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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Clearinghouse Rule 10-098

Relating to payday lending.
Submitted by Department of Financial Institutions.

September 02, 2010 Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

October 25, 2010 **PUBLIC HEARING HELD**

Present:	(5)	Senators Wirch, Plale, Holperin, Hopper and Lazich.
Absent:	(0)	None.
Excused:	(0)	None.

Appearances For

- Peter Koneazny, Milwaukee — Legal Aid Society of Milwaukee
- Amy Johnson — Lutheran Office for Public Policy in Wisconsin
- Tony Gibart — Wisconsin Coalition Against Domestic Violence
- Stacia Conneely, Madison — Legal Action of Wisconsin
- Bob Andersen — Legal Action of Wisconsin

Appearances Against

- Tim Elverman, Milwaukee — Pawn America Wisconsin LLC
- Douglas Duncan, Tomah — Pioneer Pawn
- Ed Heiser, Milwaukee — Wisconsin Financial Services Association

Appearances for Information Only

- None.

Registrations For

- Gordon Hinz — Rep.
- Sarah Orr, Madison — Consumer Law Clinic - UW Law School
- Catherin Haberland — Department of Financial Institutions

Registrations Against

- Chuck Armstrong, Burnsville — Pawn America LLC

Registrations for Information Only

- None.

October 25, 2010 **EXECUTIVE SESSION HELD**

Present:	(5)	Senators Wirch, Plale, Holperin, Hopper and Lazich.
Absent:	(0)	None.
Excused:	(0)	None.

Moved by Senator Wirch, seconded by Senator Plale that **Clearinghouse Rule 10-098** be recommended for modifications requested.

Ayes:	(5)	Senators Wirch, Plale, Holperin, Hopper and Lazich.
Noes:	(0)	None.

MODIFICATIONS REQUESTED RECOMMENDED, Ayes 5, Noes 0

November 5, 2010 MODIFICATION RECEIVED.

November 19, 2010 **EXECUTIVE SESSION HELD**

Present:	(5)	Senators Wirch, Plale, Holperin, Hopper and Lazich.
Absent:	(0)	None.
Excused:	(0)	None.

Moved by Senator Wirch that **Clearinghouse Rule 10-098** be recommended for objection.

Ayes:	(5)	Senators Wirch, Plale, Holperin, Hopper and Lazich.
Noes:	(0)	None.

OBJECTION RECOMMENDED, Ayes 5, Noes 0

Michael Tierney

Vote Record

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

CR 10-98?

Date: 10-25-2010

Moved by: Wirch Seconded by: Plale

AB_____ SB_____ Clearinghouse Rule_____

AJR_____ SJR_____ Appointment_____

AR_____ SR_____ Other Motion to request changes

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

☐ Passage ☑ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement

☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
Senator Robert Wirch, Chair	☑	☐	☐	☐
Senator Jeffrey Plale	☑	☐	☐	☐
Senator Jim Holperin	☑	☐	☐	☐
Senator Randy Hopper	☑	☐	☐	☐
Senator Mary Lazich	☑	☐	☐	☐
Totals:	5	0	____	____

☐ Motion Carried ☐ Motion Failed

Thomas E. Moore
Executive Director
(608) 256-6413
(608) 256-6222 FAX

August 24, 2010

CR 10-98?

Mr. Mark Schlei
Deputy General Counsel–Division of Banking
Department of Financial Institutions
Office of Secretary
345 W Washington Street
PO Box 8861
Madison, WI 53708-8861

Re: Comments on DFI Rules creating DFI-Bkg 75 relating to payday lending

Dear Mr. Schlei:

The Wisconsin Financial Services Association ("WFSA") represents lenders licensed under Wisconsin Statute § 138.09 entitled "Licensed Lenders." The WFSA appreciates the opportunity to present the following comments regarding the proposed Regulation DFI-Bkg 75 ("Regulation") relating to the payday lending law contained in 2009 Wis. Act 405 (the "Act"). WFSA licensed lender members do not make what normally has been designated "payday" loans, but some of the proposed new Regulations purport to regulate traditional § 138.09 licensed loans (non-payday loans), or will affect credit transactions traditionally offered by WFSA members to their customers which now may be captured under the definition of a newly enacted Wis. Stat. § 138.14 payday loan.

In this regard, the WFSA would like to emphasize that its members are not payday lenders as that term has generally been understood in the public and press. After the governor's partial veto, however, the definition of "payday lender" under § 138.14 of the Act is not limited to what typically has been classified as a payday loan. The definition now extends to traditional installment loans where the lender, for example, may require an EFT authorization or a predated check to obtain a lower interest rate. The proposed Regulations purport to expand that definition even further and would include some short term loan customers of WFSA members who may want to voluntarily request that installments be paid by recurring EFT debits to their checking accounts.

As a result of the impact on its members, the WFSA submits the comments set forth below.

1. **DFI—Bkg 75.03(3) Prohibited Practices- § 138.09 licensees**. Proposed Regulation DFI-Bkg 75.03(3) purports to restrict loans made by § 138.09 licensees. This is most troubling to the WFSA as there is no statutory grounds for this proposed Regulation, and the WFSA strongly urges that DFI—Bkg 75.03(3) (Lines 38–42) be eliminated from the final Regulation.

First, although the Act amended § 138.09, it did not grant any express authority to DFI to issue regulations governing § 138.09 licensees. Section 138.09, although amended many times over the years, has never granted rule making authority to DFI. The ability of a state agency to issue substantive regulations must be expressly granted by statute. Numerous Wisconsin cases have confirmed this requirement. See, e.g. *Elroy-Kendall-Wilton Schools v Coop. Educ. Serv.* 102 Wis.2d 274, 278. (1975) ("An agency or board created by the legislature has only those powers which are expressly

conferred or which are necessarily implied from the statutes under which it operates."); *Racine Fire and Police Comm. v Stanfield*. 70 Wis.2d 395 (1975); *Wisconsin Environmental Decade, Inc v PSC*, 69 Wis.2d 1 (1975.

The statutory authorities to issue proposed DFI-Bkg 75 cited by DFI are identified as Wis. Stat. § 138.10(2m), § 138.14(8) (b) and § 138.14(14) (g). None of these statutory sections mention or apply to § 138.09 licensees, and none grant any authority to DFI to promulgate regulations regarding licensees under § 138.09. There is no express grant of authority for DFI to issue DFI—Bkg 75.03(3).

