

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, 2-55, 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 122/2-55)

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

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

15 (b) A licensee shall collect and maintain information  
16 annually for a report that shall disclose in detail and under  
17 appropriate headings:

18 (1) the total number of payday loans made during the  
19 preceding calendar year;

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

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

24 (4) the average annual percentage rate and the average  
25 term of payday loans made during the preceding calendar

1 year; ~~and~~

2 (5) the total number of payday loans paid in full, the  
3 total number of loans that went into default, and the total  
4 number of loans written off during the preceding calendar  
5 year; and -

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

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

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

22 (d) The Department shall have the authority to conduct  
23 examinations of the books, records, and loan documents at any  
24 time.

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

1 (815 ILCS 122/4-5)

2 Sec. 4-5. Prohibited acts. A licensee or unlicensed person  
3 or entity making payday loans may not commit, or have committed  
4 on behalf of the licensee or unlicensed person or entity, any  
5 of the following acts:

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

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

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

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

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

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

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

26 (8) Threatening to take any action against a consumer

1 that is prohibited by this Act or making any misleading or  
2 deceptive statements regarding the payday loan or any  
3 consequences thereof.

4 (9) Making a misrepresentation of a material fact by an  
5 applicant for licensure in obtaining or attempting to  
6 obtain a license.

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

9 (A) a confession of judgment clause;

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

15 (C) a mandatory arbitration clause that is  
16 oppressive, unfair, unconscionable, or substantially  
17 in derogation of the rights of consumers; or

18 (D) a provision in which the consumer agrees not to  
19 assert any claim or defense arising out of the  
20 contract.

21 (11) Selling any insurance of any kind whether or not  
22 sold in connection with the making or collecting of a  
23 payday loan.

24 (12) Taking any power of attorney.

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

26 (14) Collecting a delinquency or collection charge on

1 any installment regardless of the period in which it  
2 remains in default.

3 (15) Collecting treble damages on an amount owing from  
4 a payday loan.

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

8 (17) Charging for, or attempting to collect,  
9 attorney's fees, court costs, or arbitration costs  
10 incurred in connection with the collection of a payday  
11 loan.

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

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

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

18 (21) Contacting the military chain of command of a  
19 consumer who is a member of the military in an effort to  
20 collect on a payday loan.

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



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

2 (815 ILCS 122/4-30)

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

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

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

20 (c) After the effective date of this Act, the Department  
21 shall, over a 3-year period, conduct a study of the payday loan  
22 industry to determine the impact and effectiveness of this Act.  
23 The Department shall report its findings to the General  
24 Assembly within 3 months of the third anniversary of the  
25 effective date of this Act. The study shall determine the

1 effect of this Act on the protection of consumers in this State  
2 and on the fair and reasonable regulation of the payday loan  
3 industry. The study shall include, but shall not be limited to,  
4 an analysis of the ability of the industry to use private  
5 reporting tools that:

6 (1) ensure substantial compliance with this Act,  
7 including real time reporting of outstanding payday loans;  
8 and

9 (2) provide data to the Department in an appropriate  
10 form and with appropriate content to allow the Department  
11 to adequately monitor the industry.

12 The report of the Department shall, if necessary, identify  
13 and recommend specific amendments to this Act to further  
14 protect consumers and to guarantee fair and reasonable  
15 regulation of the payday loan industry.

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

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