

# ☞ 09hr\_SC-SBEPTCCP\_CRule\_10-098\_pt02



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**
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### 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**



**State of Wisconsin**  
*Department of Financial Institutions*

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

November 5, 2010

Committee on Small Business, Emergency Preparedness,  
Technical Colleges, and Consumer Protection  
Senator Robert Wirch, Chair  
316 South, State Capitol  
Madison, WI 53703

Committee on Financial Institutions  
Representative Jason Fields  
221 North, State Capitol  
Madison, WI 53703

Via e-mail and hand-delivery

Re: CR 10—098 relating to payday lending

Dear Committee Chairs:

The Department of Financial Institutions, Division of Banking submits modifications to proposed rule CR 10-098 relating to payday lending. A copy of the proposed rule as modified is enclosed, as well as a separate memorandum for your convenience that identifies the modifications set forth in the rule.

Sincerely,

A handwritten signature in cursive script that reads "Mark Schlei".

Mark Schlei  
Deputy General Counsel

encl

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*Division of Banking*

Mail: PO Box 7876 Madison, WI 53707-7876  
Voice: (608) 261-7578

Fax: (608) 267-6889

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State of Wisconsin  
*Department of Financial Institutions*

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**Modifications to DFI-Bkg 75**  
**Clearing House Rule 10-098**

1. At Line 23, the sentence is modified to read:

(2) Payable in 6 or more substantially equal monthly installments, or 13 or more substantially equal biweekly 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:

2. At Line 38, the sentence is modified to read:

(3) Except as provided in sub. (4), no licensee under s. 138.09 Stats., shall make a loan of \$1,500 or less under any of the following circumstances:

3. At Line 40, the sentence is modified to read:

(a) That requires payments be made on any schedule other than substantially equal biweekly installments or substantially equal monthly installments, except as provided in s. 138.09(7)(c)2, Stats.

4. After Line 43, subsection (4) is created to read:

(4) Sub. (3) does not apply to a licensee under s. 138.09, Stats., where all of the following apply:  
(a) The licensee operates as a pawnbroker as defined in s. DFI-Bkg 77.02(2), Admin. Code.  
(b) The licensee takes possession of the pledge as defined in s. DFI-Bkg 77.02(5), Admin. Code.  
(c) The forfeited pledge satisfies the loan.

5. At Line 74, the sentence is modified to read:

(a) A recent official pay stub or official payroll receipt.

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6. At Line 75, the sentence is modified to read:

(b) A recent receipt reflecting payment of retirement benefits.

7. At Line 76, the sentence is modified to read:

(c) A recent receipt reflecting payment of government benefits.

8. At Line 77, the sentence is modified to read:

(d) A recent statement from a financial establishment reflecting direct deposit of government benefits.

**PROPOSED ORDER OF THE STATE OF WISCONSIN,  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING  
ADOPTING RULES**

- 1 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to  
2 create ch. DFI—Bkg 75, relating to payday lending.

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**Analysis Prepared by the Department of Financial Institutions, Division of Banking**

Statute(s) interpreted: ss. 138.10(2m), 138.14(8)(b) and 138.14(14)(g), Stats.

Statutory authority: ss. 138.10(2m), 138.14(8)(b), 138.14(14)(g), and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to 2009 Wisconsin Act 405, the department is to enact rules regarding payday lending reforms.

Summary of proposed rule: 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.

Summary of and preliminary comparison with existing or proposed federal regulation: none.

Comparison with rules in adjacent states: Illinois, Michigan, Minnesota and Iowa all now regulate payday lending.

Summary of factual data and analytical methodologies: In developing these rules, the department extensively reviewed payday lending laws in states across the country. The department also received input from payday lenders and consumer organizations. Because the department regulates licensed financial services for the state, the division could also rely on extensive staff expertise and experience in drafting regulations for these entities. The department is also experienced with payday loans and payday lending practices because the department licenses these lenders.

Analysis and supporting documentation used to determine effect on small business: The mandates addressed by the rule are the result of and set forth in 2009 Wisconsin Act 405, and not by the rule. The rule does provide substantial clarity to the payday lending industry on the types of loans covered, and notice as to what practices are prohibited. The rule provides the industry

with clear and itemized requirements for disclosures and repayment plans, and standard calculations for income determination. The rule provides for the safe and secure transmission of data, and the required information to be entered into the database. Permissible fees and interest are addressed, as well as default matters. Overall the information required by the rule should be readily available to payday lenders in the normal course of business. Standardizing requirements for disclosures, repayments and calculations provides both ease of transaction for the lenders and certainty for their practices. The fees, interest and default provisions likewise provide the same, and are *de minimis* in comparison with the overall operational costs and income of these entities. Overall the requirements of the rule are straight-forward for ease in compliance. The rule itself therefore does not have a significant economic impact on small business and should have a beneficial affect for both the business and consumer.

### **Agency Contact Persons**

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Banking adopts the following:

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3 SECTION 1. Ch. DFI—75 is created to read:

4 **CHAPTER DFI—BKG 75**

5 **PAYDAY LENDING**

6 **DFI-Bkg 75.01 Definitions.** In this chapter and s. 138.14, Stats.:

7 (1) "At the end of the loan term" has the same meaning as "maturity date," as defined in  
8 s. 138.14(1)(j), Stats.

9 (2) "Database transaction fee" means the fee the database provider shall charge licensees  
10 for each payday loan made by the licensee.

11 (3) "Default" has the meaning given in s. 425.103(2), Stats., if the loan has not reached  
12 its maturity date or the customer does not enter into a repayment plan under s. 138.14(11g),  
13 Stats.

14 (4) "Department" means the department of financial institutions.

