100TH GENERAL ASSEMBLY
State of Illinois
2017 and 2018

HB5438

by Rep. C.D. Davidsmeyer

SYNOPSIS AS INTRODUCED:

815 ILCS 122/1-10
815 ILCS 122/2-5

Amends the Payday Loan Reform Act. Limits interest on payday loans to an annual percentage rate of 36%. Effective immediately.
AN ACT concerning business.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Payday Loan Reform Act is amended by changing Sections 1-10 and 2-5 as follows:

(815 ILCS 122/1-10)

Sec. 1-10. Definitions. As used in this Act:

"Check" means a "negotiable instrument", as defined in Article 3 of the Uniform Commercial Code, that is drawn on a financial institution.

"Commercially reasonable method of verification" or "certified database" means a consumer reporting service database certified by the Department as effective in verifying that a proposed loan agreement is permissible under this Act, or, in the absence of the Department's certification, any reasonably reliable written verification by the consumer concerning (i) whether the consumer has any outstanding payday loans, (ii) the principal amount of those outstanding payday loans, and (iii) whether any payday loans have been paid in full by the consumer in the preceding 7 days.

"Consumer" means any natural person who, singly or jointly with another consumer, enters into a loan.

"Consumer reporting service" means an entity that provides
a database certified by the Department.

"Department" means the Department of Financial and Professional Regulation.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Gross monthly income" means monthly income as demonstrated by official documentation of the income, including, but not limited to, a pay stub or a receipt reflecting payment of government benefits, for the period 30 days prior to the date on which the loan is made.

"Lender" and "licensee" mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act.

"Loan agreement" means a written agreement between a lender and consumer to make a loan to the consumer, regardless of whether any loan proceeds are actually paid to the consumer on the date on which the loan agreement is made.
"Member of the military" means a person serving in the armed forces of the United States, the Illinois National Guard, or any reserve component of the armed forces of the United States. "Member of the military" includes those persons engaged in (i) active duty, (ii) training or education under the supervision of the United States preliminary to induction into military service, or (iii) a period of active duty with the State of Illinois under Title 10 or Title 32 of the United States Code pursuant to order of the President or the Governor of the State of Illinois.

"Outstanding balance" means the total amount owed by the consumer on a loan to a lender, including all principal, finance charges, fees, and charges of every kind.

"Payday loan" or "loan" means a loan with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which:

(1) A lender accepts one or more checks dated on the date written and agrees to hold them for a period of days before deposit or presentment, or accepts one or more checks dated subsequent to the date written and agrees to hold them for deposit; or

(2) A lender accepts one or more authorizations to debit a consumer's bank account; or

(3) A lender accepts an interest in a consumer's wages,
including, but not limited to, a wage assignment.

The term "payday loan" includes "installment payday loan", unless otherwise specified in this Act.

"Principal amount" means the amount received by the consumer from the lender due and owing on a loan, excluding any finance charges, interest, fees, or other loan-related charges.

"Rollover" means to refinance, renew, amend, or extend a loan beyond its original term.

(Source: P.A. 96-936, eff. 3-21-11.)

(815 ILCS 122/2-5)

Sec. 2-5. Loan terms.

(a) Without affecting the right of a consumer to prepay at any time without cost or penalty, no payday loan may have a minimum term of less than 13 days.

(b) Except for an installment payday loan as defined in this Section, no payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 45 consecutive days. Except as provided under subsection (c) of this Section and Section 2-40, if a consumer has or has had loans outstanding for a period in excess of 45 consecutive days, no payday lender may offer or make a loan to the consumer for at least 7 calendar days after the date on which the outstanding balance of all payday loans made during the 45 consecutive day period
is paid in full. For purposes of this subsection, the term "consecutive days" means a series of continuous calendar days in which the consumer has an outstanding balance on one or more payday loans; however, if a payday loan is made to a consumer within 6 days or less after the outstanding balance of all loans is paid in full, those days are counted as "consecutive days" for purposes of this subsection.

