

2009 DRAFTING REQUEST

Bill

Received: 11/18/2008

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing:

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

Drafter: **mkunkel**

May Contact:

Adl. Drafters:

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

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Finance charges for motor vehicle title and 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>
/?	mkunkel 11/19/2008	kfollett 11/26/2008		_____			State
/1			jfrantze 12/01/2008	_____	lparisi 12/01/2008	sbasford 12/03/2008	

FE Sent For:

*at intro
2/16*

<END>

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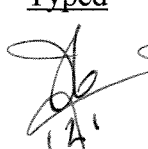
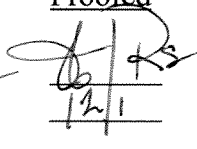
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/?	mkunkel	11/15/08 11/26/08 cjf	 1/21/09	 1/21/09			

FE Sent For:

<END>

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, November 19, 2008 10:57 AM
To: Kunkel, Mark
Subject: Note to drafting file

Rep. Schneider's office directed me to contact Bob Anderson of Legal Action (256-3304) regarding changes to the redraft of 2007 AB-4. Anderson requested the following changes:

1. Expand the bill to also cover motor vehicle title loans.
2. Add damages language comparable to s. 425.304. However, Anderson did not specify that I should include the \$1,000 limit on twice the finance charge. Therefore, I assume that I should not include such a limit, which I should point out in the drafter's note.

Mark D. Kunkel
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

O-NOTE

2007 - 2008 LEGISLATURE

11-19-08

LRB-0654/1

MDK:wj:rs

IGF

PWF

2007 ASSEMBLY BILL 4

- 085911

RM NOT RUN

January 12, 2007 - Introduced by Representatives SCHNEIDER and VRUWINK.
Referred to Committee on Financial Institutions.

Motor vehicle title or

Certain motor vehicle title and

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 payday 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. ~~no \$~~
~~no \$~~ 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.

certain motor vehicle title and (9)

This bill creates a maximum finance charge for payday loans. Under the bill, a lender, other than a bank, savings bank, savings and loan association, or credit union, who makes payday loans in the regular course of business, which the bill defines as a "payday loan provider," may not assess a finance charge that exceeds 2 percent per month. In addition, a payday loan provider must obtain the license described above. Also, the bill requires the division to enforce the bill's prohibition.

motor vehicle title or

such a lender who makes such loans

INSERT 1A

ASSEMBLY BILL 4

IN SEPT 2A

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.

(B) Motor vehicle title and

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

15 138.14 ~~Payday loan providers~~ (1) DEFINITIONS. In this section:

16 (a) "Check" has the meaning given in s. 403.104 (6).

17 (b) "Payday loan" means any of the following:

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

IN SEPT 2-10

ASSEMBLY BILL 4

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

2 (c) "Payday loan provider" means a person, other than a bank, savings bank,
3 savings and loan association, or credit union, who makes payday loans in the
4 ordinary course of business.

5 (2) FINANCE CHARGES. Notwithstanding ss. 138.09 and 422.201 (9), no payday
6 loan provider may assess a finance charge on a payday loan that exceeds 2 percent
7 per month. The division of banking shall enforce this subsection.

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

9 422.201 (3) For Notwithstanding sub. (2), for licensees under s. 138.09 and
10 under ss. 218.0101 to 218.0163, the finance charge, ~~calculated according to those~~
11 ~~sections,~~ may not exceed the applicable maximums permitted in and calculated
12 under ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.

13 SECTION 4. Initial applicability. *motor vehicle title and*

14 (1) This act first applies to payday loans made, refinanced, or consolidated on
15 the effective date of this subsection.

16 SECTION 5. Effective date.

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

19 (END)

INSEPT 3-7

O-Note

1

INSERT 1A:

an
three
of
~~no~~ 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 original term of 3 months or less. The bill defines "payday loan" as a transaction between a person and an issuer of a check in which all 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. ~~FF~~

2

INSERT 2A:

~~X~~ ~~FF~~ 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.

3

INSERT 2-16:

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

7

INSERT 3-7:

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

14

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

LRB-0859/1dn
MDK: *kgf*

Date

Rep. Schnieder:

This bill is a redraft of 2007 AB-4, with the following changes:

1. The bill also covers a "motor vehicle title loan," which has the same definition as in 2007 AB-529. Is that definition okay?
2. The bill allows for the recovery of damages. The damages language is based on s. 425.304, except that I did not include the \$1,000 limit on twice the finance charge that is included in s. 425.304.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0859/1dn
MDK:kjf:jf

December 1, 2008

Rep. Schnieder:

This bill is a redraft of 2007 AB-4, with the following changes:

1. The bill also covers a "motor vehicle title loan," which has the same definition as in 2007 AB-529. Is that definition okay?
2. The bill allows for the recovery of damages. The damages language is based on s. 425.304, except that I did not include the \$1,000 limit on twice the finance charge that is included in s. 425.304.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Basford, Sarah

From: Schneider, Marlin
Sent: Wednesday, December 03, 2008 10:44 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-0859/1 Topic: Finance charges for motor vehicle title and payday loans

Please Jacket LRB 09-0859/1 for the ASSEMBLY.