



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0234/P20

MDK:cjs:rs

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D-NOTE

Stays

PM was seen
Sun

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 447

FRI
10 AM

Can Cut

2/21

INSERT
1-2

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.

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 a period of time before negotiating it, and before negotiating the check loan the individual an agreed amount for a term of 90 days or less; or 2) accept the individual’s authorization to initiate an electronic fund transfer (EFT) from the individual’s account, wait for a period of time before initiating the EFT, and before initiating the EFT loan the individual an agreed amount for a term of 90 days or less. 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 biweekly 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 also may 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 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.

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 \$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 offer the customer the opportunity to repay the outstanding balance in four equal installments 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. 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 division is also allowed to contract for the development or administration of the database. 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 repayment offer described above is made or 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. DFI must use the fees to pay for the development and administration of the database and 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. Also, if the division contracts for development or administration of the database, the contract must ensure the confidentiality of information in the database.

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 provide 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.
4. Prohibits a payday loan provider or database contractor 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

INSEAT 4A

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.

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

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

2 20.144 (1) (g) *General program operations.* The amounts in the schedule for
3 the general program operations of the department of financial institutions. Except
4 as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department,
5 other than by the office of credit unions and the division of banking, and 88% of all
6 moneys received by the department's division of banking shall be credited to this
7 appropriation, but any balance at the close of a fiscal year under this appropriation
8 shall lapse to the general fund. Annually, \$200,000 of the amounts received under
9 this appropriation account shall be transferred to the appropriation account under
10 s. 20.575 (1) (g).

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

12 20.144 (1) (j) *Financial literacy.* All moneys received under s. 138.14 (8) (e), for
13 developing and administering, or contracting for the development and
14 administration of, the database under s. 138.14 (8) and for promoting financial
15 literacy.

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

17 138.09 (8) (f) When making a payday loan, as defined in s. 138.14 (1) (g), comply
18 with s. 138.14 and rules promulgated under s. 138.14.

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

INSEAT 4-18 ✓

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

2 (a) “Applicant” means an individual who seeks to obtain a payday loan.

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

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

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

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

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

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

13 1. A transaction between an individual with an account at a financial
14 establishment and another person, including a person who is not physically located
15 in this state, in which the person agrees to accept from the individual a check, to hold
16 the check for a period of time before negotiating or presenting the check for payment,
17 and to loan to the individual, for a term of 90 days or less, before negotiating or
18 presenting the check for payment, an amount that is agreed to by the individual.

19 2. A transaction between an individual with an account at a financial
20 establishment and another person, including a person who is not physically located
21 in this state, in which the person agrees to accept the individual’s authorization to
22 initiate an electronic fund transfer from the account, to wait a period of time before
23 initiating the electronic fund transfer, and to loan to the individual, for a term of 90
24 days or less, before initiating the electronic fund transfer, an amount that is agreed
25 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 date of maturity. "Rollover" or "rolled
5 over" includes the consolidation of payday loans and any transaction in which a
6 payday loan is repaid with the proceeds of another payday loan made by the same
7 payday 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. (4).

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

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

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

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

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 biweekly income, whichever is less.

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) (a), if less than a time period equal to the
9 applicant's pay period has elapsed since the individual repaid the loan in full under
10 sub. (7) (a).

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

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

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

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

20 (g) A payday loan provider may present a customer's check for payment no
21 more than once. For each customer authorization to initiate an electronic fund
22 transfer from the customer's account, a payday loan provider may initiate an
23 electronic fund transfer no more than once. The only charge that a payday loan
24 provider may impose for dishonor of a customer's check or denial of the payday loan

1 provider's instruction to execute an electronic fund transfer is a service charge that
2 does not exceed \$15.

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

8 (b) The informational materials under par. (a) shall include a clear and
9 conspicuous notice that a payday loan is not intended to meet long-term financial
10 needs and that a payday loan applicant should use a payday loan only to provide
11 funds in a financial emergency.

