> may repay a ~~consumer small~~ <sup>payday</sup> loan with the  
7 proceeds of a subsequent ~~consumer small~~ <sup>payday</sup> loan made by the same or another licensee  
8 or an affiliate of the same or another licensee, but if the ~~borrower~~ <sup>customer</sup> does so, the  
9 ~~borrower~~ <sup>customer</sup> may not repay the subsequent ~~consumer small~~ <sup>payday</sup> loan with the proceeds of  
10 another ~~consumer small~~ <sup>payday</sup> 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~~ <sup>payday</sup> loan and  
12 the origination of a new ~~consumer small~~ <sup>payday</sup> 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~~ <sup>payday</sup> loan to a ~~borrower~~ <sup>customer</sup> that results in  
16 the ~~borrower~~ <sup>customer</sup> having an outstanding aggregate liability of ~~more than \$900~~ <sup>in principal</sup> to all  
17 licensees who have made ~~consumer small~~ <sup>payday</sup> loans to the ~~borrower~~ <sup>customer</sup>.

INSERT 17-17

18 (c) No licensee may make a ~~consumer small~~ <sup>payday</sup> loan to a ~~borrower~~ <sup>customer</sup> if the licensee  
19 determines, knows, or should have known, that the ~~social security~~ <sup>customer identification</sup> number of the  
20 ~~borrower~~ <sup>customer</sup> 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~~ <sup>payday</sup> loan has been made.

SENATE BILL 530

SECTION 12

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 ~~loan~~ 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~~ 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~~ <sup>customer</sup>, 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~~ <sup>customer</sup> may prepay the ~~borrower's~~ <sup>customer's</sup> loan in whole or in part  
 20 and that if the loan is prepaid in full the ~~borrower~~ <sup>customer</sup> 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~~ <sup>customer</sup> 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.

payday

payday

INSEPT 18-7

payday

INSEPT 18-15

payday

payday

payday

## SENATE BILL 530

1           (d) No ~~consumer~~ <sup>payday</sup> small loan, wherever made, for which a greater rate or amount  
2 of interest than is allowed under sub. (10) (a) 2. <sup>✓</sup> 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. <sup>✓</sup>

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:

SENATE BILL 530

SECTION 12

1 a. The 3rd-party provider's ability to prevent fraud, abuse, and other unlawful  
 2 activity associated with ~~consumer small~~ <sup>payday</sup> 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:

*that is assigned  
to the customer in  
a manner*

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~~ <sup>identification</sup> 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.~~ INSERT 20-11

12 2. Allow a licensee accessing the database to determine if making a new  
 13 ~~consumer small~~ <sup>payday</sup> 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.

SENATE BILL 530

1           3. Upon receiving notification that a ~~consumer small~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> loans is not updating the database in accordance with a plan

SENATE BILL 530

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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup>  
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~~ <sup>pay day</sup>  
24 loan with the licensee that in conjunction with a new ~~consumer small~~ <sup>pay day</sup> loan would  
25 cause a violation of this section. The licensee shall maintain a database of all of the

SENATE BILL 530

1 licensee's ~~consumer small~~ <sup>pay day</sup> loans at all of its places of business and search that  
2 database to meet its obligation under this subdivision. ✓

3 2. If the database, as determined by the division, is implemented and fully  
4 operational, accessing the database and verifying that the customer does not have  
5 an outstanding ~~consumer small~~ <sup>pay day</sup> loan with the licensee and does not have open  
6 ~~consumer small~~ <sup>pay day</sup> loans with other licensees that in conjunction with a new ~~consumer~~  
7 ~~small~~ <sup>pay day</sup> loan would cause a violation of this section. ✓

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

13 "I DO NOT HAVE ANY OUTSTANDING ~~CONSUMER SMALL~~ <sup>PAYDAY</sup> LOANS WITH  
14 THIS LICENSEE AND I DO NOT HAVE MORE ~~CONSUMER SMALL~~ <sup>PAYDAY</sup> LOANS  
15 WITH ANY OTHER LICENSED ~~CONSUMER SMALL~~ <sup>PAYDAY</sup> LOAN PROVIDER IN THIS  
16 STATE." ✓

