



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 405
[2009 Senate Bill 530]

**Payday Loans and Motor Vehicle
Title Loans**

This memorandum summarizes the provisions of 2009 Wisconsin Act 405, which relates to payday loans and motor vehicle title loans and limits the areas in which a payday lender may operate. The memorandum summarizes the Act and the partial vetoes by the Governor.

LICENSING REQUIREMENTS FOR PAYDAY LENDERS

The Act provides that a person may not originate or service a payday loan involving a Wisconsin resident without first having obtained from the Division of Banking (referred to as “the Division” in this memorandum) in the Department of Financial Institutions a license for each place of business at which the person originates or services those loans. A license is required regardless of whether the loan is made by face-to-face contact, mail, telephone, Internet, or any other means.

The Act defines the term “payday loan” as follows:

138.14 (1) (k) “Payday loan” means any of the following:

1. A transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept from the individual one or more checks, to hold the check or checks for a period of time before negotiating or presenting the check or checks for payment, and to loan to the individual, before negotiating or presenting the check or checks for payment, an amount that is agreed to by the individual.
2. A transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept the individual’s authorization to initiate one or more electronic fund transfers from the account, to wait a period of time before initiating the electronic

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

fund transfer or transfers, and to loan to the individual, before initiating the electronic fund transfer or transfers, an amount that is agreed to by the individual.

An application for a license is made to the Division in writing in the form and manner prescribed by the Division and must include the applicant's Social Security number if the applicant is an individual, the applicant's federal employer identification number if the applicant is not an individual, and a statement signed by or on behalf of the applicant that acknowledges that the applicant is subject to the debt collection requirements under ch. 427, Stats., with respect to payday loans. Chapter 427 is the chapter in the Wisconsin Consumer Act that deals with debt collection practices. At the time of making application, an applicant must pay a nonrefundable \$300 fee for investigating the application and a \$500 annual license fee. The Division must require an applicant or licensee to file and maintain in force a bond in a sum not to exceed \$5,000 for each place of business.

A license is not assignable and permits operation only at or from the place of business specified in the license. Licensees are required to conspicuously post a license at each place of business or, if conducting business through the Internet, on the licensee's Web site so that the license is easily viewed by a consumer. Whenever a licensee changes the address of its place of business to another location within the same city, village, or town, the licensee must give written notice to the Division within 10 business days of the relocation and the Division is required to replace the original license with an amended license showing the new address. No change in the place of business of a licensee to a different city, village, or town is permitted under the same license.

With written authorization by the Division, a payday lender may conduct, and permit others to conduct, at its place of business one or more of the following businesses: (1) a currency exchange; (2) a seller of checks business; (3) a licensed lender business; or (4) a sales finance company.

Payday lenders are required to keep books and records in the place of business that, in the opinion of the Division, will enable the Division to determine compliance with the statutes. Licensees are required to preserve the records of a final entry used in the business for a period of at least two years after making a loan. A licensee may keep the books and records at a single location inside or outside of Wisconsin if they are kept at a place of business licensed under the payday lender statute. The Division is given the authority to suspend or revoke a payday lender license if it makes specified findings.

LOCATION OF PAYDAY LENDERS

The Act amends the provisions of statutes dealing with zoning. In the statute dealing with cities, a payday lender may not operate in a city unless it receives a permit to do so from the city council. The city council may not issue a permit to a payday lender if any of the following applies: (1) the payday lender would be located within 1,500 feet of another payday lender; or (2) the payday lender would be located within 150 feet of a single-family or two-family residential zoning district. Cities may regulate payday lenders by enacting a zoning ordinance that contains provisions that are stricter than those set forth in the statute.

If a city has enacted an ordinance regulating payday lenders that is in effect on the effective date of the Act, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of state statutes. However, if a payday lender is doing business on the effective date of the Act from a location that does not comply with state statutes, the payday lender may continue to operate from that location.

A similar statute is created for specified unincorporated areas of counties. In addition, the statute relating to cities also applies to villages and to towns that are authorized to exercise village powers.

