

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB266)

Received: 06/07/2001

Received By: rmarchan

Wanted: Soon

Identical to LRB:

For: Tim Hoven (608) 267-2369

By/Representing: mike

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

ASA (payday loans) to AB-266 (payday loans)

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>
/?	rmarchan 06/07/2001	wjackson 06/07/2001		_____			
/1			jfrantze 06/11/2001	_____	lrb_docadmin 06/11/2001	lrb_docadmin 06/11/2001	

FE Sent For:

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1?	rmarchan	1 WLj 6/7	<i>[Signature]</i> 6/11	<i>[Signature]</i> 6/11			

FE Sent For:

<END>

RJM

**LEGISLATIVE REFERENCE BUREAU**

**BILL REQUEST FORM**

Legal Section, 5<sup>th</sup> Floor, 100 N. Hamilton St.  
(608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.  
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 06 JUNE 01	Legislator or agency requesting this draft: REP. HOVEN
Name/phone number of person submitting request: REP. HOVEN 267-2369	
Persons to contact for questions about this draft (names and phone numbers please): MIKE WELSH 267-2370	
Describe the problem, including any helpful examples. How do you want to solve the problem? PLEASE SEE ATTACHED DOCUMENT FOR <u>AMENDMENT</u> DRAFT INSTRUCTIONS.	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

**Requests are confidential unless stated otherwise.**

May we tell others that we are working on this for you?  YES  NO

If yes, anyone who asks?  YES  NO

Any legislator?  YES  NO  ONLY the following persons:

Do you consider this urgent?  YES  NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?  
 YES  NO If yes, please sign your name here:

## Welsh, Michael

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**From:** Anderson, David  
**Sent:** Tuesday, June 05, 2001 8:05 AM  
**To:** Welsh, Michael  
**Cc:** 'peggy@patrickessie.com'  
**Subject:** Questions and Proposed Changes re: AB 266

Below are the questions and proposed changes to AB 266 that I mentioned I would be sending over to you. I apologize for the delay, but wanted to also discuss then with Peggy Partenfelder of the Wisconsin Deferred Deposit Association, which we did yesterday.

We look forward to our meeting this afternoon at 2:00 pm. In addition to these items, we would like to present to Representative Hoven the preliminary results of a yet-to-be-released review we conducted of the payday lending industry.

### ✓ Change 1 - 138.14(1)(g)

Eliminate "in the ordinary course of business."

Even if a licensed lender only makes payday loans on occasion, they should be required to provide the disclosures. This would also eliminate any disagreement on what "in the ordinary course of business" means.

### \* Change 2 - 138.14(2)(a)3

✓ This currently indicates "That the applicant will be required to pay additional fees if the loan is refinanced rather than paid in full when due." This should be changed to "That the applicant will be required to pay additional interest if the loan is refinanced rather than paid in full when due."

In general terms, a "fee" is a charge for labor or services. When fees are referenced in the consumer act, it is in the context of things like official fees, appraisal fees, or fees for title insurance. Financing the loan additional times will require the debtor to pay additional interest.

Also, it is good to avoid the use of the term "fee," because in some other states payday lenders have argued these transactions are not covered by consumer credit laws because they are merely assessing a service fee for deferring presentation of a personal check.

### Change 3 - 138.14(2)(b)

\* The department has several concerns about this provision. First, we are concerned that eight is too many and people might disregard the comparison, thinking they will never "renew" the loan eight times. By changing the language to say "3 consecutive times," more meaningful information might be provided for the benefit of the borrower.

Second, it appears the comparison is to be based on the actual loan the applicant has applied for, not a hypothetical loan. If this is the case, it might be fair for the debtor to presume the lender will, in fact, renew the loan up to the number of times at the terms that were used to create the example.

Third, is it intended that the comparison be made using the number of loans with the same terms (amount financed, length, APR) or what actually might be charged if those loans are made? Perhaps this needs some clarification. Also, is there any obligation on the part of the lender to offer the same terms as disclosed in the example?

Finally, is the "amount of the payday loan" the amount financed or the total of payments? This should perhaps be clarified.

### Change 4 - 138.14(2)(d)

✓ This currently indicates "Educational materials provided by the department under sub. (4)." Change this to "The educational materials required by the rules promulgated by the department."

Instead of providing the educational materials to the payday lenders, we would like to set forth in the rules the form and content of the materials that the payday lender has to give to the applicant.

