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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### PAYDAY LOANS IN WISCONSIN

A payday loan is a type of consumer loan that is made for a term of 90 days or less. Unlike some other states, Wisconsin law does not establish a maximum allowable rate of interest before a payday loan's maturity date, but state law does require lenders to comply with other requirements, such as obtaining a license from the Department of Financial Institutions (DFI), providing borrowers with certain notices, and verifying that a borrower's aggregate payday loan balance does not exceed a certain amount.<sup>1</sup> This informational memorandum provides an overview of payday lending laws in Wisconsin.

### LOANS SUBJECT TO PAYDAY LENDING LAWS

A payday loan is a transaction between a borrower with an account at a financial establishment<sup>2</sup> and a lender, where the lender agrees to: (1) accept from the borrower one or more checks or an authorization to initiate one or more electronic funds transfers from the borrower's account; (2) wait a period of time before negotiating or presenting the check or initiating the electronic funds transfer; and (3) loan an amount of money to the borrower for a term of 90 days or less, before negotiating or presenting the check or initiating the electronic funds transfer. DFI's rules further specify that the payday lending statute does not apply to transactions made for a business, commercial, or agricultural purpose. [s. 138.14 (1) (k), Stats., and s. DFI-Bkg 75.02, Wis. Adm. Code.]

Very generally, a payday loan is a type of consumer loan made for a term of 90 days or less. Other types of consumer loans, like those made by licensed lenders, are not subject to this limitation.

The maximum allowable duration of a payday loan is one characteristic that distinguishes payday lenders from other types of consumer lenders, such as "licensed lenders." Obtaining a license as a licensed lender is required for any person, other than a licensed payday lender or depository financial institution, to charge an interest rate of more than 18 percent on a consumer loan. Operating as a licensed lender also allows a person to make a consumer loan that is not subject to a maximum term of 90 days.<sup>3</sup> These loans are sometimes called installment loans. [s. 138.09 (1a) and (1m) (a), Stats.]

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<sup>1</sup> National Conference of State Legislatures, [Payday Lending State Statutes](#) (updated February 28, 2023).

<sup>2</sup> A financial establishment is any organization that is authorized to do business under state or federal law and that holds a demand deposit, savings deposit, or other asset account belonging to an individual. [s. 138.14 (1) (g), Stats.]

<sup>3</sup> Licensed lenders are prohibited from offering loans that are effectively payday loans, as they are generally prohibited from offering loans of \$ 1,500 or less for a term of 90 days or less. [s. DFI-Bkg 75.03 (3), Wis. Adm. Code.] This information memorandum describes provisions in state law that apply to businesses with a license under the payday lending statute, rather than the licensed lender statute.

## LICENSING AND ZONING

State law prohibits a person from originating or servicing a payday loan that involves a Wisconsin resident without first obtaining a license for each place of business from which the person will originate or service a payday loan. Licenses are issued by DFI's Division of Banking (DOB).<sup>4</sup> [s. 138.14 (1) (k), (2), and (3), Stats.]

In order to obtain a license, a person must apply to DOB, pay an investigative fee and annual license fee, and file and maintain a bond for each place of business. DOB must investigate an applicant's "character and general fitness and financial responsibility." If DOB determines that its investigation warrants the belief the business will be operated in compliance with state law, DOB must issue a license to the applicant. [s. 138.14 (4) and (5), Stats.]

A lender that has been issued a payday loan license may have its license revoked if DOB finds any of the following:

- The lender violated state law or DOB order.
- The lender violated any provision of the Wisconsin Consumer Act.
- The existence of any fact or condition that would have warranted DOB refusing to issue the license if it had existed at the time of the payday lender's original application.
- The lender made a material misstatement in an application for a license or in information provided to DOB.
- The lender failed to pay the annual license fee or maintain a bond.

Additionally, DOB must revoke the license of a person who failed to comply with a subpoena or warrant issued by the Department of Workforce Development (DWD) or a county child support agency, is liable to DOR for delinquent taxes, or is liable to DWD for unemployment insurance contributions. [s. 138.14 (9), Stats.]

Payday lenders are also subject to specific municipal zoning requirements. Generally, a payday lender must receive a permit for its place of business from the municipality where the business is located. A municipality may not issue a permit if the business would be located within 1,500 feet of another payday lender or within 150 feet of a single- or two-family residential zoning district, though municipalities may enact a zoning ordinance that contains provisions that are stricter than those set forth in the statute.<sup>5</sup> [ss. 59.69 (4h) and 62.23 (7) (hi), Stats.]