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

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

16 2. The percentage of customers originating payday loans who defaulted on the
17 loan.

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

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

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

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

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

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

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

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

1 2. 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.

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

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

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

9 6. 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.

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

20 **(7) REPAYMENT AFTER TERM OF LOAN.** (a) Except as provided in par. (b), if a
21 customer fails to repay a payday loan in full at the end of the loan term, the payday
22 loan provider shall offer the customer the opportunity to repay the outstanding
23 balance of the loan in four equal installments with due dates coinciding with the
24 customer's pay period schedule.

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

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

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

- 20 1. The customer's name and address.
- 21 2. The customer's identification number that is assigned by the database.
- 22 3. The principal amount and interest for the payday loan.
- 23 4. The date on which the payday loan agreement is signed.
- 24 5. The date of maturity of the payday loan.
- 25 6. The customer's pay period.

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

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

5 (d) 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 (e) 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 (c), and (d).

12 (f) 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 (g) 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 and by
18 the division to enforce this section.

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

23 (i) The division shall establish procedures monitoring use of the database by
24 payday loan providers, including procedures for determining compliance with par.
25 (b) 2.

1 **(9) CUSTOMER INFORMATION.** No payday loan provider or person with whom the
2 division contracts for development or administration of the database under sub. (8)
3 (a) may sell to another person any information regarding a customer or a payday loan
4 made to a customer.

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

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

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

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

18 **138.15 Motor vehicle title loans. (1) DEFINITIONS.** In this section:

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

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

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

3 **SECTION 6. Nonstatutory provisions.**

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

6 (2) The division shall submit in proposed form the rules required under section
7 138.14 (8) (b) 7. and (e) and (12) of the statutes, as created by this act, to the
8 legislative council staff under section 227.15 (1) of the statutes no later than the first
9 day of the 6th month beginning after the effective date of this subsection.

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

23 **SECTION 7. Initial applicability.**

24 ~~(a)~~ The treatment of section 138.14 of the statutes first applies to payday loans
25 made or offered on the effective date of this subsection.

INSERT 14-24

1 - ~~1~~ ² The treatment of section 138.15 of the statutes first applies to motor vehicle
2 title loans made or offered on the effective date of this subsection.

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

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

6 (END)

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no!

of **INSERT 1-2:**
requiring reporting certain loans to credit reporting agencies,

INSERT 4A:

7. Requires any licensed lender, upon making a loan for a term of more than 90 days, to report the loan to credit reporting agency, which is referred to as a consumer reporting agency under federal law.

INSERT 4-18:

SECTION 1. 138.09 (8) (g) of the statutes is created to read:

138.09 (8) (g) Upon making a loan for a term of more than 90 days, report the loan to a consumer reporting agency, as defined in 15 USC 1681a(f).

INSERT 14-24:

(1) The treatment of section 138.09 (8) (g) of the statutes first applies to loans made on the effective date of this subsection.

*LPS:
Please make
sure
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0234/1dn
MDK:/:...

ejs

- date -

Rep. Seidel:

This version is identical to the previous version, except that it creates s. 138.09 (8) (g), which requires licensed lenders to report loans with terms of more than 90 days to credit reporting agencies.

Note that once a licensed lender reports a loan, the licensed lender must comply with the federal Fair Credit Reporting Act, which requires correcting any inaccurate information that has been submitted, as well as, under certain circumstances, reporting information about delinquent and voluntarily closed accounts.

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**

LRBs0234/1dn
MDK:cjs:ph

February 4, 2010

Rep. Seidel:

This version is identical to the previous version, except that it creates s. 138.09 (8) (g), which requires licensed lenders to report loans with terms of more than 90 days to credit reporting agencies.

Note that once a licensed lender reports a loan, the licensed lender must comply with the federal Fair Credit Reporting Act, which requires correcting any inaccurate information that has been submitted, as well as, under certain circumstances, reporting information about delinquent and voluntarily closed accounts.