\* **Change 5 - 138.14(4)(a)**

Change this to "The department shall promulgate rules for the administration of this section. The rules shall include a method for calculating the amounts required to be disclosed under sub. (2)(b) and shall set forth the form and content of the educational materials required by sub. (2)(d). The educational materials must inform an applicant of the potential costs of entering into a payday loan and of other options for borrowing funds that may be available to the applicant."

This change would allow the department to control the content and format of the educational materials without actually producing them. This would reduce the cost to the department and the lender, and would also reduce the previously published fiscal note.

\* **Change 6 - 138.14(4)(b)**

Eliminate

The lender will be required to produce their own educational materials.

\* **Change 7 - Create Section 138.09(8)(f)**

Create section 138.09(8)(f) to read "When making a payday loan, as defined in s. 138.14(1)(f), comply with the provisions of s. 138.14."

Since all of our enforcement and examination authority for payday lenders is in 138.09, we would like this addition to make it clear we can examine for and enforce 138.14.

Please call me at 267-1719 or our Policy Advisor Lisa Roys at 266-0450 if you have any questions. Thanks!

Dave Anderson  
Executive Assistant  
Department of Financial Institutions

PLEASE FEEL FREE TO CALL MYSELF OR DAVE ANDERSON  
AT DPI IF YOU HAVE ANY QUESTIONS ON THE AMENDMENT DRAFT.

- MICHAEL WELSH

5000

2001-2002 LEGISLATURE

50139/1  
LRB-269671  
RJM:wjsh

ASA AB 266

PRINT  
NOTE

**2001 ASSEMBLY BILL 266**

March 30, 2001 - Introduced by Representatives HOVEN, ALBERS, BERCEALL, BOYLE, GUNDERSON, HAHN, KESTELL, KRAWCZYK, LADWIG, LEIBHAM, MUSSEY, OTT, OWENS, PETROWSKI, POWERS, SERATTI, STONE, TOWNSEND, VRAKAS and WASSERMAN, cosponsored by Senators GEORGE, BAUMGART, DARLING, ROESSLER and ROSENZWEIG. Referred to Committee on Financial Institutions.

REGEN

1 AN ACT to create 138.14 of the statutes; relating to: payday loan providers and  
2 granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

Currently, state and federal law contain numerous provisions regulating consumer loans (generally, loans of \$25,000 or less made to individuals for personal, family, or household purposes). For example, under current law, the creditor must provide the borrower under the consumer loan with certain information before the loan is consummated. Among other things, the creditor must disclose the total amount financed in the transaction, the amount of the finance charge assessed in the transaction, and the cost of the credit calculated as a yearly rate. The creditor must also provide the borrower with a notice that encourages the borrower to examine the loan documentation and that advises the borrower of certain rights.

This bill creates additional notice requirements that specifically apply to payday loans. In a typical payday loan transaction, the creditor 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. Under this bill, before disbursing funds pursuant to a payday loan, the payday loan provider must provide the borrower with a notice that compares the cost of the payday loan if it is paid in full when due with the cost of the payday loan if it is paid in full after being refinanced eight times. Furthermore, the payday loan provider must notify the borrower that a payday loan is not intended to meet long-term financial needs, that a payday loan should be used only in a financial emergency, that the borrower will be required to pay additional fees if the payday

**ASSEMBLY BILL 266**

loan is not paid in full when due, and that refinancing the payday loan, or entering into consecutive payday loans to pay an existing payday loan, may cause financial hardship.

This bill also requires the payday loan provider to notify the borrower that the borrower may cancel the payday loan at any time before receiving the loan funds. In addition, the payday loan provider must provide the borrower with materials, obtained from the department of financial institutions, that inform the borrower of the potential costs of entering into a payday loan and of other options for borrowing funds that may be available.

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:*

INSERT 2-1 →

1 SECTION 1. 138.14<sup>√</sup> of the statutes is created to read:

2 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

3 (a) "Applicant" means an individual who obtains or seeks to obtain a payday  
4 loan.

5 (b) "Check" has the meaning given in s. 403.104 (6).<sup>√</sup>

6 (c) "Department" means the department of financial institutions.

7 (d) "Financial establishment" means any organization that is authorized to do  
8 business under state or federal law and that holds a demand deposit, savings deposit,  
9 or other asset account belonging to an individual.

10 (e) "Organization" has the meaning given in s. 19.42 (11).<sup>√</sup>

11 (f) "Payday loan" means any of the following:

12 1. A transaction between an individual with an account at a financial  
13 establishment and another person, in which the person agrees to accept from the  
14 individual a check that draws on the account, to hold the check for a period of time  
15 before negotiating or presenting the check for payment, and to pay to the individual,

**ASSEMBLY BILL 266**

1 at any time before negotiating or presenting the check for payment, an amount that  
2 is agreed to by the individual.