15 (5) "Division" means the division of banking.

16 (6) "Electronic fund transfer" has the meaning given in 12 C.F.R. s. 205.3(b).

17 (7) "Makes" in s. 138.14(4)(c), Stats., means originates or services.

18 (8) "Percentage per year of interest charged" in s. 138.14(13)(b), Stats., means the  
19 annual percentage rate charged for the payday loan.

20 **DFI-Bkg 75.02 Transactions not covered.** Notwithstanding s. 138.14(1)(k), Stats., a  
21 payday loan does not include a transaction that is any of the following:

22 (1) Made for a business, commercial or agricultural purpose.

23 (2) Payable in 6 or more substantially equal monthly installments, or 13 or more  
24 substantially equal biweekly installments, where the customer voluntarily authorizes recurring  
25 electronic fund transfers from an account at a financial establishment if both of the following  
26 conditions are met:

27 (a) The authorization for the electronic fund transfers is not required by the creditor and  
28 that fact is clearly and conspicuously disclosed in writing to the customer.

29 (b) The authorization for electronic fund transfers can be revoked and that fact is clearly  
30 and conspicuously disclosed in writing to the customer.

31 **DFI-Bkg 75.03 Prohibited practices.** (1) A licensee shall not engage in conduct that is  
32 an attempt to evade or undermine the purpose and intent of s. 138.14, Stats.

33 (2) No licensee shall make a payday loan under any of the following circumstances:

34 (a) That requires a payment that is more than twice as large as the average of all other  
35 scheduled payments.

36 (b) Pursuant to an open-end credit plan.

37 (c) Where the lender accepts, and agrees to hold, more than 5 of a customer's checks.

38 (d) That is, or is to be, secured by an interest in a motor vehicle.

39 (3) Except as provided in sub. (4), no licensee under s. 138.09 shall make a loan of  
40 \$1,500 or less under any of the following circumstances:

41 (a) That requires payments be made on any schedule other than substantially equal  
42 biweekly installments or substantially equal monthly installments, except as provided in s.  
43 138.09(7)(c)2, Stats.

44 (b) Pursuant to an open-end credit plan.

45 (c) That has a term of less than 90 days.

46 (4) Sub. (3) does not apply to a licensee under s. 138.09, Stats., where all of the  
47 following apply:

48 (a) The licensee operates as a pawnbroker as defined in s. DFI-Bkg 77.02(2).

49 (b) The licensee takes possession of the pledge as defined in s. DFI—Bkg 77.02(5).

50 (c) The forfeited pledge satisfies the loan.

51 **DFI-Bkg 75.04 Disclosure requirements.** (1) The disclosures required by s.  
52 138.14(9g)(a)1., 2., 4., 5. and 6., Stats., shall be provided to the applicant in a single written  
53 document that is in a form prescribed by the division. The form shall be:

54 (a) Signed and dated by the applicant.

55 (b) Signed and dated by a representative of the licensee.

56 (c) On white paper sized 8 ½" x 11" and in Times New Roman font style 12 or greater.

57 (d) Delivered to the customer in the English and Spanish languages.

58 (2) The licensee shall retain a copy of each signed disclosure form in the customer's file.

59 **Note:** A copy of the disclosure form may be downloaded from the department's website  
60 at [www.wdfl.org](http://www.wdfl.org).

61 **DFI-Bkg 75.05 Interest, fees and default.** (1) Except as set forth in sub. (3), the  
62 interest permitted under s. 138.14(10)(a), Stats., and the fee permitted under s. 138.14(10)(b)2.,  
63 Stats., are the only amounts that may be charged a customer on a payday loan.

64 (2) No licensee may charge the customer a fee to cash the proceeds check from a payday  
65 loan.

66 (3) Notwithstanding s. 138.14(10), Stats., if a money judgment is awarded by the court, a  
67 customer may be charged the costs and fees awarded by the court and the interest permitted  
68 under s. 814.04(4), Stats.

69 (4) If the customer has entered into a repayment plan under s. 138.14(11g), Stats., default  
70 occurs when the customer fails to pay on or before the 10<sup>th</sup> day after its scheduled due date all or  
71 any part of a scheduled installment, or 41 days after the original maturity date of the payday  
72 loan, whichever is later.

73 **DFI-Bkg 75.06 Gross Monthly Income.** (1) The gross monthly income calculation  
74 required under s. 138.14(12)(b), Stats., shall be calculated by multiplying the amount of the:

75 (a) Gross weekly earnings times 4.33, if the customer is paid weekly.

76 (b) Gross two week earnings times 2.16, if the customer is paid every two weeks.

77 (c) Gross semi-monthly earnings times 2, if the customer is paid twice a month.

78 (d) Gross monthly earnings times 1, if the customer is paid monthly.

79 (2) Prior to making a payday loan, the licensee shall obtain from the customer a copy of  
80 any of the following to verify the gross monthly income of the customer:

81 (a) A recent official pay stub or official payroll receipt.

82 (b) A recent receipt reflecting payment of retirement benefits.

83 (c) A recent receipt reflecting payment of government benefits.

84 (d) A recent statement from a financial establishment reflecting direct deposit of  
85 government benefits.

86 (e) Other documentation as approved by the division.

87 (3) The documents set forth in pars. (a) through (d) shall not be dated more than 35 days  
88 prior to the date on which the payday loan is made.

89 (4) Documentation verifying the customer's income and setting forth the licensee's  
90 calculation of the gross monthly income shall be retained in the customer's file.

