

2009 DRAFTING REQUEST

Bill

Received: 11/24/2008

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Andy Jorgensen (608) 266-3790

By/Representing: Rebekah Sweeney

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

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

Extra Copies: MDK

Submit via email: YES

Requester's email: Rep.Jorgensen@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Payday lenders

Instructions:

Wants redraft of 2007 AB-511, no changes

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>
/?	agary 11/24/2008	bkraft 12/05/2008		_____			State
/1	agary 03/13/2009		rschluet 12/08/2008	_____	sbasford 12/08/2008		State
/2		bkraft 03/13/2009	jfrantze 03/13/2009	_____	sbasford 03/13/2009		State
/3	agary	bkraft	mduchek	_____	sbasford		State

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	03/17/2009	03/18/2009	03/18/2009	_____	03/18/2009		
/4	agary 05/26/2009	bkraft 05/27/2009	mduchek 05/27/2009	_____	sbasford 05/27/2009	mbarman 06/11/2009	

FE Sent For: "1/4" @ intro. 9/25/09

<END>

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

03/17/2009 03/18/2009 03/18/2009 _____ 03/18/2009

FE Sent For:

4 bjk 5/27

JL/KL
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1/3 bjk 3/17

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1?	agary	1 bjk 12/5		_____	_____	_____	_____

FE Sent For:

<END>

bjk → RMNR

9

2007 ASSEMBLY BILL 511

SA ✓
X-ref ✓

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

reagan

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 ✓

ASSEMBLY BILL 511

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:

X

- 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). ✓

ASSEMBLY BILL 511

X

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. ✓

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. ✓

ASSEMBLY BILL 511

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

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

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

ASSEMBLY BILL 511

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. ✓

12 SECTION 3. Nonstatutory provisions.

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

please check
12 auto-ref
auto-ref at
p. 9, line 12

ASSEMBLY BILL 511

1

1, 2010², 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)

please check auto-ref from p. 8, line 12

~~STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU~~
STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Meets w/ Rep.

412 N

Jorgensen & Jaryll

320 W

electronic presentment -

- stop rollover
- one-time presentment

- check or EFT
 - present mce

- can't pile fee upon fee

- electronic auth. int : can't roll over

- EFT : no automatic rollover

- have to come in

- can rollover

- contract :

penalty for default →

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

→ . NSF fee : same as WCA → can transfer \$25 electronically
 . penalty on default :

separate rollover from penalty -

ask ~~for~~
 DFI →
 are
 payday
 lenders
 governed
 by TICA ?

- knock off out-of-state ^{payday} lenders →
 - internet etc.
 - person making loan → can't act as a third party
- separate bill



Wisconsin Deferred Deposit Association

Best Practices

To be a member in good standing of the Wisconsin Deferred Deposit Association (WDDA), a payday advance provider must abide by the following best practices:

- **Full disclosure.** A member will comply with the disclosure requirements of the State of Wisconsin and with Federal disclosure requirements including the Federal Truth in Lending Act. A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR").
- **Compliance.** A member will comply with all applicable laws. A member will not charge a fee or rate for a payday advance that is not authorized by State or Federal law.
- **Truthful advertising.** A member will not advertise the payday advance service in any false, misleading, or deceptive manner.
- **Right to rescind.** A member will give its customers the right to cancel their repayment obligations, at no cost, on a payday advance transaction on or before the close of the following business day.
- **Stopping Interest Rate.** A member will not continue to accrue interest after the maturity date of the loan.
- **Appropriate collection practices.** A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. WDDA believes that the collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area.
- **No criminal action.** A member will not 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.
- **Enforcement.** A member will participate in self-policing of the industry. A member will be expected to report violations of these Best Practices to WDDA, which will investigate the matter and take appropriate action.
- **Support balanced legislation.** A member will work with State legislators and regulators to support responsible legislation of the payday advance industry that incorporates these Best Practices.
- **Encourage consumer responsibility.** A member will implement procedures to inform consumers of the intended use of the payday advance service. These procedures will include notifying consumers that a payday advance is a short-term cash flow tool not designed as a solution for longer term financial problems and informing customers of the availability of the WDDA agreement with Consumer Credit Counseling Services throughout Wisconsin.

Gary, Aaron

From: Teske, Darryl
Sent: Tuesday, March 03, 2009 5:38 PM
To: Gary, Aaron

Aaron,

Thank you so much for coming in.

