



2009 ASSEMBLY BILL 447

September 25, 2009 – Introduced by Representatives JORGENSEN, FIELDS, ZEPNICK, COLON, POPE-ROBERTS, SCHNEIDER, BENEDICT and BERCEAU, cosponsored by Senator LEHMAN. Referred to Committee on Financial Institutions.

1 **AN ACT** *to create* 138.09 (8) (f) and 138.14 of the statutes; **relating to:** payday
2 loan providers, providing an exemption from emergency rule procedures,
3 granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the Division of Banking in the Department of Financial Institutions (division) to assess a finance charge greater than 18 percent per year. This type of lender is generally referred to as a “licensed lender.”

This bill creates certain requirements applicable to payday loan transactions. Under the bill, a “payday loan provider” is a licensed lender that makes payday loans. A “payday loan” is a transaction between an individual with an account at a financial establishment and the payday loan provider in which the provider agrees to either: 1) accept from the individual a check, hold the check for at least three days before negotiating it, and before negotiating the check pay the individual an agreed amount; or 2) accept the individual’s authorization to initiate an electronic fund transfer (EFT) from the individual’s account, wait for at least three days before initiating the EFT, and before initiating the EFT pay the individual an agreed amount. The bill requires a payday loan provider, at least 15 minutes before entering into a payday loan with an applicant, to: 1) disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate (APR), to be paid by the applicant assuming that the loan is paid in full at the end of the loan term; 2)

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provide to the applicant a copy of certain written informational materials, described below, developed by the division; and 3) disclose to the applicant that he or she has the right to rescind the payday loan transaction by the end of the business day after the loan is made. The payday loan provider must retain, for at least three years after the origination date of the payday loan, a record of compliance with these requirements.

The bill also imposes certain restrictions on payday loans. A payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer's default or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer's payment method is dishonored for insufficient funds. A payday loan provider may present a customer's check for payment, or initiate an EFT from the customer's account, only two times and the second time only if certain conditions are satisfied. A payday loan provider may not accept from a customer a check or authorization to initiate an EFT if the amount of the check or authorization exceeds the principal amount of the payday loan plus the finance charge on the payday loan. A payday loan provider may not rollover a payday loan unless the customer enters into a new payday loan transaction, including issuing a new check or executing a new authorization to initiate an electronic fund transfer. In addition, a customer has a right to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to the payday loan provider by the close of business on the next business day after the payday loan is made.

The bill requires the division to develop written informational materials, designed to educate, on payday loans and the payday loan industry. These informational materials must include: 1) a clear and conspicuous notice to payday loan applicants containing specified information; 2) certain aggregated information from reports submitted to the division by payday loan providers; and 3) a summary of actions that the payday loan provider may take against a payday loan customer if the customer defaults on the loan or the customer's payment method is dishonored for insufficient funds.

The bill also requires each payday loan provider to report annually to the division and pay a report filing fee. The report covers the payday loan provider's business in the preceding calendar year and must include information required by the division. The report must also contain specified information, aggregated for all customers, including: 1) the number of payday loans originated, the number of payday loans rolled over, and the average number of times a rolled-over payday loan was rolled over; 2) the average total fees and costs, and average APR, for all payday loans of the payday loan provider, categorized by loans that were not rolled over and loans that were rolled over; 3) the number of payday loans resulting in the customer's default; and 4) the number of payday loans on which the customer's payment method was dishonored for insufficient funds. The bill defines "rollover" or "rolled over" as the refinancing, renewal, amendment, or extension of a payday loan beyond its original maturity date, including the consolidation of payday loans and any transaction in which a payday loan is repaid with the proceeds of another payday loan made by the same payday loan provider.

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Under the bill, a payday loan provider that violates these disclosure or reporting requirements may be required to forfeit not more than \$200. The bill also requires the division to promulgate rules and prescribe forms related to the provisions of the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.09 (8) (f) of the statutes is created to read:

2 138.09 (8) (f) When making a payday loan, as defined in s. 138.14 (1) (g), comply
3 with s. 138.14 (2), (3), (5), and (6) and rules promulgated under s. 138.14 (8).

4 **SECTION 2.** 138.14 of the statutes is created to read:

5 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

6 (a) “Applicant” means an individual who seeks to obtain a payday loan.

7 (b) “Check” has the meaning given in s. 403.104 (6).

8 (c) “Customer” means an individual who enters into a payday loan with a
9 payday loan provider.

10 (d) “Division” means the division of banking in the department of financial
11 institutions.

12 (e) “Financial establishment” means any organization that is authorized to do
13 business under state or federal law and that holds a demand deposit, savings deposit,
14 or other asset account belonging to an individual.

15 (f) “Organization” has the meaning given in s. 19.42 (11).

16 (g) “Payday loan” means any of the following:

17 1. A transaction between an individual with an account at a financial
18 establishment and another person, in which the person agrees to accept from the
19 individual a check, to hold the check for at least 3 days before negotiating or

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1 presenting the check for payment, and to pay to the individual, at any time before
2 negotiating or presenting the check for payment, an amount that is agreed to by the
3 individual.