Where no express authority is given in the statute to issue regulations, a state administrative agency is only granted the limited power to interpret statutory provisions pursuant to § 227.11. Wis. Stat. § 227.11(2), also cited by DFI in its authority to grant the Regulations, only permits rules "interpreting" the provisions of any statute enforced or administered by an administrative agency. Even this rule making authority granted under § 227.11(2) is narrowly limited as § 227.11(1) specifically provides that "This chapter does not confer rule making authority upon or augment the rule making authority of any agency except as specifically provided in sub. (2)."

Case law confirms that "[A]ny reasonable doubt of the existence of an implied power of an administrative agency should be resolved against the exercise of such authority." *State v ILHR Dept*, 77 Wis.2d 126, 136 (1977). Proposed DFI-Bkg 75.03(3) is not necessary to interpret any provision of § 138.09.

Because there is no express grant of authority to issue the proposed DFI-Bkg 75.03(3), and the regulation is not interpretive of any statutory provision of § 138.09, it should be removed from the final Regulation.

Second, Wis. Stat. § 227.10(2) states that "No agency may promulgate a rule which conflicts with state law." The proposed DFI-Bkg 75.03(3) directly conflicts with the current statutory rights granted to licensees under § 138.09. Specifically, § 138.09 does not place any restrictions on loans under $1,500, and does not require monthly installments for such loans as provided on Lines 38–40. Section 138.09 does not prohibit a licensee from making an open-end credit plan on loans under $1,500 (line 41), and does not require that a loan under $1,500 exceed 90 days (line 42). These types of loans have been made, or have been available to be offered by licensed lenders under § 138.09, since at least 1974 when that section was amended along with passage of the Wisconsin Consumer Act.

As a result, the proposed Regulation DFI-Bkg 75.03(3) directly conflicts with the rights of licensees under § 138.09 and is contrary to the statutory direction in § 227.10(2).

Third, the proposed Regulation does not meet the procedural requirements of Wis. Stat. § 227.135(1)(e) regarding publication of the scope of a rule. That section requires a "description of all of the entities that may be affected by the rule" to be published prior to the Regulation being promulgated. The scope statement published in the Wisconsin Administrative Register (No. 654, p. 16) states that the entities affected by the rule are "payday lenders" and the objective of the rule is described as "the purpose of this rule is to set forth certain procedures and requirements for payday lenders." The scope statement does not include a reference to § 138.09 licensees. Because newly enacted § 138.09 (1a) specifically excludes payday loans from § 138.09, there can be no inference that § 138.09 licensees are included in the definition of a "payday lender." Proposed DFI-Bkg 75.03(3), therefore, is not within the scope of the regulation as required to be published under § 227.135(1)(e).

Finally, on a practical basis, proposed DFI-Bkg 75.03(3) is very consumer unfriendly in that it can require consumers to pay more finance charges than necessary. It requires small loans under $1500 to be at least 90 days long, and requires monthly installments when shorter periods of repayment that may be offered, such as by-weekly, will amortize a loan faster and result less finance charges.

Proposed Bkg 75.03(3) of the Regulations attempting to regulate § 138.09 licensees is beyond the power and authority of the agency to promulgate rules under § 138.14, and it is prohibited by § 227.10(2). The Regulation should be deleted from the final rule.

2. **DFI—Bkg 75.02(2) Transactions Not Covered.** Proposed Regulation DFI-Bkg 75.02(2) reads as follows:

> **DFI—Bkg 75.02 Transactions Not Covered.** Notwithstanding s. 138.14(1)(k), Stats., a payday loan does not include a transaction that is any of the following: . . .
>
> (2) *Payable in 12 or more substantially equal monthly installments* where the customer voluntarily authorizes recurring electronic fund transfers from an account at a financial establishment if both of the following conditions are met:
>
> (a) The authorization for the electronic fund transfers is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.
>
> (b) The authorization for electronic fund transfers can be revoked and that fact is clearly and conspicuously disclosed in writing to the customer.

[Italics added.]

The WFSA applauds the DFI in recognizing that a loan transaction is not a "payday loan" as defined in § 138.14(1)(k) where a notice is given in conformity with sub. (2)(a) and (b), that is, where a recurring EFT debt transaction for payment of installments is given after notice, and can be revoked by the customer at any time.

The WFSA, however, believes that limiting this voluntary authorization only to loans payable "in 12 or more substantially equal monthly installments", is unwarranted under the statute, and against the interests of its customers. The WFSA requests that the proposed Regulation be amended to eliminate this 12 month limitation.

On the statutory side, there is no basis in either Wis. Stat. § 138.09 or § 138.14 for arbitrarily applying this exemption to equal monthly installment loans of 12 months or more. The inference is that where a customer following the same voluntary procedure authorizes recurring EFT debits to pay installment loans of 12 months or less, the loan is converted into a § 138.14 payday loan. If both the same notice set forth in sub. 2(a) of DFI-Bkg 75.02(2) and ability to revoke set forth in sub. 2(b) are given to the customer in connection with installment loans that are less than 12 months in duration, there does not seem to be any rationale for treating the loan as a § 138.14 payday loan.

This requested amendment recognizes that consumers are ever more frequently using EFT authorized debits to make timely payments, avoid delinquency charges, and positively build their credit record histories. This is a convenience that should not be arbitrarily denied to borrowers who desire installment loans of less than 12 months. As the draft regulation now reads, for example, a nine-month installment loan can be unwittingly converted into a "payday" loan where the borrower voluntarily requests and authorizes the lender to pay installments by debiting his or her account by a recurring electronic funds transfer. There is no authority in § 138.14 to require a lender to be licensed as a payday lender where the EFT authorization is voluntary just because that loan may be less than 12 months.

It is worthwhile to note that lenders other than § 138.09 licensees, such as affiliates of banks, credit unions and other financial institutions that may offer open end credit plans, would also be subject to licensing as a payday lender under this regulation if, for example, a customer voluntarily authorizes recurring EFT transfers to pay credit card monthly statements. Although such authorization may be for more than 12 months, the payments would not be "substantially equal."

The WFSA asks that proposed Regulation DFI-Bkg 75.02(2) be amended to eliminate this 12-month limitation so that the Regulation excludes from the definition of a payday lender any loan made by a § 138.09 licensee or any other lender where the EFT authorization is voluntary and complies with the requirements of subsections (a) and (b) of DFI-Bkg 75.02(2).

(3) DFI—Bkg 75.03(2)(d). Prohibited Practices- motor vehicle security interest limitation. Proposed DFI—Bkg 75.03 provides that "No licensee shall make a payday loan: . . . (d) that is, or is to be, secured by an interest in a motor vehicle."