3 2. A transaction between an individual with an account at a financial  
4 establishment and another person, in which the person agrees to accept the  
5 individual's authorization to initiate an electronic fund transfer from the account, to  
6 wait for a period of time before initiating the electronic fund transfer, and to pay to  
7 the individual, at any time before initiating the electronic fund transfer, an amount  
8 that is agreed to by the individual.

9 (g) "Payday loan provider" means a person who is required to be licensed under  
10 s. 138.09 and who makes payday loans ~~in the ordinary course of business.~~

11 (2) DISCLOSURE REQUIREMENTS. Before disbursing funds pursuant to a payday  
12 loan, a payday loan provider shall provide all of the following to the applicant:

13 (a) A clear and conspicuous printed or typewritten notice indicating all of the  
14 following:

15 1. That a payday loan is not intended to meet long-term financial needs.

16 2. That an applicant should use a payday loan only to provide funds in a  
17 financial emergency.

18 3. That the applicant will be required to pay additional ~~fees~~ if the loan is  
19 refinanced rather than paid in full when due.

20 4. That refinancing a payday loan or entering into consecutive payday loans to  
21 pay an existing payday loan may cause financial hardship for the applicant.

22 (b) A clear and conspicuous printed or typewritten notice comparing the cost  
23 to the applicant if the applicant pays the payday loan in full at the end of the loan  
24 term with the cost to the applicant if the applicant pays the payday loan in full after

~~FEES~~ interest



ASSEMBLY BILL 266

SECTION 1

3  
8

1 financing the amount of the payday loan at the end of the loan term  
2 times.

3 (c) A clear and conspicuous printed or typewritten notice that the applicant  
4 may cancel the transaction, at no cost to the applicant, at any time before receiving  
5 the funds pursuant to the payday loan.

prescribed by the department under sub. (4).

A copy of the

6 (d) Educational materials provided by the department under sub. (4).

REVISION BY DFE

7 (3) POSTING REQUIREMENT. A payday loan provider shall post a copy of each  
8 notice required under sub. (2) (a) and (c) in a conspicuous location at each place  
9 where, in the ordinary course of business, an applicant signs a contract for a payday  
10 loan.

stays

11 (4) ADMINISTRATION. (a) The department shall promulgate rules and prescribe  
12 forms to ensure the efficient administration of this section. The rules shall include  
13 a method for calculating the amounts required to be disclosed under sub. (2) (b). In  
14 addition, the department shall develop educational materials to inform an applicant  
15 of the potential costs of entering into a payday loan and of other options for borrowing  
16 funds that may be available to the applicant.

rules

prescribe the form and content of

designed

insert 4/20

17 (b) Upon the request of a payday loan provider, the department shall supply  
18 the payday loan provider with copies of the educational materials developed under  
19 par. (a). The department may charge a payday loan provider a reasonable fee for  
20 educational materials supplied under this subsection.

SECTION 2. Nonstatutory provisions.

22 (1) SUBMISSION OF PROPOSED RULES GOVERNING PAYDAY LOAN PROVIDERS. No later  
23 than the first day of the 6th month beginning after publication, the department of  
24 financial institutions shall submit in proposed form the rules governing payday loan

**ASSEMBLY BILL 266**

1 providers under section 138.14 (4) of the statutes, as created by this act, to the  
2 legislative council staff under section 227.15 (1) of the statutes.

3 **SECTION 3. Initial applicability.**

4 (1) The creation of section 138.14 of the statutes first applies to payday loans  
5 made on the effective date of this subsection.

6 **SECTION 4. Effective date.**

7 (1) The creation of section 138.14 of the statutes and SECTION 3 (1) of this act  
8 take effect on the first day of the 12th month beginning after publication.

9 (END)

2-1

INSERT ~~11-200~~

SEC #. CR; 138.09(8)(f)!

138.09(8)(f) When making a payday loan as defined in s. 138.14(1)(f),  
comply with s. 138.14(2) and (3) and rules promulgated  
under s. 138.14(4)!

Let

D. UOTS

Representative Hoven;

Attached is the substitute amendment you requested regarding payday loan providers. Please feel free to call if you have any questions or desire any changes.

RSM

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

LRBs0139/1dn  
RJM:wlj:jf

June 11, 2001

Representative Hoven:

Attached is the substitute amendment you requested regarding payday loan providers. Please feel free to call if you have any questions or desire any changes.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: [robert.marchant@legis.state.wi.us](mailto:robert.marchant@legis.state.wi.us)