91 **DFI-Bkg 75.07 Form requirements.** (1) Every writing evidencing the customer's  
92 obligation to pay under a payday loan shall clearly and conspicuously contain the following  
93 language:

94 (a) REPAYMENT PLAN: If you fail to repay this payday loan in full upon its maturity  
95 date, the lender must offer you the opportunity to repay the outstanding balance of the loan in 4  
96 equal installments with due dates coinciding with your pay period schedule. There is no cost to  
97 you for entering into the repayment plan, and the lender may not charge any interest on the  
98 outstanding balance while you are participating in the repayment plan. Customer's initials or  
99 signature: \_\_\_\_\_.

100 (b) You may rescind this payday loan by returning to the lender the proceeds of the  
101 payday loan before the close of business on the next day of business after the loan is made, or, if

102 the place of business where the loan is made is open 24-hours, before 5 p.m. on the next day of  
103 business after the loan is made.

104 (c) You may not repay a payday loan with the proceeds of another payday loan more  
105 than once.

106 (d) A lender may present a customer's check for payment no more than once. For each  
107 customer authorization to initiate an electronic fund transfer from the customer's account, a  
108 lender may initiate an electronic fund transfer no more than once. The only charge that a lender  
109 may impose for dishonor of a customer's check or denial of the lender's instruction to execute an  
110 electronic fund transfer is a charge that does not exceed \$15.

111 (e) If a person makes a payday loan to a customer in violation of s. 138.14, Stats., the  
112 customer may bring an action against the person for damages of \$250 or the amount of the  
113 payday loan, whichever is greater, plus costs, and notwithstanding s. 814.04(1), Stats.,  
114 reasonable attorney fees.

115 (2) The language required by par. (1)(a) shall be placed immediately above the Notice to  
116 Customer required by s. 422.303(3), Stats., and shall be separately signed or initialed by the  
117 customer before the payday loan is made.

118 (3) A payday loan customer is entitled to receive in the Spanish language, the writing  
119 evidencing the customer's obligation to pay.

120 **DFI-Bkg 75.08 Repayment plan.**

121 (1) NOTICE POSTED. A licensee shall prominently post a notice, in at least twenty  
122 four point boldface type, informing customers that if they are unable to repay a payday loan upon  
123 its maturity date, they shall be eligible to repay the outstanding balance of the transaction in 4  
124 equal installments with due dates that coincide with the customer's pay period schedule. The

125 notice shall be posted where the licensee makes payday loans, or if conducting business via the  
126 Internet, on the licensee's Website so that the notice is easily viewed by a consumer prior to  
127 accepting the terms of any payday loan agreement.

128       (2) REPAYMENT PLAN OFFER. (a) If the customer fails to repay the subsequent  
129 loan referred to in s. 138.14(12)(a), Stats., the offer of the repayment plan required by s.  
130 138.14(11g), Stats., shall be hand-delivered, mailed or e-mailed to the customer when the  
131 licensee receives notice of insufficient funds in the customer's account or within 10 days after  
132 the maturity date of the loan. The offer of repayment plan shall be in a single written document  
133 that is in a form prescribed by the division. The licensee may deposit the customer's check or  
134 initiate the authorized electronic fund transfer within the 10 day period. The form shall:

- 135       1. Be on white paper sized 8 ½" x 11" and in Times New Roman font style 12 or  
136 greater.
- 137       2. Identify the name, address, and telephone number of the licensee.
- 138       3. Identify the name, address, telephone number, and unique identification number of the  
139 customer.
- 140       4. Contain an explanation of the repayment plan being offered.
- 141       5. State the date the offer is made and the date by which the customer must accept the  
142 offer.

143       (b) The licensee shall retain in the customer's file a copy of the repayment plan form  
144 provided to the customer.

145       Note: A copy of the repayment plan offer form may be downloaded from the  
146 department's website at [www.wdfi.org](http://www.wdfi.org).

147           (3)    REPAYMENT PLAN AGREEMENT. (a) The repayment plan agreement shall  
148 be in writing and shall do all of the following:

- 149           1. Contain no blank spaces.
- 150           2. Be signed and dated by the customer and a representative of the licensee.
- 151           3. Identify the name, address, and telephone number of the licensee.
- 152           4. Identify the name, address, telephone number, and unique identification number of the  
153 customer.
- 154           5. State the date the repayment plan was made, the loan number, and the outstanding  
155 balance.
- 156           6. State the payment amounts and due dates.
- 157           7. Contain a summary of action that could be taken against the customer if the customer  
158 does not make the required repayment plan installment payments when due.

159           (b) The licensee shall furnish the customer a copy of the signed agreement.

160           (c) The licensee shall retain a copy of the repayment plan agreement in the customer's  
161 file.

162           (4)    ACCEPTANCE OF PLAN. No licensee is required to honor a repayment plan offer  
163 under sub. (2) that is not accepted by the customer and received by the licensee within 10 days of  
164 the date the offer is hand-delivered, mailed or e-mailed to the customer.

165           (5)    REQUIREMENTS OF REPAYMENT PLAN. The repayment plan under s.  
166 138.14(11g), Stats., shall meet all of the following requirements:

167           (a) The first payment shall not be due earlier than the customer's next pay day following  
168 the date the offer is made.

169 (b) The due date of the 4 equal installments shall coincide with the customer's pay  
170 period schedule, as verified by the customer's pay stub, payroll receipt, or receipt of government  
171 or retirement benefits that identifies the frequency of the pay cycle.

172 (c) If the customer's income is not received on a consistent, regular cycle, the pay period  
173 schedule shall be considered every two weeks and the first payment shall be due two weeks  
174 following the date the offer is made.

175 **DFI-Bkg 75.09 General matters.**

176 (1) The effective date of a payday loan cannot be prior to the date the loan is signed by  
177 the customer.