The WFSA requests that this prohibition be eliminated from the final rule. Again, there is no authority under § 138.14 for a rule that prohibits the taking of an automobile as collateral in connection with a loan that otherwise qualifies as a payday loan under § 138.14(1) (k). In fact, there is no restriction whatsoever on the ability of a payday loan licensee under new § 138.14 to take a security interest in any collateral whatsoever. The section is completely silent on the taking of collateral. Such a rule is arbitrary and beyond the scope of the authority granted under § 138.14(8)(b), which only permits rules "necessary for the administration of" § 138.14.

Under the original bill as passed by the legislature, no security interest in motor vehicles was permitted in a § 138.09 licensed loan that was less than 6 months under § 138.16. That section only applies to licensees under § 138.09, not to § 138.14 payday loan licensees. The partial veto by the Governor eliminated the 6-month limitation in § 138.16, but did not have the effect of expanding the prohibition to lenders other than § 138.09 licensees.

The Act as partially vetoed by the Governor will prevent credit worthy and often long term good customers of § 138.09 licensees from being able to use their motor vehicle as collateral to obtain extra money or to refinance an auto loan. Often times a motor vehicle is the one valuable asset the customer has to offer as collateral to obtain a needed loan. WFSA members have a long track record of being fair and reasonable in making loans secured by motor vehicles desired by their customers.

WFSA members may desire to continue to service their customers by obtaining a payday loan license and offering their customers the ability to obtain a loan secured by a motor vehicle. In such a case, the § 138.14 provisions that protects that customer without using his or her motor vehicle as collateral, should be sufficient to protect that same customer who is willing to pledge the motor vehicle, often to obtain a lower rate.

Again, proposed rule DFI-Bkg 75.03(2)(d) would seem to be precluded by § 227.10(2), which states that "no agency may promulgate a rule which conflicts with state law." Section 409.201 of Wisconsin's Uniform Commercial Code states that "a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors." As § 138.14 does not prohibit or even mention security interests, and Article 9 of the Uniform Commercial Code specifically permits security interest in motor vehicles, proposed DFI-Bkg 75.03(2)(d) appears to be beyond the scope of the regulation enabling language under § 138.14(8)(b), and the WFSA requests that it be eliminated from the final Regulation.

The WFSA thanks the DFI for the opportunity to submit these comments.

Very truly yours,

Thomas E. Moore

Thomas E. Moore
WFSA Executive Director


FORWARD

State of Wisconsin
Department of Financial Institutions
Jim Doyle, **Governor**
Lorrie Keating Heinemann, **Secretary**

August 31, 2010

Senate Chief Clerk
Office of the Senate Chief Clerk
B20 Southeast, State Capitol
Madison, Wisconsin 53707-7882

Assembly Chief Clerk
Office of the Assembly Chief Clerk
17 West Main Street
Room 401
Madison, WI 53703

Via hand-delivery

Re: Notice of Proposed Rule

Dear Chief Clerks:

Pursuant to ss. 227.19(2) and (3), Stats., notice is hereby given that CR 10-098 (proposed rule creating ch. DFI—Bkg 75 relating to payday lending) is in final draft form.

1. STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES.

The objective of the rule is to create ch. DFI—Bkg 75. The purpose of the rule is to establish clear standards and requirements for payday lenders; notice and other protections to payday lending customers; and database requirements for the secure entry, retention and transmission of customer information. The rule provides definitions; identifies transactions not deemed payday loans; lists prohibited practices; sets forth loan disclosure requirements; sets forth fees and interest, and addresses defaults; sets forth the calculations to be used to determine income; provides form and repayment plan requirements; and provides for a database and the secure transmission of information regarding payday loans.

2. SUMMARY OF PUBLIC COMMENTS TO THE PROPOSED RULE AND THE AGENCY'S RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT THE PUBLIC HEARING

Bob Andersen, Legal Action of Wisconsin, identified additional provisions to be required in loan agreements, advocated bilingual materials and a rollover limitation, requested that other

information be recorded in the data base, and asked that a review of the rules in include a review of forms.
Carol Steward, Community Financial Services Association of America, requested reconsideration of the required disclosures, objected to the customer repayment plan waiver, expressed concerns regarding the mechanics of the written repayment plan offer (suggesting alternative language), and requested clarification of the timeframe for initial loans.
Erin Krueger, Wisconsin Deferred Deposit Association, expressed concerns centering on regulations affecting the obligation of lenders to make a repayment plan offer and the information required for the data base.
Online Lenders Alliance expressed concerns regarding monthly payments and minimum loan terms. OLA proposed changes for transactions not covered, prohibited practices and disclosure statements.
Thomas Moore, Wisconsin Financial Services Association, objected to restrictions on s. 139.09 licensees, and requested removal of the 12 month limitation and the motor vehicle security interest limitation.
Peter Koneazny, Legal Aid Society of Milwaukee, requested clarification on prohibited practices and oral disclosure requirements, requested that more updated gross monthly income verification, and provided suggestions for the repayment plan provision.
Louis Dineff, Dineff & Dineff, suggested changes regarding the payment plan period and requested removal of provisions affecting s. 138.09 licensees.

As a result of the testimony and in subsequently meeting with the members of the public who testified or submitted written testimony, the department revised its proposed rule. Changes include additional requirements for the loan agreement, the repayment offer requirements were limited to subsequent loans, the effective date of any subsequent loan was clarified, and the transaction fee was limited, as well as additional minor changes in word choice.

3. LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARING

Carol Stewart, Community Financial Services Association, spoke against.
Bob Andersen, Legal Action of Wisconsin, spoke in favor.
Douglas Duncan, Pioneer Pawn, spoke against.
Louis Dineff, Brother Loan, spoke against.
Ed Heiser, Wisconsin Financial Services, spoke in favor.
Peter Koneonzny, Legal Action of Milwaukee, spoke in favor.
Bridget Wegmar, Cashfast Financial, registered against.
Cole Heller, Cash Fast, registered against.
Allen Benz, Cash Time, registered against.
Kevin Welker, Cash Today, registered against.

4. ANY CHANGES TO THE ANALYSIS PREPARED UNDER S. 227.14(2), STATS., OR THE FISCAL ESTIMATE PREPARED UNDER S. 227.14(4), STATS.

Minor modifications were made identifying the content of the rule.

5. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS

The recommendations of the Legislative Council were accepted in part – certain recommendations were no longer applicable as the rule was revised as a result of comments received at the public hearing.

6. FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to s. 227.19(3m), a final regulatory flexibility analysis is not required.