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

Kunkel, Mark

From: Castillo, Cecely
Sent: Friday, February 05, 2010 11:45 AM
To: Kunkel, Mark; McKinny, Chris
Subject: FW: LRB 09s0234 Topic: Payday lenders

Mark,

Here's some info from an attorney at legal action as well.

Thank you,
Cecely

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

From: Robert J. Andersen [mailto:RJA@legalaction.org]
Sent: Friday, February 05, 2010 11:25 AM
To: Hintz, Gordon
Cc: Castillo, Cecely
Subject: RE: LRB 09s0234 Topic: Payday lenders

Gordon and Cecely:

In answer to your question, one way to do this is to add the following to the bill

“Any licensed lender under 138.09(1m) may not require a balloon payment as described in s. 422.402 (1)” (Licensed lenders under that section covers these pay day lenders)

Secondly, the 90 day limit causes problems, because it allows people to escape this whole bill by making their loan for more than 90 days. We don't understand why this is necessary, because the banks and savings and loans are already excluded from the coverage of this bill by the definition of a pay day lender as being someone licensed under s. 138.09(1m) and that section specifically excludes banks and savings and loans. However, if you need to have some time limit in the bill, why not go to 180 days instead of 90 days. That way it makes it more unlikely that pay day lenders will be able to make money by issuing loans for that long a time.

Third, we believe that line 1 of page 14, should delete the limitation that prohibits motor vehicle loans for “not more than 3 months”. All motor vehicle loans should be prohibited, no matter for how long, because these are bigger loans that are likely to be made for longer periods of time.

Finally, page 7, line 3, should read that a provider maintain records for 6 years instead of 3, because the providers have 6 years to sue a consumer.

Thanks very much for asking for our thoughts on this.

From: Hintz, Gordon [mailto:Gordon.Hintz@legis.wisconsin.gov]
Sent: Thursday, February 04, 2010 5:54 PM
To: Robert J. Andersen
Cc: Castillo, Cecely
Subject: FW: LRB 09s0234 Topic: Payday lenders

Hi Bob,

Attached is the latest draft embargoed until 4pm tomorrow. We have at least one major problem that I was hoping you might be able to help with. In our efforts to define payday loans as those whose term is less than 90 days, we separated traditional payday loans and installment loans. However, we found the loophole.

If we use 90 days or less for our rules, lenders may simply change their business model to installment loans instead of single payment loans offering bi-weekly payments equal to a two week finance charge and then a final balloon payment equal to the original loan amount on the 91st day.

Is there a way to regulate balloon payments that attempt to circumvent our proposal?

Gordon

<<LRB s0234_1>> <<LRB s0234/1>>

SENATE BILL No. 5

AN ACT designating part of United States highway 160 as the 1011th Quartermaster Co. U.S. Army Reserve memorial highway.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The portion of United States highway 160 from the east city limits of the city of Independence, then east on United States highway 160, to the junction with United States highway 169 is hereby designated as the 1011th Quartermaster Co. U.S. Army Reserve memorial highway. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the 1011th Quartermaster Co. U.S. Army Reserve memorial highway, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and the additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

Kunkel, Mark

From: Castillo, Cecely
Sent: Friday, February 05, 2010 11:49 AM
To: Kunkel, Mark; McKinny, Chris
Subject: only line one

To clarify – this is the only thing we are concerned about. If this language works then great – add it to remove balloon payment issue.

“Any licensed lender under 138.09(1m) may not require a balloon payment as described in s. 422.402 (1)” (Licensed lenders under that section covers these pay day lenders)

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

Kunkel, Mark

From: McKinny, Chris
Sent: Friday, February 05, 2010 1:45 PM
To: Castillo, Cecely; Kunkel, Mark
Subject: RE: AB 447

Thanks Cecely. Mark a page just grabbed the stripes-they are on their way back to you. Thanks again.