## REGULATION OF PAYDAY LOANS

Wisconsin law does not limit the interest rate that a lender may charge for a payday loan before the loan's maturity date.<sup>6</sup> However, payday loans remain subject to limits regarding interest rates after the maturity date. Lenders are also subject to requirements regarding the prepayment and repayment of payday loans and restrictions regarding the maximum penalties that may be

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<sup>4</sup> Depository financial institutions and trust companies or their affiliates are exempt from this prohibition. [s. 138.14 (2), Stats.]

<sup>5</sup> This provision applies to cities, specified unincorporated areas of counties, and villages and towns that are authorized to exercise village powers.

<sup>6</sup> The "maturity date" refers to the date on which a payday loan is required to be paid in full.

assessed to borrowers, and are prohibited from engaging in certain practices related to payday lending.

## Entering Into a Payday Loan

Before making a payday loan to an applicant, a lender must check a database maintained by DFI to verify the applicant's eligibility for the loan based on whether the applicant has outstanding payday loans, as described in more detail below. Once a payday loan is made, the lender also must notify the database provider by the end of that day, and the borrower has the option to rescind the loan before the close of business on the next business day. [s. 138.14 (11r) and (14), Stats.]

## Loan Payment

As was mentioned, a payday loan is a type of loan where a lender agrees to accept a borrower's check or authorized electronic funds transfer and delay cashing the check or initiating the transfer during the term of the loan. However, a borrower also has the option to repay a payday loan, in whole or in part, prior to the loan's maturity date. If the borrower prepays a loan in full, the lender must refund the unearned portion of any interest on the loan. Additionally, whenever a borrower makes any payments on a payday loan, the lender must provide a "plain and complete receipt" for all cash payments made. [s. 138.14 (9g), (10), and (13), Stats.]

## Maximum Interest Rates

A payday loan is not subject to a maximum interest rate prior to the loan's maturity date. After the maturity date, however, a lender generally may not charge an interest rate of greater than 2.75 percent per month on any amount that remains unpaid. [s. 138.14 (10) (a), Stats.]

Additionally, because payday loans are subject to the Wisconsin Consumer Act, a court may not enforce any aspect of a transaction that it finds to be "unconscionable." [ss. 138.14 (13) (a) and 425.107, Stats.] It is possible that in certain situations, a court could find an interest rate or other aspects of a payday loan to be unconscionable.<sup>7</sup>

State law does not restrict maximum interest rates on payday loans prior to a loan's maturity date, but does impose other conditions on payday loans.

## Repayment After Maturity Date

If a borrower fails to repay a payday loan in full at the end of the loan term, a lender must offer the borrower one chance to repay the outstanding balance in four equal installments that coincide with the borrower's pay period schedule. Once a borrower has been offered this opportunity once, however, no lender is required to offer the borrower the same opportunity for the next 12 months. [s. 138.14 (10) (a) 2. and (11g), Stats.]

If a payday loan is not paid in full by the maturity date, the borrower may take out a second loan to repay the previous loan, but may not repay this second loan with the proceeds of a third loan. When a borrower takes out a second payday loan to repay a first loan, the lender may not charge interest exceeding 2.75 percent per month on the subsequent loan and may not charge any interest on the prior loan. [s. 138.14 (10) (a) and (12) (a), Stats.]

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<sup>7</sup> For example, an unpublished court of appeals opinion affirmed a circuit court ruling that found certain aspects of a payday loan to be unconscionable based on the circumstances, including a finance charge of almost \$250 and an annual interest rate of 294.35 percent. [*Drogorub v. Payday Loan Store of WI, Inc.*, 2012 Wis. App. Lexis 1002.]

