



State of Wisconsin  
2009 - 2010 LEGISLATURE

FROM  
S 0234/P1  
LRB 0025/4  
ARG:bjk:md

D-NOTE

ASA to

MDK:js

2009 ASSEMBLY BILL 447

RM NOT RUN

September 25, 2009 - Introduced by Representatives JORGENSEN, FIELDS, ZEPNICK, COLON, POPE-ROBERTS, SCHNEIDER, BENEDICT and BERCEAU, cosponsored by Senator LEHMAN. Referred to Committee on Financial Institutions.

NO 91 INSERT 1A

INSERT 1-2

making an application regulating

(division)

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

DFI

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~~ also 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; 2)

A INSERT 1A B

Subst two amendment

INSERT 1C

loan

any period of time

ASSEMBLY BILL 447

prepayments

provide to the applicant a copy of certain written informational materials, described below, developed by the division; and 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. 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.

Substitute amendment

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 \$30 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~~ once

INSEAT 2A

~~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.

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.

INSEAT 2B

NEW INSEAT 2D

NO 9 INSEAT 2C

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.

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~~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.~~

INSERT  
3-1

*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 (8), (5), and (9) and rules promulgated under s. 138.14 (1).

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: INSERT 3-18

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~~ before negotiating or

any period of time

ASSEMBLY BILL 447

loan

1 presenting the check for payment, and to ~~the~~ to the individual, at any time before  
2 negotiating or presenting the check for payment, an amount that is agreed to by the  
3 individual.

any period of time

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

INSERT 4-5

loan

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

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

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

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

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

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INSEPT 5-4

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

3 4. Disclose to the applicant that he or she has the right to rescind the loan  
4 transaction as provided in sub. (6). *INSEPT 5-7 90*

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

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

10 (b) Except as provided in *par. 2, 3, 4, 5, 6, 7, 8, 9* ~~par. (e) and (f)~~, no payday loan provider may impose  
11 any penalty on a customer arising from the customer's default or late payment on a  
12 payday loan. *INSEPT 5-12*

13 ~~(e)~~ No payday loan provider may accept from a customer a check or  
14 authorization to initiate an electronic fund transfer if the amount of the check or  
15 authorization exceeds the ~~principal~~ amount of the payday loan plus the finance  
16 ~~charge on the payday loan.~~ *prepayment of or specified in par. (a)*

17 ~~(f)~~ (a) A payday loan provider may not rollover a payday loan ~~unless the customer~~  
18 ~~enters into a new payday loan transaction with the payday loan provider, including~~  
19 ~~issuing a new check or executing a new authorization to initiate an electronic fund~~  
20 ~~transfer.~~ *once*

21 ~~(g)~~ (a) A payday loan provider may present a customer's check for payment no more  
22 than ~~2 times~~. ~~The payday loan provider may make a second presentation of the check~~  
23 ~~only if at least 3 business days have elapsed since the first presentation and the~~  
24 ~~payday loan provider has made a good faith effort to contact the customer since the~~

INSEPT. 5-21

ASSEMBLY BILL 447

SECTION 2

1 first presentment. The only charge the payday loan provider may impose for  
2 dishonor of the customer's check is that specified in s. 422.202 (1) (d).

~~3 (3) For each customer authorization to initiate an electronic fund transfer from  
4 the customer's account, a payday loan provider may initiate an electronic fund  
5 transfer no more than <sup>one</sup> ~~two~~ times. The payday loan provider may initiate an electronic  
6 fund transfer a second time only if at least 3 business days have elapsed since the  
7 payday loan provider initiated an electronic fund transfer the first time and the  
8 payday loan provider has made a good faith effort to contact the customer since the  
9 payday loan provider initiated an electronic fund transfer the first time. The only  
10 charge the payday loan provider may impose if its instruction to execute an electronic  
11 fund transfer is denied is a charge equivalent to that specified in s. 422.202 (1) (d).~~

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

17 (b) The informational materials under par. (a) shall include a clear and  
18 conspicuous notice ~~containing all of the following~~ that a

- 19 (1) ~~1~~ payday loan is not intended to meet long-term financial needs <sup>and that a</sup>
- 20 (2) ~~2~~ payday loan applicant should use a payday loan only to provide funds in  
21 a financial emergency.

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

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

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1 5. An example of the cost to the applicant if the applicant pays the payday loan  
 2 in full at the end of the loan term in comparison to the cost to the applicant if the  
 3 applicant pays the payday loan in full after financing the amount of the payday loan  
 4 at the end of the loan term 3 consecutive times.

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

8 1. The average annual percentage rate for payday loans, ~~not including any~~  
 9 ~~rollover of the loans.~~

10 ~~2. The average annual percentage rate for payday loans, including loan~~  
 11 ~~rollovers.~~

12 ~~2~~ 2. The percentage of customers originating payday loans who defaulted on the  
 13 ~~original loan or a rollover loan.~~

14 ~~3~~ 3. The percentage of customers originating payday loans whose payment  
 15 method was dishonored or denied for insufficient funds.

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

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

23 (f) The division shall make copies of the informational materials under par. (a)  
 24 available, upon request, to payday loan providers and to the public, including  
 25 making these informational materials available on the Internet ~~the~~ site of the

INSERT 7-15

## ASSEMBLY BILL 447

## SECTION 2

1 department of financial institutions. The division may charge payday loan providers  
2 a reasonable fee for printed copies of informational materials supplied under this  
3 paragraph.

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

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

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

20 2. The average of the total amount of all fees and costs, in dollars, and the  
21 average loan term, for all payday loans of the payday loan provider ~~not including any~~

22 ~~rollover of the loans.~~

23 3. Based upon the information specified in subd. 2., the average annual  
24 percentage rate for all payday loans of the payday loan provider ~~not including any~~

25 ~~rollover of the loans.~~



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INSERT 9-9

1 4. The number of payday loans originated by the payday loan provider that  
2 were rolled over and, of those payday loans rolled over, the average number of times  
3 these payday loans were rolled over.

