

2007 ASSEMBLY BILL 511

September 20, 2007 – Introduced by Representatives JORGENSEN, HINTZ, BOYLE, HIXSON, POCAN, SINICKI, ALBERS, BERCEAU, PARISI and SHERIDAN, cosponsored by Senator LEHMAN. Referred to Committee on Financial Institutions.

1 **AN ACT** *to create* 138.09 (8) (f) and 138.14 of the statutes; **relating to:** payday
2 loan providers, providing an exemption from emergency rule procedures,
3 granting rule-making authority, and providing a penalty.

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 (division) to assess a finance charge greater than 18 percent per year. This type of lender is generally referred to as a “licensed lender.”

This bill creates certain requirements applicable to payday loan transactions. Under the bill, a “payday loan provider” is a licensed lender that makes payday loans. A “payday loan” is a transaction between an individual with an account at a financial establishment and the payday loan provider in which the provider agrees to either: 1) accept from the individual a check, hold the check for at least three days before negotiating it, and before negotiating the check pay the individual an agreed amount; or 2) accept the individual’s authorization to initiate an electronic fund transfer (EFT) from the individual’s account, wait for at least three days before initiating the EFT, and before initiating the EFT pay the individual an agreed amount. The bill requires a payday loan provider, at least 15 minutes before entering into a payday loan with an applicant, to: 1) disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate (APR), to be paid by the applicant assuming that the loan is paid in full at the end of the loan term; and

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2) provide to the applicant a copy of certain written informational materials, described below, developed by the division. The payday loan provider must retain, for at least three years after the origination date of the payday loan, a record of compliance with these requirements.

The bill requires the division to develop written informational materials, designed to educate, on payday loans and the payday loan industry. These informational materials must include: 1) a clear and conspicuous notice to payday loan applicants containing specified information; 2) certain aggregated information from reports submitted to the division by payday loan providers; and 3) a summary of actions that the payday loan provider may take against a payday loan customer if the customer defaults on the loan or the customer's payment method is dishonored for insufficient funds.

The bill also requires each payday loan provider to report annually to the division and pay a report filing fee. The report covers the payday loan provider's business in the preceding calendar year and must include information required by the division. The report must also contain specified information, aggregated for all customers, including: 1) the number of payday loans originated, the number of payday loans rolled over, and the average number of times a rolled over payday loan was rolled over; 2) the average total fees, including costs and penalties, and average APR, for all payday loans of the payday loan provider, categorized by loans that were not rolled over and loans that were rolled over; 3) the number of payday loans resulting in the customer's default; and 4) the number of payday loans on which the customer's payment method was dishonored for insufficient funds and the average fees, including costs and penalties, charged to customers due to these insufficient funds accounts. The bill defines "rollover" or "rolled over" as the refinancing, renewal, amendment, or extension of a payday loan beyond its original term, including the consolidation of payday loans and any transaction in which a payday loan is repaid with the proceeds of another payday loan made by the same payday loan provider.

Under the bill, a payday loan provider that violates these disclosure or reporting requirements may be required to forfeit not more than \$200. The bill also requires the division to promulgate rules and prescribe forms related to the provisions of the bill.

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 (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) (g), comply
- 3 with s. 138.14 (2) and (4) and rules promulgated under s. 138.14 (6).

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1 **SECTION 2.** 138.14 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 seeks to obtain a payday loan.

4 (b) “Check” has the meaning given in s. 403.104 (6).

5 (c) “Customer” means an individual who enters into a payday loan with a
6 payday loan provider.

7 (d) “Division” means the division of banking in the department of financial
8 institutions.

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

12 (f) “Organization” has the meaning given in s. 19.42 (11).

13 (g) “Payday loan” means any of the following:

14 1. A transaction between an individual with an account at a financial
15 establishment and another person, in which the person agrees to accept from the
16 individual a check, to hold the check for at least 3 days before negotiating or
17 presenting the check for payment, and to pay to the individual, at any time before
18 negotiating or presenting the check for payment, an amount that is agreed to by the
19 individual.