178 (2) Notwithstanding s. 138.14(12)(f), Stats., a licensee is not prohibited from bringing an  
179 action to collect the total outstanding balance due on a payday loan, including the service charge  
180 permitted under s. 138.14(10)(b)2.

181 (3) All times referenced in s. 138.14 are for the Central Time Zone.

182 **DFI-Bkg 75.10 Database. (1) SECURE TRANSMISSION.**

183 (a) Except as otherwise provided in s. 138.14, Stats., a licensee shall transmit all  
184 information to the database via the Internet.

185 (b) In order to maintain the confidentiality and security of the information transmitted to  
186 the database, a licensee shall maintain generally accepted security safeguards to maintain the  
187 confidentiality and security of information transmitted to the database. The licensee shall install,  
188 maintain and regularly update malware protection, antivirus and antispyware software, and a  
189 firewall.

190 (c) A licensee shall not transmit information to the database using publicly accessible  
191 computers, computers that are not under the licensee's control, unsecured wireless connections,  
192 Wi-Fi connections, or other connections that are not secure.

193 **(2) CUSTOMER ELIGIBILITY.**

194 (a) If the database advises the licensee that an applicant is eligible for a payday loan, the  
195 licensee shall record a transaction identification number, generated by the database, on the  
196 applicant's loan document before entering into the payday loan.

197 (b) If the database advises the licensee that an applicant is ineligible for a payday loan,  
198 the licensee shall do all of the following:

- 199 1. Inform the applicant of the applicant's ineligibility.
- 200 2. Provide the applicant with the reason for the ineligibility determination given by the  
201 database.
- 202 3. Instruct the applicant to contact the database provider if the applicant wants more  
203 specific information regarding the reason for ineligibility.
- 204 4. Provide the applicant with the telephone number of the database provider.

205 **(3) DATABASE UPDATES.** (a) A licensee shall input all information requested by the  
206 database into the database when any of the following occur:

- 207 1. A payday loan is consummated.
- 208 2. A payday loan is repaid with the proceeds of a subsequent payday loan.
- 209 3. A customer elects to enter into a repayment plan under s. 138.14(11g), Stats.
- 210 4. A customer's payday loan is paid in full.
- 211 5. A customer elects to rescind his or her payday loan.
- 212 6. A customer makes a payment on his or her payday loan.

- 213           7. The licensee presents a check for payment or initiates an electronic fund transfer.
- 214           8. A customer's check is dishonored or electronic fund transfer is denied.
- 215           9. The licensee assesses a service charge for a dishonored check or denied electronic  
216 funds transfer.
- 217           10. The licensee collects a service charge for a dishonored check or denied electronic  
218 funds transfer.
- 219           11. The licensee determines a payday loan is in default.
- 220           12. The licensee obtains a judgment against the customer.
- 221           13. A customer satisfies a judgment.
- 222           14. The licensee collects any court costs or attorney's fees from a customer.
- 223           15. The licensee charges off a payday loan as uncollectible.
- 224           16. The division or the database provider determines additional information needs to be  
225 submitted to the database.
- 226           (b) Except as set forth in sub. (4), information shall be entered into the database on the  
227 day the licensee becomes aware of the information.
- 228           (c) If a licensee becomes aware of any changes or errors in the information previously  
229 verified or transmitted by the licensee to the database, the licensee shall immediately update or  
230 correct the database.
- 231           **(4) ALTERNATE PROCESS.** (a) If at the time a licensee receives a loan application  
232 the licensee is unable to access the database via the Internet due to technical difficulties  
233 occurring with the database, the licensee shall use the database provider's alternate process to  
234 obtain applicant eligibility information from the database.

235 (b) If a licensee makes a payday loan based on applicant eligibility information obtained  
236 from the database provider's alternate process, the licensee shall transmit to the database any  
237 remaining required information no later than 11:59 p.m. on the next business day following the  
238 date the database becomes accessible to the licensee via the Internet.

239 (c) If a licensee is required to transmit to the database information regarding a payday  
240 loan that has already been made but the licensee is unable to access the database via the Internet  
241 due to technical difficulties occurring with the database, the licensee shall transmit to the  
242 database the required information no later than 11:59 p.m. on the date that the database becomes  
243 accessible to the licensee via the Internet.

244 (d) Anytime a licensee is unable to access the database via the Internet due to technical  
245 difficulties occurring with the database, the licensee shall document in its records the technical  
246 problems it experienced and the date and time that it sought to access the database.

247 (5) RECORD RETENTION. Data shall be retained on the database until the database  
248 provider receives written approval from the department to archive, delete, or destroy specific  
249 information.

250 (6) TRANSACTION FEE. By December 1 of each year the division shall determine and  
251 post on its website the amount of the database transaction fee that will be in effect for each  
252 payday loan made during the following calendar year.

253 (7) CEASING LOAN ORIGINATIONS.

254 (a) The plan required by s. 138.14(14)(o), Stats., shall be received by the division at least  
255 10 business days before a licensee stops originating payday loans.

256 (b) The provisions of s. 138.14(14)(d)5., Stats., do not apply if a licensee is updating the  
257 database in accordance with a plan approved by the division under s. 138.14(14)(o), Stats.







**ROBERT W. WIRCH**

STATE SENATOR TWENTY-SECOND DISTRICT

November 19, 2010

Lorrie Keating Heinemann, Secretary  
Department of Financial Institutions  
345 W Washington Ave. 5<sup>th</sup> Floor  
Madison WI 53703

Dear Secretary Heinemann,

I am writing to inform you that the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection voted 5-0 to object to Clearinghouse Rule 10-098. This will have the effect of sending the rule to the Joint Committee for Review of Administrative Rules.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Wirch".

