

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB665)

Received: **01/15/2004**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**

By/Representing: **Pam**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **jkreye**

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

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Jeskewitz@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Payday loan providers

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>
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FE Sent For:

<END>

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FE Sent For:

<END>

TO: Representative Sue Jeskewitz and Senator Dale Schultz
FROM: Peggy Partenfelder-Moede
DATE: January 15, 2004
RE: AB 665 and SB 338 Amendment to Bills

The following items are what was agreed upon to be drafted as an amendment for AB 665 and SB 338.

- a substitute*
- ✓ 1. Right to cancel payment obligations (1 day right of rescission). This would allow the borrower the right to cancel payment obligations without finance charge or other cost of the borrower, by the end of the business day immediately following the date on which the loan was executed. *eliminate old right - funds disposed*
 - ✓ 2. Prohibit Criminal Prosecution (this would not take away the right to civil prosecution) No payday lender will threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid. *421.301(c)*
 - ✓ 3. No fee will increase after the consumer has defaulted on his/her loan
 - ✓ 4. Cap all payday loans to no more than \$5,000 with language attached which will adjust for the rate of inflation
 5. Maximum term of loan 35 days

5
↑
per phone call w/ Pam

50304/1
LRB-0045/3
RM:cjs:ps
cmh:jk
Stays

D-NOTE
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ASA
to

2003 ASSEMBLY BILL 665

SAV

November 13, 2003 - Introduced by Representatives JESKEWITZ, M. LEHMAN, MUSSER, BOYLE, TAYLOR, OWENS, ZIEGELBAUER, HAHN, GRONEMUS, OLSEN, PLOUFF, VAN ROY, GIELOW, BERCEAU, OTT, GUNDERSON and POWERS, cosponsored by Senators SCHULTZ and STEPP. Referred to Committee on Financial Institutions.

Regen

- 1 AN ACT *to create* 138.09 (8) (f) and 138.14 of the statutes; **relating to:** payday
- 2 loan providers and 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. Generally, current law does not regulate the total finance charges that may be assessed on a consumer transaction, although current law does require certain persons who desire to assess a finance charge in excess of 18% per year to obtain a license from the Division of Banking in the Department of Financial Institutions.

This bill creates additional notice requirements that specifically apply to payday loans made by these licensed lenders. 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 of less than \$15,000 with a term of at least three days but not more than 31 days, the payday loan provider must provide

ASSEMBLY BILL 665

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 three 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 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 such a 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:

(4), (5), and (6)

1 SECTION 1. 138.09 (8) (f) of the statutes is created to read:

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

4 SECTION 2. 138.14 of the statutes is created to read:

(7)

5 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

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

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

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

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

13 (e) "Organization" has the meaning given in s. 19.42 (11).

(am) "Business day" has the meaning given in s.
421.301 (6).

ASSEMBLY BILL 665

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

2 1. A transaction between an individual with an account at a financial
3 establishment and another person, in which the person agrees to accept from the
4 individual a check that draws less than \$15,000 on the account, to hold the check for
5 at least 3 days but not more than ~~30 days~~ before negotiating or presenting the check
6 for payment, and to pay to the individual, at any time before negotiating or
7 presenting the check for payment, an amount that is agreed to by the individual.

8 2. A transaction between an individual with an account at a financial
9 establishment and another person, in which the person agrees to accept the
10 individual's authorization to initiate an electronic fund transfer of less than \$15,000
11 from the account, to wait for at least 3 days but not more than ~~30 days~~ before
12 initiating the electronic fund transfer, and to pay to the individual, at any time before
13 initiating the electronic fund transfer, an amount that is agreed to by the individual.

14 (g) "Payday loan provider" means a person who is required to be licensed under
15 s. 138.09 and who makes payday loans.