From: Castillo, Cecely
Sent: Friday, February 05, 2010 1:44 PM
To: Kunkel, Mark
Cc: McKinny, Chris
Subject: RE: AB 447

Sorry Mark

Please apply balloon payment provision to **all** licensed lenders

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Friday, February 05, 2010 1:08 PM
To: Castillo, Cecely
Cc: McKinny, Chris
Subject: RE: AB 447

Okay, but do you want the balloon payment prohibition to apply to all licensed lenders, or only those licensed lenders who are payday lenders as defined in the bill?

From: Castillo, Cecely
Sent: Friday, February 05, 2010 12:05 PM
To: Kunkel, Mark
Cc: McKinny, Chris
Subject: RE: AB 447

Mark,

Thank you. Here's our instructions for drafting revisions. Re. Seidel's office would like to be able to send out this by COB. Is this possible?

Thank you!!!!

-Cecely

Regarding no. 2 below, DFI has 3 issues:

1. DFI notes that the definition of payday loan could be interpreted as being limited to loans in which only one check or

electronic funds transfer is used for repayment. I can revise the definition to make sure that one or more checks or electronic funds transfers for a single loan are covered. I think this is consistent with your intent because I think you want the sub. amend. to cover installment loans of 90 days or less. As a result, the sub. amend. should allow for multiple checks or transfers for such installment loans. This is a simple change that I can do in an hour.
Yes –this does match intent. Please change

2. DFI is concerned about limiting the definition of payday loan to only those loans that have terms of 90 days or less. DFI thinks the "bad actors" will do installment loans of more than 90 days and thus avoid regulation. Do you want to revise the sub. amendment to change the reference to 90 days to a longer time period? This would be a substantive change that I can't make unless you tell me to do so. No do not change.

3. DFI is concerned that the final payment due on an installment loan could be a balloon payment that is extremely high. I can't draft anything on this point unless I receive further instructions from you, as I would need further details on how to limit the amount of the final payment, assuming you wanted to do that.
Please change – to eliminate possibility of balloon payments. Language suggested by Bob Anderson of legal action is: if this works great. If not then use language that does.

“Any licensed lender under 138.09(1m) may not require a balloon payment as described in s. 422.402 (1)”
(Licensed lenders under that section covers these pay day lenders)

Let me know what you think,

-- Mark

From: Castillo, Cecely
Sent: Thursday, February 04, 2010 5:24 PM
To: McKinny, Chris
Cc: Kunkel, Mark
Subject: FW: AB 447

DFI sent over the following this afternoon. #2 seems like a legitimate concern. Mark – can you look at this issue and see if this is a problem and if so how could them be fixed with an amendment?

Thank you,
Cecely

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

From: Haberland, Catherine L - DFI [<mailto:catherine.haberland@dfi.wisconsin.gov>]
Sent: Thursday, February 04, 2010 2:03 PM
To: Castillo, Cecely
Subject: FW: AB 447

Cecely,

Per our earlier conversation, below are Lisa's thoughts on the bill. Please let me know if you need further clarification.

Thanks.

Catherine Haberland
Executive Assistant
Department of Financial Institutions

345 West Washington Ave. - 5th Fl
Madison, WI 53708
(608) 264-7800

From: Lee, Lisa A - DFI
Sent: Thursday, February 04, 2010 9:26 AM
To: Haberland, Catherine L - DFI
Cc: Mach, Mike J - DFI; Plale, Jean M - DFI
Subject: AB 447

These are points that may need to be considered.