The following documentation accompanies this notice in triplicate: proposed rule with analysis, fiscal estimate and recommendations of legislative council staff.

If you have any questions regarding this matter, please do not hesitate to contact me at tel. (608) 267-1705.

Sincerely,

Mark Schlei
Deputy General Counsel

c: *Legislative Council (via hand-delivery [1 East Main St., Suite 401], w/encls & e-mail [clearinghouse@legis.state.wi.us], w/attachments)*
Wisconsin Administrative Rules (via e-mail [adminrules@wisconsin.gov], w/ attachments)


FORWARD

Tierney, Michael

From: Robert J. Andersen [RJA@legalaction.org]
Sent: Tuesday, September 14, 2010 11:26 AM
To: Tierney, Michael
Subject: Payday Loan Rule

CR 10-98?

Hello Mike:

Catherine Haberland, Executive Assistant of DFI, called me to tell me that DFI agrees with the first of the two issues I raised and that they will be making a change to the rule to correct this mistake. Remember, this is what I wrote:

> On page 6 and 7 they add some of our recommendations, but I think they made a mistake. On page 6, they include the additions to the writing evidencing the agreement, but on page 7 they add (b) and (c), which are not under "writing evidencing the agreement" – but are under the general heading **Form Requirements.** Not sure what form they are referring to.
>
> If they intended this to be part of the "writing evidencing the agreement," the material in (b) and (c) should be under (a).

As for the second issue I raised -- that the installment payment plan should not be limited only to circumstances where the obligor has first agreed to a rollover and failed to pay that off – Catherine says that this is written this way in the rule, because legislators told them that this was the intent of the legislature. This is what I wrote on that issue:

> On page 8, it seems that they require the repayment plan offer only after the one rollover is engaged in. That shouldn't be.
>
> The second of these is a significant problem, because we wanted, as I am sure the department did, that the installment repayment plan would apply in all circumstances – and not only after someone has first attempted a rollover

Below is the express language of the Act (Act 405). It is clear under par (11g) that there is no requirement that an obligor has to first try a rollover loan, before having the opportunity to pay off the loan "in 4 equal installments with due dates coinciding with the customer's pay period schedule".

> **(11g)** REPAYMENT AFTER TERM OF LOAN.
> if a customer fails to repay a payday loan in full at the end of the loan term, the licensee that made the loan shall offer the customer the opportunity to repay the outstanding balance of the loan in 4 equal installments with due dates coinciding with the customer's pay period schedule.

The limitation on rollovers is in the following paragraph:

> **(12)** PROHIBITIONS. (a) A customer may repay a payday loan with the proceeds of a subsequent payday loan made by the same or another licensee or an affiliate of the same or another licensee, but if the customer does

> so, the customer may not repay the subsequent payday loan with the proceeds of another payday loan made by the same or another licensee or an affiliate of the same or another licensee. A repayment of a subsequent payday loan and the origination of a new payday loan from the same or another licensee or an affiliate of the same or another licensee within a 24–hour period shall be considered proof of violation of the prohibition under this paragraph.

Rollovers are where payday loan operators make their money. It was testified time and again during the hearings on this legislation that rollovers constitute 80% of the profits of payday loan operators. A rollover is where an obligor is unable to pay off the loan by the maturity date and is given a new loan with added interest obligations to pay off the first loan. Rollovers are bad, because the obligation of an obligor snowballs with each rollover. That is why the legislation limited rollovers to only one.

Now, it may be that the payday loan industry does not like the way the legislation turned out – allowing obligors an opportunity to pay in installments before engaging in a rollover – but they and their legislative allies had an opportunity to correct this either as the bill was being acted on by the legislature or as the governor was exercising his veto authority. They failed to do so. They cannot complain now about how this came out. And as for the law – the law is that the express language of the statute governs over what people might think was the "intent" of the legislature, unless the language is ambiguous. There is nothing ambiguous about this provision. There is simply nothing in the legislation that conditions an obligor's right to an installment payment plan on having first agreed to a rollover. I am confident that the Legislative Council staff would agree with me on this.

While DFI believes it has to write the rule the way it has, the fact is that the rule violates the statute. I know this is a tricky political situation, but that at least is where the law stands on this.

I will call you to discuss this further this afternoon, if you have time to talk about it then. Thanks.


FORWARD

Tierney, Michael

From: Robert J. Andersen [RJA@legalaction.org]
Sent: Friday, October 08, 2010 9:40 AM
To: Tierney, Michael
Subject: Payday Loan Hearing

CR 10-98?

Hello Mike:

Well, I finally got to talk to some legal staff for DFI and I have discovered that my complaint that the rule requires installment payment plans only after rollover is not true.

While s. 75.08 (2) gives explicit details about the notice that required to be given the customer where the customer defaults on a rollover, an earlier section, s. 75.07 (1)(a), does require the lender to offer the customer an installment payment plan upon default in the initial loan . This requirement is in the written agreement that is required for the initial loan.

Consequently, we will not be testifying about any need for change in the provisions relating to installment payment plans.

We will, however, be opposing any deletion of s. 75.03 (3), which lenders have complained about.

The big complaint of the lenders is that s. 75.03(3) limits what a licensee under s. 138.09 can do with a loan under $1500 – it cannot be an open end credit plan, it cannot be less than 90 days, and it cannot require payments on a schedule for other than substantially equal monthly installments. These are not lenders under s. 138.14 (payday loans) These are lenders under s. 138.09 (non payday loans). Non payday loans are loans where collection will not be by presentment of a check or electronic funds transfer. Collection will be by conventional methods (small claims action).

The objection of the lenders is that the new legislation does not apply to s. 138.09, but applies only to s. 138.14. They say there is no statutory authority for s. 75.03 (3).

DFI created s. 75.03 (3) to prevent payday loan operators from circumventing the new law by simply issuing loans under s. 138.09. If lenders were able to circumvent the law, they would not be bound by the following restrictions of the new law, because these would not be payday loans:

- Limiting total liability to 35% of monthly gross income or $1500, whichever is less
- Prohibiting interest being charged after default
- Requiring installment payment plans in 4 equal installments
- Prohibiting rollovers
- Requiring notice of right to rescind
- Complying with disclosure requirements, including the total amount of all fees and costs and the annual percentage rate and the service charges

In short, without s. 75.03 (3), these same lenders can charge people 500% interest, require payments every two weeks, etc.

The result would be that we would be back to the same fix we were in before the legislation was enacted. Lenders could issue short term loans for small amounts of money and charge exorbitant interest rates.

So, s. 75.03 (3) is in perfect t keeping with the purpose and intent of the legislation -- which is to regulate short term loans for small amounts.

