



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1100

Introduced 02/08/05, by Rep. David E. Miller - Angelo Saviano - Joseph M. Lyons - Susana A Mendoza - John A. Fritchey, et al.

SYNOPSIS AS INTRODUCED:

New Act	
20 ILCS 1205/4	from Ch. 17, par. 104
20 ILCS 1205/6	from Ch. 17, par. 106
205 ILCS 670/21	from Ch. 17, par. 5427
815 ILCS 505/2Z	from Ch. 121 1/2, par. 262Z

Creates the Payday Loan Reform Act. Provides that the Division of Financial Institutions of the Department of Financial and Professional Regulation shall license and regulate entities that offer payday loans (loans under which a lender accepts a post-dated check, authorization to debit a consumer's bank account, or an interest in a consumer's wages as security for the loan). Establishes requirements and restrictions applicable to license applications and licensing. Contains provisions regarding: limitations, requirements, and disclosures applicable to loan agreements, terms of loans, finance charges, and renewal of loans; revocation, suspension, and surrender of licenses; information to be available to the public; complaint handling; hearings; books and records; reports; advertising; prohibited acts; bonding; administrative rules; and other matters. Amends the Financial Institutions Code to provide for the administration of the Payday Loan Reform Act. Amends the Consumer Installment Loan Act to provide that the Act does not apply to payday loans. Provides that a violation of the Payday Loan Reform Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act. Effective immediately.

LRB094 09280 MKM 39518 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

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

4 Article 1. General Provisions

5 Section 1-1. Short title. This Act may be cited as the
6 Payday Loan Reform Act.

7 Section 1-5. Purpose and construction. The purpose of this
8 Act is to protect consumers who enter into payday loans and to
9 regulate the lenders of payday loans. This Act shall be
10 construed as a consumer protection law for all purposes. This
11 Act shall be liberally construed to effectuate its purpose.

12 Section 1-10. Definitions. As used in this Act:

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

16 "Commercially reasonable method of verification" means a
17 database certified by the Division as effective in verifying
18 that a proposed loan agreement is permissible under this Act,
19 or, in the absence of the Division's certification, any written
20 verification by the consumer concerning (i) whether the
21 consumer has any outstanding payday loans, (ii) the principal
22 amount of those outstanding payday loans, and (iii) whether any
23 payday loans have been paid in full by the consumer in the
24 preceding 7 days.

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

27 "Division" means the Division of Financial Institutions of
28 the Department of Financial and Professional Regulation.

29 "Director" means the Director of the Division of Financial
30 Institutions of the Department of Financial and Professional

1 Regulation.

2 "Gross monthly income" means a consumer's gross monthly
3 income as demonstrated by all of the consumer's pay stubs for
4 the period 30 days prior to the date on which the loan is made.

5 "Lender" and "licensee" mean any person or entity that
6 offers or makes a payday loan, arranges a payday loan for a
7 third party, or acts as an agent for a third party in making a
8 payday loan, regardless of whether the third party is exempt
9 from licensing under this Act or whether approval, acceptance,
10 or ratification by the third party is necessary to create a
11 legal obligation for the third party, and includes any other
12 person or entity if the Division determines that the person or
13 entity engaged in a transaction that is in substance a
14 disguised payday loan or a subterfuge for the purpose of
15 avoiding this Act. "Lender" includes, but is not limited to, a
16 supervised financial organization. Notwithstanding that a
17 bank, savings and loan association, credit union, or supervised
18 lender may be exempted by federal law from this Act's
19 provisions related to finance charges, interest, and
20 licensure, all other applicable provisions of this Act apply to
21 both a payday loan and a payday lender.

22 "Loan" when not preceded by the word "payday" means a
23 payday loan.

24 "Loan agreement" means a written agreement between a lender
25 and consumer to make a loan to the consumer, regardless of
26 whether any loan proceeds are actually paid to the consumer on
27 the date on which the loan agreement is made.

28 "Member of the military" means a person serving in the
29 armed forces of the United States, the Illinois National Guard,
30 or any reserve component of the armed forces of the United
31 States.

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

35 "Payday loan" means a loan with a finance charge exceeding
36 an annual percentage rate of 36%, including any transaction

1 conducted via any medium whatsoever, including, but not limited
2 to, paper, facsimile, Internet, or telephone, in which:

3 (1) a lender accepts a check dated on the date it was
4 written and agrees to hold it for a period of days before
5 deposit or presentment, or accepts a check dated subsequent
6 to the date it was written and agrees to hold the check for
7 deposit;

8 (2) a lender accepts authorization to debit a
9 consumer's bank account; or

10 (3) a lender accepts an interest in a consumer's wages
11 as security for the loan.

12 "Principal amount" means the amount received by the
13 consumer from the lender due and owing on a loan exclusive of
14 any finance charges, interest, fees, or other loan-related
15 charges.

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

18 "Supervised financial organization" means a person or
19 entity, other than an insurance company or other organization
20 primarily engaged in an insurance business, that (1) is
21 organized, chartered, or holds an authorization certificate
22 under the laws of any state or of the United States that
23 authorize the person or entity to make loans and to receive
24 deposits, including a savings, share, certificate, or deposit
25 account, and (2) is subject to supervision by an official or
26 agency of any state or of the United States.