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

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

23 (m) Before entering into a ~~consumer small~~ <sup>pay day</sup> loan, a licensee shall submit to the  
24 database provider the customer's name; ~~social security number~~ <sup>or other unique</sup>  
25 identifier ~~prescribed~~ <sup>that is assigned in a manner specified</sup> by the division; address; driver license number or other method

SENATE BILL 530

*if applicable*

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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>pay day</sup> 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~~ <sup>customer</sup> loan to a ~~borrower~~ <sup>customer</sup>, the ~~borrower~~ <sup>customer</sup> is not obligated to pay any amounts  
25

INSERT 24-20

SENATE BILL 530

1 ~~owing~~ <sup>Owed</sup> on the loan, and the ~~borrower~~ <sup>customer</sup> may recover from the person all amounts the  
 2 ~~borrower~~ <sup>customer</sup> has paid to the person. <sup>✓</sup> 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. <sup>✓</sup>

5 (16) PRIVATE CAUSE OF ACTION. If a person makes a ~~consumer credit~~ <sup>pay day</sup> loan to a  
 6 ~~borrower~~ <sup>customer</sup> in violation of this section, the ~~borrower~~ <sup>customer</sup> may bring an action against the  
 7 person for damages of \$250 or the amount of the ~~consumer credit~~ <sup>pay day</sup> loan, whichever is  
 8 greater, plus costs, and, notwithstanding s. 814.04 (1), reasonable attorney fees. <sup>✓</sup>

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 or 138.14, 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, and 138.14, 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

**SENATE BILL 530****SECTION 14**

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

**SENATE BILL 530**

1 credit with the drawee, is liable for all reasonable costs and expenses in connection  
2 with the collection of the amount for which the check or draft was written, except  
3 recovery is not permitted under this section if a person licensed under s. 138.09 or  
4 138.14 or any other person collected or could have collected a charge for that check  
5 or other draft under s. 422.202 (1) (d) or (2m).

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

7 422.201 (3) For licensees under s. 138.09 and or 138.14 or under ss. 218.0101  
8 to 218.0163, the finance charge, calculated according to those sections, may not  
9 exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163,  
10 respectively.

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

12 425.301 (4) The liability of a merchant under chs. 421 to 427 is in lieu of and  
13 not in addition to any liability under the federal consumer credit protection act and  
14 ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation  
15 under chs. 421 to 427 may not be maintained if a final judgment has been rendered  
16 for or against that person with respect to the same violation under the federal  
17 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a  
18 final judgment is entered against any merchant under chs. 421 to 427 and the federal  
19 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the  
20 same violation, the merchant has a cause of action for appropriate relief to the extent  
21 necessary to avoid double liability.

22 **SECTION 20. Effective date.**

23 (1) This act takes effect on the first day of the ~~12~~<sup>7</sup>th month beginning after  
24 publication.✓

25 (END)

D-note

(INSERT 27-21)

1

**INSERT 2A:**

a transaction between an individual with an account at a financial establishment and another person in which the person agrees to either: 1) accept from the individual one or more checks, hold the checks for a period of time before negotiating them, and, before negotiating the checks, loan the individual an agreed amount for a term of 90 days or less; or 2) accept the individual's authorization to initiate one or more electronic fund transfers (EFTs) from the individual's account, wait for a period of time before initiating the EFTs, and, before initiating the EFTs, loan the individual an agreed amount for a term of 90 days or less. The foregoing definitions apply regardless of whether the person making the loan is physically located in this state.

2

**INSERT 2B:**

Also, the substitute amendment prohibits a licensee from imposing any penalty on a customer arising from the customer's prepayment of or default or late payment on a payday loan, except for the dishonored check or denied ETF fee described below.