## Other Prohibited Practices

Payday lenders are also prohibited from engaging in several practices, such as the following:

- Imposing any penalty on a borrower for the borrower's prepayment of, default on, or late payment on a payday loan, other than a missed payment fee of up to \$15.
- Making a payday loan that results in a borrower having an outstanding aggregate payday loan balance above a certain amount. Specifically, a lender may not make a payday loan that results in a borrower having an outstanding aggregate liability to all other payday lenders (including principal, interest, and all other fees and charges) of more than \$1,500 or 35 percent of the borrower's gross monthly income, whichever is less.
- Making a loan that requires a payment that is more than twice as large as the average of all other scheduled payments, that is pursuant to an open-credit plan, that allows the lender to accept and agree to hold more than five of a customer's checks, or that is secured by an interest in a motor vehicle.
- Threatening or pursuing criminal action against a borrower as a result of the borrower's check being dishonored or transfer of funds being denied.
- Advertising any statement with regard to the rates, terms, or conditions of a payday loan that is false or calculated to deceive.

[ss. 138.14 (10), (12), and (13) and 427.104, Stats., and s. DFI-Bkg. 75.03 (2), Wis. Adm. Code.]

Finally, a lender is generally prohibited from selling merchandise or conducting other business at the place of business specified in its license. However, a lender with written authorization from DOB may conduct, and permit others to conduct, the following businesses: (1) a currency exchange; (2) a seller of checks business; (3) a licensed lender business; or (4) a sales finance company. [s. 138.14 (6), Stats.]

## REQUIRED DISCLOSURES

Before entering into a payday loan with an applicant, a lender must provide certain consumer disclosures and informational materials developed by DFI.

### Consumer Disclosures

A lender must disclose the following information before entering into a payday loan with an applicant:

- The total amount of all fees and costs, in dollars, to be paid by the applicant for the loan assuming that the loan is paid in full at the end of the loan term.
- The annual percentage rate to be paid by the applicant on the loan assuming that the loan is paid in full at the end of the loan term.
- A copy of written informational materials prepared by DFI on payday loans and the payday loan industries.
- A statement that the applicant has the right to rescind the transaction before the close of business on the next day of business after the loan is made, or if the place of business where

Lenders must provide payday loan applicants with consumer disclosures regarding the loan and informational materials regarding payday lending.

the loan is made is open 24 hours, before 5 p.m. on the next day of business after the loan is made.

- The payment requirements that may apply if the loan is not paid in full at the end of loan term.
- Any service charge that may apply.
- A statement in English and Spanish that includes the disclosures required by the federal Credit Protection Act that also discloses that the customer may repay the loan in whole or in part and that clearly and conspicuously indicates the percentage per year of interest charged for the loan.

## **Informational Materials**

Wisconsin law also requires DFI to develop written informational materials on payday loans and the payday loan industries, which a payday lender must provide to an applicant before entering into a payday loan. The statutes provide that these informational materials shall 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. [s. 138.14 (9r), Stats.]

The statutes further provide that DFI's informational materials must include certain specified content. Specifically, those 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.
- Data, based on aggregated information DFI is required to collect, on all of the following:
  - The average annual percentage rate for payday loans.
  - The percentage of customers originating payday loans who defaulted on the loan.
  - The percentage of customers originating payday loans whose payment method was dishonored or denied for insufficient funds.
  - The percentage of customers originating payday loans that resulted in repayment plans.
- A summary of all actions that the lender may take against a payday loan customer if the customer defaults on the payday loan or if the customer's check or electronic funds transfer is dishonored or denied for insufficient funds.

## **REPORTS BY LENDERS**

Every lender must maintain certain books and records in the licensee's place of business. Specifically, a lender must keep any books and records that, in DOB's opinion, will allow DOB to determine compliance with the payday lending statute, and must preserve the records of final entry for at least two years after the making of a loan recorded in the records. [s. 138.14 (7), Stats.]

Similarly, DOB has the authority to issue any general or special order in execution of or supplementary to the payday lending statute and to investigate the business of a lender of the purpose of discovering violations of the payday lending statute. [s. 138.14 (8), Stats.]

## **PENALTIES AND ENFORCEMENT**

A person, partnership, or corporation that violates the payday lending or loan company statutes is subject to a fine of up to \$500, imprisonment of up to six months, or both. Additionally, a borrower may bring a private cause of action against a lender for damages, costs, and reasonable attorney fees. Any payday loan made by a person who is not licensed to make payday loans is void, with the customer not obligated to pay any amounts owed on the loan and able to recover any amount paid to the person. [s. 138.14 (15) and (16), Stats.]

Finally, as was mentioned, payday loans are subject to the Wisconsin Consumer Act, but the payday lending statute generally applies to the extent the two conflict.

This information memorandum was prepared by Tom Koss, Staff Attorney, on August 1, 2023.