



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 447

**Assembly Substitute Amendment 1
and
Assembly Amendment 2**

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This Memo provides a description of Assembly Substitute Amendment 1 (“Substitute Amendment”) and Assembly Amendment 2 to the Substitute Amendment to 2009 Assembly Bill 447, relating to regulating payday loan providers, requiring the reporting of certain loans to credit reporting agencies, prohibiting balloon payments for certain loans, prohibiting certain motor vehicle title loans, providing an exemption from emergency rule procedures, granting rule-making authority, making an appropriation, and providing a penalty.

Current law provides that a lender, other than 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% per year. This type of lender is generally referred to as a “licensed lender.” Current law also contains numerous provisions regulating consumer loans, which are generally loans of \$25,000 or less made to individuals for personal, family, or household purposes.

Assembly Substitute Amendment 1

The Substitute Amendment prohibits a licensed lender from making or offering a motor vehicle title loan. The Substitute Amendment defines the term “motor vehicle title loan” and limits the amount and term of such a loan.

The Substitute Amendment also creates requirements applicable to payday loan transactions. The Substitute Amendment defines the term “payday loan provider” and also the term “payday loan.” These definitions in the Substitute Amendment apply regardless of whether a payday loan provider is physically located in Wisconsin.

The Substitute Amendment includes the following restrictions on payday loans:

1. A payday loan provider is prohibited from making a payday loan that exceeds, in principal amount and interest, \$600 or 35% of the applicant’s gross biweekly income, whichever is

less. The Substitute Amendment does not otherwise affect the amount of interest that a payday loan provider charges, as long as the provider complies with the applicable prohibition.

2. A payday loan provider is prohibited from making a payday loan to an applicant who is liable for repayment on a payday loan by another payday loan provider. A provider is also prohibited from making a payday loan if less than 24 hours have elapsed since the applicant repaid another payday loan in full or, if subject to certain conditions, less than one pay period of an applicant has elapsed since the applicant repaid the loan in full.
3. A payday loan provider is prohibited from rolling over a payday loan that is made to an individual. The Substitute Amendment defines the term “roll over” as the refinancing, renewal, amendment, or extension of a payday loan beyond its original maturity date, including the consolidation of payday loans in any transaction in which a payday loan is repaid with the proceeds of another payday loan made by the same payday loan provider.
4. A payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer’s prepayment, default, or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer’s payment method is dishonored for insufficient funds.
5. A payday loan provider is permitted to present the customer’s check for payment, or initiate an electronic fund transfer from the customer’s account, only once under the legislation.
6. A customer is provided with a right to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to the payday loan provider by the close of business on the next business day after the payday loan is made.
7. If a customer fails to repay a payday loan in full at the end of the loan term, the payday loan provider 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. The Substitute Amendment provides, however, that if a payday loan provider makes such an offer to a customer, then, for 12 months following the offer, no payday loan provider, including the payday loan provider making the offer, is required to make another offer to the customer. Further, the Substitute Amendment stipulates that a payday loan provider may not impose any penalty on a customer who repays a loan in such a manner.

The Substitute Amendment requires the Division to develop and administer a database to provide payday loan providers with real-time access through an Internet connection, to all payday loan information necessary for payday loan providers. This database is intended to allow providers to comply with the requirements of the Substitute Amendment relating to lending practices. The Substitute Amendment permits the Division to contract for the development or administration of the database. The database is required to assign a unique identification number for each customer that must be used each time the customer enters into a payday loan transaction and specifies the numbers may not be based on Social Security numbers.

Under the Substitute Amendment, each time that a payday loan provider enters into a payday loan transaction with a customer, the payday loan provider is required to submit certain information

about the customer and the loan to the database. The payday loan provider must also submit information when a repayment offer, as described above, is made or a payday loan is paid in full. The Division is directed to impose a fee of no more than \$1 each time a payday loan provider submits data to the database. DFI must use the fees to pay for the development and administration of the database and to promote financial literacy. The Substitute Amendment permits a payday loan provider to rely on the information contained in the database as accurate, and provides that a payday loan provider is not subject to any penalty or liability for relying on inaccurate information contained in the database. Information in the database, under the Substitute Amendment, is not subject to inspection or copying under the Open Records Law.

In addition, the Substitute Amendment also does the following:

1. Requires a payday loan provider, at least 15 minutes before entering into a payday loan, to disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate, to be paid by the applicant assuming the loan is paid in full at the end of the loan term and to make other disclosures regarding the requirements of the Substitute Amendment.
2. Requires any licensed lender, upon making the loan for a term of more than 90 days, to report the loan to a credit reporting agency, which is referred to as a consumer reporting agency under federal law.
3. Prohibits a licensed lender from requiring a schedule of payments by a borrower which includes either a payment that is not equal or substantially equal to all other payments or provides that the intervals between any consecutive payments differ substantially. These are typically referred to as “balloon payments.”
4. Requires the Division to develop written materials about payday loans and the payday loan industry.
5. Requires the payday loan providers to make annual reports about their business to the Division.
6. Prohibits a payday loan provider or database contractor from selling to any person information about customers and payday loans made to customers.
7. Allows a customer to bring an action against a payday loan provider who makes a payday loan that violates the terms of the Substitute Amendment. In such an action, the customer is entitled to obtain an amount equal to twice the interest charged for the loan, or the actual damages, whichever is greater, as well as costs and reasonable attorney fees.
8. Provides that whoever violates the Substitute Amendment is subject to a criminal fine of not less than \$500 nor more than \$1,000, imprisonment for not more than six months, or both.