One thing that Andy and I were talking about when you left was that we want to make sure that if the person chooses to roll over their own account and reauthorizes an EFT, we want to make sure that the payday lender can't slip in subsequent transfers without approval.

I guess essentially, all subsequent transfers must be consumer authorized.

Thanks

Darryl

Darryl DD Teske
Research Assistant
Office of Representative Andy Jorgensen
320 - West
PO Box 8952
Madison, WI 53708

(608) 266-3790
darryl.teske@legis.wisconsin.gov



soon

LRB-092502
ARG:bjk:rs stays
PWR

in
3/13

2009 BILL

SA

Inserts

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 3 granting rule-making authority, and providing a penalty.

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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

BILL

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.

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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.

*

maturity date

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 ~~(3)~~ and rules promulgated under s. 138.14 ~~(4)~~ ~~(5)~~ ~~(6)~~ (7)

(3) (5) (7)

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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.

1

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¶ The bill also imposes certain restrictions on payday loans. A payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer's default or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer's payment method is dishonored for insufficient funds. A payday loan provider may present a customer's check for payment, or initiate an EFT from the customer's account, only one time. A payday loan provider may not accept from a customer a check or authorization to initiate an EFT if the amount of the check or authorization exceeds the principal amount of the payday loan plus the finance charge on the payday loan. A payday loan provider may not rollover a payday loan unless the customer appears in person at the office of the payday loan provider and enters into a new payday loan transaction, including issuing a new check or executing a new authorization to initiate an electronic fund transfer.

3

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4

(3) LOAN RESTRICTIONS. (a) No payday loan provider may require the payment of any interest on a payday loan that accrues after the maturity date of the payday loan.

5

6

7

(b) Except as provided in pars. (e) and (f), no payday loan provider may impose any penalty on a customer arising from the customer's default or late payment on a payday loan.

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9

10

(c) No payday loan provider may accept from a customer a check or authorization to initiate an electronic fund transfer if the amount of the check or authorization exceeds the principal amount of the payday loan plus the finance charge on the payday loan.

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13

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(d) A payday loan provider may not rollover a payday loan unless the customer appears in person at the office of the payday loan provider and enters into a new

15

BILL

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 ^{date of maturity} ~~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. ~~(b)~~ ⁽⁴⁾

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 ⁽⁴⁾ ~~(2)~~ 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.

Insert
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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 (S) 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 ^{all} fees, ^{and} 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 fund transfer is dishonored
7 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. ~~(2)~~ (5)

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 ^B (5) ⁽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

BILL

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, ^{and} 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, ^{and} 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 fund 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 ~~(6)~~ PENALTY. ^{Notwithstanding § 138.09 (8)(f) and (10)} Any person who violates sub. (2) ~~may~~ ^{(3) or (5)} be required to forfeit
8 not more than \$200.

9 ~~(7)~~ 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)~~ ⁽⁵⁾ and the method of, and fee for, filing such a report.

SECTION 3. Nonstatutory provisions.

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

14 (2) The division shall submit in proposed form the rules required under section
15 138.14 ~~(6)~~ ⁽⁷⁾ of the statutes, as created by this act, to the legislative council staff under
16 section 227.15 (1) of the statutes no later than the first day of the 6th month
17 beginning after the effective date of this subsection.

18 (3) Using the emergency rules procedure under section 227.24 of the statutes,
19 the division shall promulgate the rules required under section 138.14 ~~(6)~~ ⁽⁷⁾ of the
20 statutes, as created by this act, for purposes of implementing this act, for the period
21 before the effective date of the rules submitted under subsection (2). The division
22 shall promulgate these emergency rules no later than the first day of the 6th month
23 beginning after the effective date of this subsection. Notwithstanding section 227.24
24 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
25

BILL

1 1, 2011, 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)

1 payday loan transaction with the payday loan provider, including issuing a new
2 check or executing a new authorization to initiate an electronic fund transfer.

3 (e) A payday loan provider may present a customer's check for payment only
4 one time. The only charge the payday loan provider may impose for dishonor of the
5 check is that specified in s. 422.202 (1) (d).

6 (f) For each customer authorization to initiate an electronic fund transfer from
7 the customer's account, a payday loan provider may initiate an electronic fund
8 transfer only one time. The only charge the payday loan provider may impose if its
9 instruction to execute an electronic fund transfer is denied is a charge equivalent to
10 that specified in s. 422.202 (1) (d).