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

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

10 57. The number of payday loans originated by the payday loan provider that  
11 resulted in default on the loan by the customer.

12 6. 8. The number of payday loans originated by the payday loan provider on which  
13 the customer's payment method was dishonored or denied because the customer's  
14 check was drawn on, or the customer's authorization to initiate an electronic fund  
15 transfer was from, an account at a financial establishment containing insufficient  
16 funds when the check was presented for payment or the electronic fund transfer was  
17 initiated.

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

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

INSERT 9-23

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less  
NOT MORE  
than \$1,000

ASSEMBLY BILL 447

INSERT 10-3

SECTION 2

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

SECTION 3. Nonstatutory provisions.

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

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

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

SECTION 4. Initial applicability.

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(1) ~~that~~ first applies to payday loans made or offered on the effective date of this subsection. *The treatment of Section 138.14 of the statutes*

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

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

(END)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0234/P1ins  
MDK:.....

1

✓  
**INSERT 1-2:**

2

prohibiting certain motor vehicle title loans,

3

**INSERT 1A:**

Ⓢ Current law also contains numerous provisions regulating consumer loans, which are generally loans of \$25,000 or less made to individuals for personal, family, or household purposes.

4

**INSERT 1B:**

Ⓢ This substitute amendment prohibits a licensed lender from making or offering a motor vehicle title loan. The substitute amendment defines "motor vehicle title loan" as a loan of \$25,000 or less to a borrower that is, or is to be, secured by a nonpurchase money security interest in the borrower's motor vehicle and that has an original term of not more than three months. Under the substitute amendment, a "borrower" is an individual who obtains or seeks to obtain a motor vehicle title loan for personal, family, or household purposes. ✓

5

**INSERT 1C:**

Ⓢ The foregoing definitions apply regardless of whether a payday loan provider is physically located in this state.

6

**INSERT 2A:** ✓

Ⓢ The substitute amendment prohibits a payday loan provider from making a payday loan that exceeds, in principal amount and interest, \$600 or 35 percent of the applicant's gross monthly income, whichever is less. The substitute amendment does not otherwise affect the amount of interest that a payday loan provider charges, as long as the provider complies with the foregoing prohibition. In addition, the substitute amendment prohibits a payday loan provider from making a payday loan to an applicant who is liable for repayment on a payday loan made by another payday loan provider. A payday loan provider may also not make a payday loan if less than 24 hours have elapsed since the applicant repaid another payday loan in full or, if certain repayment requirements that are described below apply, less than one month has elapsed since the applicant repaid the loan in full under those requirements. The substitute amendment also prohibits a payday loan provider from rolling over a payday loan that it has made to an individual. The substitute amendment defines "roll 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. ✓

In addition, the substitute amendment provides that a

7

**INSERT 2B**

no 9

1

limit for principal and interest described above.

**INSERT 2C**

no 9

Also, if a customer fails to repay a payday loan in full at the end of the loan term, the payday loan provider must allow the customer to repay the outstanding balance in four equal monthly installments and may not take any other action, including the commencement of a court action, to collect the outstanding balance until after the last monthly installment is due. A payday loan provider may not impose any penalty on customer who repays a loan in such a manner.

a

2

**INSERT 2D:**

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the requirements of the

The substitute amendment also requires the division to develop and administer a database that provides payday loan providers with real-time access, through an Internet connection, to all payday loan information necessary for payday loan providers to comply with substitute amendment. The database must assign a unique identification number for each customer that must be used each time the customer enters into a payday loan transaction. Customer identification numbers may not be based on social security numbers. Each time that a payday loan provider enters into a payday loan transaction with a customer, the payday loan provider must submit certain information about the customer and the loan to the database. Also, a payday loan provider must submit information when a payday loan is paid in full. The division must, by rule, impose a fee of no more than \$1 each time a payday loan provider submits data to the database. Except for moneys necessary for the division to administer the database, DFI must use the fees to promote financial literacy. The substitute amendment allows a payday loan provider to rely on the information contained in the database as accurate, and provides that a payday loan provider is not subject to any penalty or liability for relying on inaccurate information contained in the database. In addition, information maintained in the database is not subject to inspection or copying under the open records law.

The substitute amendment also does the following:

✓

1. Requires a payday loan provider, at least 15 minutes before entering into a payday loan, to disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate, to be paid by the applicant assuming that the loan is paid in full at the end of the loan term and to make other disclosures regarding the requirements of this substitute amendment.

✓

2. Requires the division to develop written materials about payday loans and the payday loan industry. A payday loan provider must provider the materials to an applicant when making the disclosures described above.

✓

3. Requires payday lenders to make annual reports about their business to the division and to pay report filing fees. loan provider

✓

4. Prohibits a payday loan provider from selling to any person information about customers and payday loans made to customers.

✓

5. Allows a customer to bring an action against a payday loan provider who makes a payday loan that violates the substitute amendment. In such an action, the customer may obtain an amount equal to twice the interest charged for the loan, or the actual damages, whichever is greater, as well as costs and attorney fees.

6. Provides that whoever violates the substitute amendment is subject to a criminal fine of not more than \$500 nor more than \$1,000, imprisonment for not more than 6 months, or both.

**INSERT 3-1:**

**SECTION 1.** 20.144 (1) (g) of the statutes is amended to read:

20.144 (1) (g) *General program operations.* The amounts in the schedule for the general program operations of the department of financial institutions. Except as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department, other than by the office of credit unions and the division of banking, and 88% of all moneys received by the department's division of banking shall be credited to this appropriation, but any balance at the close of a fiscal year under this appropriation shall lapse to the general fund. Annually, \$200,000 of the amounts received under this appropriation account shall be transferred to the appropriation account under s. 20.575 (1) (g).

<sup>^</sup>  
History: 1995 a. 27 ss. 492, 495, 498, 499, 501, 504, 518, 519, 520b, 536c; 1995 a. 216; 1999 a. 9; 2003 a. 33; 2007 a. 196.

