

Chapter DFI-Bkg 75

PAYDAY LENDING

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

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

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

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

(4) “Department” means the department of financial institutions.

(5) “Division” means the division of banking.

(6) “Electronic fund transfer” has the meaning given in 12 C.F.R. 205.3(b).

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

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

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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:

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

(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:

(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.

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

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

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

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

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

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

(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:

(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.

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

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

(4) Subsection (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).

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

(c) The forfeited pledge satisfies the loan.

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

(a) Signed and dated by the applicant.

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

(c) On white paper sized 8.5 inches x 11 inches and in Times New Roman font style 12 or greater.

(d) Delivered to the customer in the English and Spanish languages, or at the customer’s option, in the English or Spanish language.

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

(3) If the applicant is applying for a payday loan via the Internet, the lender’s compliance with sub. (1) (c) will be based on how the form is displayed on the lender’s computer, and not based on how the form is displayed on the applicant’s computer.

Note: A copy of the disclosure form may be downloaded from the department’s website at www.wdfi.org.

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

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

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

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

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

- (a) Gross weekly earnings times 4.33, if the customer is paid weekly.
- (b) Gross two-week earnings times 2.16, if the customer is paid every two weeks.
- (c) Gross semi-monthly earnings times 2, if the customer is paid twice a month.
- (d) Gross monthly earnings times 1, if the customer is paid monthly.

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

- (a) A recent official pay stub or official payroll receipt.
- (b) A recent receipt reflecting payment of retirement benefits.
- (c) A recent receipt reflecting payment of government benefits.
- (d) A 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 sub. (2) (a) through (d) shall not be dated more than 180 days prior to the date on which the payday loan is made.

(4) 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.

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

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

(b) You may rescind this payday loan by returning to the lender the proceeds of the payday loan before the close of business on the next day of business after the loan is made, or, if the place of business where the loan is made is open 24-hours, before 5 p.m. on the next day of business after the loan is made.

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

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

(e) If a person makes a payday loan to a customer in violation of s. 138.14, Stats., 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 notwithstanding s. 814.04 (1), Stats., reasonable attorney fees.

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

(3) The writing evidencing the customer's obligation to pay shall be delivered to the customer in the English and Spanish lan-

guages, or at the customer's option, in the English or Spanish language.

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DFI-Bkg 75.08 Repayment plan. (1) **REPAYMENT PLAN OFFER.** (a) If the customer fails to repay the subsequent loan referred to in s. 138.14 (12) (a), Stats., the offer of the repayment plan required by s. 138.14 (11g), Stats., shall be hand-delivered, mailed or e-mailed to the customer when the licensee receives notice of insufficient funds in the customer's account or within 10 days after the maturity date of the loan. The offer of repayment plan shall be in a single written document that is in a form prescribed by the division. The licensee may deposit the customer's check or initiate the authorized electronic fund transfer within the 10-day period. The form shall:

- 1. Be on white paper sized 8.5 inches x 11 inches and in Times New Roman font style 12 or greater.
- 2. Identify the name, address, and telephone number of the licensee.
- 3. Identify the name, address, telephone number, and unique identification number of the customer.
- 4. Contain an explanation of the repayment plan being offered.
- 5. State the date the offer is made and the date by which the customer must accept the offer.

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

(c) If the offer is e-mailed to the customer, the lender's compliance with par. (a) 1. will be based on how the offer is displayed on the lender's computer, and not based on how the offer is displayed on the customer's computer.

Note: A copy of the repayment plan offer form may be downloaded from the department's website at www.wdfi.org.

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

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

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

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

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

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

- (a) The first payment shall not be due earlier than the customer's next pay day following the date the offer is made.
- (b) The due date of the 4 equal installments shall coincide with the customer's pay period schedule, as verified by the customer's pay stub, payroll receipt, or receipt of government or retirement benefits that identifies the frequency of the pay cycle.

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

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DFI-Bkg 75.09 General matters. (1) The effective date of a payday loan cannot be prior to the date the loan is signed by the customer.

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

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

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

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

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

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

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

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

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

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

1. A payday loan is consummated.
2. A payday loan is repaid with the proceeds of a subsequent payday loan.
3. A customer elects to enter into a repayment plan under s. 138.14 (11g), Stats.
4. A customer's payday loan is paid in full.
5. A customer elects to rescind his or her payday loan.
6. A customer makes a payment on his or her payday loan.
7. The licensee presents a check for payment or initiates an electronic fund transfer.
8. A customer's check is dishonored or electronic fund transfer is denied.
9. The licensee assesses a service charge for a dishonored check or denied electronic funds transfer.

10. The licensee collects a service charge for a dishonored check or denied electronic funds transfer.

11. The licensee determines a payday loan is in default.

12. The licensee obtains a judgment against the customer.

13. A customer satisfies a judgment.

14. The licensee collects any court costs or attorney's fees from a customer.

15. The licensee charges off a payday loan as uncollectible.

16. The division or the database provider determines additional information needs to be submitted to the database.

(b) Except as set forth in sub. (4), information shall be entered into the database on the day the licensee becomes aware of the information.

(c) If a licensee becomes aware of any changes or errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

(4) ALTERNATE PROCESS. (a) If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical difficulties occurring with the database, the licensee shall use the database provider's alternate process to obtain applicant eligibility information from the database.

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

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

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

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

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

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

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

(8) IMPLEMENTATION AFTER JANUARY 1, 2011. In the event the database is not implemented or is not fully operational by January 1, 2011, the licensee shall have 60 days from the date the database is deemed fully operational by the division to enter all required information onto the database for all loans originated on or after January 1, 2011.

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