POWERS AND DUTIES OF THE DIVISION OF BANKING

Payday lenders are required to make an annual report to the Division of Banking for each calendar year on or before March 15 of the following year. The reports must be made in the form and manner prescribed by the Division. The Division is required to submit an annual report to the appropriate standing committees of the Legislature that includes all of the following for the preceding year: (1) the number of payday loans made by all licensees; (2) the average principal amount for all payday loans; (3) the average interest, fees, and other charges for all payday loans; (4) based on the information in the previous item, the average annual percentage rate for all payday loans; (5) the number of payday loans that were paid in full on the maturity date; (6) the number of payday loans that resulted in repayment under the statute dealing with installment repayments; (7) the number of payday loans that were repaid with proceeds of a subsequent payday loan; (8) the number of payday loans that resulted in default; and (9) the number of payday loans for which a customer's payment method was dishonored or denied due to insufficient funds.

The Division is given the authority to issue any general or special order in execution of or supplementary to the statute. It may promulgate such rules as it considers necessary for the administration of the statute, including rules establishing database transaction fees and other fees considered reasonable and necessary by the Division. The Division is given the authority to conduct hearings, take testimony, secure evidence and investigate businesses. The cost of any investigation, examination, or hearing conducted by the Division involving a payday lender is to be paid by the payday lender.

The Division is required to develop written informational materials on payday loans and the payday loan industry. The materials are to be designed to educate individuals regarding the operation and potential costs of payday loans and of other options for borrowing funds that may be available. These materials must include a clear and conspicuous notice that a payday loan is not intended to meet long-term financial needs and that a payday loan applicant should use a payday loan only to provide funds in a financial emergency. The materials must include all of the following information, based upon aggregated information from reports submitted by payday lenders for the most recent reporting period: (1) the average annual percentage rate for payday loans; (2) the percentage of customers originating payday loans who defaulted on the loans; (3) the percentage of customers originating payday loans whose payment method was dishonored or denied for insufficient funds; and (4) the percentage of customers originating payday loans that resulted in repayment under the installment payment statute.

REGULATION OF LOANS

Before a payday lender enters into a payday loan with an applicant, the payday lender must ***disclose or provide all of the following to the applicant***: (1) the total amount of all fees and costs to be paid by the applicant for the loan assuming that the loan is paid in full at the end of the loan term; (2) the annual percentage rate assuming that the loan is paid in full at the end of the loan term; (3) a copy of the written information prepared by the Division, as described above; (4) the applicant has the right to rescind the loan transaction, as described below; (5) the service charge that may apply for dishonored customer's checks or denial of an electronic funds transfer; and (6) the payment requirements that may apply under the installment repayment statute if the loan is not paid in full at the end of the loan term period. Payday lenders must retain a record of compliance with these requirements for at least three years after the origination date of the payday loan.

The Act imposes *no limit on interest* that a payday lender may charge *before the maturity date* of a payday loan. However, if a payday loan is not paid in full on or before the maturity date, a licensee may not charge interest *after the maturity date*.

A payday lender may not impose any penalty on a customer arising from the customer's prepayment of, or default or late payment on, a payday loan. However, a payday lender may impose a service charge that does not exceed \$15 for the dishonoring of a customer's check or the denial of an electronic funds transfer. Payday lenders may present a customer's check for payment no more than once. In addition, a payday lender, for each customer authorization to initiate an electronic funds transfer from the customer's account, may initiate an electronic funds transfer no more than once. Also, a payday lender may not assess a customer any fee or charge for database access or usage.

A customer is permitted to pay a payday loan in whole or in part prior to the maturity date of the loan. Upon prepayment in full, a refund of the unearned portion of any interest assessed by the licensee must be allowed.

If a customer fails to repay a payday loan in full at the end of the loan term, the payday lender must offer the customer the opportunity to repay the outstanding balance of the loan in *four equal installments* with due dates coinciding with the customer's pay period schedule.