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H/c w/ Darryl 6-3790

3/17

LRB-0925

2 changes:

1. take out "in person" -
payday loan provider needs to
recontact customer ~~but it~~
and have them "sign off"
but it can be in person or
electronic

2. allow check to be presented twice
but need 3 business days in
between & payday loan provider
must try to contact person
during this time

need by noon tomorrow



in 3/17

LRB-0925/3
ARG:bjk:jf stay

Needed by
3/18
at noon

RMN

2009 BILL

SA-

Inserts

regen.

- 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 also imposes certain restrictions on payday loans. A payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer's default or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer's payment method is dishonored for insufficient funds. A payday loan provider may present a customer's check for payment, or initiate an EFT from the customer's account, only ~~by a check or authorization~~. A payday loan provider may not accept from a customer a check or authorization to initiate an EFT if the amount of the check or authorization exceeds the principal amount of the payday loan plus the finance charge on the payday loan. A payday loan provider may not rollover a payday loan unless the customer appears in person at the office of the payday loan provider and enters into a new payday loan transaction, including issuing a new check or executing a new authorization to initiate an electronic fund transfer.

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 and costs, 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. The bill defines "rollover" or "rolled over" as the refinancing, renewal, amendment, or extension of a payday loan beyond its original maturity date, 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.

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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), (3), and (5) and rules promulgated under s. 138.14 (7).

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

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

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

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

8 (c) "Customer" means an individual who enters into a payday loan with a
9 payday loan provider.

10 (d) "Division" means the division of banking in the department of financial
11 institutions.

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

15 (f) "Organization" has the meaning given in s. 19.42 (11).

16 (g) "Payday loan" means any of the following:

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

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1 negotiating or presenting the check for payment, an amount that is agreed to by the
2 individual.

3 2. A transaction between an individual with an account at a financial
4 establishment and another person, in which the person agrees to accept the
5 individual's authorization to initiate an electronic fund transfer from the account, to
6 wait for at least 3 days before initiating the electronic fund transfer, and to pay to
7 the individual, at any time before initiating the electronic fund transfer, an amount
8 that is agreed to by the individual.

9 (h) "Payday loan provider" means a person who is required to be licensed under
10 s. 138.09 and who makes payday loans.

11 (i) "Rollover" or "rolled over" means the refinancing, renewal, amendment, or
12 extension of a payday loan beyond its original date of maturity. "Rollover" or "rolled
13 over" includes the consolidation of payday loans and any transaction in which a
14 payday loan is repaid with the proceeds of another payday loan made by the same
15 payday loan provider.

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

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

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

24 3. Provide to the applicant a copy of the written informational materials
25 specified in sub. (4).

BILL

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

3 (3) LOAN RESTRICTIONS. (a) No payday loan provider may require the payment
4 of any interest on a payday loan that accrues after the maturity date of the payday
5 loan.

6 (b) Except as provided in pars. (e) and (f), no payday loan provider may impose
7 any penalty on a customer arising from the customer's default or late payment on a
8 payday loan.

9 (c) No payday loan provider may accept from a customer a check or
10 authorization to initiate an electronic fund transfer if the amount of the check or
11 authorization exceeds the principal amount of the payday loan plus the finance
12 charge on the payday loan.

13 (d) A payday loan provider may not rollover a payday loan unless the customer
14 appears in person at the office of the payday loan provider and enters into a new
15 payday loan transaction with the payday loan provider, including issuing a new
16 check or executing a new authorization to initiate an electronic fund transfer.

17 (e) A payday loan provider may present a customer's check for payment ~~only~~

18 ~~one time~~ The only charge the payday loan provider may impose for dishonor of the
19 ~~customer's~~ check is that specified in s. 422.202 (1) (d).

20 (f) For each customer authorization to initiate an electronic fund transfer from
21 the customer's account, a payday loan provider may initiate an electronic fund
22 transfer ~~only one time~~ The only charge the payday loan provider may impose if its
23 instruction to execute an electronic fund transfer is denied is a charge equivalent to
24 that specified in s. 422.202 (1) (d).

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

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

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

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

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

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

15 5. An example of the cost to the applicant if the applicant pays the payday loan
16 in full at the end of the loan term in comparison to the cost to the applicant if the
17 applicant pays the payday loan in full after financing the amount of the payday loan
18 at the end of the loan term 3 consecutive times.

19 (c) The informational materials under par. (a) shall include all of the following
20 information, based upon aggregated information from reports submitted under sub.

21 (5) for the most recent reporting period:

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

24 2. The average annual percentage rate for payday loans, including loan
25 rollovers.

