



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 338

**Senate Substitute
Amendment 1**

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BACKGROUND

Current law contains a number of provisions relating to consumer loans. 2003 Senate Bill 338 (the bill) creates a number of new requirements relating to payday loans. In a typical payday loan transaction, a creditor accepts a personal check from the borrower, pays the borrower the amount of the check less a finance charge, and agrees to wait a short period, such as a week or two, before depositing the check.

Under the bill, the payday lender must provide the borrower with a comparison of the cost of the payday loan if it is paid in full when due with the cost of the payday loan if it is paid in full after being refinanced three times. In addition, the lender must provide the borrower with a number of notifications. The lender must notify the borrower, among other things, that a payday loan should only be used for a financial emergency, and that the borrower may cancel the transaction at any time before receiving the funds.

THE AMENDMENT

The **substitute amendment** makes six changes to the bill. First, the substitute amendment modifies the consumer's right to cancel. The substitute amendment extends the time period in which the borrower may cancel the transaction from "any time before receiving the funds" to "any time before the close of the next business day." In addition, the amendment changes the wording of this right. The bill provides that the applicant may cancel "at no cost to the applicant." The substitute amendment provides that an applicant "...shall have no obligation to pay interest and fees related to [the loan, and]...shall have no payment obligations related to the payday loan if the applicant returns the principal...." Finally, the substitute amendment makes the right to cancel an explicit statutory right. Under the bill, the lender was required to notify the borrower of the right to cancel, but there was no explicit statutory statement that the borrower had that right.

Second, the substitute amendment adds a prohibition on threatening criminal prosecution. Under the substitute amendment, a payday lender may not initiate or threaten to initiate criminal prosecution because the borrower's check did not clear. In addition, the substitute amendment specifies that a payday lender is not prohibited from cooperating with a law enforcement agency that has started an independent criminal action.

Third, the substitute amendment caps payday loans at \$5,000 per loan. The Department of Financial Institutions (department) is directed to adjust the \$5,000 figure annually based on inflation.

Fourth, the substitute amendment caps the term of payday loans. Under the substitute amendment, no payday lender may make a payday loan with a term of longer than 35 days.

Fifth, the substitute amendment changes the department's authority to promulgate rules. Under the bill, the department is given the power to promulgate rules relating to three areas: (1) the method for calculating the comparison between repaying the loan in full with repaying the loan after refinancing three times; (2) the form and content of the educational materials to be distributed to borrowers; and (3) the efficient administration of the section. The substitute amendment eliminates the department's authority to promulgate rules for the efficient administration of the section. In addition, the substitute amendment adds authority for the department to promulgate rules for the annual adjustment of the maximum amount of a payday loan.

Sixth, the substitute amendment prohibits a payday lender from refinancing or "rolling over" a payday loan more than four consecutive times.

LEGISLATIVE HISTORY

On March 3, 2004, the Senate Committee on Agriculture, Financial Institutions and Insurance adopted Senate Substitute Amendment 1 by a vote of Ayes, 5; Noes, 0. On the same day, the committee voted to recommend passage of the bill, as amended, by a vote of Ayes, 3; Noes, 2.

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