27 Section 1-15. Applicability.

28 (a) Except as otherwise provided in this Section, this Act
29 applies to any lender that offers or makes a payday loan to a
30 consumer in Illinois.

31 (b) The provisions of this Act apply to any person or
32 entity that seeks to evade its applicability by any device,
33 subterfuge, or pretense whatsoever.

34 (c) Retail sellers who cash checks incidental to a retail
35 sale and who charge no more than \$2 per check for the service

1 are exempt from the provisions of this Act.

2 Article 2. Payday Loans

3 Section 2-5. Loan terms.

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

7 (b) No payday loan may be made to a consumer if the loan
8 would result in the consumer being indebted to one or more
9 payday lenders for a period in excess of 45 consecutive days.
10 Except as provided under Section 2-15, if a consumer has or has
11 had loans outstanding for a period in excess of 45 consecutive
12 days, no payday lender may offer or make a loan to the consumer
13 for at least 7 consecutive days after the date on which the
14 outstanding balance of all payday loans made during the 45-day
15 period is paid in full. For purposes of this subsection, the
16 term "consecutive days" means a series of continuous calendar
17 days in which the consumer has an outstanding balance on one or
18 more payday loans. If a payday loan is made to a consumer
19 within 6 days or less after the outstanding balance of all
20 loans is paid in full, those days are counted as "consecutive
21 days" for purposes of this subsection.

22 (c) No lender may make a payday loan to a consumer if the
23 total principal amount of the loan, when combined with the
24 principal amount of all of the consumer's other outstanding
25 payday loans, exceeds \$1,000 or 25% of the consumer's gross
26 monthly income, whichever is less.

27 (d) No payday loan may be made to a consumer who has an
28 outstanding balance on 2 payday loans.

29 (e) No lender may charge more than \$16 per \$100 loaned on
30 any payday loan over the term of the loan.

31 (f) A lender may not take or attempt to take a security
32 interest in any of the consumer's personal property other than
33 the items described in the definition of "payday loan" in
34 Section 1-10.

1 (g) A consumer has the right to redeem a check issued in
2 connection with a payday loan from the lender holding the check
3 at any time before the negotiation or presentment of the check
4 by paying the full amount of the check, less the unearned
5 portion of the finance charge calculated on a straight-line
6 amortization basis.

7 Section 2-10. Rollovers prohibited. Rollover of a payday
8 loan by any lender is prohibited.

9 Section 2-15. Repayment plan.

10 (a) At the time a payday loan is made and every time a
11 consumer enters a lender's place of business and makes a
12 payment or inquires about the consumer's loan, the lender must
13 provide the consumer with written and oral notice of the
14 consumer's right to request a repayment plan.

15 (b) The loan agreement must include the following language
16 in at least 14-point bold type: IF YOU STILL OWE ON ONE OR MORE
17 PAYDAY LOANS AFTER 35 DAYS, YOU ARE ENTITLED TO ENTER INTO A
18 REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 56
19 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL
20 FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

21 (c) At the time a payday loan is made, on the first page of
22 the loan agreement and in a separate document signed by the
23 consumer, the following shall be inserted in an least 14-point
24 bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE
25 PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A
26 REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 56 DAYS TO REPAY THE
27 LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES,
28 INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

29 (d) If the consumer has or has had one or more payday loans
30 outstanding for 35 consecutive days, any payday loan
31 outstanding on the 35th consecutive day shall be payable under
32 the terms of a repayment plan as provided for in this Section,
33 so long as the consumer requests the repayment plan either
34 orally or in writing. The consumer has the right to request a

1 repayment plan on all payday loans outstanding on the 35th
2 consecutive day, until 28 days after the default date. Within
3 48 hours after the request for a repayment plan is made, the
4 lender must prepare the repayment plan agreement and both
5 parties must sign the agreement. Execution of the repayment
6 plan agreement shall be made in the same manner in which the
7 loan was made and shall be evidenced in writing.

8 (e) The terms of the repayment plan for a payday loan must
9 include the following:

10 (1) The lender may not impose any charge on the
11 consumer for requesting or using a repayment plan.
12 Performance of the terms of the repayment plan extinguishes
13 the consumer's obligation on the loan.

14 (2) No lender shall charge the consumer any finance
15 charges, interest, fees, or other charges of any kind,
16 except a fee for insufficient funds, as provided under
17 Section 2-20.

18 (3) The consumer shall be allowed to repay the loan in
19 at least 4 equal installments with at least 14 days between
20 installments, provided that the term of the repayment plan
21 does not exceed 90 days. The first payment under the
22 repayment plan shall not be due before at least 14 days
23 after the repayment plan is signed by both parties. The
24 consumer may prepay the amount due under the repayment plan
25 at any time, without charge or penalty.

26 (4) The length of time between installments may be
27 modified by the parties so long as the total period of
28 repayment does not exceed 90 days. Any such modification
29 must be in writing and signed by both parties.