1. It does not govern all Internet lenders, just those who are licensed under s. 138.09. We still have to follow the territorial application under s. 421.201 to determine if a transaction is considered made in Wisconsin law and thus, if s. 138.09 applies.
2. This may effectively eliminate the payday loan product we see offered today. How many lenders will continue to offer a single payment loan if this passes should be considered. As installment loans are not governed by this bill, I believe lenders will simply change their business model to installment loans instead of single payment loans. If they all do this, there will be no payday loans being made to generate funds to support the database. We have already seen licensees offering installment loans with bi-weekly payments equal to a two week finance charge and a final balloon payment equal to the original loan amount. We have received many calls asking if they can do installment loans with the loan company license.
3. 138.14(3)(c) could simply say "No payday loan provider may assess interest after the original maturity date of the payday loan."
4. 138.14(3)(d) says no penalty may be imposed for prepayment, default or late payment. I interpret that to mean the lender cannot pursue a money judgment in court. I'm not sure that was the intent. I question if that conflicts in any way with Chapter 425 of the WCA.
5. I question how the denial of an EFT should be interpreted under 138.14(3)(g). Should that include any reason an EFT did not get through, including an error in recording the account number? The reasons for an NSF fee under 422.202(1)(d) are very specific. Perhaps 138.14(3)(g) should be just as specific in regards to a dishonored check or denial of an EFT.
6. 138.14(4)(d) We cannot know what ALL of the actions are that the provider may take upon default. We prefer this be deleted.
7. 138.14(4)(f) We would prefer DFI not have to provide the printed materials to the providers. They can obtain it off the website.
8. The additional information to be collected in the annual report and included in the informational materials is an added task that is doable, but will be time consuming.
9. Default is defined in Chapter 425 as the failure to pay the first installment within 40 days of the scheduled due date. If a customer does a repayment plan, is the customer still considered in default if the loan is not paid in full within 40 days of the original scheduled due date? If not, when would a customer under a repayment plan be in default? 138.14(5) b.5 uses the term default. I suggest avoiding the term default and asking for the number of loans not paid in full.
10. For the database, it is not clear to me if the customer will provide their SSN during the application process so that the database can properly identify the customer. It seems to me that the SSN would be necessary for this process. The database can assign a different unique identification number to each customer.
11. 138.14(8)(i) This should probably say "establish procedures for monitoring use of the database." We would like clarification as to what the reference to par. (b)2 encompasses.
12. 138.14(11) should say may be fined not less than \$500 nor more than \$1,000.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0234/1
MDK:cjs:ph

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O-note

Now

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 447

RM has
been
run

SA ✓

prohibiting balloon
payments for certain
loans ✓

1 AN ACT to amend 20.144 (1) (g); and to create 20.144 (1) (j), 138.09 (8) (f), 138.09
2 (8) (g), 138.14 and 138.15 of the statutes; relating to: regulating payday loan
3 providers, requiring reporting of certain loans to credit reporting agencies,
4 prohibiting certain motor vehicle title loans, providing an exemption from
5 emergency rule procedures, granting rule-making authority, making an
6 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

one or more checks
one or more
them

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.

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 a period of time before negotiating it, and before negotiating the ~~check~~ loan the individual an agreed amount for a term of 90 days or less; or 2) accept the individual's authorization to initiate an electronic fund transfer (EFT) from the individual's account, wait for a period of time before initiating the EFT, and before initiating the EFT loan the individual an agreed amount for a term of 90 days or less. The foregoing definitions apply regardless of whether a payday loan provider is physically located in this state.

S
check S

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 biweekly 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 also may 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 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.

S
EFT S

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 \$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 offer the customer the opportunity to repay the outstanding balance in four equal installments 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. 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 division is also allowed to contract for the development or administration of the database. 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 repayment offer described above is made or 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. DFI must use the fees to pay for the development and administration of the database and 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. Also, if the division contracts for development or administration of the database, the contract must ensure the confidentiality of information in the database.

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 provide 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.
4. Prohibits a payday loan provider or database contractor 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

INSERT 4A

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.

7. Requires any licensed lender, upon making a loan for a term of more than 90 days, to report the loan to a credit reporting agency, which is referred to as a consumer reporting agency under federal law.

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

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

2 20.144 (1) (g) *General program operations.* The amounts in the schedule for

3 the general program operations of the department of financial institutions. Except

4 as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department,

5 other than by the office of credit unions and the division of banking, and 88% of all

6 moneys received by the department's division of banking shall be credited to this

7 appropriation, but any balance at the close of a fiscal year under this appropriation

8 shall lapse to the general fund. Annually, \$200,000 of the amounts received under

9 this appropriation account shall be transferred to the appropriation account under

10 s. 20.575 (1) (g).