A customer may *rescind a payday loan* before close of business on the next day of business after the loan was made, or, if the place of business is open 24 hours, before 5:00 p.m. on the next day of business after the loan was made. The loan may be rescinded by returning to the payday lender the proceeds of the payday loan. The payday lender may not charge the customer any fee for rescinding the payday loan under this provision.

A customer is permitted to repay a payday loan with the proceeds of a subsequent payday loan made by the same or another payday lender. However, if the customer does so, he or she may not repay the subsequent payday loan with the proceeds of another payday loan. [In other words, this provision permits only one "rollover" of a payday loan.] A repayment of a subsequent payday loan and the origination of a new payday loan from the same or another payday lender within a 24-hour period shall be considered proof of violation of this provision.

No payday lender may make a payday loan to a customer that results in the customer having an *outstanding aggregate liability* in principal, interest, and all other fees and charges, to all licensees who have made payday loans to the customer of more than *\$1,500 or 35% of the customer's gross monthly income*, whichever is less.

Payday lenders may not do any of the following: (1) make a payday loan to a customer if the payday lender determines, knows, or should have known, that the customer identification number is invalid; (2) take a note, promise to pay, or any other instrument, in which lines are left to be filled in after the payday loan has been made; or (3) advertise, print, display, publish, distribute, or broadcast or cause these things to be done, in any manner, any statement with regard to the rates, terms, or conditions of a payday loan that is false or calculated to deceive.

If a check is dishonored, or an instruction to execute an electronic funds transfer is denied, the payday lender may bring an action to collect the amount of the check or the electronic funds transfer, but may not threaten or pursue criminal action against the debtor as a result of this.

All payday loans are governed by the Wisconsin Consumer Act. However, to the extent that the Wisconsin Consumer Act (other than the debt collection practices chapter) is inconsistent with the Act, the Act governs. Licensees are required to deliver to customers a statement that includes all the disclosures required by the federal Consumer Protection Act. This statement must disclose that the customer may prepay the loan and that if the customer does so, the customer will receive a refund of interest as described above. The statement must also clearly and conspicuously indicate the annual percentage interest charged for the payday loan. Payday lenders are also required to give a customer a plain and complete receipt for all cash payments that the customer makes at the time the payments are made.

DATABASE

The Act requires the Division or a database provider to develop, implement, and maintain a single statewide database that has real-time access through an Internet connection, is accessible at all times to payday lenders and the Division, and otherwise meets requirements specified in the statute. The Division may either operate the database or contract with a third-party provider to operate the database. If it enters into such a contract, the Division must meet specified requirements.

The database must do all the following: (1) allow a payday lender to check a customer's unique identification number (which may not be based on the customer's Social Security number) that is assigned to the customer in a manner specified by the Division; (2) allow a payday lender to determine if making a new payday loan would cause a violation of the statutes; (3) provide information necessary to aid a payday lender in complying with any requirements imposed under specified federal law; and (4) provide any other information that the Division determines is necessary and requires by rule or contract with the database provider.

The database provider is required to meet specified statutory requirements. One of those requirements is establishment and maintenance of an alternate process for responding to transaction authorization requests when there are technical difficulties that prevent a payday lender from accessing the database through the Internet. The Division is required to stipulate the period for which data is to be retained in the database only as required to ensure payday lender compliance with the statutes or for enforcement or compliance purposes. In addition, the Division is required to specify a *database transaction fee* that the database charges to payday lenders to cover the costs of developing and implementing the database, and accessing the database to verify that a customer does not have any payday loans with the payday lender or others that in combination with the new transaction will create a violation of the statute.

Payday lenders are required to notify the database provider no later than 11:59 p.m. on the day the payday loan is closed. The Division is required to assess an administrative forfeiture of \$100 for each day that the payday lender fails to do so.

No payday lender licensee or person with whom the Division contracts for operation of the database may sell to another person any information regarding a customer or a payday loan made to a customer.