**SECTION 2.** 20.144 (1) (j) of the statutes is created to read:

20.144 (1) (j) *Financial literacy.* All moneys received under s. 138.14 (8) (d), less the amounts required for the department's division of banking to administer the database under s. 138.14 (8), for the purpose of promoting financial literacy.

**INSERT 3-18:**

<sup>no 9</sup> including a person who is not physically located in this state,

**INSERT 4-5:**

<sup>no 9</sup> including a person who is not physically located in this state,

**INSERT 5-4:**

<sup>9</sup> 5. Disclose to the applicant the service charge that may apply under sub. (3)

(g).



1           4. The number of payday loans originated by the payday loan provider that  
2 resulted in repayment under sub. (7).

3   **INSERT 9-22:**

4           **(7) REPAYMENT AFTER TERM OF LOAN.** If a customer fails to repay a payday loan  
5 in full at the end of the loan term, the payday loan provider shall allow the customer  
6 to repay the outstanding balance of the loan in four equal monthly installments  
7 beginning in the first month after the end of the loan term. A payday loan provider  
8 may not take any other action to collect the outstanding balance, including the  
9 commencement of a court action, until after the last monthly installment is due  
10 under this subsection. ✓

11           **(8) DATABASE.** (a) The division shall develop and administer a database that  
12 provides payday loan providers with real-time access, through an Internet  
13 connection, to all payday loan information necessary for payday loan providers to  
14 comply with this section. The database shall assign a unique identification number  
15 for each customer that shall be used each time the customer enters into a payday loan  
16 transaction. A customer identification number may not be based on a customer’s  
17 social security number. The database shall also assign a unique identifying  
18 transaction number for each payday loan transaction that is entered into the  
19 database by a payday loan provider under par. (b).

20           (b) At the time a payday loan provider enters into a payday loan transaction  
21 with a customer, the payday loan provider shall submit to the database under par.  
22 (a), in the form and manner prescribed by the division, information relating to the  
23 payday loan, including all of the following:

- 24                 1. The customer’s name and address.  
25                 2. The customer’s identification number that is assigned by the database.



1           3. The principal amount and interest for the payday loan.

2           4. The date on which the payday loan agreement is signed.

3           5. The date of maturity of the payday loan.

4           6. Any other information required by the division by rule.

5           (c) At the time the outstanding balance of a payday loan is repaid in full, the  
6 payday loan provider shall submit to the database under par. (a), in the form and  
7 manner prescribed by the division, information specifying that the payday loan has  
8 terminated, including the date and time that the payday loan terminated.

9           (d) The division shall by rule impose on a payday loan provider a fee of no more  
10 than \$1 each time the payday loan provider submits data required under pars. (b)  
11 and (c).

12           (e) A payday loan provider may rely on the information contained in the  
13 database under par. (a) as accurate and is not subject to any penalty or liability due  
14 to its reliance on inaccurate information contained in the database.

15           (f) Information maintained in the database under par. (a) is not subject to  
16 inspection or copying under s. 19.35 (1) and shall remain confidential except as  
17 needed by payday loan providers to satisfy the requirements of this section.

18           (g) and by the division to enforce this section  
19 The division shall establish procedures for the division to monitor use of the  
20 database by payday loan providers, including procedures for determining  
21 compliance with par. (b) 2.

22           **(9) CUSTOMER INFORMATION.** No payday loan provider may sell to another person  
23 any information regarding a customer or a payday loan made to a customer.

24           **(10) PRIVATE CAUSE OF ACTION.** If a payday loan provider makes a payday loan  
25 to a customer that violates this section, the customer may bring an action against the  
payday loan provider for an amount equal to twice the interest charged for the loan,

1 or the actual damages, including any incidental and consequential damages,  
2 sustained by the customer by reason of the violation, whichever is greater, and,  
3 notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney  
4 fees. ✓

5 **INSERT 9-23:**

6 *ms*

Whoever violates this section may be fined not more than \$500 nor more than \$1,000,  
7 imprisoned for not more than 6 months, or both.

8 **INSERT 10-3:**

9 **SECTION 3.** 138.15<sup>1</sup> of the statutes is created to read:

10 **138.15 Motor vehicle title loans. (1) DEFINITIONS.** In this section:

11 (a) "Borrower" means an individual who obtains or seeks to obtain a motor  
12 vehicle title loan for personal, family, or household purposes.

13 (b) "Motor vehicle title loan" means a loan of \$25,000 or less to a borrower that  
14 is, or is to be, secured by an interest, other than a purchase money security interest,  
15 in the borrower's motor vehicle and that has an original term of not more than 3  
16 months.

17 **(2) TITLE LOANS PROHIBITED.** No person required to be licensed under s. 138.09  
18 may make or offer any motor vehicle title loan.

19 **INSERT 11-2:**

20 (1) The treatment of section 138.15 of the statutes first applies to motor vehicle  
21 title loans made or offered on the effective date of this subsection.

} Now  
STAT  
INIT  
APP

*LPS - use  
autonumber  
not hard number*

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

LRBs0234/P1dn

MDK:.....

- Date -

gjs

Rep. Seidel:

Please note the following about this substitute amendment:

1. I drafted the substitute amendment to AB-447, but only because that bill contains some provisions that are similar to this substitute amendment. I could also prepare an identical substitute amendment to any other bill dealing with payday lending. Please let me know if you need a substitute amendment to a different bill. ✓
2. The substitute amendment includes the provisions of 2009 AB 310 (motor vehicle title loans). However, I delayed the effective date by 6 months (rather than by 4 months as in 2009 AB 310) to make the delay consistent with the rest of the substitute amendment. ✓
3. Because rollovers are prohibited, I deleted references to rollovers in the informational materials required under proposed s. 138.14 (4) and the reports required under proposed s. 138.14 (5) (b).
4. Regarding the penalty in proposed s. <sup>138</sup>196.14 (10), you indicated that you want a violation to be a misdemeanor, but you did not indicate the maximum amount of jail time. Therefore, I chose a 6-month maximum, which is based on s. 138.09 (10), which is the penalty for violations of the licensed lender requirements. Is that okay? (11) (c)
5. Please let me know if you have additional concerns about installment loans. Chris McKinny alluded to the possibility of such concerns at our meeting on this substitute amendment.

