



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1437

Introduced 2/21/2007, by Rep. David E. Miller

SYNOPSIS AS INTRODUCED:

815 ILCS 122/1-10
815 ILCS 122/2-5
815 ILCS 122/2-55
815 ILCS 122/4-5
815 ILCS 122/4-30

Amends the Payday Loan Reform Act. Changes the definition of "payday loan" to include any loan with a finance charge exceeding an annual percentage rate of 36% (instead of with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days). Provides that no lender may make a payday loan with periodic payments unless the periodic payments are substantially equal term payments and, if paid as scheduled, result in full payment of the principal and interest owed on the loan at the end of the loan term. Requires the licensee, as part of the information that he or she must collect and maintain, to include the total number of lawsuits filed by the licensee or its agent against consumers to collect on payday loans from consumers during the preceding calendar year. Prohibits a licensee or a person making payday loans from evading the requirements and prohibitions of the Act by use of a device or subterfuge including, but not limited to, (i) disguising a payday loan as a different type of transaction, or (ii) characterizing a required fee as a purchase of a good or service in connection with a payday loan. Authorizes the Department to develop rules to determine if any person or entity seeks to evade the applicability of this Act by any device, subterfuge, or pretense. Effective immediately.

LRB095 08216 LCT 28386 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

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

4 Section 5. The Payday Loan Reform Act is amended by
5 changing Sections 1-10, 2-5, 2-55, 4-5, and 4-30 as follows:

6 (815 ILCS 122/1-10)

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

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

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

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

23 "Consumer reporting service" means an entity that provides

1 a database certified by the Department.

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

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

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

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

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

1 "Member of the military" means a person serving in the
2 armed forces of the United States, the Illinois National Guard,
3 or any reserve component of the armed forces of the United
4 States. "Member of the military" includes those persons engaged
5 in (i) active duty, (ii) training or education under the
6 supervision of the United States preliminary to induction into
7 military service, or (iii) a period of active duty with the
8 State of Illinois under Title 10 or Title 32 of the United
9 States Code pursuant to order of the President or the Governor
10 of the State of Illinois.

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

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

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

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

26 (3) A lender accepts an interest in a consumer's wages,

1 including, but not limited to, a wage assignment.

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

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

8 (Source: P.A. 94-13, eff. 12-6-05.)

9 (815 ILCS 122/2-5)

10 Sec. 2-5. Loan terms.

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

14 (b) No payday loan may be made to a consumer if the loan
15 would result in the consumer being indebted to one or more
16 payday lenders for a period in excess of 45 consecutive days.
17 Except as provided under Section 2-40, if a consumer has or has
18 had loans outstanding for a period in excess of 45 consecutive
19 days, no payday lender may offer or make a loan to the consumer
20 for at least 7 calendar days after the date on which the
21 outstanding balance of all payday loans made during the 45
22 consecutive day period is paid in full. For purposes of this
23 subsection, the term "consecutive days" means a series of
24 continuous calendar days in which the consumer has an
25 outstanding balance on one or more payday loans; however, if a

1 payday loan is made to a consumer within 6 days or less after
2 the outstanding balance of all loans is paid in full, those
3 days are counted as "consecutive days" for purposes of this
4 subsection.

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

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

12 (e) No lender may charge more than \$15.50 per \$100 loaned
13 on any payday loan over the term of the loan. Except as
14 provided in Section 2-25, this charge is considered fully
15 earned as of the date on which the loan is made.

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

19 (g) A consumer has the right to redeem a check or any other
20 item described in the definition of payday loan under Section
21 1-10 issued in connection with a payday loan from the lender
22 holding the check or other item at any time before the payday
23 loan becomes payable by paying the full amount of the check or
24 other item.

25 (h) No lender may make a payday loan with periodic payments
26 unless the periodic payments are substantially equal term

1 payments and, if paid as scheduled, result in full payment of
2 the principal and interest owed on the loan at the end of the
3 loan term.

4 (Source: P.A. 94-13, eff. 12-6-05.)

5 (815 ILCS 122/2-55)

6 Sec. 2-55. Information, reporting, and examination.

7 (a) A licensee shall keep and use books, accounts, and
8 records that will enable the Secretary to determine if the
9 licensee is complying with the provisions of this Act and
10 maintain any other records as required by the Secretary.

11 (b) A licensee shall collect and maintain information
12 annually for a report that shall disclose in detail and under
13 appropriate headings:

14 (1) the total number of payday loans made during the
15 preceding calendar year;

16 (2) the total number of payday loans outstanding as of
17 December 31 of the preceding calendar year;

18 (3) the minimum, maximum, and average dollar amount of
19 payday loans made during the preceding calendar year;

20 (4) the average annual percentage rate and the average
21 term of payday loans made during the preceding calendar
22 year; ~~and~~

23 (5) the total number of payday loans paid in full, the
24 total number of loans that went into default, and the total
25 number of loans written off during the preceding calendar

1 year; and ~~+~~

2 (6) the total number of lawsuits filed by the licensee
3 or its agent against consumers to collect on payday loans
4 from consumers during the preceding calendar year.