30 (f) Notwithstanding any provision of law to the contrary, a
31 lender is prohibited from making a payday loan to a consumer
32 who has a payday loan outstanding under a repayment plan and
33 for at least 14 days after the outstanding balance of the loan
34 under the repayment plan and the outstanding balance of all
35 other payday loans outstanding during the term of the repayment
36 plan are paid in full.

1 (g) A lender may not accept postdated checks for payments
2 under a repayment plan.

3 (h) A lender may agree to enter into a repayment plan with
4 a consumer at any time. If a consumer is eligible for a
5 repayment plan under subsection (d), any repayment agreement
6 constitutes a repayment plan under this Section and all
7 provisions of this Section apply to that agreement.

8 Section 2-20. Permitted fees.

9 (a) If there are insufficient funds to pay a check on the
10 day of presentment, a lender may charge a fee not to exceed the
11 fee imposed upon the lender by the financial institution
12 dishonoring the check. Only one such fee may be collected by
13 the lender with respect to a particular check even if it has
14 been deposited and returned more than once. A lender shall
15 present the check for payment not more than twice. A fee
16 charged under this subsection (a) is a lender's exclusive
17 charge for late payment.

18 (b) When a consumer repays a payday loan in full before its
19 due date, the lender must credit the finance charges to the
20 consumer on a straight-line amortization basis as of the time
21 of repayment.

22 (c) Except for the finance charges described in Section 2-5
23 and as specifically allowed by this Section, a lender may not
24 impose on a consumer any additional finance charges, interest,
25 fees, or charges of any sort for any purpose.

26 Section 2-25. Rescission. A consumer may rescind a loan
27 without cost or finance charge and a lender must honor this
28 rescission as provided in this Section. To rescind a loan, a
29 consumer must, by the end of the business day immediately
30 following the day on which the loan was made: (i) inform the
31 lender that the consumer wants to rescind the loan and (ii)
32 return in cash the principal amount of the loan to the lender.

33 Section 2-30. Proceeds and payments.

1 (a) A lender may issue the proceeds of a loan in the form
2 of a check drawn on the lender's bank account, in cash, by
3 money order, by debit card, or by electronic funds transfer.
4 When the proceeds are issued in the form of a check drawn on
5 the lender's bank account or by money order, the lender may not
6 charge a fee for cashing the check or money order. When the
7 proceeds are issued in cash, the lender must provide the
8 consumer with written verification of the cash transaction and
9 shall maintain a record of the transaction for at least 3
10 years.

11 (b) After each payment made in full or in part on any loan,
12 the lender shall give the consumer making the payment a signed,
13 dated receipt showing the amount paid and the balance due on
14 the loan.

15 (c) Before a loan is made, the lender must provide the
16 consumer, or each consumer if there is more than one, with a
17 copy of the loan documents described in Section 2-50.

18 (d) The holder or assignee of any loan agreement or of any
19 check written by a consumer in connection with a payday loan
20 takes the loan agreement or check subject to all claims and
21 defenses of the consumer.

22 (e) Upon receipt of a check from a consumer for a loan, the
23 lender must immediately stamp the back of the check with an
24 endorsement that states: "This check is being negotiated as
25 part of a loan under the Payday Loan Reform Act, and any holder
26 of this check takes it subject to all claims and defenses of
27 the maker."

28 (f) Loan payments may be electronically debited from the
29 consumer's bank account. Except as preempted by federal law,
30 before each and any electronic debit, the lender must obtain
31 prior written approval from the consumer.

32 (g) A consumer may prepay on a loan in increments of \$5 or
33 more at any time without cost or penalty.

34 (h) A loan is made on the date on which a loan agreement is
35 signed by both parties, regardless of whether the lender gives
36 any moneys to the consumer on that date.

1 Section 2-35. Verification.

2 (a) Before entering into a loan agreement with a consumer,
3 a lender must use a commercially reasonable method of
4 verification to verify that the proposed loan agreement is
5 permissible under this Act.

6 (b) The Division shall certify that one or more consumer
7 reporting services are commercially reasonable methods of
8 verification. If the Division certifies that a consumer
9 reporting service is a commercially reasonable method of
10 verification, the Division shall:

11 (1) provide reasonable notice to all licensees
12 identifying the commercially reasonable methods of
13 verification that are available; and

14 (2) require each licensee to use a commercially
15 reasonable method of verification as a means of complying
16 with subsection (a) of this Section.

17 (c) Except as otherwise provided in this Section, all
18 information contained in the certified database regarding any
19 consumer is strictly confidential and is exempt from the
20 federal Freedom of Information Act (5 U.S.C. 552).

21 (d) Notwithstanding any other provision of law to the
22 contrary, a consumer seeking a payday loan may make a direct
23 inquiry to the certified database provider to request a more
24 detailed explanation of the basis for a database's
25 determination that the consumer is ineligible for a new payday
26 loan.