Robert W Wirch  
State Senator  
22<sup>nd</sup> Senate District

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

FROM: Senator Robert Wirch, Chair

DATE: November 19, 2010

SUBJECT: Committee ballot on Clearinghouse Rules 10-098

**[MOTION]** *To object to Clearinghouse Rule 10-098 with modifications received from agency on November 5, 2010, by the committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. The committee is objecting pursuant to ss. 227.19(4)(d)1., 3., and 4., Stats.*

Pursuant to Senate Rule 25 (4)(am), the committee will vote by ballot on the above motion. Please review the motion and record your vote below by signing your name, inserting the date, and circling "Aye" or "No." By circling "Aye" you indicate your approval of the motion. Please forward this ballot to the next office listed. Thank you.

<u>Robert Wirch</u> Senator Robert Wirch	<u>11-19-2010</u> Date	<u>AYE</u>	NO
<u>Jeff Plale</u> Senator Jeff Plale	<u>11/19/10</u> Date	<u>AYE</u>	NO
<u>Jim Holperin</u> Senator Jim Holperin	<u>11-19-10</u> Date	<u>AYE</u>	NO
<u>Randy Hopper</u> Senator Randy Hopper	<u>11-19-10</u> Date	<u>AYE</u>	NO
<u>Mary Lazich</u> Senator Mary Lazich	<u>11/19/10</u> Date	<u>AYE</u>	NO

**Due Date is Friday, November 19, 2010 at 11:00 A.M.**

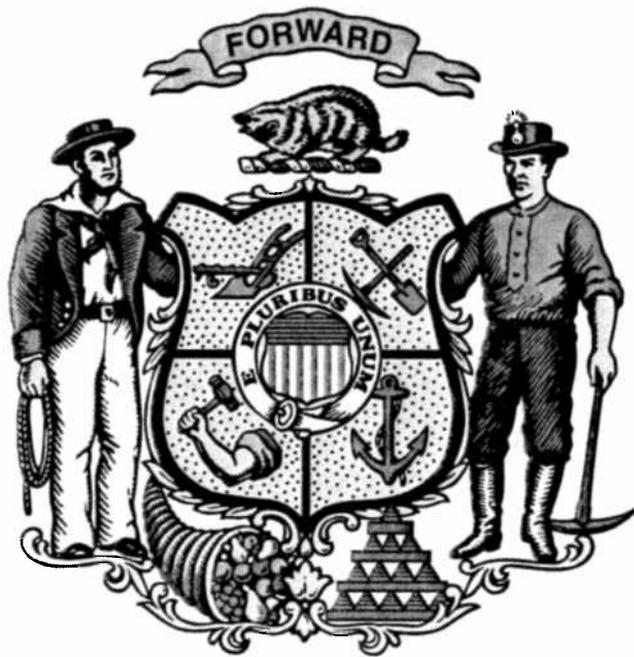


Motion:

Date?

MOVED, that the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Financial Institutions to consider making modifications to Clearinghouse Rule 10-098, relating to payday lending.

FURTHER MOVED, that, if the Department of Financial Institutions fails to notify the Chair of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection in writing, by 5:00 pm on Friday, October 29, 2010, that the Department of Financial Institutions agrees to consider making modifications, the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection objects to the promulgation of Clearinghouse Rule 10-098 under s. 227.19 (4) (d) 1., 3., and 4., Stats.



Date?

## Clearinghouse Rule 10-098

After years of legislative consideration and debate on regulating the payday lending industry, Senate Bill 530 was introduced on February 9, 2010. Despite being a negotiated legislative middle-ground in its original form, Senate Bill 530 was still subject to a great deal of review by the Assembly and Senate after its introduction. Multiple hearings were held, amendments adopted and defeated and, after spirited floor debate, the bill was passed by the legislature on April 23, 2010. See "Wisconsin Lawmakers Agree to Regulate Payday Lenders," *Associated Press* (Apr. 23, 2010).

A month later, Governor Doyle aggressively and creatively used his partial veto authority to dramatically alter legislative intent and the enrolled version of Senate Bill 530. In obliterating a carefully-structured compromise reached by lawmakers in the State Senate and Assembly, Governor Doyle not only prohibited a licensed lender from making a title loan (an action not even contemplated in the legislation), he also greatly affected the consumer credit and installment lending industries in Wisconsin – industries having nothing to do with payday or title lending. See "Our Legislator Governor: Jim Doyle's use of the partial veto on payday lending suggests that voters shouldn't be done with tweaking his veto authority," *Milwaukee Journal Sentinel* (May 20, 2010); "Consumer Credit Companies Take Hit: New auto title provision in state loan law will hurt them and consumers, lenders say," *Racine Journal Times* (May 29, 2010).

Now, through the administrative rulemaking process and Clearinghouse Rule 10-098, Governor Doyle and the Department of Financial Institutions are attempting to: 1) clean-up the problems created by his unprecedented use of the partial veto; and, 2) adopt through administrative rule provisions that were not included in Senate Bill 530 at any point. In doing so, Governor Doyle is essentially performing through administrative rule what the Wisconsin Constitution prohibits from occurring through the use of the partial veto: a governor may not write-in new language but instead is limited to deleting provisions in the bill as passed by the state legislature. See *Risser v. Klauser*, 207 Wis. 2d 176 (1997) (governor's write-in veto may only be exercised on a monetary figure which is an appropriation amount).