3

**INSERT 2C:**

4

of more than 40 percent of the customer's gross monthly income.

5

**INSERT 2D:**

The substitute amendment requires the division to specify the manner for assigning customer identification numbers, which may not be based on a customer's social security number. The substitute amendment also prohibits a licensee from

6

**INSERT 3A:**

7

or denial of an authorized ETF.

8

**INSERT 3B:**

In addition, if a customer fails to repay a payday loan in full at the end of the loan term, the licensee must offer the customer the opportunity to repay the outstanding balance in four equal installments with due dates coinciding with the customer's pay period schedule. However, if a licensee makes such an offer to a customer, then, for 12 months following the offer, no licensee, including the licensee making the offer, is required to make another offer to the customer. As noted above, a licensee may not impose any penalty on a customer for late payment, including repayment made pursuant to such an offer.

9

**INSERT 3C:**

In addition, the substitute amendment "grandfathers" a payday lender doing business at a location on the effective date of the substitute amendment by allowing

such

the payday lender to continue to do business at that location, even if the location does not comply with the substitute amendment's requirements.

1

**INSERT 3D:**

The substitute amendment also requires the applicant to acknowledge the applicant is subject to the debt collection requirements of the Wisconsin Consumer Act with respect to payday loans.

2

**INSERT 4A:**

9. The substitute amendment allows a customer to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to the licensee by the close of business on the next business day after the payday loan is made.

3

**INSERT 4B:**

<sup>e 11.</sup>  
(12.) The substitute amendment prohibits a licensee or third-party provider from selling any information regarding a customer or a payday loan made to a customer.

<sup>e 12.</sup>  
(13.) The substitute amendment prohibits earnings garnishment actions to recover amounts owed on a payday loan.

4

**INSERT 5-13:**

4. If a payday lender that is doing business on the effective date of this subdivision ... [LRB inserts date] from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

9

**INSERT 6-7:**

5. If a payday lender that is doing business on the effective date of this subdivision ... [LRB inserts date] from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

14

**INSERT 8-20:**

(bm) "Customer" means an individual who enters into a payday loan with a licensee.

17

**INSERT 9-5:**

1 (g) "Financial establishment" means any organization that is authorized to do  
2 business under state or federal law and that holds a demand deposit, savings deposit,  
3 or other asset account belonging to an individual.✓

4 **INSERT 9-10:**

5 (k) "Payday loan" means any of the following:

6 1. A transaction between an individual with an account at a financial  
7 establishment and another person, including a person who is not physically located  
8 in this state, in which the person agrees to accept from the individual one or more  
9 checks, to hold the check or checks for a period of time before negotiating or  
10 presenting the check or checks for payment, and to loan to the individual, for a term  
11 of 90 days or less, before negotiating or presenting the check or checks for payment,  
12 an amount that is agreed to by the individual.✓

13 2. A transaction between an individual with an account at a financial  
14 establishment and another person, including a person who is not physically located  
15 in this state, in which the person agrees to accept the individual's authorization to  
16 initiate one or more electronic fund transfers from the account, to wait a period of  
17 time before initiating the electronic fund transfer or transfers, and to loan to the  
18 individual, for a term of 90 days or less, before initiating the electronic fund transfer  
19 or transfers, an amount that is agreed to by the individual.✓

20 **INSERT 10-2:**

21 c. A statement signed by or on behalf of the applicant ✓ that acknowledges that  
22 the applicant is subject to the debt collection requirements under ch. 427 ✓ with respect  
23 to payday loans.✓

24 **INSERT 16-16:**

1 (am) *Penalties*. Except as provided in par. (b) 2., no licensee may impose any  
2 penalty on a customer arising from the customer's prepayment of or default or late  
3 payment on a payday loan, including any payment under sub. (11g) (a).