Now, of course, lenders who proceed under the authority of s. 138.09 will be forced to go through small claims court to collect – instead of by presentment of checks or electronic funds transfers. But, the reality is that all that lenders need to do is to intimidate people into paying the debts and people will do so, without lenders having to proceed through court. You can imagine the letters that will threaten people with added court costs if they don't pay.

So, any argument by lenders that there are sufficient limitations or protections on lenders who issue short term loans under s. 138.09 is a hollow argument. Without s. 75.03(3) there just are no protections left for customers.

The same argument applies to another section which lenders want to delete – s. 75.03 (2)(d). This section prohibits a payday loan operator from issuing an auto title loan. The operators claim that the legislation only prohibits lenders licensed under s. 138.09 (non payday loans) from issuing auto title loans. They claim it does not prohibit lenders licensed under s. 138.14 (payday loans) from issuing auto title loans.

The same response to this argument applies. The purpose and intent of this legislation was clearly to prohibit auto title loans – as has been done in several other states. That purpose and intent was achieved by gubernatorial veto. Of course, actions by the governor are part of legislative intent, because legislation cannot be enacted without gubernatorial action. The governor's action is part of the process in the enactment of legislation.

Without s. 75.03(2)(d), the purpose and intent of this legislation would be defeated.

This is just an idea of what we will be saying.

Thanks.


FORWARD

Testimony

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

307 South Paterson Street, Suite 1
Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560

To: Members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

Date: October 25, 2010

Re: Clearinghouse Rule 10-098

Chairperson Wirch and Members of the Committee, thank you for the opportunity to provide testimony on Clearinghouse Rule 10-098. My name is Tony Gibart and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide organization that represents local domestic abuse victim service providers and survivors. WCADV has consistently advocated for strong regulation of the payday and short-term lending industry because victims of domestic violence tend to be caught in difficult financial situations when trying to leave abusive homes and the industry's predatory tactics leave victims further indebted and economically tied to abusers. WCADV strongly supports DFI's proposed rule because it will ensure the intent of 09 Wisconsin Act 405 is preserved and that predatory lenders will not skirt that act's reasonable and modest consumer protections.

Predatory lending re-victimizes survivors of domestic violence and prevents them from gaining the financial security they need to live free from violence.

When a victim attempts to leave an abuser short-term loans can be an enticing option. However, the experiences of survivors and the practices of the short-term loan industry demonstrate that these loans are designed to keep borrowers perpetually indebted to lenders. Many survivors who are hoping to start a new life get caught in this endless cycle of borrowing and re-borrowing.

One woman who sought services from WCADV's member program, Christine Ann Domestic Abuse Services, in Neenah (I will call her Nancy) told me how she turned to payday loans when going through a divorce with her abuser. Nancy found herself being forced to take out loans from different payday lenders to pay just the interest on the others. Nancy was part of the industry pattern; the finance charges and interest were so exorbitant that she was never able to pay down the principle. Nancy explained how the bill collectors used harassing tactics, calling her work, her family members and friends with demands for money. They even went so far as to show up at her house to intimidate her. Being subjected to this kind of intimidation would be unpleasant for anyone, but for victims of domestic abuse, who are likely dealing with similar behaviors from abusers, the psychological toll can be overwhelming.

Even more troubling than the psychological impact, payday lending prevents victims from gaining the financial independence and stability they need to be free of abusers. Quite clearly, the industry is designed to keep victims in a state of financial dependence and instability. When victims are not able to

be financially secure they face tragic choices. Many victims become homeless. Intimate partner violence is the leading cause of homeless among women. Many others out of economic desperation stay with or return to their abusers, resulting in the ever escalating violence that plagues our communities.

Act 405 was a compromise proposal to limit the most abusive practices of the industry. Without DFI's proposed rule, these practices will continue and Act 405 will be ineffective.

Most, if not all, of the people on this committee and in this room were involved in the legislative debates on predatory lending last session. We know that many proposals were put forth, including a bill to cap the rate on all loans in Wisconsin. Many consumer groups argued that, because predatory lenders would evade regulations by reclassifying themselves and exploiting loopholes, an across the board rate cap was the only way to curb predatory lending in Wisconsin. In the end, the Legislature did not adopt a rate cap, but passed significant consumer protections, such as limiting loan amounts relative to the borrowers' income, requiring repayment plans and limiting rollovers. Legislators in their floor speeches and press releases assured consumers and their constituents that, although they did not pass a rate cap, the the protections contained in Act 405 were real and would be effective.

Through the rule, DFI has sought to ensure that payday lenders will not morph into installment leaders, auto-title lenders or offer other, similar loans to evade the purpose and the intent of the law. Specifically, DFI-BKG 75.03(1) would clearly state that a licensed lender "shall not engage in conduct that is an attempt to evade or undermine the purpose and intent" of Act 405. The rule further states that payday lenders may not become auto-title lenders, which are banned under another section of the statutes. The rule would also prevent lenders from continuing abusive practices under section 138.09.

If this last provision is not promulgated, lenders will continue to offer endless rollovers, put borrowers in debt well beyond their ability to pay and avoid the disclosure requirements and other protections of Act 405. The only difference will be that lenders will not be able to require presentment of check or authorization of funds transfer. However, the predatory lending industry will be able to operate without these conditions. Because predatory lenders provide financing to individuals with jobs, borrowers are typically able to repay their short-term loan and its exorbitant interest; the problem is borrowers are not able to repay the loan and afford to live on their remaining income. Thus, borrowers will be required to take out loan after loan and remain trapped in a cycle of debt. Even if lenders will no longer have automatic access to borrowers' checking accounts, the threat of lawsuit and intimidation tactics, like the ones Nancy experienced, will be just as effective. Unless this committee approves DFI-BKG 75, these loopholes will be the means by which predatory lenders will continue to pillage some of the most desperate and vulnerable of our fellow citizens.

DFI has the authority to promulgate the rule.

The Legislature has provided executive agencies wide authority to promulgate rules. Under section 227.11(2)(a), an agency may impose rules "it considers...necessary to effectuate the purpose of the statute." Guided by section 227.11(2)(a), courts only strike down administrative rules when the rule contradicts either the language of a statute or legislative intent. *Seider v. O'Connell,* 2000 WI 76, ¶ 72. Certainly, DFI-BKG 75 is in keeping with legislative intent because it closes loopholes that would make Act 405 ineffective. In addition, the rule does not contradict the language of current statutes. The rule restricts licensed lenders under 138.09 from

engaging in practices that would enable them to avoid the regulations contained in Act 405 and clarifies that payday lenders may not engage in auto-title lending, as that practice is made illegal in another statute section.