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**

LRBs0234/P1dn  
MDK:cjs:ph

January 18, 2010

Rep. Seidel:

Please note the following about this substitute amendment:

1. I drafted the substitute amendment to AB-447, but only because that bill contains some provisions that are similar to this substitute amendment. I could also prepare an identical substitute amendment to any other bill dealing with payday lending. Please let me know if you need a substitute amendment to a different bill.
2. The substitute amendment includes the provisions of 2009 AB 310 (motor vehicle title loans). However, I delayed the effective date by 6 months (rather than by 4 months as in 2009 AB 310) to make the delay consistent with the rest of the substitute amendment.
3. Because rollovers are prohibited, I deleted references to rollovers in the informational materials required under proposed s. 138.14 (4) (c) and the reports required under proposed s. 138.14 (5) (b).
4. Regarding the penalty in proposed s. 138.14 (11), you indicated that you want a violation to be a misdemeanor, but you did not indicate the maximum amount of jail time. Therefore, I chose a 6-month maximum, which is based on s. 138.09 (10), which is the penalty for violations of the licensed lender requirements. Is that okay?
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Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

## McKinny, Chris

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**From:** Hintz, Gordon  
**Sent:** Tuesday, January 19, 2010 9:22 PM  
**To:** McKinny, Chris; Castillo, Cecely  
**Subject:** What I did tonight

**Attachments:** 35 Percent of Income or 600 Model.xls

So I created a model based on an industry model to see what our proposal would allow based on an average charge of \$22 per \$100. In our previous meeting, I thought we had agreed to 35% of gross biweekly income or \$600, whatever is less. If we accept monthly, it is really just \$600 except for very very low income.

Also, we need to define loans as follows to close loopholes:

### Definition of short-term or consumer loan

(\$25,000 or less) Existing Law

or  
(\$5,000 or less) AB 192

Any consumer loan to requiring repayment in 90 or fewer days will be prohibited from making a loan that exceeds, in principle and interest, \$600 or 35% of the applicant's gross bi-monthly income, whichever is less.

Any loan with a repayment term exceeding 90 days will also be required to report to credit bureaus.



35 Percent of  
Income or 600 Mo...

**Eligible Loan Amount at 35% or \$600, Whichever is Less**  
Annual Income

<b>Term (days)</b>	<b>\$10,000</b>	<b>\$15,000</b>	<b>\$20,000</b>	<b>\$25,000</b>	<b>\$30,000</b>	<b>\$35,000</b>	<b>\$40,000</b>	<b>\$45,000</b>
1	\$ 10	\$ 14	\$ 19	\$ 24	\$ 29	\$ 34	\$ 38	\$ 43
2	19	29	38	48	58	67	77	86
3	29	43	58	72	86	101	115	129
4	38	58	77	96	115	134	153	173
5	48	72	96	120	144	168	192	216
6	58	86	115	144	173	201	230	259
7	67	101	134	168	201	235	268	302
8	77	115	153	192	230	268	307	345
9	86	129	173	216	259	302	345	388
10	96	144	192	240	288	336	384	432
11	105	158	211	264	316	369	422	475
12	115	173	230	288	345	403	460	518
13	125	187	249	312	374	436	499	561
<b>14</b>	<b>\$ 134</b>	<b>\$ 201</b>	<b>\$ 268</b>	<b>\$ 336</b>	<b>\$ 403</b>	<b>\$ 470</b>	<b>\$ 537</b>	<b>\$ 600</b>
15	144	216	288	360	432	503	575	600
16	153	230	307	384	460	537	<b>\$ 600</b>	600
17	163	245	326	408	489	571	600	600
18	173	259	345	432	518	<b>\$ 600</b>	600	600
19	182	273	364	455	547	600	600	600
20	192	288	384	479	575	600	600	600
21	201	302	403	503	<b>\$ 600</b>	600	600	600
22	211	316	422	527	600	600	600	600
23	221	331	441	551	600	600	600	600
24	230	345	460	575	600	600	600	600
25	240	360	479	<b>\$ 599</b>	600	600	600	600
26	249	374	499	600	600	600	600	600
27	259	388	518	600	600	600	600	600
28	268	403	537	600	600	600	600	600
29	278	417	556	600	600	600	600	600
30	288	432	575	600	600	600	600	600
31	<b>\$ 297</b>	<b>\$ 446</b>	<b>\$ 595</b>	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600

<b>Biweekly Loan Amount</b>	\$105	\$157	\$209	\$262	\$314	\$367	\$419	\$468
<b>Interest*</b>	\$29	\$44	\$59	\$74	\$89	\$103	\$118	\$132
<b>Total</b>	<b>\$134</b>	<b>\$201</b>	<b>\$268</b>	<b>\$336</b>	<b>\$403</b>	<b>\$470</b>	<b>\$537</b>	<b>\$600</b>

<b>Monthly Loan Amount</b>	\$232	\$348	\$464	\$468	\$468	\$468	\$468	\$468
<b>Interest*</b>	\$65	\$98	\$131	\$132	\$132	\$132	\$132	\$132
<b>Total</b>	<b>\$297</b>	<b>\$446</b>	<b>\$595</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>

\*calculated on a \$22 per hundred charge



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0234/PL

MDK:cjs:ph

stays

(PZ)

O-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 2009 ASSEMBLY BILL 447

TODAY

Rm has  
been  
run

SxV

Ben Cat

1 AN ACT to amend 20.144 (1) (g); and to create 20.144 (1) (j), 138.09 (8) (f), 138.14  
2 and 138.15 of the statutes; relating to: regulating payday loan providers,  
3 prohibiting certain motor vehicle title loans, providing an exemption from  
4 emergency rule procedures, granting rule-making authority, making an  
5 appropriation, 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 (division) in the Department of Financial Institutions (DFI) to assess a finance charge greater than 18 percent per year. This type of lender is generally referred to as a "licensed lender." Current law also contains numerous provisions regulating consumer loans, which are generally loans of \$25,000 or less made to individuals for personal, family, or household purposes.