The Substitute Amendment also authorizes the Division to submit administrative rules relating to the implementation of the Substitute Amendment and to use the emergency rule-making authority in adopting such rules.

The Substitute Amendment provides that the Act will take effect on the first day of the sixth month beginning after publication, except for the provisions relating to administrative rule-making which will take effect on the day following publication of the Act.

Assembly Amendment 2

Assembly Amendment 2 makes a series of changes in the Substitute Amendment. Included in the changes are the following:

1. Assembly Amendment 2 changes the title of the appropriation provision from “Financial Literacy” to “Payday Loan Database and Financial Literacy” to more accurately reflect the appropriation provisions.
2. The Substitute Amendment requires a payday loan provider, at least 15 minutes before entering in to a payday loan, to make a series of disclosures to the applicant regarding the total amount of fees and costs and the annual percentage rate to be paid by the applicant. Assembly Amendment 2 *deletes* the language “not less than 15 minutes before” and substitutes “before” so that the provision now would require a payday loan provider to make the required disclosures before entering into a payday loan without a specific time requirement.
3. The Substitute Amendment provides that no payday loan provider may make a payday loan that exceeds, in *principal amount and interest*, \$600 or 35% of the applicant’s gross bi-weekly income, whichever is less. Assembly Amendment 2 changes this provision to apply to not only the principal amount and interest but also to *all other fees and charges*.
4. The Substitute Amendment prohibits a licensee from making a motor vehicle title loan. The Substitute Amendment defines “motor vehicle title loan” to mean a loan of \$25,000 or less to a borrower is, or is to be secured by an interest, other than a purchase money security interest, in the borrower’s motor vehicle, *and that has an original term of not more than three months*. Assembly Amendment 2 *deletes* the three-month term language highlighted above from the bill.
5. The Substitute Amendment provides the customer with the right to rescind the payday loan, without incurring any fee, by returning the payday loan proceeds to the payday loan provider by the close of business on the next business day after the payday loan is made. Assembly Amendment 2 modifies this provision to further provide that if the place of business for the loan is made is open 24 hours, then the rescission must occur “*before 5:00 p.m.*” on the next day of business after the loan is made.
6. The information provided by payday loan provider to the database operated by the Division of Banking (Division) is modified by Assembly Amendment 2 to require the reporting of principal amount and interest as well *and all other fees and charges*. The Substitute Amendment requires only the disclosure of the principal amount and interest for the payday loan.

7. Assembly Amendment 2 also modifies the information required to be reported to the database by providing that the Division may not require the submission of, and a payday provider may not submit, *a customer's financial establishment account or routing numbers*.
8. The Substitute Amendment provides that the Division shall by rule impose on a payday loan provider a fee of *no more than \$1* each time the payday loan provider submits data required under the bill. Assembly Amendment 2 modifies this provision by *deleting* the \$1 fee and instead providing that the fee *will be set by rule* by the Division.
9. The Substitute Amendment provides that any payday loan provider or person with whom the Division contracts for development or administration of the database under the bill may not sell any information regarding a customer or payday loan made to a customer. Assembly Amendment 2 also prohibits the provision of any such information except that providing the information does not apply to information that is provided to satisfy the requirements of the law or to enforce the requirements of the law.
10. Under the Substitute Amendment, if a payday loan provider makes a payday loan to a customer that violates the law, the customer may bring an action against the payday loan provider for an amount equal to twice the interest charged for the loan, or the actual damages, including any incidental or consequential damages, sustained by the customer by reason of the violation, whichever is greater, and may recover the costs of the action, including any reasonable attorneys fees. Assembly Amendment 2 allows the damages to include twice the amount of interest *and all other fees and charges*.

Assembly Amendment 2 makes no other substantive changes in the Substitute Amendment.

Legislative History

Assembly Bill 447 was introduced on September 25, 2009, by Representative Jorgensen and others; and cosponsored by Senator Lehman. A public hearing was held on the bill by the Assembly Committee on Financial Institutions on October 7, 2009. Assembly Substitute Amendment 1 was offered by Representatives Fields, Hintz, Jorgensen, Seidel, Smith, and Zepnick on February 9, 2010. In executive session on February 10, 2010, the Assembly Committee on Financial Institutions *adopted* Assembly Substitute Amendment 1 on a vote of Ayes, 6; Noes, 5; and recommended passage of the bill, as amended, on the same vote of Ayes, 6; Noes, 5.

Assembly Amendment 2 was offered on February 16, 2010 by Representative Fields and others; and adopted by the Assembly on a voice vote. Assembly Substitute Amendment 1 was adopted, as amended, and passed on a vote of Ayes, 59; Noes, 38; and messaged to the Senate.

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