Conclusion

DFI-BKG 75 is necessary to fulfill the promise the Legislature made to consumers and citizens when it acted to reduce abusive lending practices in Wisconsin. If these rules are not promulgated, the stories of people like Nancy and the many others who spoke out about predatory lending will multiple. Indeed, the Legislature will be forced to confront the issue again but only after more people will have become trapped in never-ending debt and reasonable efforts at compromise and moderate regulation will have been unnecessarily squandered. Thank you for the opportunity to speak to this issue.


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LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

FROM: Bob Andersen
Stacia Conneely

RE: Clearinghouse Rule 10-098, relating top Payday Lending

Date: October 25, 2010

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

We were in support of the recently enacted legislation on payday lending which requires the creation of these administrative rules. We also testified in favor of the rules at the recent administrative hearing on the rules.

We appear in favor of the rules at this hearing. We are concerned about the objections that people in the industry have had about the rules, including the two matters that we address here.

1. Deletion of Proposed Bkg 75.03 (3)

The big complaint of the lenders is that s. 75.03(3) limits what a licensee under s. 138.09 can do with a loan under $1500 – it cannot be an open end credit plan, it cannot be less than 90 days, and it cannot require payments on a schedule for other than substantially equal monthly installments. These are not lenders under s. 138.14 (payday loans) These are lenders under s. 138.09 (non payday loans). Non payday loans are loans where collection will not be by presentment of a check or electronic funds transfer. Collection will be by conventional methods (small claims action).

The objection of the lenders is that the new legislation does not apply to s. 138.09, but applies only to s. 138.14. They say there is no statutory authority for s. 75.03 (3).

DFI created s. 75.03 (3) to prevent payday loan operators from circumventing the new law by simply issuing loans under s. 138.09. If lenders were able to circumvent the law, they would not be bound by the following restrictions of the new law, because these would not be payday loans:

- Limiting total liability to 35% of monthly gross income or $1500, whichever is less
- Prohibiting interest being charged after default
- Requiring installment payment plans in 4 equal installments
- Limiting rollovers to one
- Requiring notice of right to rescind
- Requiring compliance with disclosure requirements, including the total amount of all fees and costs and the annual percentage rate and the service charges
- Providing for the private right of action for any violation by a customer for a minimum of $250 in damages, plus reasonable attorney fees and the cost of the action

Without this rule provision, these same lenders can charge people 500% interest, require payments every two weeks, etc.

The result would be that we would be back to the same fix we were in before the legislation was enacted. Lenders could issue short term loans for small amounts of money and charge exorbitant interest rates.

So, s. 75.03 (3) is in perfect keeping with the purpose and intent of the legislation -- which is to regulate short term loans for small amounts.

Now, of course, lenders who proceed under the authority of s. 138.09 will be forced to go through small claims court to collect – instead of by presentment of checks or electronic funds transfers. But, the reality is that all that lenders need to do is to intimidate people into paying the debts and people will do so, without lenders having to proceed through court. You can imagine the letters that will threaten people with added court costs if they don't pay.

So, any argument by lenders that there are sufficient limitations or protections on lenders who issue short term loans under s. 138.09 is a hollow argument. Without s. 75.03(3) there just are no protections left for customers.

2. Deletion of Bkg 75.03(2)(d)

The same argument applies to another section which lenders want to delete – s. 75.03 (2)(d). This section prohibits a payday loan operator from issuing an auto title loan. The operators claim that the legislation only prohibits lenders licensed under s. 138.09 (non payday loans) from issuing auto title loans. They claim it does not prohibit lenders licensed under s. 138.14 (payday loans) from issuing auto title loans.

The same response to this argument applies. The purpose and intent of this legislation was clearly to prohibit auto title loans – as has been done in several other states. That purpose and intent was achieved by gubernatorial veto. Of course, actions by the governor are part of

legislative intent, because legislation cannot be enacted without gubernatorial action. The governor's action is part of the process in the enactment of legislation.

Without s. 75.03(2)(d), the purpose and intent of this legislation would be defeated.


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Comments of Tim Elverman
before the
Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
regarding
Clearinghouse Rule 10-098, Relating to Payday Lending
October 25, 2010

Senator Wirch and other members of the Committee, thank you for having this hearing on **Clearinghouse Rule 10-098**, relating to payday lending. I am Tim Elverman, an associate at HWZ Government Relations, representing Pawn America Wisconsin LLC.

Pawn America is a Burnsville, Minnesota based company, operating 24 retail stores in Minnesota, South Dakota, North Dakota and Wisconsin. Our stores in Wisconsin are located in Onalaska, Schofield, Appleton, and Madison. We are primarily a retail store, offering discounted pricing on new, refurbished and used merchandise including electronics, jewelry, furniture and sporting goods. Pawn America prides itself on giving customers great value for their recycled or pawned merchandise.

Pawn America was both an interested observer and participant as the Wisconsin legislature grappled with the payday lending legislation during this legislative session. We communicated with a variety of legislators regarding SB 530 and the other payday lending bills which were discussed. Our goal was to offer helpful suggestions, while being strongly supportive of Sen. Sullivan's efforts to pass meaningful payday lending regulations.

Pawn America does not currently offer payday loans in Wisconsin. We are a licensed lender, under Section 138.09 of the Wisconsin Statutes. With that in mind, we did not view SB 530 (and ultimately 2009 Wisconsin Act 405) to have a direct impact on our business in Wisconsin.

In all of the legislative hearings concerning SB 530 and the other payday lending bills which were introduced during this session, there was never any overt criticism, (or even mention), of Wisconsin's licensed lenders that are *not* payday lenders. The only other category of lenders that were discussed or criticized were those making auto title loans. Those of us who are licensed under Sec. 138.09, who do *not* fit into the definition of payday lender in new section 138.14 of the Statutes were therefore not anticipating that the rule-making process for this legislation would have any direct impact on us or our business.

We therefore were very surprised in August to see the draft rules from the Department of Financial Institutions (DFI) which suddenly, and inexplicably, contained language directly impacting *other* licensed lenders under Section 138.09 of the Statutes. Specifically, we were perplexed by **DFI-Bkg 75.03 Prohibited**

practices. (3) (lines 38 to 43 in the Proposed Order), which stated that those of us licensed under Section 138.09 could not make a loan of $1,500 or less unless we met the criteria outlined in that section. ***Where did the authority for that provision of the proposed rule come from?***

I attended the DFI public hearing on this Proposed Rule on August 26, 2010 and observed the comments and suggestions made by a variety of parties to the DFI staff. I was pleased to see that several other parties had come to the same conclusion that we had concerning this section of the Proposed Rule.

