

AN ACT concerning regulation.

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

Section 5. The Consumer Installment Loan Act is amended by changing Section 20 as follows:

(205 ILCS 670/20) (from Ch. 17, par. 5426)

Sec. 20. Penalties for violation.

(a) Any person who engages in business as a Consumer Installment Loan lender without the license required by this Act shall be guilty of a Class 4 felony.

(b) The obligor, prior to the expiration of 2 years after the date of his last scheduled payment, may recover such reasonable attorney's fees and court costs as a court may assess against such licensee or lender for a violation of Sections 1, 12, 15, 15a, 15b, 15d, 15e, 16, 17, 18, or 19.1. The balance due under the terms of the loan contract shall be reduced by the amount which the obligor is thus entitled to recover. A bona fide error by a licensee in calculating charges or rebates is not a violation if the licensee corrects the error within a reasonable time, after discovery.

(b-5) A license issued under this Act may be revoked if the licensee, or any directors, managers of a limited liability company, partners, or officer thereof is convicted of a felony.

(c) No provision of this Section imposing any liability shall apply to any act done or omitted in conformity with any rule or regulation or written interpretation thereof by the Department of Financial and Professional Regulation, Division of Financial Institutions, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason. All interpretations issued after January 1, 1998 must be written and signed by the Department's Chief Counsel and approved by the Director.

(d) Notwithstanding any other provision of this Section, if any person who does not have a license issued under this Act makes a loan pursuant to this Act to an Illinois consumer, then the loan shall be null and void and the person who made the loan shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan.

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

Section 10. The Payday Loan Reform Act is amended by changing Section 4-10 as follows:

(815 ILCS 122/4-10)

Sec. 4-10. Enforcement and remedies.

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

(b) Any material violation of this Act, including the commission of an act prohibited under Section 4-5, constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act.

(c) If any provision of the written agreement described in subsection (b) of Section 2-20 violates this Act, then that provision is unenforceable against the consumer.

(d) Subject to the Illinois Administrative Procedure Act, the Secretary may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have the power to issue fines of up to \$10,000 per violation, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act. All proceedings shall be open to the public.

(e) The Secretary may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. The cease and desist order permitted by this subsection (e) may be issued prior to a hearing.

The Secretary shall serve notice of his or her action, including, but not limited to, a statement of the reasons for the action, either personally or by certified mail, return

receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

Within 10 days of service of the cease and desist order, the licensee or other person may request a hearing in writing. The Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

If it is determined that the Secretary had the authority to issue the cease and desist order, he or she may issue such orders as may be reasonably necessary to correct, eliminate, or remedy the conduct.

The powers vested in the Secretary by this subsection (e) are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this subsection (e) shall be construed as requiring that the Secretary shall employ the power conferred in this subsection instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

(f) The Secretary may, after 10 days notice by registered mail to the licensee at the address set forth in the license stating the contemplated action and in general the grounds therefore, fine the licensee an amount not exceeding \$10,000 per violation, or revoke or suspend any license issued hereunder if he or she finds that:

- (1) the licensee has failed to comply with any provision of this Act or any order, decision, finding,

rule, regulation, or direction of the Secretary lawfully made pursuant to the authority of this Act; or

(2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Secretary in refusing to issue the license.

The Secretary may fine, suspend, or revoke only the particular license with respect to which grounds for the fine, revocation, or suspension occur or exist, but if the Secretary finds that grounds for revocation are of general application to all offices or to more than one office of the licensee, the Secretary shall fine, suspend, or revoke every license to which the grounds apply.

No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligor.

The Secretary may issue a new license to a licensee whose license has been revoked when facts or conditions which clearly would have warranted the Secretary in refusing originally to issue the license no longer exist.

In every case in which a license is suspended or revoked or an application for a license or renewal of a license is denied, the Secretary shall serve the licensee with notice of his or her action, including a statement of the reasons for his or her actions, either personally, or by certified mail, return receipt requested. Service by certified mail shall be deemed

completed when the notice is deposited in the U.S. Mail.

An order assessing a fine, an order revoking or suspending a license, or an order denying renewal of a license shall take effect upon service of the order unless the licensee requests a hearing, in writing, within 10 days after the date of service. In the event a hearing is requested, the order shall be stayed until a final administrative order is entered.

If the licensee requests a hearing, the Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

The hearing shall be held at the time and place designated by the Secretary. The Secretary and any administrative law judge designated by him or her shall have the power to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers, correspondence, and other records or information that he or she considers relevant or material to the inquiry.

(g) The costs of administrative hearings conducted pursuant to this Section shall be paid by the licensee.

(h) Notwithstanding any other provision of this Section, if a lender who does not have a license issued under this Act makes a loan pursuant to this Act to an Illinois consumer, then the loan shall be null and void and the lender who made the loan shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan.

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HB3935 Enrolled

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

Section 99. Effective date. This Act takes effect January 1, 2013.