20 2. A transaction between an individual with an account at a financial
21 establishment and another person, in which the person agrees to accept the
22 individual’s authorization to initiate an electronic fund transfer from the account, to
23 wait for at least 3 days before initiating the electronic fund transfer, and to pay to
24 the individual, at any time before initiating the electronic fund transfer, an amount
25 that is agreed to by the individual.

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1 (h) “Payday loan provider” means a person who is required to be licensed under
2 s. 138.09 and who makes payday loans.

3 (i) “Rollover” or “rolled over” means the refinancing, renewal, amendment, or
4 extension of a payday loan beyond its original term. “Rollover” or “rolled over”
5 includes the consolidation of payday loans and any transaction in which a payday
6 loan is repaid with the proceeds of another payday loan made by the same payday
7 loan provider.

8 **(2) DISCLOSURE REQUIREMENTS.** (a) Not less than 15 minutes before any payday
9 loan provider enters into a payday loan with an applicant, the payday loan provider
10 shall do all of the following:

11 1. Disclose to the applicant the total amount of all fees and costs, in dollars, to
12 be paid by the applicant for the loan assuming that the loan is paid in full at the end
13 of the loan term.

14 2. Disclose to the applicant the annual percentage rate to be paid by the
15 applicant on the loan assuming that the loan is paid in full at the end of the loan term.

16 3. Provide to the applicant a copy of the written informational materials
17 specified in sub. (3) (a).

18 (b) A payday loan provider shall retain, for at least 3 years after the origination
19 date of any payday loan, a record of compliance with par. (a) with respect to the loan.

20 **(3) INFORMATIONAL MATERIALS.** (a) The division shall develop written
21 informational materials on payday loans and the payday loan industry. These
22 informational materials shall be designed to educate individuals regarding the
23 operation and potential costs of payday loans and of other options for borrowing
24 funds that may be available.

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1 (b) The informational materials under par. (a) shall include a clear and
2 conspicuous notice containing all of the following:

3 1. A payday loan is not intended to meet long-term financial needs.

4 2. A payday loan applicant should use a payday loan only to provide funds in
5 a financial emergency.

6 3. A payday loan applicant will be required to pay additional interest if a
7 payday loan is refinanced rather than paid in full when due.

8 4. Refinancing a payday loan or entering into consecutive payday loans to pay
9 an existing payday loan may cause financial hardship for the applicant.

10 5. An example of the cost to the applicant if the applicant pays the payday loan
11 in full at the end of the loan term in comparison to the cost to the applicant if the
12 applicant pays the payday loan in full after financing the amount of the payday loan
13 at the end of the loan term 3 consecutive times.

14 (c) The informational materials under par. (a) shall include all of the following
15 information, based upon aggregated information from reports submitted under sub.
16 (4) for the most recent reporting period:

17 1. The average annual percentage rate for payday loans, not including any
18 rollover of the loans.

19 2. The average annual percentage rate for payday loans, including loan
20 rollovers.

21 3. The percentage of customers originating payday loans who defaulted on the
22 original loan or a rollover loan.

23 4. The percentage of customers originating payday loans whose payment
24 method was dishonored or denied for insufficient funds and the average of the total

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1 amount of fees, costs, and penalties charged to these customers by payday loan
2 providers as a result of this dishonor or denial.

3 (d) The informational materials under par. (a) shall include a summary of all
4 actions that the payday loan provider may take against a payday loan customer,
5 including fees, costs, or other penalties that may be assessed, if the customer defaults
6 on the payday loan or if the customer's check or electronic funds transfer is
7 dishonored or denied for insufficient funds.

8 (e) The division shall annually update the informational materials under par.
9 (a), based upon the division's analysis of reports received under sub. (4).

10 (f) The division shall make copies of the informational materials under par. (a)
11 available, upon request, to payday loan providers and to the public, including
12 making these informational materials available on the Internet Web site of the
13 department of financial institutions. The division may charge payday loan providers
14 a reasonable fee for printed copies of informational materials supplied under this
15 paragraph.