4 **INSERT 16-22:**

5 dishonor of a customer's check or denial of the licensee's instruction to execute an  
6 electronic fund transfer authorized by the customer

7 **INSERT 17-5:**

8 **(11g) REPAYMENT AFTER TERM OF LOAN.** (a) Except as provided in par. (b), if a  
9 customer fails to repay a payday loan in full at the end of the loan term, the licensee  
10 that made the loan shall offer the customer the opportunity to repay the outstanding  
11 balance of the loan in four<sup>e 4</sup> equal installments with due dates coinciding with the  
12 customer's pay period schedule.

13 (b) If a licensee offers a customer the opportunity to make repayment under par.  
14 (a), then, during the 12-month period following the offer, no licensee, including the  
15 licensee making the offer, is required to offer the customer another opportunity to  
16 repay a payday loan under par. (a).

17 **(11r) RESCISSION.** A customer may rescind a payday loan, before the close of  
18 business on the next day of business after the loan is made, by returning to the  
19 licensee the proceeds of the payday loan. The licensee may not charge the customer  
20 any fee for rescinding the payday loan as provided in this subsection.

21 **INSERT 17-17:**

22 of more than 40 percent of the customer's gross monthly income

23 **INSERT 18-7:**

24 is dishonored, or an instruction to execute an electronic funds transfer authorized as  
25 the result of a payday loan is denied,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

**INSERT 18-15:**

All payday loans shall be governed by ch. 427.✓

**INSERT 20-11:**

A customer's unique identification number may not be based on the customer's social security number.✓

**INSERT 24-20:**

**(14m)** CUSTOMER INFORMATION. No licensee or person with whom the division contracts for operation of the database under sub. (14) (b) ✓ may sell to another person any information regarding a customer or a payday loan made to a customer.✓

**INSERT 27-21:**

**SECTION 1.** 812.35 (1a) of the statutes is created to read:

812.35 **(1a)** No earnings garnishment action may be brought to recover the amount owed by a debtor for the payment of a payday loan, as defined in s. 138.14 (1) (k).✓

**SECTION 2. Initial applicability.**

(1) The treatment of section 812.35 (1a) of the statutes first applies to payday loans, as defined in section 138.14 (1) (k) ✓ of the statutes, as created by this act, made on the effective date of this subsection. ✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0352/1dn

MDK:.):...  
nwn

Date

Sen. Sullivan<sup>✓</sup>:

This substitute amendment is identical to SB-530, except for the following:

1. The term "payday loan," as defined in ASA1 to AB-447, replaces "small consumer loan." Because the definition of "payday loan" refers to "financial establishment," the substitute also includes the definition of "financial establishment" from ASA1 to AB-447. In addition, because the definition refers to electronic funds transfers, I revised s. 138.14 (10) (b) 2. and (12) (f) to refer to dishonored checks and denied electronic funds transfers.
2. In reviewing the bill, I realized that both "customer" and "borrower" are used to refer to payday loan borrowers. To be consistent with ASA2 to AB-447, this substitute amendment uses the term customer, instead of borrower. See the new definition of "customer" in s. 138.14 (1) (bm).
3. Sections 59.69 (4h) (c) 4. and 62.23 (7) (hi) 5. allow payday lenders doing business before the effective date of the substitute amendment to continue to do business at their locations, even if a local ordinance adopted pursuant to the substitute amendment prohibits operation of the business at the location.
4. Section 138.14 (10) (am) is created, which is based on the prohibition on prepayment, default, and late penalty fees in ASA1 to AB-447.
5. Section 138.14 (11g) is created, which is based on the repayment requirements of ASA1 to AB-447.
6. Section 138.14 (11r) is created, which is based on the rescission requirements of ASA1 to AB-447.
7. Section 138.14 (12) (b) is revised to prohibit a borrower from <sup>g percent</sup> having an outstanding aggregate liability in principal to all licensees of more than 40% of the borrower's gross monthly income. Note that this limitation applies to principal, and not interest.
8. Section 138.14 (13) (a) is revised to clarify that ch. 427 (debt collection requirements under the Wisconsin Consumer Act) applies to payday loans without exception. In a related change, section 138.14 (4) (a) 1. c. is created, which requires an applicant for a payday lender license to acknowledge that the lender is subject to ch. 427. I had also