4 2. A transaction between an individual with an account at a financial
5 establishment and another person, in which the person agrees to accept the
6 individual's authorization to initiate an electronic fund transfer from the account, to
7 wait for at least 3 days before initiating the electronic fund transfer, and to pay to
8 the individual, at any time before initiating the electronic fund transfer, an amount
9 that is agreed to by the individual.

10 (h) "Payday loan provider" means a person who is required to be licensed under
11 s. 138.09 and who makes payday loans.

12 (i) "Rollover" or "rolled over" means the refinancing, renewal, amendment, or
13 extension of a payday loan beyond its original date of maturity. "Rollover" or "rolled
14 over" includes the consolidation of payday loans and any transaction in which a
15 payday loan is repaid with the proceeds of another payday loan made by the same
16 payday loan provider.

17 **(2) DISCLOSURE REQUIREMENTS.** (a) Not less than 15 minutes before any payday
18 loan provider enters into a payday loan with an applicant, the payday loan provider
19 shall do all of the following:

20 1. Disclose to the applicant the total amount of all fees and costs, in dollars, to
21 be paid by the applicant for the loan assuming that the loan is paid in full at the end
22 of the loan term.

23 2. Disclose to the applicant the annual percentage rate to be paid by the
24 applicant on the loan assuming that the loan is paid in full at the end of the loan term.

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1 3. Provide to the applicant a copy of the written informational materials
2 specified in sub. (4).

3 4. Disclose to the applicant that he or she has the right to rescind the loan
4 transaction as provided in sub. (6).

5 (b) A payday loan provider shall retain, for at least 3 years after the origination
6 date of any payday loan, a record of compliance with par. (a) with respect to the loan.

7 **(3) LOAN RESTRICTIONS.** (a) No payday loan provider may require the payment
8 of any interest on a payday loan that accrues after the maturity date of the payday
9 loan.

10 (b) Except as provided in pars. (e) and (f), no payday loan provider may impose
11 any penalty on a customer arising from the customer's default or late payment on a
12 payday loan.

13 (c) No payday loan provider may accept from a customer a check or
14 authorization to initiate an electronic fund transfer if the amount of the check or
15 authorization exceeds the principal amount of the payday loan plus the finance
16 charge on the payday loan.

17 (d) A payday loan provider may not rollover a payday loan unless the customer
18 enters into a new payday loan transaction with the payday loan provider, including
19 issuing a new check or executing a new authorization to initiate an electronic fund
20 transfer.

21 (e) A payday loan provider may present a customer's check for payment no more
22 than 2 times. The payday loan provider may make a second presentment of the check
23 only if at least 3 business days have elapsed since the first presentment and the
24 payday loan provider has made a good faith effort to contact the customer since the

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1 first presentment. The only charge the payday loan provider may impose for
2 dishonor of the customer's check is that specified in s. 422.202 (1) (d).

3 (f) For each customer authorization to initiate an electronic fund transfer from
4 the customer's account, a payday loan provider may initiate an electronic fund
5 transfer no more than 2 times. The payday loan provider may initiate an electronic
6 fund transfer a second time only if at least 3 business days have elapsed since the
7 payday loan provider initiated an electronic fund transfer the first time and the
8 payday loan provider has made a good faith effort to contact the customer since the
9 payday loan provider initiated an electronic fund transfer the first time. The only
10 charge the payday loan provider may impose if its instruction to execute an electronic
11 fund transfer is denied is a charge equivalent to that specified in s. 422.202 (1) (d).

12 (4) INFORMATIONAL MATERIALS. (a) The division shall develop written
13 informational materials on payday loans and the payday loan industry. These
14 informational materials shall be designed to educate individuals regarding the
15 operation and potential costs of payday loans and of other options for borrowing
16 funds that may be available.

17 (b) The informational materials under par. (a) shall include a clear and
18 conspicuous notice containing all of the following:

19 1. A payday loan is not intended to meet long-term financial needs.

20 2. A payday loan applicant should use a payday loan only to provide funds in
21 a financial emergency.

22 3. A payday loan applicant will be required to pay additional interest if a
23 payday loan is refinanced rather than paid in full when due.

24 4. Refinancing a payday loan or entering into consecutive payday loans to pay
25 an existing payday loan may cause financial hardship for the applicant.

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1 5. An example of the cost to the applicant if the applicant pays the payday loan
2 in full at the end of the loan term in comparison to the cost to the applicant if the
3 applicant pays the payday loan in full after financing the amount of the payday loan
4 at the end of the loan term 3 consecutive times.

5 (c) The informational materials under par. (a) shall include all of the following
6 information, based upon aggregated information from reports submitted under sub.
7 (5) for the most recent reporting period:

8 1. The average annual percentage rate for payday loans, not including any
9 rollover of the loans.

10 2. The average annual percentage rate for payday loans, including loan
11 rollovers.

