

2009 ASSEMBLY BILL 55

February 17, 2009 – Introduced by Representatives SCHNEIDER, ZIEGELBAUER, KESSLER, RICHARDS, VRUWINK, GUNDERSON and ROYS, cosponsored by Senator A. LASEE. Referred to Committee on Financial Institutions.

1 **AN ACT** *to amend* 138.09 (1m) (a) and 422.201 (3); and *to create* 138.14 of the
2 statutes; **relating to:** finance charges for certain motor vehicle title and payday
3 loans.

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.” With certain limited exceptions, current law provides no maximum finance charge for a loan entered into by a licensed lender. A lender who makes motor vehicle title or payday loans is typically required to be a licensed lender.

This bill creates a maximum finance charge for certain motor vehicle title and payday loans. The bill defines “motor vehicle title loan” as a loan that is secured by an interest, other than a purchase money security interest, in the borrower’s motor vehicle, and that has an original term of three months or less. The bill defines “payday loan” as a transaction between a person and an issuer of a check in which all of the following are satisfied: 1) the person agrees to hold the check for a period of time before negotiating or presenting the check for payment; and 2) the person pays the issuer, upon accepting the check, the amount of the check less any finance charge.

Under the bill, a lender, other than a bank, savings bank, savings and loan association, or credit union, who makes motor vehicle title or payday loans in the

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regular course of business, may not assess a finance charge that exceeds 2 percent per month. In addition, such a lender who makes such loans must obtain the license described above. Also, the bill requires the division to enforce the bill's prohibition.

The bill also allows a borrower to bring an action against a person who violates the bill's requirements to recover damages in an amount equal to the greater of the following: 1) twice the amount of the finance charge in connection with the loan made to the borrower; or 2) the actual damages, including incidental and consequential damages, sustained by the borrower by reason of the violation. In addition, the bill allows the borrower to recover the costs of the action, including reasonable attorney fees.

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 or charge
3 the interest authorized by sub. (7) and before any creditor other than a bank, savings
4 bank, savings and loan association or credit union may assess a finance charge on
5 a consumer loan in excess of 18% per year or assess a finance charge subject to s.
6 138.14, that person shall first obtain a license from the division. Applications for a
7 license shall be in writing and upon forms provided for this purpose by the division.
8 An applicant at the time of making an application shall pay to the division a
9 nonrefundable \$300 fee for investigating the application and a \$500 annual license
10 fee for the period terminating on the last day of the current calendar year. If the cost
11 of the investigation exceeds \$300, the applicant shall upon demand of the division
12 pay to the division the amount by which the cost of the investigation exceeds the
13 nonrefundable fee.

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

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1 **138.14 Motor vehicle title and payday loans. (1) DEFINITIONS.** In this
2 section:

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

4 (b) “Motor vehicle title loan” means a loan that is, or is to be, secured by an
5 interest, other than a purchase money security interest, in the borrower’s motor
6 vehicle and that has an original term of not more than 3 months.

7 (c) “Payday loan” means any of the following:

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

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

13 **(2) FINANCE CHARGES.** Notwithstanding ss. 138.09 and 422.201 (9), no person,
14 other than a bank, savings bank, savings and loan association, or credit union, who
15 makes motor vehicle title or payday loans in the ordinary course of business, may
16 assess a finance charge on a motor vehicle title or payday loan that exceeds 2 percent
17 per month. The division of banking shall enforce this subsection.

18 **(3) DAMAGES.** If a person makes a motor vehicle title or payday loan to a
19 borrower that violates this section, the borrower may bring an action against the
20 person for an amount equal to twice the amount of the finance charge in connection
21 with the loan, or the actual damages, including any incidental and consequential
22 damages, sustained by the borrower by reason of the violation, whichever is greater,
23 and, notwithstanding s. 814.04 (1), the costs of the action, including reasonable
24 attorney fees.

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