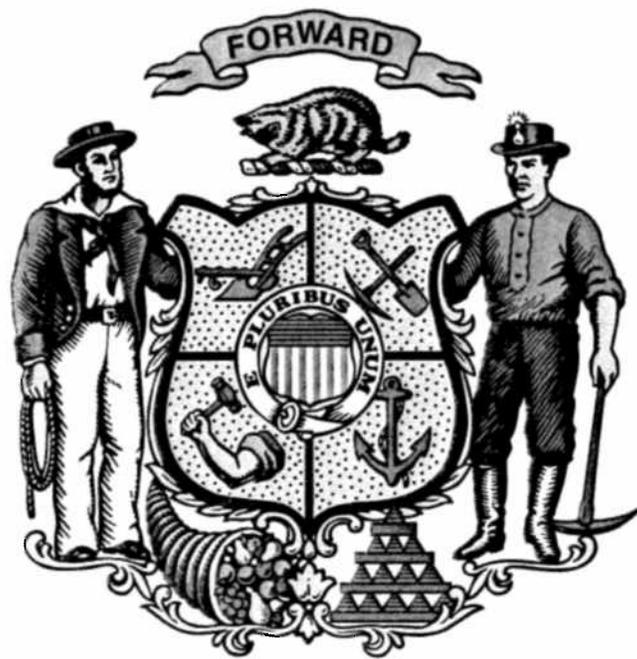
Accordingly, Clearinghouse Rule 10-098 in its current form should be modified to better reflect the true intent of the legislature:

- the only form of loans to be covered under the proposed rules should be payday loans as installment loans that are not payday loans should be excluded;
- motor vehicles should be allowed to be used as collateral for a payday loan;
- only payday lenders, not licensed lenders, should be subject to regulation; and,
- the zoning grandfather provisions should clearly apply to payday lenders doing business on or before January 1, 2011.

These proposed changes are consistent with the letter and the spirit of 2009 Act 405. They do not weaken or change any provision of this new law. Moreover, they prevent DFI from accomplishing through administrative rule what Governor Doyle could not accomplish through his partial veto.

Memo summary

young grandfathers promise is not  
going to fly.



~~CONFIDENTIAL~~

Industry Concerns with Proposed Rules Related to Payday Lending

- (1) The Extended Payment Plan notice requirements are burdensome, excessive and have the result of a requirement to up-sell a longer term product to consumers who simply want a short-term payday loan:

**Proposed Rule DFI—Bkg 75.07, 75.08 and 75.04:** Rule DFI-Bkg 75.08 requires a large notice in 24 point boldface type regarding a customer's eligibility to enter into a repayment plan be prominently posted where a licensee makes loans. In addition, Rule DFI-Bkg 75.07 requires a clear and conspicuous notice regarding the no-cost repayment plan option be included in the payday loan agreement. We acknowledge that the Act requires a licensee to disclose the repayment plan option to a consumer prior to entering into a payday loan with that consumer. However, we would argue that having to post such a large notice, having to include such a conspicuous notice in the payday loan agreement and having to get the customer to sign a separate disclosure prior to entering into the loan as proposed in DFI-Bkg 75.04 are excessive and not required by the Act. We respectfully request consideration as to whether all such disclosures are required, particularly when you consider our overall concern that the repayment plan option, if not handled as intended, may effectively transform every payday loan into a long term loan. We would submit that the disclosures in the loan agreement are sufficient to satisfy the statutory requirements.

For the Extended Payment Plan notice requirements in the regulations, these are suggested ways to rewrite the rule (in order of industry preference):

1. There should be no Extended Payment Plan notice unless the customer requests it.
2. There should be a notice in the agreement only—no initialing needed (75.07).
3. There should be a disclosure posted in the store. (75.08(1)).

(We do not think it makes sense to have a 10 day "grace period" for the customer to decide whether to take out a payment plan or to have to mail, hand-deliver or email a notice in addition to disclosures in the one or several of the ways suggested above.)

- (2) There are concerns about the requirement that we receive new verification documentation every time a loan is taken out. Instead we suggest that the customer must attest to the fact that there is no change in income each time a loan is taken out and that, if the income changes, new documentation is provided. In addition the documents should be updated each 180 days. Here is suggested language:

**Proposed Rule DFI—Bkg 75.06 (2)** Prior to making a payday loan, the licensee shall ~~obtain from the customer~~ have a copy of any of the following to verify the gross monthly income of the customer:

- (a) The customer's ~~most recent~~ official pay stub or official payroll receipt.
- (b) The customer's ~~most recent~~ receipt reflecting payment of retirement benefits.
- (c) The customer's ~~most recent~~ receipt reflecting payment of government benefits.

- (d) The customer's ~~most recent~~ statement from a financial establishment reflecting direct deposit of government benefits.
  - (e) Other documentation as approved by the division.
- (3) The documents set forth in pars. (a) through (d) shall not be dated more than ~~35~~ 180 days prior to the date on which the payday loan is made.
- (4) Customer does not have to provide new documentation for each loan so long as the documentation complies with subsection (3), and the customer warrants in a separate document that their gross monthly income is the same as reflected in the documentation on file.
- (5) Documentation verifying the customer's income and setting forth the licensee's calculation of the gross monthly income shall be retained in the customer's file.
- (6) The definition of subsequent loan should be clarified in the rules to ensure it means a loan taken out to repay a prior loan in which case the customer only pays the fee. Suggested language is below:
- (1) A "subsequent loan" as used in Section 138.14(12) (a) is defined as a loan in which the proceeds are used to repay the balance on a prior payday loan. If a customer repays a loan in full prior to originating a new loan, the new loan shall not be considered a subsequent loan for the purposes of Section 138(12) (a).