12 3. The percentage of customers originating payday loans who defaulted on the
13 original loan or a rollover loan.

14 4. The percentage of customers originating payday loans whose payment
15 method was dishonored or denied for insufficient funds.

16 (d) The informational materials under par. (a) shall include a summary of all
17 actions that the payday loan provider may take against a payday loan customer,
18 including all fees and costs that may be assessed, if the customer defaults on the
19 payday loan or if the customer's check or electronic fund transfer is dishonored or
20 denied for insufficient funds.

21 (e) The division shall annually update the informational materials under par.
22 (a), based upon the division's analysis of reports received under sub. (5).

23 (f) The division shall make copies of the informational materials under par. (a)
24 available, upon request, to payday loan providers and to the public, including
25 making these informational materials available on the Internet Web site of the

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1 department of financial institutions. The division may charge payday loan providers
2 a reasonable fee for printed copies of informational materials supplied under this
3 paragraph.

4 (5) REPORTING AND RECORD KEEPING. (a) On or before March 15 of each year,
5 every payday loan provider shall make an annual report to the division and shall pay
6 any reasonable filing fee imposed by the division. The report shall cover business
7 relating to payday loans made by the payday loan provider during the preceding
8 calendar year and shall include any relevant information required by the division.
9 The report shall be made upon forms prescribed by the division and shall be signed
10 and verified by the oath or affirmation of the payday loan provider if an individual,
11 one of the partners if a partnership, a member or manager if a limited liability
12 company, or an officer of the corporation or association if a corporation or association.
13 A payday loan provider may include the information required to be reported under
14 this subsection in the payday loan provider's report under s. 138.09 (3) (f), if the
15 information required under this subsection is stated separately in the report from
16 information relating to the payday loan provider's other business.

17 (b) The division shall require that the report under par. (a) include, for the
18 applicable reporting period, all of the following aggregated information:

19 1. The number of payday loans originated by the payday loan provider.

20 2. The average of the total amount of all fees and costs, in dollars, and the
21 average loan term, for all payday loans of the payday loan provider, not including any
22 rollover of the loans.

23 3. Based upon the information specified in subd. 2., the average annual
24 percentage rate for all payday loans of the payday loan provider, not including any
25 rollover of the loans.

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1 4. The number of payday loans originated by the payday loan provider that
2 were rolled over and, of those payday loans rolled over, the average number of times
3 these payday loans were rolled over.

4 5. The average of the total amount of all fees and costs, in dollars, and the
5 average loan term, for all payday loans of the payday loan provider, including any
6 rollover of the loans.

7 6. Based upon the information specified in subd. 5., the average annual
8 percentage rate for all payday loans of the payday loan provider, including any
9 rollover of the loans.

10 7. The number of payday loans originated by the payday loan provider that
11 resulted in default on the loan by the customer.

12 8. The number of payday loans originated by the payday loan provider on which
13 the customer's payment method was dishonored or denied because the customer's
14 check was drawn on, or the customer's authorization to initiate an electronic fund
15 transfer was from, an account at a financial establishment containing insufficient
16 funds when the check was presented for payment or the electronic fund transfer was
17 initiated.

18 **(6) RESCISSION.** A customer may rescind a payday loan, before the close of
19 business on the next day of business after the loan is made, by returning to the
20 payday loan provider the proceeds of the payday loan. The payday loan provider may
21 not charge the customer any fee for rescinding the payday loan as provided in this
22 subsection.

23 **(7) PENALTY.** Notwithstanding s. 138.09 (8) (f) and (10), any person who violates
24 sub. (2), (3), (5), or (6) may be required to forfeit not more than \$200.

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1 **(8) RULES.** The division shall promulgate rules necessary to implement,
2 administer, and enforce this section, including prescribing the form and content of
3 any report required under sub. (5) and the method of, and fee for, filing such a report.

4 **SECTION 3. Nonstatutory provisions.**

5 (1) In this SECTION, “division” means the division of banking in the department
6 of financial institutions.

7 (2) The division shall submit in proposed form the rules required under section
8 138.14 (8) of the statutes, as created by this act, to the legislative council staff under
9 section 227.15 (1) of the statutes no later than the first day of the 6th month
10 beginning after the effective date of this subsection.

11 (3) Using the emergency rules procedure under section 227.24 of the statutes,
12 the division shall promulgate the rules required under section 138.14 (8) of the
13 statutes, as created by this act, for purposes of implementing this act, for the period
14 before the effective date of the rules submitted under subsection (2). The division
15 shall promulgate these emergency rules no later than the first day of the 6th month
16 beginning after the effective date of this subsection. Notwithstanding section 227.24
17 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
18 1, 2011, or the date on which permanent rules take effect, whichever is sooner.
19 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not
20 required to provide evidence that promulgating a rule under this subsection as an
21 emergency rule is necessary for the preservation of the public peace, health, safety,
22 or welfare and is not required to provide a finding of emergency for a rule
23 promulgated under this subsection.

24 **SECTION 4. Initial applicability.**