BILL

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

3 4. The percentage of customers originating payday loans whose payment
4 method was dishonored or denied for insufficient funds.

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

10 (e) The division shall annually update the informational materials under par.
11 (a), based upon the division's analysis of reports received under sub. (5).

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

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

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1 company, or an officer of the corporation or association if a corporation or association.
2 A payday loan provider may include the information required to be reported under
3 this subsection in the payday loan provider's report under s. 138.09 (3) (f), if the
4 information required under this subsection is stated separately in the report from
5 information relating to the payday loan provider's other business.

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

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

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

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

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

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

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

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

BILL

1 8. The number of payday loans originated by the payday loan provider on which
2 the customer's payment method was dishonored or denied because the customer's
3 check was drawn on, or the customer's authorization to initiate an electronic fund
4 transfer was from, an account at a financial establishment containing insufficient
5 funds when the check was presented for payment or the electronic fund transfer was
6 initiated.

7 **(6) PENALTY.** Notwithstanding s. 138.09 (8) (f) and (10), any person who violates
8 sub. (2), (3), or (5) may be required to forfeit not more than \$200.

9 **(7) 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. (5) and the method of, and fee for, filing such a report.

SECTION 3. Nonstatutory provisions.

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

14 **(2)** The division shall submit in proposed form the rules required under section
15 138.14 (7) of the statutes, as created by this act, to the legislative council staff under
16 section 227.15 (1) of the statutes no later than the first day of the 6th month
17 beginning after the effective date of this subsection.

18 **(3)** Using the emergency rules procedure under section 227.24 of the statutes,
19 the division shall promulgate the rules required under section 138.14 (7) of the
20 statutes, as created by this act, for purposes of implementing this act, for the period
21 before the effective date of the rules submitted under subsection (2). The division
22 shall promulgate these emergency rules no later than the first day of the 6th month
23 beginning after the effective date of this subsection. Notwithstanding section 227.24
24 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
25

BILL**SECTION 3**

1 1, 2011, 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)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0925/3ins
ARG:.....

1 **INSERT ANAL:**

2 (no ff) two times and the second time only if certain conditions are satisfied.

3 **INSERT 5-17:**

4 (no ff) no more than 2 times. The payday loan provider may make a second
5 presentation of the check only if at least 3 business days have elapsed since the first
6 presentation and the payday loan provider has made a good faith effort to contact the
7 customer since the first presentation.

8 **INSERT 5-22:**

9 (no ff) no more than 2 times. The payday loan provider may initiate an electronic fund
10 transfer a second time only if at least 3 business days have elapsed since the payday
11 loan provider initiated an electronic fund transfer the first time and the payday loan
12 provider has made a good faith effort to contact the customer since the ~~the~~^e payday
13 loan provider initiated an electronic fund transfer the first time.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Jorgensen

5/26/09

Darrell - 0925

~~add 24 hours to research the loan~~
add 24 hours to research the loan

• also tell that they have
24 hour it to research
(disclosure)

• ~~must be told or be~~
~~in middle mt. materials~~

(tomorrow a.m.)



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LRB-0925/04
ARG:bjk:md stays

needed
by 5/27
A.M.

TRR

2009 BILL

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regen.

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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① and insert ANAL-A

*

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 also imposes certain restrictions on payday loans. A payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer's default or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer's payment method is dishonored for insufficient funds. A payday loan provider may present a customer's check for payment, or initiate an EFT from the customer's account, only two times and the second time only if certain conditions are satisfied. A payday loan provider may not accept from a customer a check or authorization to initiate an EFT if the amount of the check or authorization exceeds the principal amount of the payday loan plus the finance charge on the payday loan. A payday loan provider may not rollover a payday loan unless the customer enters into a new payday loan transaction, including issuing a new check or executing a new authorization to initiate an electronic fund transfer.

insert ANAL-B

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 and costs, 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. The bill defines "rollover" or "rolled over" as the refinancing, renewal, amendment, or extension of a payday loan beyond its original maturity date, 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.

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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), (3), ~~(4)~~ ^{and (6)} (5) and rules promulgated under s. 138.14 ~~(7)~~ ⁽⁸⁾.

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

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

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

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

8 (c) "Customer" means an individual who enters into a payday loan with a
9 payday loan provider.

10 (d) "Division" means the division of banking in the department of financial
11 institutions.

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

15 (f) "Organization" has the meaning given in s. 19.42 (11).

