

## 2003 SENATE BILL 345

December 10, 2003 – Introduced by Senators ROBSON, HANSEN and JAUCH, cosponsored by Representatives GROTHMAN, AINSWORTH, BERCEAU, BLACK, BOYLE, HINES, MILLER, PETROWSKI, PLOUFF, POCAN and TAYLOR. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1     **AN ACT to amend 422.201 (3); to repeal and recreate 138.09 (title); and to**  
2             **create 138.14 of the statutes; relating to: payday loan providers and providing**  
3             **a penalty.**

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### *Analysis by the Legislative Reference Bureau*

Under current law, 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 in the Department of Financial Institutions (DFI) to assess a finance charge greater than 18%. 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.

Currently, 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. Current law does not specifically regulate payday loan transactions.

This bill creates requirements and prohibitions that apply specifically to payday loan transactions. Under this bill, a lender, other than a bank, saving bank, savings and loan association, or credit union, who makes payday loans in the regular course of business (payday loan provider), may not assess fees or interest in a payday loan transaction in an aggregate amount that exceeds 5% of the amount of the payday loan. In addition, a payday loan provider may not make a payday loan with

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a term of less than 30 days. The bill also requires a payday loan provider to give each borrower copies of educational brochures prepared by DFI regarding the operation and potential costs of payday loans, to make annual reports to the division of banking in DFI, and to pay annually any reasonable filing fee imposed by the division of banking in DFI.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2           **138.09** (title) **Licensed lenders.**

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

4           **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

5           (a) “Check” has the meaning given in s. 403.104 (6).

6           (b) “Department” means the department of financial institutions.

7           (c) “Division” means the division of banking.

8           (d) “Payday loan” means any of the following:

9           1. A transaction between a person and the issuer of a check in which the person  
10 agrees to accept a check from the issuer, hold the check for a period of time before  
11 negotiating or presenting the check for payment, and pay to the issuer, upon  
12 accepting the check, the amount of the check less any applicable fee.

13           2. A refinancing or consolidation of a transaction described in subd. 1.

14           (e) “Payday loan provider” means a person, other than a bank, savings bank,  
15 savings and loan association, or credit union, who makes payday loans in the  
16 ordinary course of business.

17           **(2) MAXIMUM FEES AND INTEREST FOR PAYDAY LOANS.** Notwithstanding ss. 138.09  
18 and 422.201 (9), no payday loan provider may charge, contract for, or receive fees and

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1 interest for a payday loan in an aggregate amount that exceeds 5% of the amount of  
2 the payday loan.

3 **(3) MINIMUM TERM FOR PAYDAY LOANS.** No payday loan provider may make a  
4 payday loan with a term of less than 30 days.

5 **(4) DISCLOSURE REQUIREMENTS.** (a) Except as provided in par. (b), before  
6 disbursing funds pursuant to a payday loan, a payday loan provider shall provide the  
7 person obtaining the payday loan with a copy of each brochure provided by the  
8 department under sub. (6).

9 (b) Paragraph (a) does not apply if the person obtaining the payday loan has  
10 previously received a copy of each brochure from the payday loan provider.

11 **(5) REPORTING AND RECORDKEEPING.** (a) On or before March 15, every payday  
12 loan provider shall make an annual report to the division and shall pay any  
13 reasonable filing fee imposed by the division. The report shall cover business  
14 relating to payday loans made by the payday loan provider during the preceding  
15 calendar year and shall include any relevant information required by the division.  
16 The report shall be made upon forms provided by the division and shall be signed and  
17 verified by the oath or affirmation of the payday loan provider if an individual, one  
18 of the partners if a partnership, a member or manager if a limited liability company,  
19 or an officer of the corporation or association if a corporation or association. A payday  
20 loan provider that is licensed under s. 138.09 may include the information required  
21 to be reported under this paragraph in the payday loan provider's report under s.  
22 138.09 (3) (f), if the information required under this paragraph is stated separately  
23 in the report from information relating to the payday loan provider's other business.

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1 (b) Every payday loan provider shall keep the records relating to payday loans  
2 made by the payday loan provider separate from the records of any other business  
3 of the payday loan provider.

4 **(6) EDUCATIONAL BROCHURES.** The department shall provide brochures to  
5 educate individuals regarding the operation and potential costs of payday loans and  
6 regarding the laws of this state relating to consumer credit. Upon the request of a  
7 payday loan provider, the department shall supply the payday loan provider with  
8 copies of the brochures provided under this subsection. The department shall charge  
9 a payday loan provider a reasonable fee for brochures supplied under this subsection.

10 **(7) PENALTY.** Any person who violates sub. (2), (3), (4), or (5) may be fined not  
11 more than \$500 or imprisoned not more than 6 months or both.

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

13 422.201 **(3)** ~~For~~ Notwithstanding sub. (2), for licensees under s. 138.09 and  
14 under ss. 218.0101 to 218.0163 and for payday loan providers under s. 138.14, the  
15 finance charge, ~~calculated according to those sections,~~ may not exceed the applicable  
16 maximums permitted in and calculated under ss. 138.09, 138.14, and 218.0101 to  
17 218.0163, ~~respectively.~~

18 **SECTION 4. Initial applicability.**

19 (1) This act first applies to payday loans made on the effective date of this  
20 subsection.

21 **SECTION 5. Effective date.**

22 (1) This act takes effect on the first day of the 6th month beginning after  
23 publication.

24 **(END)**