While Douglas Duncan from Pioneer Pawn in Tomah voiced his concerns orally at the DFI hearing, (along with Ed Heiser, representing the Wisconsin Financial Services Association), the objection to this section of the proposed rule was also expressed in writing by Thomas Moore in a letter to DFI dated August 24, 2010 and submitted at the August 26th hearing. *Mr. Moore's letter outlined in great detail why DFI has no statutory authority to include this section in the Proposed Rule.*

Since this concern with the Proposed Rule was articulated in great detail at the DFI hearing, (both orally and in writing), I was anxious to see how DFI would respond to this issue when they modified the Proposed Rule and forwarded it to the legislature on August 31, 2010.

In the August 31, 2010 letter forwarding the Proposed Rule to the Senate and Assembly Chief Clerks, Mark Schlei, Deputy General Counsel at DFI, noted that Thomas Moore "objected to restrictions on s. 139.09 licensees", (we think he meant s. 138.09) and also noted that Douglas Duncan from Pioneer Pawn "spoke against" the proposed rule. However, Mr. Schlei did not respond to their concerns, or explain what DFI's rationale was for including section **DFI-Bkg 75.03 Prohibited practices (3)** in the Proposed Rule. Instead, Mr. Schlei simply stated "As a result of the testimony and in subsequently meeting with the members of the public who testified or submitted written testimony, the department revised its proposed rule." *Obviously, DFI did not revise the proposed rule as it relates to this questionable section.*

We find the August 31, 2010 letter from DFI to the legislature unsatisfactory in answering the questions raised by those testifying at the August 26th hearing on the proposed rule. *What justification is there for inserting lines 38 to 43 in the Proposed Order?*

As a licensed pawn store operator in Wisconsin, we are surprised and perplexed by DFI's actions in this rule-making process. We find this situation troubling because (as noted previously) the legislature did *not* address pawn stores or other lenders licensed under sec. 138.09 of the Statutes in any of the payday lender bills which were introduced during this session. Even if pawn stores or other licensed lenders *had* been discussed during the legislative hearings, it is obvious from reading the law which you approved (SB 530, now 2009 Wisconsin Act 405), that pawn stores and other licensed lenders were *not* the subject of the legislation. Therefore, DFI

has gone beyond the scope of the law you enacted and has somehow decided, without authority from the legislature, to formulate new rules for other section 138.09 lenders. We trust that you find this as troubling as we do. It was certainly the prerogative of your chamber, and your colleagues in the Assembly, to draft and enact legislation which would impact other lenders licensed under section 138.09 of the statutes. However, it is not the prerogative of DFI to simply "create law" on its own.

We want to be clear that we are not criticizing the overall work product of DFI. We find the Department overall to be very competent and responsive as a regulator. Perhaps it was an attempt to complete this Proposed Rule in a timely manner which caused them to somehow overlook this section of their Proposed Rule. However, the Department's letter to your Clerk does nothing to clarify their rationale for continuing to include it in the Proposed Rule. That is why we appreciate you having this hearing today. Hopefully, through the testimony from the Department personnel, we can all learn what their rationale is for this section of the Proposed Rule. Thus far, in their own Departmental hearing on August 26, 2010, and in their August 31, 2010 written correspondence to your Clerk forwarding the Proposed Rule, they have not cited any justification for including this section in the Proposed Rule.

As you have heard from others (and from us today), **SB 530 and the resulting 2009 Wisconsin Act 405 contain no language which gives DFI authority to create DFI-Bkg 75.03 Prohibited Practices (3). We therefore respectfully ask you to not approve this Proposed Rule until that section is removed, since it was created without legislative authority.**

Thank you again for scheduling this hearing and for allowing me to outline Pawn America's concerns with the Proposed Rule. I will be happy to attempt to answer any questions concerning my comments today.


FORWARD

STATE REPRESENTATIVE
GORDON HINTZ
WISCONSIN STATE ASSEMBLY
54th DISTRICT

TESTIMONY October 25, 2010
Clearinghouse Rule 10-098 relating to payday lending legislation

Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Dear Chairman Wirch and committee members,

Thank you for the opportunity to submit testimony today regarding Clearinghouse Rule 10-098 relating to payday lending regulations in Wisconsin. As many of you know, I have worked long and hard to make payday lending reform a reality in the State of Wisconsin. From the beginning, the legislature worked to provide meaningful and necessary protections *on behalf of consumers* who currently pay more than $150 million annually in abusive fees and charges. Today I am asking you to stand by that commitment to vulnerable consumers and avoid making changes to the proposed rule requested by the payday lending industry.

I took on this legislation because I was tired of hearing stories from constituents about how their lives had been devastated by their doing business with the unregulated payday lending industry that has proliferated in our state. Most borrowers are lower income individuals who are lent more money than they can reasonably pay back, and find themselves in an endless debt trap. These are people who would normally spend all of their disposable income in our economy, but are instead spending their income on interest and fees going primarily to out-of-state lenders.

The Wisconsin State Assembly's position has always been to protect Wisconsin's consumers from the most abusive payday lending practices. This was evidenced by the assembly vote on AB 447 and the final version, SB 530 that passed 72 to 25 in the assembly and was signed into law by Governor Doyle as Wisconsin Act 405. I am extremely proud of the work the Assembly and Senate did to ensure that Wisconsin will not longer be the "Wild, Wild West" for payday lenders. But we find today that our great achievement is again under attack by the payday lending industry.

You have before you Clearinghouse rule 10-098 which has already gone through a lengthy and thorough process in the Department of Financial Institutions. Their final version of the rule that is before you is reflective of the legislative intent. It is a good, strong and appropriate rule. The payday lending industry is taking one more crack at watering our laws down, and I ask you to once more stand strong and make your decision on what will best protect your constituents by allowing this rule through unaltered and unopposed. The consumer groups and their legal teams, including the Wisconsin Coalition Against Domestic Violence (WCADV), Legal Aid Society of Milwaukee Inc. and Legal Action of Wisconsin, Inc., have looked closely at this rule and signed off on it as appropriate and best for Wisconsin's consumers.

State Capitol: P.O. Box 8952, Madison, WI 53708 ◆ (608) 266-2254 ◆ Toll-free: 1-888-534-0054 ◆ FAX: (608) 282-3654
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I understand that the payday industry has been pressuring legislators and asking that s. 75.03(3) be deleted from the rule. It is interesting that this rule was referred not to the committee that addresses payday lending reform legislation up to this point, but rather to a committee that has previously never dealt with this issue until today.