This substitute amendment prohibits a licensed lender from making or offering a motor vehicle title loan. The substitute amendment defines "motor vehicle title loan" as a loan of \$25,000 or less to a borrower that is, or is to be, secured by a nonpurchase money security interest in the borrower's motor vehicle and that has

an original term of not more than three months. Under the substitute amendment, a "borrower" is an individual who obtains or seeks to obtain a motor vehicle title loan for personal, family, or household purposes.

for a term of 90 days or less  
(use 2x)

This substitute amendment also creates certain requirements applicable to payday loan transactions. Under the substitute amendment, 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 ~~any~~ period of time before negotiating it, and before negotiating the check loan 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 ~~any~~ period of time before initiating the EFT, and before initiating the EFT loan the individual an agreed amount. The foregoing definitions apply regardless of whether a payday loan provider is physically located in this state.

The substitute amendment imposes certain restrictions on payday loans. The substitute amendment prohibits a payday loan provider from making a payday loan that exceeds, in principal amount and interest, \$600 or 35 percent of the applicant's gross ~~monthly~~ income, whichever is less. The substitute amendment does not otherwise affect the amount of interest that a payday loan provider charges, as long as the provider complies with the foregoing prohibition. In addition, the substitute amendment prohibits a payday loan provider from making a payday loan to an applicant who is liable for repayment on a payday loan made by another payday loan provider. A payday loan provider may also not make a payday loan if less than 24 hours have elapsed since the applicant repaid another payday loan in full or, if certain repayment requirements that are described below apply, less than one ~~month~~ pay period of an applicant has elapsed since the applicant repaid the loan in full under those requirements. The substitute amendment also prohibits a payday loan provider from rolling over a payday loan that it has made to an individual. The substitute amendment defines "roll 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.

biweekly

pay period of an applicant

In addition, the substitute amendment provides that a payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer's prepayment, default, or late payment except that a payday loan provider may charge a fee not to exceed ~~\$50~~ \$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 once. 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 limit for principal and interest described above. 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. Also, if a customer fails to repay a payday loan in full at the end of the loan term, the payday loan provider must ~~allow~~ offer the customer to repay the

offer

the opportunity



INSEPT 3A

outstanding balance in four equal ~~monthly~~ installments and may not take any other action, including the commencement of a court action, to collect the outstanding balance until after the last monthly installment is due. A payday loan provider may not impose any penalty on a customer who repays a loan in such a manner.

The substitute amendment also requires the division to develop and administer a database that provides payday loan providers with real-time access, through an Internet connection, to all payday loan information necessary for payday loan providers to comply with the requirements of the substitute amendment. The database must assign a unique identification number for each customer that must be used each time the customer enters into a payday loan transaction. Customer identification numbers may not be based on social security numbers. Each time that a payday loan provider enters into a payday loan transaction with a customer, the payday loan provider must submit certain information about the customer and the loan to the database. Also, a payday loan provider must submit information when a payday loan is paid in full. The division must, by rule, impose a fee of no more than \$1 each time a payday loan provider submits data to the database. ~~(Except for attorneys necessary for the division to administer the database.)~~ DFI must use the fees to promote financial literacy. The substitute amendment allows a payday loan provider to rely on the information contained in the database as accurate, and provides that a payday loan provider is not subject to any penalty or liability for relying on inaccurate information contained in the database. In addition, information maintained in the database is not subject to inspection or copying under the open records law. ~~(INSEPT 3D)~~

INSEPT 3B

INSEPT 3C

The substitute amendment also does the following:

1. Requires a payday loan provider, at least 15 minutes before entering into a payday loan, to disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate, to be paid by the applicant assuming that the loan is paid in full at the end of the loan term and to make other disclosures regarding the requirements of this substitute amendment.
2. Requires the division to develop written materials about payday loans and the payday loan industry. A payday loan provider must provider the materials to an applicant when making the disclosures described above.
3. Requires payday loan providers to make annual reports about their business to the division ~~and to pay report filing fees.~~
4. Prohibits a payday loan provider from selling to any person information about customers and payday loans made to customers.
5. Allows a customer to bring an action against a payday loan provider who makes a payday loan that violates the substitute amendment. In such an action, the customer may obtain an amount equal to twice the interest charged for the loan, or the actual damages, whichever is greater, as well as costs and attorney fees.

or database contractor

a repayment offer described above is made or

6. Provides that whoever violates the substitute amendment is subject to a criminal fine of not more than \$500 nor more than \$1,000, imprisonment for not more than 6 months, or both.

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

**SECTION 1.** 20.144 (1) (g) of the statutes is amended to read:

20.144 (1) (g) *General program operations.* The amounts in the schedule for the general program operations of the department of financial institutions. Except as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department, other than by the office of credit unions and the division of banking, and 88% of all moneys received by the department's division of banking shall be credited to this appropriation, but any balance at the close of a fiscal year under this appropriation shall lapse to the general fund. Annually, \$200,000 of the amounts received under this appropriation account shall be transferred to the appropriation account under s. 20.575 (1) (g).

**SECTION 2.** 20.144 (1) (j) of the statutes is created to read:

20.144 (1) (j) *Financial literacy.* All moneys received under s. 138.14 (8) (a), ~~less the amounts required for the department's division of banking to administer the database under s. 138.14 (8), for the purpose of~~ promoting financial literacy.

**SECTION 3.** 138.09 (8) (f) of the statutes is created to read:

138.09 (8) (f) When making a payday loan, as defined in s. 138.14 (1) (g), comply with s. 138.14 and rules promulgated under s. 138.14.