27 (e) In certifying a commercially reasonable method of
28 verification, the Division shall ensure that the database:

29 (1) provides real-time access through an Internet
30 connection;

31 (2) is accessible to the Division and to licensees in
32 order to ensure compliance with this Act and in order to
33 provide any other information that the Division deems
34 necessary;

35 (3) requires licensees to input whatever information

1 is required by the Division;

2 (4) maintains a real-time copy of the required
3 reporting information that is available to the Division at
4 all times and is the property of the Division;

5 (5) provides licensees only with a statement that a
6 consumer is eligible or ineligible for a new payday loan
7 and a description of the reason for the determination; and

8 (6) contains safeguards to ensure that all information
9 contained in the database regarding consumers is kept
10 strictly confidential.

11 (f) Six months after the effective date of this Act, all
12 licensees must use the certified database to verify that a
13 proposed loan agreement is permissible under this Act, provided
14 that the Division has certified a database.

15 (g) When a payday loan is made, the licensee shall update
16 the database by inputting all information required under item
17 (3) of subsection (e). When a consumer's payday loan becomes
18 payable under the terms of a repayment plan, the licensee shall
19 enter all information necessary in order for licensees and the
20 Division to ensure that payday loans are made to the consumer
21 in compliance with this Act.

22 (h) A licensee may rely on the information contained in the
23 certified database as accurate and is not subject to any
24 administrative penalty or liability as a result of relying on
25 inaccurate information contained in the database.

26 Section 2-40. Default.

27 (a) No legal proceeding of any kind, including, but not
28 limited to, a lawsuit or arbitration, may be filed against a
29 consumer to collect on a payday loan until 28 days after the
30 default date of the loan, or, in the case of a payday loan
31 under a repayment plan, for 28 days after the default date
32 under the terms of the repayment plan.

33 (b) Upon and after default, a lender shall not charge the
34 consumer any finance charges, interest, fees, or charges of any
35 kind, other than the insufficient fund fee described in Section

1 2-20.

2 Section 2-45. Practices concerning members of the
3 military.

4 (a) A lender may not garnish the wages or salaries of a
5 consumer who is a member of the military.

6 (b) A lender shall defer collection activity against a
7 consumer who is a member of the military and who has been
8 deployed to a combat or combat support posting for the duration
9 of the deployment.

10 (c) A lender may not contact the commanding officer of a
11 consumer who is a member of the military in an effort to
12 collect on a payday loan.

13 (d) Lenders must honor the terms of any repayment plan that
14 they have entered into with any consumer, including a repayment
15 agreement negotiated through military counselors or
16 third-party credit counselors.

17 Section 2-50. Required disclosures.

18 (a) Before entering into a payday loan, a lender shall
19 deliver to the consumer a pamphlet prepared by the Director
20 that:

21 (1) explains, in simple English and Spanish, all of the
22 consumer's rights and responsibilities in a payday loan
23 transaction;

24 (2) includes a toll-free number to the Director's
25 office to handle concerns or provide information about
26 whether a lender is licensed, whether complaints have been
27 filed with the Director, and the resolution of those
28 complaints; and

29 (3) provides information regarding the availability of
30 debt management services at the time of default.

31 (b) Lenders shall provide consumers with a written
32 agreement on a form specified or approved by the Director that
33 may be kept by the consumer. The written agreement must include
34 the following information in English and in the language in

1 which the loan was negotiated:

2 (1) the name and address of the lender making the
3 payday loan, and the name and title of the individual
4 employee who signs the agreement on behalf of the lender;

5 (2) an itemization of the finance charges to be paid by
6 the consumer;

7 (3) disclosures required by the federal Truth in
8 Lending Act and the information required by the Federal
9 Consumer Credit Protection Act;

10 (4) disclosures required under any other State law;

11 (5) a clear description of the consumer's payment
12 obligations under the loan;

13 (6) the following statement, in at least 14-point bold
14 type face: "You cannot be prosecuted in criminal court to
15 collect this loan.". The information required to be
16 disclosed under this subdivision (6) must be conspicuously
17 disclosed in the loan document and shall be located
18 immediately preceding the signature of the consumer; and

19 (7) the following statement, in at least 14-point bold
20 type face:

21 "WARNING: A loan is not intended to meet long-term
22 financial needs. A loan should be used only to meet
23 short-term cash needs. Refinancing the loan rather than
24 paying the debt in full will require additional finance
25 charges. The cost of your loan may be higher than loans
26 offered by other lending institutions. Loans are regulated
27 by the Department of Financial and Professional
28 Regulation."

29 (c) The following notices in English and Spanish, as well
30 as other languages in which a significant amount of payday loan
31 business is conducted, must be conspicuously posted by a lender
32 in each location of a business providing payday loans:

33 (1) A notice that informs consumers that the lender
34 cannot use the criminal process against a consumer to
35 collect any payday loan.

36 (2) The schedule of all finance charges to be charged

1 on loans with an example of the amounts that would be
2 charged on a \$100 loan payable in 13 days and a \$400 loan
3 payable in 30 days, giving the corresponding annual
4 percentage rate.

5 (3) In one-inch bold type, a notice to the public in
6 the lending area of each business location containing the
7 following statement:

8 "WARNING: A loan is not intended to meet long-term
9 financial needs. A loan should be used only to meet
10 short-term cash needs. Refinancing the loan rather than
11 paying the debt in full will require additional finance
12 charges. The cost of your loan may be higher than loans
13 offered by other lending institutions. Loans are regulated
14 by the Department of Financial and Professional
15 Regulation."