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

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

- 20 1. That a payday loan is not intended to meet long-term financial needs.
- 21 2. That an applicant should use a payday loan only to provide funds in a
22 financial emergency.
- 23 3. That the applicant will be required to pay additional interest if the loan is
24 refinanced rather than paid in full when due.

subject to sub. (5) (c)

ASSEMBLY BILL 665

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

3 (b) A clear and conspicuous printed or typewritten notice comparing the cost
4 to the applicant if the applicant pays the payday loan in full at the end of the loan
5 term with the cost to the applicant if the applicant pays the payday loan in full after
6 financing the amount of the payday loan at the end of the loan term 3 consecutive
7 times.

8 (c) A clear and conspicuous printed or typewritten notice that the applicant
9 may cancel the transaction, at no cost to the applicant, at any time before ~~the~~
10 ~~the funds pursuant to the payday loan.~~ *the close of the next*

11 (d) A copy of the educational materials prescribed by the department under

12 sub. (7).

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

17 (4) ADMINISTRATION. The department shall promulgate rules to ensure the
18 efficient administration of this section. The rules shall include a method for
19 calculating the amounts required to be disclosed under sub. (2) (b). In addition, the
20 rules shall prescribe the form and content of educational materials designed to
21 inform an applicant of the potential costs of entering into a payday loan and of other
22 options for borrowing funds that may be available to the applicant.

SECTION 3. Nonstatutory provisions.

23 (1) SUBMISSION OF PROPOSED RULES GOVERNING PAYDAY LOAN PROVIDERS. No later
24 than the first day of the 6th month beginning after publication, the department of
25

INS 4-17

(7)
(7)
(7)

business day

ASSEMBLY BILL 665

1 financial institutions shall submit in proposed form the rules governing payday loan
2 providers under section 138.14 (9) of the statutes, as created by this act, to the
3 legislative council staff under section 227.15 (1) of the statutes.

4 **SECTION 4. Initial applicability.**

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

7 **SECTION 5. Effective date.**

8 (1) The creation of section 138.14 of the statutes and SECTION 4 (1) of this act
9 take effect on the first day of the 12th month beginning after publication.

10

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0304/lins
CMH&JK:.....

INSERT 4-17

1 (4) CANCELLATION REQUIREMENTS. A payday loan provider shall cancel the
2 transaction at no cost to the applicant if the applicant cancels the transaction at any
3 time before ~~receiving the funds pursuant to the payday loan or at any time before~~^{the}
4 close of the next business day, ~~whichever is later.~~ ✓

5 (5) PAYDAY LOAN PROVIDER PROHIBITION. (a) No payday loan provider may
6 threaten or pursue criminal action against an applicant because the applicant's
7 check or electronic fund transfer has not been paid by the financial establishment
8 from which it is drawn or transferred. ✓

9 (b) If an applicant defaults on his or her payday loan, no payday loan provider
10 may increase an existing fee or add a new fee related to the applicant's payday loan
11 after the applicant defaults. ✓

12 (c) ^{1.} No payday loan provider may provide a payday loan that exceeds \$~~8~~⁵,000,
13 adjusted annually by the department to reflect changes in price levels due to
14 inflation ~~beginning 10/1/04~~ after the effective date of this paragraph [revisor
15 inserts date]. ~~on the 13th day of the 13th month beginning~~

16 (6) MAXIMUM TERM FOR PAYDAY LOANS. No payday loan provider may make a
17 payday loan with a term of more than 35 days. ✓

② § 2. The department shall make the first adjustment under subd. 1. on the first day of the 13th month beginning ✓
DNOTE

LRBs0304/lins
cmh: ejs

Pam,

The memo describing the differences between the 2003 AB-665 and this sub ^{statute amendment} will be finished by Tuesday. I wanted to get the draft to you as early as possible for your review so I am sending it first. ✓
cmh

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0304/1dn
CMH&JK:cjs:ch

Jan 16, 2004

Pam:

The memo describing the differences between 2003 AB-665 and this substitute amendment will be finished by Tuesday. I wanted to get the draft to you as early as possible for your review so I am sending it first.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.state.wi.us