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

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

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

INSEAT  
4-13  
e

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

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

4 (d) "Division" means the division of banking in the department of financial  
5 institutions.

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

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

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

*for a term of 90 days or less*

11 1. A transaction between an individual with an account at a financial  
12 establishment and another person, including a person who is not physically located  
13 in this state, in which the person agrees to accept from the individual a check, to hold  
14 the check for ~~the~~<sup>a</sup> period of time before negotiating or presenting the check for  
15 payment, and to loan to the individual, ~~an amount~~<sup>an amount</sup> before negotiating or presenting  
16 the check for payment, an amount that is agreed to by the individual.

17 2. A transaction between an individual with an account at a financial  
18 establishment and another person, including a person who is not physically located  
19 in this state, in which the person agrees to accept the individual's authorization to  
20 initiate an electronic fund transfer from the account, to wait ~~a~~<sup>a</sup> period of time before  
21 initiating the electronic fund transfer, and to loan to the individual, ~~an amount~~<sup>an amount</sup>  
22 before initiating the electronic fund transfer, an amount that is agreed to by the  
23 individual.

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

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

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

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

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

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

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

18 5. Disclose to the applicant the service charge that may apply under sub. (3)

19 (g).

20 6. Disclose to the applicant the payment requirements that may apply under  
21 sub. (7) if the loan is not paid in full at the end of the loan term. ✓

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

biweekly

1 (3) LOAN RESTRICTIONS. (a) No payday loan provider may make a payday loan  
2 that exceeds, in principal amount and interest, \$600 or 35 percent of the applicant's  
3 gross ~~gross~~ income, whichever is less.

INSERT 7-8

4 (b) No payday loan provider may make a payday loan to individual who is liable  
5 for repayment of any amount on a payday loan made by another payday loan  
6 provider. No payday loan provider may make a payday loan to an individual if less  
7 than 24 hours have elapsed since the individual repaid another payday loan in full  
8 or, if repayment is subject to sub. (7), <sup>(a)</sup> if less than ~~24 hours~~ has elapsed since the  
9 individual repaid the loan in full under sub. (7). <sup>(a)</sup>

10 (c) No payday loan provider may require the payment of any interest on a  
11 payday loan that accrues after the original maturity date of the payday loan.

12 (d) Except as provided in par. (g), no payday loan provider may impose any  
13 penalty on a customer arising from the customer's prepayment of or default or late  
14 payment on a payday loan, including any payment ~~amount~~ under sub. (7). <sup>(a)</sup>

15 (e) No payday loan provider may accept from a customer a check or  
16 authorization to initiate an electronic fund transfer if the amount of the check or  
17 authorization exceeds the amount specified in par. (a).

18 (f) A payday loan provider may not rollover a payday loan.

19 (g) A payday loan provider may present a customer's check for payment no  
20 more than once. For each customer authorization to initiate an electronic fund  
21 transfer from the customer's account, a payday loan provider may initiate an  
22 electronic fund transfer no more than once. The only charge that a payday loan  
23 provider may impose for dishonor of a customer's check or denial of the payday loan  
24 provider's instruction to execute an electronic fund transfer is a service charge that  
25 does not exceed \$70.

15

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 that a payday loan is not intended to meet long-term financial  
8 needs and that a payday loan applicant should use a payday loan only to provide  
9 funds in a financial emergency.

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

13           1. The average annual percentage rate for payday loans.

14           2. The percentage of customers originating payday loans who defaulted on the  
15 loan.

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

18           4. The percentage of customers originating payday loans that resulted in  
19 repayment under sub. (7) (a)

20           (d) The informational materials under par. (a) shall include a summary of all  
21 actions that the payday loan provider may take against a payday loan customer if  
22 the customer defaults on the payday loan or if the customer's check or electronic fund  
23 transfer is dishonored or denied for insufficient funds.

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

1 (f) The division shall make copies of the informational materials under par. (a)  
2 available, upon request, to payday loan providers and to the public, including  
3 making these informational materials available on the Internet site of the  
4 department of financial institutions. The division may charge payday loan providers  
5 a reasonable fee for printed copies of informational materials supplied under this  
6 paragraph.

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

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

- 22 1. The number of payday loans originated by the payday loan provider.
- 23 2. The average of the total amount of all fees and costs, in dollars, and the  
24 average loan term, for all payday loans of the payday loan provider.

1 3. Based upon the information specified in subd. 2., the average annual  
2 percentage rate for all payday loans of the payday loan provider.

3 4. The number of payday loans originated by the payday loan provider that  
4 resulted in repayment under sub. (7). (a)

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

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

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

18 (7) REPAYMENT AFTER TERM OF LOAN. If a customer fails to repay a payday loan  
19 in full at the end of the loan term, the payday loan provider shall ~~offer~~ offer

20 to repay the outstanding balance of the loan in four equal ~~monthly~~ installments  
21 ~~beginning in the first month after the end of the loan term. A payday loan provider~~  
22 ~~may not take any other action to collect the outstanding balance, including the~~  
23 ~~commencement of a court action, until after the last monthly installment is due~~  
24 ~~under this subsection.~~

(a) Except as provided in par. (b) 5

the opportunity to ~~defend~~

INSERT 10-20



INSEAT 11-1

1 (8) DATABASE. (a) The division shall develop and administer a database that  
 2 provides payday loan providers with real-time access, through an Internet  
 3 connection, to all payday loan information necessary for payday loan providers to  
 4 comply with this section. The database shall assign a unique identification number  
 5 for each customer that shall be used each time the customer enters into a payday loan  
 6 transaction. A customer identification number may not be based on a customer's  
 7 social security number. The database shall also assign a unique identifying  
 8 transaction number for each payday loan transaction that is entered into the  
 9 database by a payday loan provider under par. (b).