16 Section 2-55. Information and reporting.

17 (a) A licensee shall keep and use books, accounts, and
18 records that will enable the Director to determine if the
19 licensee is complying with the provisions of this Act and
20 maintain any other records as required by the Director.

21 (b) A licensee shall collect information annually for a
22 report that shall disclose in detail and under appropriate
23 headings:

24 (1) the total number of payday loans made during the
25 preceding calendar year;

26 (2) the total number of such loans outstanding as of
27 December 31 of the preceding calendar year;

28 (3) the minimum, maximum, and average dollar amount of
29 checks whose deposits were deferred during the preceding
30 calendar year;

31 (4) the average annual percentage rate and the average
32 number of days a deposit of a check is deferred during the
33 preceding calendar year; and

34 (5) the total of returned checks, the total of checks
35 recovered, and the total of checks charged off during the

1 preceding calendar year.

2 The report shall be verified by the oath or affirmation of
3 the owner, manager, or president of the licensee. The report
4 must be filed with the Director no later than January 31 of the
5 year following the year for which the report discloses the
6 information specified in this subsection (b). The Director may
7 impose upon the licensee a fine of \$25 per day for each day
8 beyond the filing deadline that the report is not filed.

9 (c) A licensee shall file a copy of the loan agreement and
10 the fee schedule described in Section 2-50 with the Director
11 before the date of commencement of business at each location,
12 at the time any changes are made to the documents or schedule,
13 and annually thereafter upon renewal of the license. These
14 documents shall be available to interested parties and to the
15 general public.

16 (d) The Division shall compile aggregate data in the form
17 of an annual report of the payday lending industry and shall
18 make the report available to the Governor, the General
19 Assembly, and the general public.

20 Section 2-60. Advertising.

21 (a) Advertising for loans transacted under this Act may not
22 be false, misleading, or deceptive. That advertising, if it
23 states a rate or amount of charge for a loan, must state the
24 rate as an annual percentage rate. No licensee may advertise in
25 any manner so as to indicate or imply that its rates or charges
26 for loans are in any way recommended, approved, set, or
27 established by the State government or by this Act.

28 (b) If any advertisement to which this Section applies
29 states the amount of any installment payment, the dollar amount
30 of any finance charge, or the number of installments or the
31 period of repayment, then the advertisement shall state all of
32 the following items:

33 (1) The amount of the loan.

34 (2) The number, amount, and due dates or period of
35 payments scheduled to repay the indebtedness if the credit

1 is extended.

2 (3) The finance charge expressed as an annual
3 percentage rate.

4 Article 3. Licensure

5 Section 3-3. Licensure requirement. On and after the
6 effective date of this Act, a person or entity acting as a
7 lender, as defined in Section 1-10 of this Act, must be
8 licensed by the Division.

9 Section 3-5. Licensure.

10 (a) A license to make a payday loan shall state the
11 address, including city and state, at which the business is to
12 be conducted and shall state fully the name of the licensee.
13 The license shall be conspicuously posted in the place of
14 business of the licensee and shall not be transferable or
15 assignable.

16 (b) An application for a license shall be in writing and in
17 a form prescribed by the Director. No person or entity shall
18 engage in or offer to engage in the business regulated by this
19 Act unless and until a license has been issued by the Director.
20 The Director may not issue or renew any such license unless and
21 until the following findings are made:

22 (1) that the financial responsibility, experience,
23 character, and general fitness of the applicant are such as
24 to command the confidence of the public and to warrant the
25 belief that the business will be operated lawfully and
26 fairly and within the provisions and purposes of this Act;

27 (2) that the location has conformed to local zoning
28 laws with respect to location, structural, aesthetic, or
29 other requirements; and

30 (3) that the applicant has submitted such other
31 information as the Director may deem necessary.

32 (c) A license shall be issued for no longer than one year,
33 and no renewal of a license may be provided if a licensee has

1 substantially violated this Act and has not cured the violation
2 to the satisfaction of the Division.

3 (d) A licensee shall appoint, in writing, the Director as
4 attorney-in-fact upon whom all lawful process against the
5 licensee may be served with the same legal force and validity
6 as if served on the licensee. A copy of the written
7 appointment, duly certified, shall be filed in the office of
8 the Director, and a copy thereof certified by the Director
9 shall be sufficient evidence. This appointment shall remain in
10 effect while any liability remains outstanding in this State
11 against the licensee. When summons is served upon the Director
12 as attorney-in-fact for a licensee, the Director shall
13 immediately notify the licensee by registered mail, enclosing
14 the summons and specifying the hour and day of service.

15 (e) A licensee must pay an annual fee of \$300. In addition
16 to the license fee, the reasonable expense of any examination
17 or hearing by the Director under any provisions of this Act
18 shall be borne by the licensee. If a licensee fails to renew
19 his or her license by December 31, it shall automatically
20 expire; however, the Director, in his or her discretion, may
21 reinstate an expired license upon:

22 (1) payment of the annual renewal fee within 30 days of
23 the date of expiration; and

24 (2) proof of good cause for failure to renew.