5 The report shall be verified by the oath or affirmation of
6 the owner, manager, or president of the licensee. The report
7 must be filed with the Secretary no later than March 1 of the
8 year following the year for which the report discloses the
9 information specified in this subsection (b). The Secretary may
10 impose upon the licensee a fine of \$25 per day for each day
11 beyond the filing deadline that the report is not filed.

12 (c) No later than July 31 of the second year following the
13 effective date of this Act, the Department shall publish an
14 annual ~~a biennial~~ report that contains a compilation of
15 aggregate data concerning the payday lending industry and shall
16 make the report available to the Governor, the General
17 Assembly, and the general public.

18 (d) The Department shall have the authority to conduct
19 examinations of the books, records, and loan documents at any
20 time.

21 (Source: P.A. 94-13, eff. 12-6-05.)

22 (815 ILCS 122/4-5)

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

1 of the following acts:

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

4 (2) Using any device or agreement that would have the
5 effect of charging or collecting more fees or charges than
6 allowed by this Act, including, but not limited to,
7 entering into a different type of transaction with the
8 consumer.

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

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

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

17 (6) Knowingly accepting any security, other than that
18 specified in the definition of payday loan in Section 1-10,
19 for a payday loan.

20 (7) Charging any fees or charges other than those
21 specifically authorized by this Act.

22 (8) Threatening to take any action against a consumer
23 that is prohibited by this Act or making any misleading or
24 deceptive statements regarding the payday loan or any
25 consequences thereof.

26 (9) Making a misrepresentation of a material fact by an

1 applicant for licensure in obtaining or attempting to
2 obtain a license.

3 (10) Including any of the following provisions in loan
4 documents required by subsection (b) of Section 2-20:

5 (A) a confession of judgment clause;

6 (B) a waiver of the right to a jury trial, if
7 applicable, in any action brought by or against a
8 consumer, unless the waiver is included in an
9 arbitration clause allowed under subparagraph (C) of
10 this paragraph (11);

11 (C) a mandatory arbitration clause that is
12 oppressive, unfair, unconscionable, or substantially
13 in derogation of the rights of consumers; or

14 (D) a provision in which the consumer agrees not to
15 assert any claim or defense arising out of the
16 contract.

17 (11) Selling any insurance of any kind whether or not
18 sold in connection with the making or collecting of a
19 payday loan.

20 (12) Taking any power of attorney.

21 (13) Taking any security interest in real estate.

22 (14) Collecting a delinquency or collection charge on
23 any installment regardless of the period in which it
24 remains in default.

25 (15) Collecting treble damages on an amount owing from
26 a payday loan.

1 (16) Refusing, or intentionally delaying or
2 inhibiting, the consumer's right to enter into a repayment
3 plan pursuant to this Act.

4 (17) Charging for, or attempting to collect,
5 attorney's fees, court costs, or arbitration costs
6 incurred in connection with the collection of a payday
7 loan.

8 (18) Making a loan in violation of this Act.

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

11 (20) Failing to suspend or defer collection activity
12 against a consumer who is a member of the military and who
13 has been deployed to a combat or combat-support posting.

14 (21) Contacting the military chain of command of a
15 consumer who is a member of the military in an effort to
16 collect on a payday loan.

17 (22) Evading the requirements and prohibitions of this
18 Act by use of a device or subterfuge including, but not
19 limited to, (i) disguising a payday loan as a different
20 type of transaction, or (ii) characterizing a required fee
21 as a purchase of a good or service in connection with a
22 payday loan.

23 (Source: P.A. 94-13, eff. 12-6-05.)

24 (815 ILCS 122/4-30)

25 Sec. 4-30. Rulemaking; industry review.

1 (a) The Department may make and enforce such reasonable
2 rules, regulations, directions, orders, decisions, and
3 findings as the execution and enforcement of the provisions of
4 this Act require, and as are not inconsistent therewith. The
5 Department may develop rules to determine if any person or
6 entity seeks to evade the applicability of this Act by any
7 device, subterfuge, or pretense. All rules, regulations, and
8 directions of a general character shall be printed and copies
9 thereof mailed to all licensees.

10 (b) Within 6 months after the effective date of this Act,
11 the Department shall promulgate reasonable rules regarding the
12 issuance of payday loans by banks, savings banks, savings and
13 loan associations, credit unions, and insurance companies.
14 These rules shall be consistent with this Act and shall be
15 limited in scope to the actual products and services offered by
16 lenders governed by this Act.

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

1 reporting tools that:

2 (1) ensure substantial compliance with this Act,
3 including real time reporting of outstanding payday loans;
4 and

5 (2) provide data to the Department in an appropriate
6 form and with appropriate content to allow the Department
7 to adequately monitor the industry.

8 The report of the Department shall, if necessary, identify
9 and recommend specific amendments to this Act to further
10 protect consumers and to guarantee fair and reasonable
11 regulation of the payday loan industry.

12 (Source: P.A. 94-13, eff. 12-6-05.)

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