suggested to you that the lender could acknowledge that the federal Fair Debt Collection Practices Act (FDCPA) applies to the lender. However, after doing some research, I realized that the FDCPA generally applies to a person in the business of collecting debts, and has an exception for a creditor that collects its own debt. See 15 USC 1692a (4) and (6) (a). Therefore, the FDCPA does not apply to a payday lender that takes its own debt collection activity. However, ch. 427 does apply to a payday lender, as ch. 427 does not have a similar exception for creditors.

9. Section 138.14 (14) (c) 1. and (m) are revised to refer to a customer's identification number, rather than the customer's social security number, to require identification numbers to be assigned in a manner specified by DFI's division of banking, and to prohibit basing an identification number on a customer's social security number. I also deleted requirements that appeared to be relevant only to social security numbers (e.g., a requirement to report invalid numbers). In addition, I revised s. 138.14 (12) (c) to prohibit payday loans to a borrower with a customer identification number that the payday lender determines, knows, or should have known, is invalid.

10. Section 138.14 (14m) is created, which is based on the prohibition on selling borrower information in ASA1 to AB-447.

11. The substitute amendment creates s. 812.35 (1a) to prohibit wage garnishment for payday loans.

12. The delayed effective date is changed to the first day of the 7th month after publication, which is approximately 6 months.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0352/1dn  
MDK:nwn:ph

March 26, 2010

Sen. Sullivan:

This substitute amendment is identical to SB-530, except for the following:

1. The term "payday loan," as defined in ASA1 to AB-447, replaces "small consumer loan." Because the definition of "payday loan" refers to "financial establishment," the substitute also includes the definition of "financial establishment" from ASA1 to AB-447. In addition, because the definition refers to electronic funds transfers, I revised s. 138.14 (10) (b) 2. and (12) (f) to refer to dishonored checks and denied electronic funds transfers.
2. In reviewing the bill, I realized that both "customer" and "borrower" are used to refer payday loan borrowers. To be consistent with ASA2 to AB-447, this substitute amendment uses the term customer, instead of borrower. See the new definition of "customer" in s. 138.14 (1) (bm).
3. Sections 59.69 (4h) (c) 4. and 62.23 (7) (hi) 5. allow payday lenders doing business before the effective date of the substitute amendment to continue to do business at their locations, even if a local ordinance adopted pursuant to the substitute amendment prohibits operation of the business at the location.
4. Section 138.14 (10) (am) is created, which is based on the prohibition on prepayment, default, and late penalty fees in ASA1 to AB-447.
5. Section 138.14 (11g) is created, which is based on the repayment requirements of ASA1 to AB-447.
6. Section 138.14 (11r) is created, which is based on the rescission requirements of ASA1 to AB-447.
7. Section 138.14 (12) (b) is revised to prohibit a borrower from having an outstanding aggregate liability in principal to all licensees of more than 40 percent of the borrower's gross monthly income. Note that this limitation applies to principal, and not interest.
8. Section 138.14 (13) (a) is revised to clarify that ch. 427 (debt collection requirements under the Wisconsin Consumer Act) applies to payday loans without exception. In a related change, section 138.14 (4) (a) 1. c. is created, which requires an applicant for a payday lender license to acknowledge that the lender is subject to ch. 427. I had also

suggested to you that the lender could acknowledge that the federal Fair Debt Collection Practices Act (FDCPA) applies to the lender. However, after doing some research, I realized that the FDCPA generally applies to a person in the business of collecting debts, and has an exception for a creditor that collects its own debt. See 15 USC 1692a (4) and (6) (a). Therefore, the FDCPA does not apply to a payday lender that takes its own debt collection activity. However, ch. 427 does apply to a payday lender, as ch. 427 does not have a similar exception for creditors.