25 (f) Not more than one place of business shall be maintained
26 under the same license, but the Director may issue more than
27 one license to the same licensee upon compliance with all the
28 provisions of this Act governing issuance of a single license.
29 The location, except those locations already in existence as of
30 June 1, 2005, may not be within one mile of a facility operated
31 by an inter-track wagering location licensee or an organization
32 licensee subject to the Illinois Horse Racing Act of 1975,
33 within one mile of a facility at which gambling is conducted
34 under the Riverboat Gambling Act, within one mile of the
35 location at which a riverboat subject to the Riverboat Gambling
36 Act docks, or within one mile of any State of Illinois or

1 United States military base or installation.

2 (g) No licensee shall conduct the business of making loans
3 under this Act within any office, suite, room, or place of
4 business in which any other business is solicited or engaged in
5 unless, in the opinion of the Director, the other business
6 would not be contrary to the best interests of consumers and is
7 authorized by the Director in writing.

8 (h) If the Director finds, after due notice and hearing, or
9 opportunity for hearing, that a licensee or an officer, agent,
10 employee, or representative of a licensee, has violated any of
11 the provisions of this Act, has failed to comply with the
12 rules, instructions, or orders promulgated by the Director, has
13 failed or refused to make its reports to the Director, or has
14 furnished false information to the Director, the Director may
15 issue an order revoking or suspending the right of the licensee
16 and the officer, agent, employee, or representative to do
17 business in this State as a licensee. No revocation,
18 suspension, or surrender of any license shall relieve the
19 licensee from civil or criminal liability for acts committed
20 before the revocation, suspension, or surrender.

21 (i) The Director shall maintain a list of licensees that
22 shall be available to interested consumers and lenders and the
23 public. The Director shall establish a toll-free number whereby
24 consumers may obtain information about licensees. The Director
25 shall also establish a complaint process under which an
26 aggrieved consumer or any member of the public may file a
27 complaint against a licensee or non-licensee who violates any
28 provision of this Act. The Director may hold hearings upon the
29 request of a party to the complaint, make findings of fact,
30 conclusions of law, issue cease and desist orders, refer the
31 matter to the appropriate law enforcement agency for
32 prosecution under this Act, and suspend or revoke a license
33 granted under this Act. All proceedings shall be open to the
34 public.

35 Section 3-10. Closing of business; surrender of license. At

1 least 10 days before a licensee ceases operations, closes the
2 business, or files for bankruptcy, the licensee shall:

3 (1) Notify the Division of its action in writing.

4 (2) With the exception of filing for bankruptcy,
5 surrender its license to the Director for cancellation. The
6 surrender of the license shall not affect the licensee's
7 civil or criminal liability for acts committed before the
8 surrender or entitle the licensee to a return of any part
9 of the annual license fee.

10 (3) Notify the Division of the location where the
11 books, accounts, contracts, and records will be
12 maintained.

13 The accounts, books, records, and contracts shall be
14 maintained and serviced by the licensee, another licensee under
15 this Act, or an entity exempt from licensing under this Act.

16 The Division shall have the authority to conduct
17 examinations of the books, records, and loan documents at any
18 time after surrender of the license, filing of bankruptcy, or
19 the cessation of operations.

20 Article 4. Administrative Provisions

21 Section 4-5. Prohibited acts. A licensee or unlicensed
22 person or entity making payday loans may not commit, or have
23 committed on behalf of the licensee or unlicensed person or
24 entity, any of the following acts:

25 (1) Threatening to use or using the criminal process in
26 this or any other state to collect on the loan.

27 (2) Using any device or agreement that would have the
28 effect of charging or collecting more fees or charges than
29 allowed by this Act, including, but not limited to,
30 entering into a different type of transaction with the
31 consumer.

32 (3) Engaging in unfair, deceptive, or fraudulent
33 practices in the making or collecting of a payday loan.

34 (4) Charging to cash a check representing the proceeds

1 of the payday loan.

2 (5) Using or attempting to use the check provided by
3 the consumer in a payday loan as collateral for a
4 transaction not related to a payday loan.

5 (6) Knowingly accepting payment in whole or in part of
6 a payday loan through the proceeds of another payday loan
7 provided by any licensee.

8 (7) Knowingly accepting any security, other than that
9 specified in the definition of payday loan in Section 10,
10 for a payday loan.

11 (8) Charging any fees or charges other than those
12 specifically authorized by this Act.

13 (9) Threatening to take any action against a consumer
14 that is prohibited by this Act or making any misleading or
15 deceptive statements regarding the payday loan or any
16 consequences thereof.

17 (10) Making a misrepresentation of a material fact by
18 an applicant for licensure in obtaining or attempting to
19 obtain a license.