PENALTIES AND PRIVATE CAUSE OF ACTION

The Act provides that any person, partnership, or corporation, or the officers or employees thereof, who violate the payday lender statute is guilty of a misdemeanor and shall be fined not more than \$500, imprisoned for not more than six months, or both. If a person who is not licensed under the

statute makes a payday loan to a customer, the loan is void, the customer is not obligated to pay any amounts owed on the loan, and the customer may recover from the person all amounts the customer has paid to the person. An action to recover the amounts must be commenced within one year after the date of the last scheduled payment on the loan.

If a person makes a payday loan to a customer in violation of the payday lender statute, the customer may bring an action against the person for damages of \$250 or the amount of the payday loan, whichever is greater, plus costs and reasonable attorney fees.

MOTOR VEHICLE TITLE LOANS

The Act creates a new statute that prohibits a licensed lender from making motor vehicle title loans. For purposes of the statute, the term “title loan” is defined as a loan of \$25,000 or less to a borrower, who obtains or seeks to obtain a loan for personal, family, or household purposes, that is, or is to be, secured by an interest, other than a purchase money security interest, in the borrower’s motor vehicle.

PARTIAL VETOES

In signing Enrolled 2009 Senate Bill 530 (the version of the bill passed by both houses of the Legislature) into law as Act 405, the Governor exercised his partial veto authority to make the following changes to the Enrolled Bill:

- The Enrolled Bill included provisions that stated that the license lender statutes and the payday lender statutes did not apply to banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates. The Governor vetoed the phrase “, or any of their affiliates”.
- The definition of “payday loan” in the Enrolled Bill covered only those transactions that were for a term of 90 days or less. The Governor vetoed the phrase “for a term of 90 days or less”.
- The Enrolled Bill allowed a payday lender to charge interest at a rate not exceeding 2.75% per month after the maturity date of payday loan. The Governor partially vetoed this provision so that a payday lender may not charge interest on a payday loan after the maturity date of the loan.
- The Enrolled Bill provided that if a customer fails to repay a payday loan in full at the end of the loan term, the payday lender must offer the customer the opportunity to repay the outstanding balance of the loan in four equal installments. The Governor retained this provision, but vetoed the part that provided that if a payday lender offered a customer the opportunity to use this option, then, during the 12-month period following the offer, no payday lender was required to offer the customer another opportunity to use this option.
- The Enrolled Bill contained a provision that the database provider must automatically designate a payday loan as paid in the database five days after the maturity date unless a payday lender reports to the database provider before that time that the loan remains open for one of several specified reasons. Under the Enrolled Bill, if a licensee makes such a report, the database provider must designate the payday loan as an open transaction until the database provider is notified that the transaction is closed. The Governor’s veto eliminated the automatic designation of a payday loan as paid and retained just the language that

requires the database provider to designate a payday loan as an open transaction until the provider is notified that the transaction is closed.

- The Enrolled Bill contained a provision requiring the Division to, by order or rule, specify a database transaction fee of no more than \$1. The Governor vetoed the requirement that this be done by order or rule and vetoed the phrase “of no more than \$1”.
- The Governor vetoed the provision in the Enrolled Bill that would have required that if the database is not fully operational or the payday lender is unable to access the database, and if the alternate process is also unavailable, a payday lender may rely on the written verification of the customer that the customer does not have any outstanding payday loans with the payday lender and does not have more payday loans with any other payday lender in Wisconsin.
- The Enrolled Bill provided for regulation of motor vehicle title loans, including limits on interest that may be charged after maturity, rescission of those loans, and other provisions. The Governor vetoed the regulation of motor vehicle title loans and, in the language that was retained, prohibited licensed lenders from making motor vehicle title loans. In addition, the partial veto deleted a phrase in the definition of “title loan” that would have only covered title loans with an original term of not more than six months. Following the veto, the Act defines “title loan” as “...a loan of \$25,000 or less to a borrower, who obtains or seeks to obtain the loan for personal, family, or household purposes, that is, or is to be, secured by an interest, other than a purchase money security interest, in the borrower’s motor vehicle.”

Effective date: The Act takes effect on January 1, 2011.

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May 25, 2010

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