9. Section 138.14 (14) (c) 1. and (m) are revised to refer to a customer's identification number, rather than the customer's social security number, to require identification numbers to be assigned in a manner specified by DFI's division of banking, and to prohibit basing an identification number on a customer's social security number. I also deleted requirements that appeared to be relevant only to social security numbers (e.g., a requirement to report invalid numbers). In addition, I revised s. 138.14 (12) (c) to prohibit payday loans to a borrower with a customer identification number that the payday lender determines, knows, or should have known, is invalid.

10. Section 138.14 (14m) is created, which is based on the prohibition on selling borrower information in ASA1 to AB-447.

11. The substitute amendment creates s. 812.35 (1a) to prohibit wage garnishment for payday loans.

12. The delayed effective date is changed to the first day of the 7th month after publication, which is approximately 6 months.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

**Kunkel, Mark**

**From:** Hudzinski, Nicole  
**Sent:** Sunday, March 28, 2010 4:35 PM  
**To:** Kunkel, Mark; Shovers, Marc  
**Cc:** Hudzinski, Nicole  
**Subject:** Payday sub- LRB 0352

must be a restriction

Hi Mark and Marc,

Thank you very much for your work on the sub amendment. I reviewed it over the weekend and it looks very good. I have a few questions, and potentially a few changes. How do your schedules look on Monday?

To expedite our conversation, my questions are:

**Zoning**

- What if the ordinance in effect on the effective date is weaker than the rules being created in this statute? Does the city's (weaker) ordinance still apply? Or do they have to at least come up to the standards created in this legislation? (page 6, lines 3-5 and page 7, lines 1-3) *CNO*
- I understand the grandfathering in language that was added, but I want to double check that the language is only exempting the current locations from the zoning provisions in the legislation, and that it's not exemption them from the entire legislation. *only applies to zoning*

**Non-Zoning**

- We added the prohibition on prepayment, default, and late penalty fees in ASA1 to AB 447. Please help explain to me this section. *18-15 → 18-17*
- Under this sub amendment, what interest would the lender be able to charge if the borrower elects to repay the balance in 4 equal installments? Also, what would happen if the borrower misses a payment? *2.75% violated agreement enforceable in court*
- Under the sub, would the lender be able to charge a fee to the borrower for selecting the repayment plan (4 equal installments)? *NO see 18-17*
- Under the sub, would a payday lender be required to get two licenses (the license required under current law and the license we're creating in this legislation)? *NO*
- Under the sub, would a lender be able to require a balloon payment? *see 18-17*
- Under the sub, using the Assembly definition for "payday loan", would there be a loophole for auto title companies? *Yes not prohibited*

There are also a few sections in the sub where I don't understand their purpose. They were all included in the original draft, but I still would like to briefly discuss their purpose.

Please let me know how your schedules look on Monday. Marc, I think the zoning questions could easily be discussed over email or phone. Mark, I think the other parts will take a little longer. I will make myself available whenever is convenient for you.

Thanks,  
Nicole

check Assembly sub  
- no change necessary per subsequent email

Approval sent to legis (statewide) (\$5,000)  
# loans, loan amounts, interest paid, follow-up, installment, default

*IN-SENT - remains in effect, but if less restrictive, then state law sub applies*

40% inclusive

principal & interest

max is 1500

- add except -  
to 18 -

opportunities

- 4/8 hrs after

Not overall pick up -

---

WED -  
NOON - EXEC

(before NOON  
TUES?)

## Kunkel, Mark

---

**From:** Hudzinski, Nicole  
**Sent:** Monday, March 29, 2010 2:55 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Balloon payments

Mark, thank you for looking into this. Based on this information, I do not think we need to include a prohibition on balloon payments. Thank you.

-----Original Message-----

From: Kunkel, Mark  
Sent: Monday, March 29, 2010 2:44 PM  
To: Hudzinski, Nicole  
Subject: Balloon payments

ASA1 to AB 447 prohibits "balloon payments" for all licensed lenders, including payday lenders. It does that by creating 138.09 (8) (h), which requires a licensed lender, including a payday lender, to "[m]ake no loan which requires a schedule of payments by a borrower under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially."