20 (11) Including any of the following provisions in loan
21 documents required by subsection (b) of Section 2-50:

22 (A) a confession of judgment clause;

23 (B) a waiver of the right to a jury trial, if
24 applicable, in any action brought by or against a
25 consumer, unless the waiver is included in an
26 arbitration clause allowed under subparagraph (C) of
27 this paragraph (11);

28 (C) a mandatory arbitration clause that is
29 oppressive, unfair, unconscionable, or substantially
30 in derogation of the rights of consumers;

31 (D) any assignment of or order for payment of wages
32 or other compensation for services;

33 (E) a provision in which the consumer agrees not to
34 assert any claim or defense arising out of the
35 contract.

36 (12) Selling any insurance of any kind whether or not

1 sold in connection with the making or collecting of a
2 payday loan.

3 (13) Taking any power of attorney.

4 (14) Taking any security interest in real estate.

5 (15) Collecting a delinquency or collection charge on
6 any installment regardless of the period in which it
7 remains in default.

8 (16) Collecting treble damages on an amount owing from
9 a payday loan.

10 (17) Refusing, or intentionally delaying or
11 inhibiting, the consumer's right to enter into a repayment
12 plan pursuant to this Act.

13 (18) Charging for, or attempting to collect,
14 attorney's fees or court costs incurred in connection with
15 the collection of a payday loan.

16 (19) Entering into a wage assignment agreement with a
17 consumer in connection with a payday loan.

18 (20) Executing a loan in violation of this Act.

19 (21) Garnishing the wages or salaries of a consumer who
20 is a member of the military.

21 (22) Failing to defer collection activity against a
22 consumer who is a member of the military and who has been
23 deployed to a combat or combat-support posting.

24 (23) Contacting the commanding officer of a consumer
25 who is a member of the military in an effort to collect on
26 a payday loan.

27 Section 4-10. Enforcement and remedies.

28 (a) The remedies provided in this Act are cumulative and
29 apply to persons or entities subject to this Act.

30 (b) A violation of this Act constitutes a violation of the
31 Consumer Fraud and Deceptive Business Practices Act.

32 (c) If any provision of the written agreement described in
33 subsection (b) of Section 2-50 violates this Act, then that
34 provision is unenforceable against the consumer.

1 Section 4-15. Bonding.

2 (a) A person or entity engaged in making payday loans under
3 this Act shall post a bond to the Division in the amount of
4 \$50,000 for each location where loans will be made, up to a
5 maximum bond amount of \$500,000.

6 (b) A bond posted under subsection (a) must continue in
7 effect for 3 years after the lender ceases operation in
8 Illinois. The bond must be available to pay damages and
9 penalties to a consumer harmed by a violation of this Act.

10 Section 4-20. Preemption of administrative rules. Any
11 administrative rule promulgated prior to the effective date of
12 this Act by the Division regarding payday loans is preempted.

13 Section 4-25. Reporting of violations. The Division shall
14 report to the Attorney General all violations of this Act of
15 which it becomes aware.

16 Section 4-30. Rulemaking; industry review.

17 (a) The Division may adopt reasonable rules to implement
18 and administer this Act.

19 (b) After the effective date of this Act, the Division
20 shall, over a 3-year period, conduct a study of the payday loan
21 industry to determine the impact and effectiveness of this Act.
22 The Division shall report its findings to the General Assembly
23 within 3 months of the third anniversary of the effective date
24 of this Act. The study shall determine the effect of this Act
25 on the protection of consumers in this State and on the fair
26 and reasonable regulation of the payday loan industry. The
27 study shall include, but shall not be limited to, an analysis
28 of the ability of the industry to use private reporting tools
29 that:

30 (1) ensure substantial compliance with this Act,
31 including real time reporting of outstanding payday loans;
32 and

33 (2) provide data to the Division in an appropriate form

1 and with appropriate content to allow the Division to
2 adequately monitor the industry.

3 The report of the Division shall, if necessary, identify
4 and recommend specific amendments to this Act to further
5 protect consumers and to guarantee fair and reasonable
6 regulation of the payday loan industry.

7 Section 4-35. Judicial review. All final administrative
8 decisions of the Division under this Act are subject to
9 judicial review pursuant to the provisions of the
10 Administrative Review Law and any rules adopted pursuant
11 thereto.

12 Section 4-40. No waivers. There shall be no waiver of any
13 provision of this Act.

14 Section 4-45. Superiority of Act. To the extent this Act
15 conflicts with any other State financial regulation laws, this
16 Act is superior and supersedes those laws for the purposes of
17 regulating payday loans in Illinois.

18 Section 4-50. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Article 90. Amendatory Provisions

21 Section 90-5. The Financial Institutions Code is amended by
22 changing Sections 4 and 6 as follows:

23 (20 ILCS 1205/4) (from Ch. 17, par. 104)

24 Sec. 4. As used in this Act:

25 (a) "Department" means the Department of Financial
26 Institutions.

27 (b) "Director" means the Director of Financial
28 Institutions.

29 (c) "Person" means any individual, partnership, joint

1 venture, trust, estate, firm, corporation, association or
2 cooperative society or association.