(c) Notwithstanding anything in this Act to the contrary, a payday loan shall also include any installment loan otherwise meeting the definition of payday loan contained in Section 1-10, but that has a term agreed by the parties of not less than 112 days and not exceeding 180 days; hereinafter an "installment payday loan". The following provisions shall apply:

(i) Any installment payday loan must be fully amortizing, with a finance charge not exceeding an annual percentage rate of 36% calculated on the principal balances scheduled to be outstanding and be repayable in substantially equal and consecutive installments, according to a payment schedule agreed by the parties with not less than 13 days and not more than one month between payments; except that the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of finance charges applicable to the extra days. In
calculating finance charges under this subsection, when
the first installment period is longer than the remaining
installment periods, the amount of the finance charges
applicable to the extra days shall not be greater than
$15.50 per $100 of the original principal balance divided
by the number of days in a regularly scheduled installment
period and multiplied by the number of extra days
determined by subtracting the number of days in a regularly
scheduled installment period from the number of days in the
first installment period.

(ii) An installment payday loan may be refinanced by a
new installment payday loan one time during the term of the
initial loan; provided that the total duration of
indebtedness on the initial installment payday loan
combined with the total term of indebtedness of the new
loan refinancing that initial loan, shall not exceed 180
days. For purposes of this Act, a refinancing occurs when
an existing installment payday loan is paid from the
proceeds of a new installment payday loan.

(iii) In the event an installment payday loan is paid
in full prior to the date on which the last scheduled
installment payment before maturity is due, other than
through a refinancing, no licensee may offer or make a
payday loan to the consumer for at least 2 calendar days
thereafter.

(iv) No installment payday loan may be made to a
consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 180 consecutive days. The term "consecutive days" does not include the date on which a consumer makes the final installment payment.

(d) (Blank).

(e) No lender may make a payday loan to a consumer if the total of all payday loan payments coming due within the first calendar month of the loan, when combined with the payment amount of all of the consumer's other outstanding payday loans coming due within the same month, exceeds the lesser of:

(1) $1,000; or

(2) in the case of one or more payday loans, 25% of the consumer's gross monthly income; or

(3) in the case of one or more installment payday loans, 22.5% of the consumer's gross monthly income; or

(4) in the case of a payday loan and an installment payday loan, 22.5% of the consumer's gross monthly income.

No loan shall be made to a consumer who has an outstanding balance on 2 payday loans, except that, for a period of 12 months after March 21, 2011 (the effective date of Public Act 96-936), consumers with an existing CILA loan may be issued an installment loan issued under this Act from the company from which their CILA loan was issued.

(e-5) No Except as provided in subsection (e)(i), no lender may impose a finance charge exceeding an annual percentage rate
of 36% more than $15.50 per $100 loaned on any payday loan, or more than $15.50 per $100 on the initial principal balance and on the principal balances scheduled to be outstanding during any installment period on any installment payday loan. Except for installment payday loans and except as provided in Section 2-25, this charge is considered fully earned as of the date on which the loan is made. For purposes of determining the finance charge earned on an installment payday loan, the disclosed annual percentage rate shall be applied to the principal balances outstanding from time to time until the loan is paid in full, or until the maturity date, whichever occurs first. No finance charge may be imposed after the final scheduled maturity date.

When any loan contract is paid in full, the licensee shall refund any unearned finance charge. The unearned finance charge that is refunded shall be calculated based on a method that is at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act. The sum of the digits or rule of 78ths method of calculating prepaid interest refunds is prohibited.

(f) A lender may not take or attempt to take an interest in any of the consumer's personal property to secure a payday loan.

(g) A consumer has the right to redeem a check or any other item described in the definition of payday loan under Section 1-10 issued in connection with a payday loan from the lender.
holding the check or other item at any time before the payday loan becomes payable by paying the full amount of the check or other item.

(Source: P.A. 100-201, eff. 8-18-17.)

Section 99. Effective date. This Act takes effect upon becoming law.