16 **(4) REPORTING AND RECORD KEEPING.** (a) On or before March 15 of each year,
17 every payday loan provider shall make an annual report to the division and shall pay
18 any reasonable filing fee imposed by the division. The report shall cover business
19 relating to payday loans made by the payday loan provider during the preceding
20 calendar year and shall include any relevant information required by the division.
21 The report shall be made upon forms prescribed by the division and shall be signed
22 and verified by the oath or affirmation of the payday loan provider if an individual,
23 one of the partners if a partnership, a member or manager if a limited liability
24 company, or an officer of the corporation or association if a corporation or association.
25 A payday loan provider may include the information required to be reported under

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1 this subsection in the payday loan provider's report under s. 138.09 (3) (f), if the
2 information required under this subsection is stated separately in the report from
3 information relating to the payday loan provider's other business.

4 (b) The division shall require that the report under par. (a) include, for the
5 applicable reporting period, all of the following aggregated information:

6 1. The number of payday loans originated by the payday loan provider.

7 2. The average of the total amount of all fees, costs, and penalties, in dollars,
8 and the average loan term, for all payday loans of the payday loan provider, not
9 including any rollover of the loans.

10 3. Based upon the information specified in subd. 2., the average annual
11 percentage rate for all payday loans of the payday loan provider, not including any
12 rollover of the loans.

13 4. The number of payday loans originated by the payday loan provider that
14 were rolled over and, of those payday loans rolled over, the average number of times
15 these payday loans were rolled over.

16 5. The average of the total amount of all fees, costs, and penalties, in dollars,
17 and the average loan term, for all payday loans of the payday loan provider, including
18 any rollover of the loans.

19 6. Based upon the information specified in subd. 5., the average annual
20 percentage rate for all payday loans of the payday loan provider, including any
21 rollover of the loans.

22 7. The number of payday loans originated by the payday loan provider that
23 resulted in default on the loan by the customer.

24 8. The number of payday loans originated by the payday loan provider on which
25 the customer's payment method was dishonored or denied because the customer's

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1 check was drawn on, or the customer's authorization to initiate an electronic fund
2 transfer was from, an account at a financial establishment containing insufficient
3 funds when the check was presented for payment or the electronic funds transfer was
4 initiated.

5 9. The average of the total amount of all fees, costs, and penalties charged to
6 customers due to insufficient funds accounts described in subd. 8.

7 **(5) PENALTY.** Any person who violates sub. (2) or (4) may be required to forfeit
8 not more than \$200.

9 **(6) RULES.** The division shall promulgate rules necessary to implement,
10 administer, and enforce this section, including prescribing the form and content of
11 any report required under sub. (4) and the method of, and fee for, filing such a report.

SECTION 3. Nonstatutory provisions.

12
13 (1) In this SECTION, "division" means the division of banking in the department
14 of financial institutions.

15 (2) The division shall submit in proposed form the rules required under section
16 138.14 (6) of the statutes, as created by this act, to the legislative council staff under
17 section 227.15 (1) of the statutes no later than the first day of the 6th month
18 beginning after the effective date of this subsection.

19 (3) Using the emergency rules procedure under section 227.24 of the statutes,
20 the division shall promulgate the rules required under section 138.14 (6) of the
21 statutes, as created by this act, for purposes of implementing this act, for the period
22 before the effective date of the rules submitted under subsection (2). The division
23 shall promulgate these emergency rules no later than the first day of the 6th month
24 beginning after the effective date of this subsection. Notwithstanding section 227.24
25 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July

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1 1, 2010, or the date on which permanent rules take effect, whichever is sooner.
2 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not
3 required to provide evidence that promulgating a rule under this subsection as an
4 emergency rule is necessary for the preservation of the public peace, health, safety,
5 or welfare and is not required to provide a finding of emergency for a rule
6 promulgated under this subsection.

7 **SECTION 4. Initial applicability.**

8 (1) This act first applies to payday loans made or offered on the effective date
9 of this subsection.

10 **SECTION 5. Effective dates.** This act takes effect on the first day of the 6th
11 month beginning after publication, except as follows:

12 (1) SECTION 3 of this act takes effect on the day after publication.

13 (END)