~~DRAFT~~

### **1. Transactions Not Covered**

Admirably, the proposed rule makes clear what loan transactions will not be covered under the new regulations. However, the exclusion of installment loans is qualified in a manner that is too narrow and greatly limits what loans are not covered. As a result, it will lead to the regulation of many standard loans that are not considered to be payday loans. Moreover, there is no statutory basis for regulating these other types of loans as payday loans. Therefore, installment loans need to be broadly excepted from the regulations and the qualifications on such loans should be eliminated from the proposed rule.

### **2. Motor Vehicles as Collateral**

The proposed rule will not allow a payday lender to make a loan that is secured by an interest in a motor vehicle. However, such a restriction on the use of motor vehicles as collateral has no basis in statute. Instead, state law does not at all limit the ability of a payday lender to take a security interest in any form of collateral. As a result, the prohibition on taking a security interest in a motor vehicle needs to be eliminated.

### **3. Regulation of Licensed Lenders**

The proposed rule will regulate loans made by all "licensed lenders" under Wis. Stat. § 138.09 and it is not limited to payday lenders licensed under Wis. Stat. § 138.14. There is no statutory basis for any aspect of this rule that goes beyond payday lenders. Licensed lenders do not make payday loans and the language in these rules will effect many forms of traditional consumer financing. Because of this broad effect and lack of statutory authority, the regulation of licensed lenders needs to be eliminated from the proposed rule.

### **4. Existing Payday Lenders**

Under 2009 Wisconsin Act 405, both counties and cities are permitted to impose certain restrictions on payday lenders. However, existing payday lenders are not effected by any new restrictions provided that they are "doing business" on January 1, 2011. To provide clarity to payday lenders that they may continue to operate from their existing locations, language should be added to the rule that makes clear what it means to be "doing business."





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**WISCONSIN LEGISLATIVE COUNCIL  
ACT MEMO**

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<b>2009 Wisconsin Act 405</b> [2009 Senate Bill 530]	<b>Payday Loans and Motor Vehicle Title Loans</b>
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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 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.

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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/>.

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.

**Prepared by:** Richard Sweet, Senior Staff Attorney

May 25, 2010

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# Payday loan industry hopes state will loosen rules

## Republican election victory may ease path to alterations

By [Patrick Marley](#) of the Journal Sentinel

Nov. 13, 2010 | [\(40\) Comments](#)

**Madison** — With Republicans about to take control of the Legislature and governor's office, payday loan stores and auto title lenders are looking to roll back limits recently placed on short-term loans.

Democrats passed a bill this year that limits payday loans to a maximum of \$1,500. Democratic Gov. Jim Doyle toughened the bill, using his partial veto powers to ban loans secured by vehicle titles.

Until the Legislature acted, Wisconsin was the only state that did not regulate payday and auto title loans. The loans are typically good for two to four weeks but can be repeatedly rolled over. When they are, they can cost borrowers 500% or more in interest a year.

The restrictions on the loans take effect Jan. 1 but may not last long. Republicans took over both houses of the Legislature and the governor's office in the Nov. 2 elections, and in the past they have viewed the industry more favorably than Democrats.

Erin Krueger, a lobbyist for the lenders, said they hope to eliminate "anti-business and anti-consumer choice" provisions in the new law. She did not detail the specific changes they want to make.

"Everything's on the table in terms of what we're going to discuss," she said.

Krueger said her group, the Wisconsin Deferred Deposit Association, would try to pursue the changes either with a bill or as part of the state budget process. Budget provisions tend to get less scrutiny than bills, and can be passed without lawmakers having to identify who wrote them.

Rep. Gordon Hintz (D-Oshkosh), one of the authors of the new law, said he would fight changes but expected difficulties because Republicans will run the Legislature.

"There's a new leadership and they can do what they want, but there's also accountability," Hintz said. "If this is part of their jobs effort, I think that's pretty sad. .&ensp.&ensp.&ensp;I'll be there to shine the light every step of the way."

Governor-elect Scott Walker said during the campaign that changes to the law are warranted.

"An outright ban of title loans was never the intent of the legislation and the law needs to be clarified," Walker said in a statement during the campaign.

Jim Smith, a lobbyist for Select Management Resources, said changing the new law could be difficult because some Republicans oppose the industry. That could make it difficult to include in the budget, he said.

"I think there will be an attempt to move it, but I don't think it will move as quickly as things all Republicans agree on," Smith said.

Select Management Resources has about a dozen Wisconsin vehicle title loan stores under the name Loan Max.

Other lobbyists for the industry declined comment or did not return phone calls.

### **Uncertain prospects**

One Republican who opposes the industry is Sen. Glenn Grothman of West Bend. He voted against the new law because he did not think it went far enough.

"This industry does not exist in a state like Minnesota, and I don't see any downside in keeping these usurious vipers out of our state," Grothman said. "There are so many legitimate businesses in this state that need regulatory help. I sure hope that these guys are not on the list."

Republicans have been clear their top priorities are creating jobs and closing a \$3 billion shortfall in the two-year state budget without raising taxes.

"I would be shocked if it is in the budget because it is our .&ensp.&ensp. position to leave policy out of the budget," Grothman said.

Rep. Robin Vos (R-Rochester), the incoming co-chairman of the budget-writing Joint Finance Committee, said he wants to minimize the amount of policy in the budget but would be open to considering changes to the payday loan industry through that process.

Vos voted against the law passed this year because he thought it went too far. But he said the industry needs some regulation.

"The general idea to make sure we have disclosure and fairness in payday lending is something that has broad bipartisan support," Vos said. "I'm not calling for a complete repeal. I don't know anyone who is."

The industry is large and fought the legislation hard, spending \$669,000 on lobbying last year. In 2009, there were 527 short-term lender locations in the state, and they lent \$600.5 million, state records show.