10 (b) At the time a payday loan provider enters into a payday loan transaction  
 11 with a customer, the payday loan provider shall submit to the database under par.  
 12 (a), in the form and manner prescribed by the division, information relating to the  
 13 payday loan, including all of the following:

- 14 1. The customer's name and address.
- 15 2. The customer's identification number that is assigned by the database.
- 16 3. The principal amount and interest for the payday loan.
- 17 4. The date on which the payday loan agreement is signed.
- 18 5. The date of maturity of the payday loan.

19 7. Any other information required by the division by rule.

20 (g) At the time the outstanding balance of a payday loan is repaid in full, the  
 21 payday loan provider shall submit to the database under par. (a), in the form and  
 22 manner prescribed by the division, information specifying that the payday loan has  
 23 terminated, including the date and time that the payday loan terminated.

INSEAT 11-19

Ⓟ 6. The customer's pay period.

1 *ca* (d) The division shall by rule impose on a payday loan provider a fee of no more

2 than \$1 each time the payday loan provider submits data required under pars. (b)

3 *and (c) and (d)*

4 *e* (e) A payday loan provider may rely on the information contained in the  
5 database under par. (a) as accurate and is not subject to any penalty or liability due  
6 to its reliance on inaccurate information contained in the database.

7 *f* (f) Information maintained in the database under par. (a) is not subject to  
8 inspection or copying under s. 19.35 (1) and shall remain confidential except as  
9 needed by payday loan providers to satisfy the requirements of this section and by  
10 the division to enforce this section.

11 *i* (g) The division shall establish procedures ~~for the division to~~ monitor/use of the  
12 database by payday loan providers, including procedures for determining  
13 compliance with par. (b) 2.

14 (9) CUSTOMER INFORMATION. No payday loan provider ~~may sell to another person~~  
15 any information regarding a customer or a payday loan made to a customer.

16 (10) PRIVATE CAUSE OF ACTION. If a payday loan provider makes a payday loan  
17 to a customer that violates this section, the customer may bring an action against the  
18 payday loan provider for an amount equal to twice the interest charged for the loan,  
19 or the actual damages, including any incidental and consequential damages,  
20 sustained by the customer by reason of the violation, whichever is greater, and,  
21 notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney  
22 fees.

23 (11) PENALTY. Whoever violates this section may be fined not more than \$500  
24 nor more than \$1,000, imprisoned for not more than 6 months, or both.

1 (12) RULES. The division shall promulgate rules necessary to implement,  
2 administer, and enforce this section, including prescribing the form and content of  
3 any report required under sub. (5) and the method of ~~submit~~ filing such a report.

4 SECTION 5. 138.15 of the statutes is created to read:

5 **138.15 Motor vehicle title loans.** (1) DEFINITIONS. In this section:

6 (a) “Borrower” means an individual who obtains or seeks to obtain a motor  
7 vehicle title loan for personal, family, or household purposes.

8 (b) “Motor vehicle title loan” means a loan of \$25,000 or less to a borrower that  
9 is, or is to be, secured by an interest, other than a purchase money security interest,  
10 in the borrower’s motor vehicle and that has an original term of not more than 3  
11 months.

12 (2) TITLE LOANS PROHIBITED. No person required to be licensed under s. 138.09  
13 may make or offer any motor vehicle title loan.

14 SECTION 6. Nonstatutory provisions.

15 (1) In this SECTION, “division” means the division of banking in the department  
16 of financial institutions.

17 (2) The division shall submit in proposed form the rules required under section  
18 138.14 (8) (b) ~~e~~ and ~~d~~ and (12) of the statutes, as created by this act, to the  
19 legislative council staff under section 227.15 (1) of the statutes no later than the first  
20 day of the 6th month beginning after the effective date of this subsection.

21 (3) Using the emergency rules procedure under section 227.24 of the statutes,  
22 the division shall promulgate the rules required under section 138.14 (8) (b) ~~e~~ and  
23 ~~d~~ and (12) of the statutes, as created by this act, for purposes of implementing this  
24 act, for the period before the effective date of the rules submitted under subsection  
25 (2). The division shall promulgate these emergency rules no later than the first day

1 of the 6th month beginning after the effective date of this subsection.  
2 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules  
3 may remain in effect until July 1, 2011, or the date on which permanent rules take  
4 effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the  
5 statutes, the division is not required to provide evidence that promulgating a rule  
6 under this subsection as an emergency rule is necessary for the preservation of the  
7 public peace, health, safety, or welfare and is not required to provide a finding of  
8 emergency for a rule promulgated under this subsection.

9 **SECTION 7. Initial applicability.**

10 (1) The treatment of section 138.14 of the statutes first applies to payday loans  
11 made or offered on the effective date of this subsection.

12 (2) The treatment of section 138.15 of the statutes first applies to motor vehicle  
13 title loans made or offered on the effective date of this subsection.

14 **SECTION 8. Effective dates.** This act takes effect on the first day of the 6th  
15 month beginning after publication, except as follows:

16 (1) SECTION 6 of this act takes effect on the day after publication.

17 (END)



A handwritten note consisting of the text "d-note" written in cursive and enclosed within a hand-drawn oval. Below the oval is a scribbled signature.

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0234/P2ins  
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**INSERT 3A:**

with due dates coinciding with the customer's pay period schedule. However, if a payday loan provider makes such an offer to a customer, then, for 12 months following the offer, no payday loan provider, including the payday loan provider making the offer, is required to make another offer to the customer.

**INSERT 3B:**

The division is also allowed to contract for the development or administration of the database.

**INSERT 3C:**

pay for the development and administration of the database and to

**INSERT 3D:**

Also, if the division contracts for development or administration of the database, the contract must ensure the confidentiality of information in the database.

**INSERT 4-13:**

for developing and administering, or contracting for the development and administration of,

**INSERT 7-8:**

a time period equal to the applicant's pay period

**INSERT 10-20:**

with due dates coinciding with the customer's pay period schedule.

(b) If a payday loan provider offers a customer the opportunity to make repayment under par. (a), then, during the 12-month period following the offer, no payday loan provider, including the payday loan provider making the offer, is required to offer the customer another opportunity to repay a payday loan under par. (a).

