



2011 ASSEMBLY BILL 150

May 25, 2011 - Introduced by Representatives WYNN, NASS, HINTZ, BERNIER, SPANBAUER, PETRYK, RIVARD, BIES, PETROWSKI, PASCH, HEBL, MOLEPSKE JR and KNILANS, cosponsored by Senators GROTHMAN, TAYLOR, WANGGAARD, ELLIS, T. CULLEN, HANSEN and CARPENTER. Referred to Committee on Financial Institutions.

1 **AN ACT** *to renumber and amend* 138.14 (10) (a) 1.; *to amend* 138.09 (1m) (a),
2 138.09 (7) (bp), 138.14 (13) (d) and 422.201 (3); and *to create* 138.09 (7) (bs) and
3 138.14 (10) (a) 1g. of the statutes; **relating to:** interest rates on payday loans
4 and loans by licensed lenders.

Analysis by the Legislative Reference Bureau

Under current law, as created in 2009 Wisconsin Act 405, a person must be licensed by the Division of Banking (division) in the Department of Financial Institutions to originate or service a payday loan involving a Wisconsin resident. Current law does not impose a limit on the interest that a payday loan licensee may charge, before the maturity date, on a payday loan. However, current law prohibits a licensee from charging interest after the maturity date of a payday loan when the loan is not paid in full by this maturity date. A payday loan under which interest is charged after the maturity date is not enforceable.

This bill limits the interest rate that a payday loan licensee may charge, before the maturity date, on a payday loan to an annual percentage rate of 36 percent. A payday loan on which a greater rate of interest is charged is not enforceable.

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union (financial institution) generally must obtain a license from the division to assess a finance charge for a consumer loan that is greater than 18 percent. This type of lender is generally referred to as a "licensed lender." A "consumer loan" is a loan made to an individual for personal, family, or household purposes that is payable in installments or for which a finance charge may be

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imposed and includes most transactions under an open-end credit plan such as most credit card debt. A “finance charge” is the sum of all charges payable by the customer as an incident to or condition of the extension of credit, including interest and other costs and fees to the extent not specifically designated by statute as permissible charges of the creditor. Consumer loans are largely regulated under the Wisconsin Consumer Act. With certain limited exceptions, current law provides no maximum interest rate or finance charge for a consumer loan, including those made by a licensed lender.

This bill expands the class of creditors that are considered “licensed lenders” and are subject to the licensing requirements as such. Under the bill, a lender other than a financial institution that makes consumer loans exceeding \$5,000 in principal amount must also obtain a license from the division and is a licensed lender.

The bill also prohibits a licensed lender from charging an annual percentage rate of interest greater than 36 percent. However, this maximum interest rate does not apply to an open-end credit plan, including most credit card debt, or to a consumer loan secured by a first lien security interest in a mobile home or manufactured home. The bill also does not affect the maximum interest rate under current law of 12 percent per year for consumer loans after their final scheduled maturity date. If a licensed lender violates the 36 percent interest limitation, the loan is not enforceable.

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.** 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, charge
3 the interest authorized by sub. (7), ~~or~~ assess a finance charge on a consumer loan in
4 excess of 18% per year, or make a consumer loan exceeding \$5,000 in principal
5 amount, that person shall first obtain a license from the division. Applications for
6 a license shall be in writing and upon forms provided for this purpose by the division.
7 An applicant at the time of making an application shall pay to the division a
8 nonrefundable \$300 fee for investigating the application and a \$500 annual license
9 fee for the period terminating on the last day of the current calendar year. If the cost
10 of the investigation exceeds \$300, the applicant shall upon demand of the division

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1 pay to the division the amount by which the cost of the investigation exceeds the
2 nonrefundable fee.

3 **SECTION 2.** 138.09 (7) (bp) of the statutes is amended to read:

4 138.09 (7) (bp) A loan, whether precomputed or based upon the actuarial
5 method, made after October 31, 1984, and prior to the effective date of this paragraph
6 ... [LRB inserts date], is not subject to any maximum interest rate limit.

7 **SECTION 3.** 138.09 (7) (bs) of the statutes is created to read:

8 138.09 (7) (bs) 1. For purposes of this paragraph, “annual percentage rate”
9 shall be determined consistent with the provisions of section 107 of the federal Truth
10 in Lending Act, 15 USC 1606, and federal Regulation Z adopted under that act, 12
11 CFR 226.

12 2. Notwithstanding sub. (9) (a) and ss. 138.05 (8) (c) and 422.201 (2) (bn) and
13 (9), and except as provided in ss. 422.201 (10s) and (11), 422.202 (2m) (b), and 422.203
14 (4) (c), a licensee may not charge, contract for, or receive an annual percentage rate
15 of interest for a loan or forbearance made on or after the effective date of this
16 subdivision ... [LRB inserts date], that is greater than 36 percent. This subdivision
17 does not apply to an open-end credit plan or any consumer loan described in s.
18 422.201 (12m).

19 **SECTION 4.** 138.14 (10) (a) 1. of the statutes is renumbered 138.14 (10) (a) 1r.
20 and amended to read:

21 138.14 (10) (a) 1r. ~~Except as provided in~~ Subject to subd. 2. and sub. (12) (b),
22 ~~this section imposes no limit on the interest that a licensee may not charge before the~~
23 ~~maturity date of~~ an annual percentage rate of interest greater than 36 percent on a
24 payday loan.

25 **SECTION 5.** 138.14 (10) (a) 1g. of the statutes is created to read:

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1 138.14 (10) (a) 1g. For purposes of this paragraph, “annual percentage rate”
2 shall be determined consistent with the provisions of section 107 of the federal Truth
3 in Lending Act, 15 USC 1606, and federal Regulation Z adopted under that act, 12
4 CFR 226.

5 **SECTION 6.** 138.14 (13) (d) of the statutes is amended to read:

6 138.14 (13) (d) No payday loan, wherever made, for which a greater rate or
7 amount of interest than is allowed under sub. (10) (a) ~~2~~ has been contracted for or
8 received, may be enforced in this state, and every person in any way participating
9 therein in this state shall be subject to this section. If a licensee makes an excessive
10 charge of such interest as the result of an unintentional mistake, but upon demand
11 makes correction of such mistake, the loan shall be enforceable and treated as if no
12 violation occurred at the agreed rate. Nothing in this paragraph shall limit any
13 greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer
14 credit transaction.

15 **SECTION 7.** 422.201 (3) of the statutes is amended to read:

16 422.201 (3) ~~For~~ Notwithstanding sub. (2), for licensees under s. 138.09 or
17 138.14 or under ss. 218.0101 to 218.0163, the finance charge or rate of interest,
18 calculated according to those sections, may not exceed the maximums permitted in
19 ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.

20 **SECTION 8. Nonstatutory provisions.**

21 (1) This act first applies to loans made, refinanced, or consolidated on the
22 effective date of this subsection.

23 **SECTION 9. Effective date.**