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

12 20.144 (1) (j) *Financial literacy.* All moneys received under s. 138.14 (8) (e), for

13 developing and administering, or contracting for the development and

14 administration of, the database under s. 138.14 (8) and for promoting financial

15 literacy.

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

17 138.09 (8) (f) When making a payday loan, as defined in s. 138.14 (1) (g), comply

18 with s. 138.14 and rules promulgated under s. 138.14.

INSEPT 5-3

1 SECTION 4. 138.09 (8) (g) of the statutes is created to read:

2 138.09 (8) (g) Upon making a loan for a term of more than 90 days, report the
3 loan to a consumer reporting agency, as defined in 15 USC 1681a (f).

4 SECTION 5. 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, including a person who is not physically located
19 in this state, in which the person agrees to accept from the individual ~~a check~~ ^{one or more} checks, to hold
20 the check ^{for checks} for a period of time before negotiating or presenting the check ^{for checks} for payment,
21 and to loan to the individual, for a term of 90 days or less, before negotiating or
22 presenting the check ^{for checks} for payment, an amount that is agreed to by the individual. ✓

23 2. A transaction between an individual with an account at a financial
24 establishment and another person, including a person who is not physically located
25 in this state, in which the person agrees to accept the individual's authorization to

1 initiate an ^{one or more} electronic fund transfer from the account, to wait a period of time before
2 initiating the electronic fund transfer, and to loan to the individual, for a term of 90
3 days or less, before initiating the electronic fund transfer, ^{or transfers} an amount that is agreed
4 to by the individual. ✓

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

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

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

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

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

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

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

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

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

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

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

8 (b) No payday loan provider may make a payday loan to individual who is liable
9 for repayment of any amount on a payday loan made by another payday loan
10 provider. No payday loan provider may make a payday loan to an individual if less
11 than 24 hours have elapsed since the individual repaid another payday loan in full
12 or, if repayment is subject to sub. (7) (a), if less than a time period equal to the
13 applicant's pay period has elapsed since the individual repaid the loan in full under
14 sub. (7) (a).

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

17 (d) Except as provided in par. (g), no payday loan provider may impose any
18 penalty on a customer arising from the customer's prepayment of or default or late
19 payment on a payday loan, including any payment under sub. (7) (a).

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

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

24 (g) A payday loan provider may present a customer's check for payment no
25 more than once. For each customer authorization to initiate an electronic fund

1 transfer from the customer's account, a payday loan provider may initiate an
2 electronic fund transfer no more than once. The only charge that a payday loan
3 provider may impose for dishonor of a customer's check or denial of the payday loan
4 provider's instruction to execute an electronic fund transfer is a service charge that
5 does not exceed \$15.

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

11 (b) The informational materials under par. (a) shall include a clear and
12 conspicuous notice that a payday loan is not intended to meet long-term financial
13 needs and that a payday loan applicant should use a payday loan only to provide
14 funds in a financial emergency.

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

- 18 1. The average annual percentage rate for payday loans.
- 19 2. The percentage of customers originating payday loans who defaulted on the
20 loan.
- 21 3. The percentage of customers originating payday loans whose payment
22 method was dishonored or denied for insufficient funds.
- 23 4. The percentage of customers originating payday loans that resulted in
24 repayment under sub. (7) (a).

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

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

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

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

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

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

4 2. 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.

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

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

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

12 6. 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) REPAYMENT AFTER TERM OF LOAN. (a) Except as provided in par. (b), if a
24 customer fails to repay a payday loan in full at the end of the loan term, the payday
25 loan provider shall offer the customer the opportunity to repay the outstanding

1 balance of the loan in four equal installments with due dates coinciding with the
2 customer's pay period schedule.

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

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

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

- 22 1. The customer's name and address.
- 23 2. The customer's identification number that is assigned by the database.
- 24 3. The principal amount and interest for the payday loan.
- 25 4. The date on which the payday loan agreement is signed.