Under the bill Doyle signed in May, lenders cannot issue loans secured with vehicle title loans. At the time, Doyle said he considered such loans predatory because low-income people risked losing their cars if they couldn't pay off their loans, which in turn made it more difficult for them to get to work.

The new law limits loans to \$1,500 or 35% of monthly income, whichever is less. Once the loan comes

due, no additional interest can be charged.

Borrowers can renew their loans just once - a change that supporters said was crucial to stopping people from repeatedly rolling over their loans and getting trapped in debt.

The law also created a new state database meant to track loans to ensure loans aren't being improperly renewed. The law also includes zoning provisions, barring stores from locating within 1,500 feet of one another and 150 feet of residential areas.

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## **Lenders criticize new state rules for payday loans**

November 12, 2010 [Our Stories](#) 2 Comments [E-mail This Post](#)  
By *Matt Hrodey*

New rules regulating what critics have labeled “predatory lending” by payday lenders could also restrict the ability of banks, credit unions and other lenders to make small, short term loans. The Wisconsin Financial Services Association – which represents the consumer finance industry in the state, including sub-prime lenders – is calling into question rules being drafted by the state Department of Financial Institutions to carry out legislation passed by the state Legislature earlier this year.

Wisconsin had been the only state that didn’t regulate payday lenders, which tend to proliferate in impoverished neighborhoods. Debate over the reform package was one of the past legislative session’s toughest battles, but discussion over the new rules to implement the legislation – which would become final on Nov. 18 without a formal objection from the legislature – has been relatively muted.

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The rules expound upon the already detailed 21-page bill passed in the state senate, which was a compromise between competing State Assembly and senate proposals. Gov. Jim Doyle, using line item vetoes, toughened the final law, outlawing auto title loans in the state, a ban sought by some lawmakers in the assembly but opposed in the senate.

The Wisconsin Financial Services Association has raised concerns that the rules proposed would also restrict banks, credit unions and other lenders from making small loans with very short terms. No loan under \$1,500 could have a term shorter than 90 days, the rules say, or an 'open-end' credit plan, one where, as with a credit card, interest continues to accumulate until the loan is paid off.

Consumer advocates say the restriction, an administrative rule, closes a loophole payday lenders could have exploited. But Ed Heiser, a Milwaukee attorney representing the association, questioned DFI's authority to also impose the rule on banks and other lenders at an Oct. 25 public hearing. "We cannot understand from a legal standpoint or a practical standpoint why this was proposed," he said.

State Sen. Mary Lazich (R-New Berlin) also objected to the rule. "I am very, very concerned about agencies promulgating rules that become law," she said at the hearing. "As I see it, we get a lot of law that we didn't make."



mary lazich

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Others have no qualms. State Sen. Glenn Grothman (R-West Bend) says he supports the [Milwaukee Magazine](#) to strengthen regulations on payday loans, which can result in ballooning interest rates on customers. "They can make the rules as tough on the industry as they want, and it's not my business," he says. "It's a usurious industry, and as far as I'm concerned, they can shut it down." [Terms of Use | Privacy Policy | Site Map | RSS Feeds | RSS Comments \(RSS\)](#)

The proposed [rules \(pdf\)](#) also limit the number of customer checks a payday lender can hold for a loan to five. Customers typically write checks to payday lenders, who promise not to cash them until an agreed upon date ("payday") when the account will contain enough money. Michael Mach, the administrator of DFI's banking division, tells *NewsBuzz* the legislation didn't specifically call for the limit, but says it's being proposed to prevent "installment-type products" that would bind customers to long-running obligations to payday lenders.

One rule mandates that payday loans require uniform payments. No one payment, the rules read, can be "more than twice as large as the average of all other scheduled payments." Mach says this rule was also not explicitly required by the legislation. "That's a provision we felt was necessary to implement the law," he says.



Glenn Grothman

Another rule prohibits payday lenders from entering into "open-end" credit plans with customers. The prohibition is in line with the law signed by Doyle: As result of one of his line-item vetoes, payday lenders can't charge any interest after a payday loan matures.

The law signed by Doyle caps the amount anyone in the state can borrow from a payday lender (including interest) at \$1,500 and requires the department to setup an online database for lenders to check how many outstanding payday loans a customer has. Mach says the state is considering contracting with a third-party provider to administer the database.

The Wisconsin Deferred Deposit Association, which represents payday lenders in the state and opposed the legislation, said of the database earlier this year, "This Orwellian proposal is an unprecedented state intrusion in citizens' personal financial decision-making and information." The Association could not be reached for comment on DFI's proposed rules.

The rules prescribe a laundry list of information lenders would report to the database, including notification whenever "a customer's check is dishonored or (an) electronic fund transfer is denied." The database will also include information on any loan defaults or judgments against customers.

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1. *BelindaJoy* says:  
November 14, 2010 at 11:04 am

As much as I firmly believe grown men and women should be allowed to live their lives the way they want to; the reality is sometimes (we) must save people from themselves. Predatory lending practices by financial institutions played a huge part in the financial collapse of our nation. A financial collapse that we continue to attempt to dig ourselves out of. Greedy banks and lenders granted mortgages to people who they knew could ill afford to pay them. And sadly when we discuss Pay Day Loans, they are the bastions for those who can least afford to repay them. one need only look at where most of these loan stores are located. The answer is in the low income parts of any city. I assure you there are not a glut of Pay Day Loan stores in River Hills. The sad reality is many of the men and women that use these services do so without any real understanding of how they are being abused financially. And for others they realize it, but they chalk it up to another example of "the Man" (whomever the Man is) taking advantage of the poor.

2. *Consumer Loans BLOG» Blog Archive » Lenders criticize new state rules for payday loans* says:  
November 15, 2010 at 4:26 am

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