16 (g) "Payday loan" means any of the following:

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

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1 negotiating or presenting the check for payment, an amount that is agreed to by the
2 individual.

3 2. A transaction between an individual with an account at a financial
4 establishment and another person, in which the person agrees to accept the
5 individual's authorization to initiate an electronic fund transfer from the account, to
6 wait for at least 3 days before initiating the electronic fund transfer, and to pay to
7 the individual, at any time before initiating the electronic fund transfer, an amount
8 that is agreed to by the individual.

9 (h) "Payday loan provider" means a person who is required to be licensed under
10 s. 138.09 and who makes payday loans.

11 (i) "Rollover" or "rolled over" means the refinancing, renewal, amendment, or
12 extension of a payday loan beyond its original date of maturity. "Rollover" or "rolled
13 over" includes the consolidation of payday loans and any transaction in which a
14 payday loan is repaid with the proceeds of another payday loan made by the same
15 payday loan provider.

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

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

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

24 3. Provide to the applicant a copy of the written informational materials
25 specified in sub. (4).

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

3 **(3) LOAN RESTRICTIONS.** (a) No payday loan provider may require the payment
4 of any interest on a payday loan that accrues after the maturity date of the payday
5 loan.

6 (b) Except as provided in pars. (e) and (f), no payday loan provider may impose
7 any penalty on a customer arising from the customer's default or late payment on a
8 payday loan.

9 (c) No payday loan provider may accept from a customer a check or
10 authorization to initiate an electronic fund transfer if the amount of the check or
11 authorization exceeds the principal amount of the payday loan plus the finance
12 charge on the payday loan.

13 (d) A payday loan provider may not rollover a payday loan unless the customer
14 enters into a new payday loan transaction with the payday loan provider, including
15 issuing a new check or executing a new authorization to initiate an electronic fund
16 transfer.

17 (e) A payday loan provider may present a customer's check for payment no more
18 than 2 times. The payday loan provider may make a second presentment of the check
19 only if at least 3 business days have elapsed since the first presentment and the
20 payday loan provider has made a good faith effort to contact the customer since the
21 first presentment. The only charge the payday loan provider may impose for
22 dishonor of the customer's check is that specified in s. 422.202 (1) (d).

23 (f) For each customer authorization to initiate an electronic fund transfer from
24 the customer's account, a payday loan provider may initiate an electronic fund
25 transfer no more than 2 times. The payday loan provider may initiate an electronic

BILL

1 fund transfer a second time only if at least 3 business days have elapsed since the
2 payday loan provider initiated an electronic fund transfer the first time and the
3 payday loan provider has made a good faith effort to contact the customer since the
4 payday loan provider initiated an electronic fund transfer the first time. The only
5 charge the payday loan provider may impose if its instruction to execute an electronic
6 fund transfer is denied is a charge equivalent to that specified in s. 422.202 (1) (d).

7 (4) INFORMATIONAL MATERIALS. (a) The division shall develop written
8 informational materials on payday loans and the payday loan industry. These
9 informational materials shall be designed to educate individuals regarding the
10 operation and potential costs of payday loans and of other options for borrowing
11 funds that may be available.

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

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

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

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

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

21 5. An example of the cost to the applicant if the applicant pays the payday loan
22 in full at the end of the loan term in comparison to the cost to the applicant if the
23 applicant pays the payday loan in full after financing the amount of the payday loan
24 at the end of the loan term 3 consecutive times.

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1 (c) The informational materials under par. (a) shall include all of the following
2 information, based upon aggregated information from reports submitted under sub.
3 (5) for the most recent reporting period:

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

6 2. The average annual percentage rate for payday loans, including loan
7 rollovers.

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

10 4. The percentage of customers originating payday loans whose payment
11 method was dishonored or denied for insufficient funds.

12 (d) The informational materials under par. (a) shall include a summary of all
13 actions that the payday loan provider may take against a payday loan customer,
14 including all fees and costs that may be assessed, if the customer defaults on the
15 payday loan or if the customer's check or electronic fund transfer is dishonored or
16 denied for insufficient funds.

17 (e) The division shall annually update the informational materials under par.
18 (a), based upon the division's analysis of reports received under sub. (5).

19 (f) The division shall make copies of the informational materials under par. (a)
20 available, upon request, to payday loan providers and to the public, including
21 making these informational materials available on the Internet Web site of the
22 department of financial institutions. The division may charge payday loan providers
23 a reasonable fee for printed copies of informational materials supplied under this
24 paragraph.