**INSERT 11-1:**

, or contract for the development and administration of,

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**INSERT 11-<sup>19</sup>~~10~~:** (a)

(c) At any time a payday loan provider offers a customer the opportunity to agree to repay a payday loan under sub. (7), the payday loan provider shall submit the date of the offer to the database under par. (a).

**INSERT 12-10:**

(h) If the division contracts with a person for the development or administration of the database under par. (a), the division shall ensure that the contract requires the person to maintain the confidentiality of information contained in the database.

**INSERT 12-14:**

or person with whom the division contracts for development or administration of the database under par. (a)

sub. (8)

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

LRBs0234/P2dn

MDK:/:....

*cjs*

*— date —*

Rep. Seidel:

Please review this draft to make sure it achieves your intent. I can quickly prepare a version that can be introduced after you review this version. Note the following differences between this version and the previous version:

1. The definition of “payday loan” is revised to refer to loans with terms of 90 days or less. ✓
2. The maximum limit for a payday loan is revised to refer to gross biweekly pay, instead of gross monthly pay. ✓
3. The allowable return check fee is \$15, not \$30. ✓
4. The repayment language in proposed s. 138.14 (7) is substantially revised. Please review it to make sure it is okay. Also note that I made related changes to the “cooling off” period in proposed s. 138.14 (3) (b) and required additional database reporting in proposed s. 138.14 (8) (b) 6. and (c).
5. This version does not allow DFI’s Division of Banking to impose a report filing fee. ✓
6. This version allows DFI’s Division of Banking to contract for the database. I made related changes to the appropriation, as well as required a contract to ensure confidentiality of information and prohibited contractors from selling information. ✓

*and also*

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**

LRBs0234/P2dn  
MDK:cjs:rs

January 22, 2010

Rep. Seidel:

Please review this draft to make sure it achieves your intent. I can quickly prepare a version that can be introduced after you review this version. Note the following differences between this version and the previous version:

1. The definition of "payday loan" is revised to refer to loans with terms of 90 days or less.
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Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)



**Barman, Mike**

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**From:** Hanaman, Cathlene  
**Sent:** Friday, January 22, 2010 11:43 AM  
**To:** Becky Kraft; Chris Siciliano; Joy Geller; Kathy Follett; Noah Natzke; Wendy Jackson; Jean Frantzen; Michael Duchek; Patty Greenslet; Ron Schlueter; Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford  
**Subject:** Today

[REDACTED] will be in editing by 1; it [REDACTED]

## Kunkel, Mark

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**From:** McKinny, Chris  
**Sent:** Monday, February 01, 2010 5:11 PM  
**To:** Kunkel, Mark  
**Subject:** Credit Bureau Language

"Any loan with a repayment term exceeding 90 days will be required to report to credit bureaus as is standard practice for installment loans."

There wasn't any context in the document I received, but I assume this is just out of his concern that lenders will try to re-characterize themselves as installment loan providers as opposed to payday loan providers. I just tried to call his office to clarify but nobody was in. If I hear differently I will let you know. Thanks again Mark. Have a great night!

Chris McKinny  
**Office of Rep. Donna Seidel**  
*Assistant Majority Leader*  
608-266-0654 (office)  
1-888-534-0085 (toll free)

. No requirement or prohibition may be imposed under the laws of any State--  
(1) with respect to any subject matter regulated under--

(F) section 623 [15 USCS § 1681s-2], relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply--

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996 [enacted Sept. 30, 1996]); or

Mass law: Every person who furnishes information to a consumer reporting agency shall follow reasonable procedures to ensure that the information reported to a consumer reporting agency is accurate and complete. No person may provide information to a consumer reporting agency if such person knows or has reasonable cause to believe such information is not accurate or complete.

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996 [enacted Sept. 30, 1996]);

Cal. law: A person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate.

15 USCS 1681s-2:

(a) Duty of furnishers of information to provide accurate information.

- (1) Prohibition
- (2) Duty to correct and update information
- (3) Duty to provide notice of dispute
- (4) Duty to provide notice of closed accounts.

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed

(5) Duty to provide notice of delinquency of accounts.

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action

- (6) Duties of furnishers upon notice of identity theft-related information.
- (7) Negative information.
- (8) Ability of consumer to dispute information directly with furnisher.
- (9) Duty to provide notice of status as medical information furnisher.

(b) Duties of furnishers of information upon notice of dispute.

Unlike "consumer reporting agency," the term "furnisher" is not defined in the FCRA. As the term is generally understood, however, furnishers are entities that provide information about their customers to CRAs, including information about customers' payments on their accounts. Examples of furnishers include banks, thrifts, credit unions, savings and loan institutions, mortgage lenders, credit card issuers, collection agencies, retail installment lenders, and auto finance lenders.<sup>20</sup> The FCRA does not require furnishers to report to CRAs, but, as discussed below, if they do report, they must comply with certain provisions of the statute. According to CDIA, the majority of furnishers report full account payment information, both "positive" information that the account is current and "negative" information, such as delinquencies and accounts placed for collection.<sup>21</sup> Some types of accounts are typically reported only when the payment history turns negative, such as when the debt is transferred to a debt collector. The most common examples of these accounts are those related to medical debts, telecommunications, and power companies.<sup>22</sup>

from <http://www.federalreserve.gov/boarddocs/rptcongress/fcradispute/fcradispute200608.htm>

Report to Congress on the  
Fair Credit Reporting Act Dispute Process

Submitted to the Congress pursuant to section 313(b) of the Fair and Accurate Credit  
Transactions Act of 2003

August 2006

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\*\*\* CURRENT THROUGH PL 111-125, APPROVED 12/28/2009 \*\*\*

TITLE 15. COMMERCE AND TRADE  
CHAPTER 41. CONSUMER CREDIT PROTECTION  
CREDIT REPORTING AGENCIES

**Go to the United States Code Service Archive Directory**

15 USCS § 1681a

§ 1681a. Definitions; rules of construction

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.