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

2 6. The customer's pay period.

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

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

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

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

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

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

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

1 (i) The division shall establish procedures monitoring use of the database by
2 payday loan providers, including procedures for determining compliance with par.
3 (b) 2.

4 **(9) CUSTOMER INFORMATION.** No payday loan provider or person with whom the
5 division contracts for development or administration of the database under sub. (8)
6 (a) may sell to another person any information regarding a customer or a payday loan
7 made to a customer.

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

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

17 **(12) 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 filing such a report.

20 **SECTION 6.** 138.15 of the statutes is created to read:

21 **138.15 Motor vehicle title loans. (1) DEFINITIONS.** In this section:

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

24 (b) "Motor vehicle title loan" means a loan of \$25,000 or less to a borrower that
25 is, or is to be, secured by an interest, other than a purchase money security interest,

1 in the borrower's motor vehicle and that has an original term of not more than 3
2 months.

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

5 **SECTION 7. Nonstatutory provisions.**

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

8 (2) The division shall submit in proposed form the rules required under section
9 138.14 (8) (b) 7. and (e) and (12) of the statutes, as created by this act, to the
10 legislative council staff under section 227.15 (1) of the statutes no later than the first
11 day of the 6th month beginning after the effective date of this subsection.

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

25 **SECTION 8. Initial applicability.**

1

(1) The treatment of section 138.09 (8) (g) ^{and (h)} of the statutes first applies to loans made on the effective date of this subsection.

3

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

5

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

7

SECTION 9. Effective dates. This act takes effect on the first day of the 6th month beginning after publication, except as follows:

9

(1) SECTION 7 of this act takes effect on the day after publication.

10

(END)

D-note

1

INSERT 4A:

8. Prohibits a licensed lender from requiring a schedule of payments by a
borrower under which: 1) any one payment is not equal or substantially equal to all
> other payments; 2) the intervals between any consecutive payments differ
substantially. ~~and~~ or

2

INSERT 5-3:

3

SECTION 1. 138.09[^] (8) (h) of the statutes is created to read:

4

138.09 (8) (h) Make no loan which requires a schedule of payments by a

5

borrower under which any one payment is not equal or substantially equal to all

6

other payments, or under which the intervals between any consecutive payments

7

differ substantially.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0234/2dn

MDK:j:...

nwn

Date

Rep. Seidel:

This version is identical to the previous version, except for the following:

1. Proposed s. 138.09 (8) (h) is created to prohibit licensed lenders from requiring "balloon payments." Note that I created language based on s. 422.402 (1) (intro.), rather than cross-referencing that section.
2. Proposed s. 138.14 (1)(g) 1. and 2. are revised to refer to one or more checks or electronic fund transfers.

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

LRBs0234/2dn
MDK:nwn:rs

February 5, 2010

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CCC

to

ASA 1

to

2009 AB 447

(Date)

#. Page 14, line 1: delete "more" and substitute "less".

(End)

LRBS 0234 / 2 cc-1

NWN:

less

1 (11) PENALTY. Whoever violates this section may be fined not more than \$500
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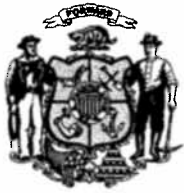
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20 138.14 (8) (b) 7. and (e) and (12) of the statutes, as created by this act, to the
21 legislative council staff under section 227.15 (1) of the statutes no later than the first
22 day of the 6th month beginning after the effective date of this subsection.

23 (3) Using the emergency rules procedure under section 227.24 of the statutes,
24 the division shall promulgate the rules required under section 138.14 (8) (b) 7. and
25 (e) and (12) of the statutes, as created by this act, for purposes of implementing this



State of Wisconsin
2009-2010 LEGISLATURE

CORRECTIONS IN:

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 447**

Prepared by the Legislative Reference Bureau
(February 10, 2010)

1. Page 14, line 1: delete “more” and substitute “less”.

(END)