Make no mistake about it, the payday lenders are asking you to remove s. 75.03(3) because they want you to insert a loophole that they can exploit. They want you today to help them continue making unregulated payday loans under a different guise. This is the technique that has been used in other states and they now think they can slip this by your committee. The payday industry has lots of resources and loads of experience in finding loopholes in order to continue to extract hundreds of millions of dollars from our most vulnerable citizens.

In making your decision regarding Clearinghouse Rule 10-098, ask yourself who you are making the decision on behalf of: Wisconsin's consumers or the national predatory payday lending industry? Please stand up to the special interests one more time and do not alter or delete s. 75.03(3).

Thank you for your consideration and please do not fall into the payday lenders trap today,

Sincerely,

Gordon Hintz


FORWARD
E PLURIBUS UNUM

State of Wisconsin

Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

CR 10-98?

Lorrie Keating Heinemann, Secretary
Department of Financial Institutions

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
October 25, 2010

Chairperson Wirch, committee members, thank you for the opportunity for the Department of Financial Institutions (DFI) to submit testimony on our rule on Act 405, relating to payday lending.

In drafting Rule DFI-Bkg 75, our Banking Division gave deliberate thought and consideration to the comments put forth by all interested parties. The resulting rule protects consumers while allowing the industry to continue to offer loans. The rule also provides clarity and allows the Division to effectively implement the provisions of s. 138.14.

The Committee's passage of the rule will ensure implementation in January, 2011. The decision not to pass the rule will have a negative impact on businesses and could eliminate the consumer protections afforded by s. 138.14. Numerous credit transactions would be considered payday loans if you do not pass this rule. All types of businesses dealing with credit and using electronic fund transfer payments are impacted without this rule.

For example, a loan secured by a person's home made after January 1, 2011, would be considered a payday loan under s. 138.14, if the customer makes their monthly payment via electronic funds transfers. Also, by being licensed under s. 138.09, a lender could avoid licensing under s. 138.14 by making a loan that looks like a payday loan except that the loan would not be secured by a check or an electronic fund transfer authorization. Our rule will fix these unintended consequences of the Act.

It is important to note that the volume of payday loans in Wisconsin has gone from $11.2 million in 1996 to $600 million in 2009. The average loan amount has gone from $140 to $419 during the same period. It appears that the loans that were intended to be for emergency purposes have ended up being a frequent source of credit. It is time that we implement these new consumer protections to ensure that this high cost of credit does not continue as a primary source of credit for consumers.

The rule includes many consumer protections, such as requiring that the loan agreements have disclosures regarding the repayment plan options, the 24 hour right to rescind the loans and the limit of one rollover per loan.

Our Department has developed these rules in a transparent manner and we invited input from both the industry and consumers. We met with many different stakeholders before and during the drafting of the rule and carefully considered all suggestions that were brought to our attention. While drafting the rule the Department focused on what the intention of the legislation was while addressing any unintended consequences. We encourage you to pass this rule so the law can be fully implemented on the first of the year and business can continue on without further regulatory burdens.

Office of the Secretary
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State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

October 27, 2010

CR 1098?

Senator Robert Wirch
Twenty-Second District
State Capitol
P.O. Box 7882
Madison, WI 53707

Re: Payday lending rules

Dear Senator Wirch:

Thank you for your letter dated October 25, 2010 regarding my written testimony for our Department's rulemaking for Act 405.

We have reviewed the rule and taken into account your committee's comments and have made modifications which address your concerns.

Catherine Haberland, our Chief Policy Director, and Michael Mach, our Division of Banking Administrator, will be meeting with your staff today to come to a resolution.

We understand the importance of passing this rule in your committee this week and we appreciate your willingness to resolve your concerns.

Sincerely,

Lorrie Keating Heinemann
Cabinet Secretary

Office of the Secretary
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FORWARD

Tierney, Michael

From: Sen.Wirch
Sent: Friday, October 29, 2010 9:52 AM
To: Tierney, Michael
Subject: FW: Pay Day Lending rules changes

CR 10-98?

From: DOUGLAS DUNCAN [mailto:PIONEER@MWT.NET]
Sent: Tuesday, October 26, 2010 1:27 PM
To: Sen.Wirch
Subject: Pay Day Lending rules changes

Dear Senator Wirch,

Thank you for the opportunity to speak to you today regarding the rule that has been proposed to regulate payday lenders, that has an effect on my small business as a pawnbroker. I believe that if this rule were to become law, it would become a hardship on my customers, my business, as well as my community here in Tomah, Wisconsin.

I have been operating under the DFI Chapter 77 Rules regarding pawnbrokers for a many years now, and I believe that these rules, as they currently are, work well for my customers. Because a pawn transaction is a short term, small dollar, non-recourse form of loan, it gives my customers the best and cheapest method of getting the cash that they need for their needs.

If the loan were to change to a 90 day loan with required monthly payments, I believe that my customers would be less able, or apt, to pay off the loan within the usual 30 days, instead they would take the loan out to the 90 day period. In the long run the change to a 90 day loan would thus end up costing them more than they would pay now under the current rule. I also believe that since it would cost them more, they would be more likely to default on the loan. Therefore I would have to start giving the customer less for their collateral than I currently give, under the current rules, as an increase in stock would soon reduce my storage space that I have available.

I also feel that the requirement of equal monthly installment payments on the loans would also increase the percentage of defaulted loans. My reasoning for the increase of defaults, is that many times the customer has trouble coming up with the required interest to renew their loan, an additional requirement of paying on the principle, as well, would cause the increase in defaulted loans. The required additional cost of the monthly payment would also increase the number of customers taking additional loans to pay for their current loans charges.

With these changes would also come increased financial, training, and time costs to my business. Initially it would cost me a loss of the contracts which I have recently purchased, in excess of $ 3000.00, because they would not be applicable under these new changes. As you are well aware in business, if my costs increase, this increase will probably be transferred to my customers.

The cost to my community would come from the increase of my customers for whom my business would no longer be an answer for their short term cash needs. If their needs weren't met by business, I am sure you will agree, that they would be required to go elsewhere in my community. The other places affected could be anything from churches, or other charitable sources, family, local government, or even illegal means of obtaining cash.

I ask you to please encourage the DFI to exclude pawnbrokers from the rules that are currently being proposed for payday lenders.

Thank you,

Douglas Duncan (Partner- Pioneer Pawn, Tomah, WI)