I think the concern was that payday lenders might switch business models and adopt an installment payment method in response to the Assembly bill, and if they did, the above would prohibit balloon payments. I'm not entirely sure why there was a worry over switching business models. Note that the Assembly version, and your sub. amendment, do not contain any "loopholes" that would allow a payday lender to avoid regulation by switching to installment repayments. This may have occurred in other states, which define "payday loan" as not including loans paid in installments, but neither the Assembly or Senate version define payday loans that way.

Note that the language in ASA1 to AB 447 that is quoted above applies to any licensed lender, not just payday lenders.

Do you want to do something similar in your sub. amendment? If you want to apply the above to both licensed lenders and payday lenders, I would create language in both ss. 138.09 and 138.14. (The Assembly version creates the language only in s. 138.09 because it takes a slightly different approach to licensing. Under the Assembly version, all payday lenders continue to be licensed under 138.09 but must comply with new payday lending requirements. Your Senate version eliminates payday lenders from 138.09 and creates a new license in 138.14.)

As we discussed, prohibiting balloon payments for payday lenders doesn't make much sense, if payday lenders continue with the one-payment business model. If they were to switch to installment loans, then it might make sense to prohibit balloon payments.

-----Original Message-----

From: Hudzinski, Nicole  
Sent: Monday, March 29, 2010 10:49 AM  
To: Kunkel, Mark  
Subject: RE: Payday sub- LRB 0352

Hey Mark, just wanted to check in. Are you going to be able to call soon? I can also come over to your office if that works better.

Nicole

-----Original Message-----

From: Kunkel, Mark  
Sent: Monday, March 29, 2010 9:03 AM  
To: Hudzinski, Nicole  
Subject: RE: Payday sub- LRB 0352

I will be out of the office until about 10 am today. I'll call you when I get to the office.

Mark

-----Original Message-----

From: Hudzinski, Nicole  
Sent: Sun 3/28/2010 4:35 PM  
To: Kunkel, Mark; Shovers, Marc  
Cc: Hudzinski, Nicole  
Subject: Payday sub- LRB 0352

Hi Mark and Marc,

Thank you very much for your work on the sub amendment. I reviewed it over the weekend and it looks very good. I have a few questions, and potentially a few changes. How do your schedules look on Monday?

To expedite our conversation, my questions are:

Zoning

. What if the ordinance in effect on the effective date is weaker than the rules being created in this statute? Does the city's (weaker) ordinance still apply? Or do they have to at least come up to the standards created in this legislation? (page 6, lines 3-5 and page 7, lines 1-3)

. I understand the grandfathering in language that was added, but I want to double check that the language is only exempting the current locations from the zoning provisions in the legislation, and that it's not exemption them from the entire legislation.

Non-Zoning

. We added the prohibition on prepayment, default, and late penalty fees in ASA1 to AB 447. Please help explain to me this section.

. Under this sub amendment, what interest would the lender be able to charge if the borrower elects to repay the balance in 4 equal installments? Also, what would happen if the borrower misses a payment?

. Under the sub, would the lender be able to charge a fee to the borrower for selecting the repayment plan (4 equal installments)?

. Under the sub, would a payday lender be required to get two licenses (the license required under current law and the license we're creating in this legislation)?

. Under the sub, would a lender be able to require a balloon payment?

. Under the sub, using the Assembly definition for "payday loan", would there be a loophole for auto title companies?

There are also a few sections in the sub where I don't understand their purpose. They were all included in the original draft, but I still would like to briefly discuss their purpose.

Please let me know how your schedules look on Monday. Marc, I think the zoning questions could easily be discussed over email or phone. Mark, I think the other parts will take a little longer. I will make myself available whenever is convenient for you.

Thanks,  
Nicole