3 (d) "Financial institutions" means ambulatory and
4 community currency exchanges, credit unions, guaranteed credit
5 unions, persons engaged in the business of transmitting money
6 to foreign countries or buying and selling foreign money,
7 pawners' societies, title insuring or guaranteeing companies,
8 and persons engaged in the business of making loans of \$800 or
9 less, all as respectively defined in the laws referred to in
10 Section 6 of this Act. The term includes sales finance
11 agencies, as defined in the "Sales Finance Agency Act", enacted
12 by the 75th General Assembly.

13 (e) "Payday loan" has the meaning ascribed to that term in
14 the Payday Loan Reform Act.

15 (Source: Laws 1967, p. 2211.)

16 (20 ILCS 1205/6) (from Ch. 17, par. 106)

17 Sec. 6. In addition to the duties imposed elsewhere in this
18 Act, the Department has the following powers:

19 (1) To exercise the rights, powers and duties vested by law
20 in the Auditor of Public Accounts under "An Act to provide for
21 the incorporation, management and regulation of pawners'
22 societies and limiting the rate of compensation to be paid for
23 advances, storage and insurance on pawns and pledges and to
24 allow the loaning of money upon personal property", approved
25 March 29, 1899, as amended.

26 (2) To exercise the rights, powers and duties vested by law
27 in the Auditor of Public Accounts under "An Act in relation to
28 the definition, licensing and regulation of community currency
29 exchanges and ambulatory currency exchanges, and the operators
30 and employees thereof, and to make an appropriation therefor,
31 and to provide penalties and remedies for the violation
32 thereof", approved June 30, 1943, as amended.

33 (3) To exercise the rights, powers, and duties vested by
34 law in the Auditor of Public Accounts under "An Act in relation
35 to the buying and selling of foreign exchange and the

1 transmission or transfer of money to foreign countries",
2 approved June 28, 1923, as amended.

3 (4) To exercise the rights, powers, and duties vested by
4 law in the Auditor of Public Accounts under "An Act to provide
5 for and regulate the business of guaranteeing titles to real
6 estate by corporations", approved May 13, 1901, as amended.

7 (5) To exercise the rights, powers and duties vested by law
8 in the Department of Insurance under "An Act to define,
9 license, and regulate the business of making loans of eight
10 hundred dollars or less, permitting an interest charge thereon
11 greater than otherwise allowed by law, authorizing and
12 regulating the assignment of wages or salary when taken as
13 security for any such loan or as consideration for a payment of
14 eight hundred dollars or less, providing penalties, and to
15 repeal Acts therein named", approved July 11, 1935, as amended.

16 (6) To administer and enforce "An Act to license and
17 regulate the keeping and letting of safety deposit boxes,
18 safes, and vaults, and the opening thereof, and to repeal a
19 certain Act therein named", approved June 13, 1945, as amended.

20 (7) Whenever the Department is authorized or required by
21 law to consider some aspect of criminal history record
22 information for the purpose of carrying out its statutory
23 powers and responsibilities, then, upon request and payment of
24 fees in conformance with the requirements of Section 2605-400
25 of the Department of State Police Law (20 ILCS 2605/2605-400),
26 the Department of State Police is authorized to furnish,
27 pursuant to positive identification, such information
28 contained in State files as is necessary to fulfill the
29 request.

30 (8) To administer the Payday Loan Reform Act.

31 (Source: P.A. 91-239, eff. 1-1-00.)

32 Section 90-10. The Consumer Installment Loan Act is amended
33 by changing Section 21 as follows:

34 (205 ILCS 670/21) (from Ch. 17, par. 5427)

1 Sec. 21. Application of act. This Act does not apply to any
2 person, partnership, association, limited liability company,
3 or corporation doing business under and as permitted by any law
4 of this State or of the United States relating to banks,
5 savings and loan associations, savings banks, credit unions, or
6 licensees under the Residential Mortgage License Act for
7 residential mortgage loans made pursuant to that Act. This Act
8 does not apply to business loans. This Act does not apply to
9 payday loans.

10 (Source: P.A. 90-437, eff. 1-1-98.)

11 Section 90-15. The Consumer Fraud and Deceptive Business
12 Practices Act is amended by changing Section 2Z as follows:

13 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

14 Sec. 2Z. Violations of other Acts. Any person who knowingly
15 violates the Automotive Repair Act, the Home Repair and
16 Remodeling Act, the Dance Studio Act, the Physical Fitness
17 Services Act, the Hearing Instrument Consumer Protection Act,
18 the Illinois Union Label Act, the Job Referral and Job Listing
19 Services Consumer Protection Act, the Travel Promotion
20 Consumer Protection Act, the Credit Services Organizations
21 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call
22 Services Consumer Protection Act, the Telephone Solicitations
23 Act, the Illinois Funeral or Burial Funds Act, the Cemetery
24 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery
25 Sales Act, the High Risk Home Loan Act, the Payday Loan Reform
26 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
27 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use
28 Tax Act, the Electronic Mail Act, paragraph (6) of subsection
29 (k) of Section 6-305 of the Illinois Vehicle Code, or the
30 Automatic Contract Renewal Act commits an unlawful practice
31 within the meaning of this Act.

32 (Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950,
33 eff. 1-1-05.)

1 Article 99. Effective Date

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