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1 **(5) REPORTING AND RECORD KEEPING.** (a) On or before March 15 of each year,
2 every payday loan provider shall make an annual report to the division and shall pay
3 any reasonable filing fee imposed by the division. The report shall cover business
4 relating to payday loans made by the payday loan provider during the preceding
5 calendar year and shall include any relevant information required by the division.
6 The report shall be made upon forms prescribed by the division and shall be signed
7 and verified by the oath or affirmation of the payday loan provider if an individual,
8 one of the partners if a partnership, a member or manager if a limited liability
9 company, or an officer of the corporation or association if a corporation or association.
10 A payday loan provider may include the information required to be reported under
11 this subsection in the payday loan provider's report under s. 138.09 (3) (f), if the
12 information required under this subsection is stated separately in the report from
13 information relating to the payday loan provider's other business.

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

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

17 2. The average of the total amount of all fees and costs, in dollars, and the
18 average loan term, for all payday loans of the payday loan provider, not including any
19 rollover of the loans.

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

23 4. The number of payday loans originated by the payday loan provider that
24 were rolled over and, of those payday loans rolled over, the average number of times
25 these payday loans were rolled over.

BILL

1 5. The average of the total amount of all fees and costs, in dollars, and the
2 average loan term, for all payday loans of the payday loan provider, including any
3 rollover of the loans.

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

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

9 8. The number of payday loans originated by the payday loan provider on which
10 the customer's payment method was dishonored or denied because the customer's
11 check was drawn on, or the customer's authorization to initiate an electronic fund
12 transfer was from, an account at a financial establishment containing insufficient
13 funds when the check was presented for payment or the electronic fund transfer was
14 initiated.

insert
9-14

15 (7) ~~(7)~~ PENALTY. Notwithstanding s. 138.09 (8) (f) and (10), any person who violates
16 sub. (2), (3), ~~(5)~~ ^{or (6)} may be required to forfeit not more than \$200.

17 (8) ~~(7)~~ RULES. The division shall promulgate rules necessary to implement,
18 administer, and enforce this section, including prescribing the form and content of
19 any report required under sub. (5) and the method of, and fee for, filing such a report.

SECTION 3. Nonstatutory provisions.

20 (1) In this SECTION, "division" means the division of banking in the department
21 of financial institutions.
22

23 (2) The division shall submit in proposed form the rules required under section
24 138.14 ~~(8)~~ ⁽⁸⁾ of the statutes, as created by this act, to the legislative council staff under

BILL

1 section 227.15 (1) of the statutes no later than the first day of the 6th month
2 beginning after the effective date of this subsection.

3 (3) Using the emergency rules procedure under section 227.24 of the statutes,
4 the division shall promulgate the rules required under section 138.14 ⁽³⁾ of the
5 statutes, as created by this act, for purposes of implementing this act, for the period
6 before the effective date of the rules submitted under subsection (2). The division
7 shall promulgate these emergency rules no later than the first day of the 6th month
8 beginning after the effective date of this subsection. Notwithstanding section 227.24
9 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
10 1, 2011, or the date on which permanent rules take effect, whichever is sooner.
11 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not
12 required to provide evidence that promulgating a rule under this subsection as an
13 emergency rule is necessary for the preservation of the public peace, health, safety,
14 or welfare and is not required to provide a finding of emergency for a rule
15 promulgated under this subsection.

SECTION 4. Initial applicability.

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

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

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

21 (END)
22

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0925/4ins
ARG:.....

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INSERT ANAL-A:

(no P) 3) disclose to the applicant that he or she has the right to rescind the payday loan transaction by the end of the business day after the loan is made.

4

INSERT ANAL-B:

(no P) In addition, a customer has a right to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to the payday loan provider by the close of business on the next business day after the payday loan is made.

5

6

INSERT 4-25:

7

Q 4. Disclose to the applicant that he or she has the right to rescind the loan transaction as provided in sub. (6).

8

9

INSERT 9-14:

10

Q (6) RESCISSION. A customer may rescind a payday loan, before the close of business on the next day of business after the loan is made, by returning to the payday loan provider the proceeds of the payday loan. The payday loan provider may not charge the customer any fee for rescinding the payday loan as provided in this subsection.

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12

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14

Barman, Mike

From: Teske, Darryl
Sent: Thursday, June 11, 2009 3:20 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-0925/4 Topic: Payday lenders

Please Jacket LRB 09-0925/4 for the ASSEMBLY.