

# HB5438



## 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.

LRB100 18342 JLS 33548 b

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 and 2-5 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 The term "payday loan" includes "installment payday loan",  
3 unless otherwise specified in this Act.

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

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

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

11 (815 ILCS 122/2-5)

12 Sec. 2-5. Loan terms.

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

16 (b) Except for an installment payday loan as defined in  
17 this Section, no payday loan may be made to a consumer if the  
18 loan would result in the consumer being indebted to one or more  
19 payday lenders for a period in excess of 45 consecutive days.  
20 Except as provided under subsection (c) of this Section and  
21 Section 2-40, if a consumer has or has had loans outstanding  
22 for a period in excess of 45 consecutive days, no payday lender  
23 may offer or make a loan to the consumer for at least 7  
24 calendar days after the date on which the outstanding balance  
25 of all payday loans made during the 45 consecutive day period

1 is paid in full. For purposes of this subsection, the term  
2 "consecutive days" means a series of continuous calendar days  
3 in which the consumer has an outstanding balance on one or more  
4 payday loans; however, if a payday loan is made to a consumer  
5 within 6 days or less after the outstanding balance of all  
6 loans is paid in full, those days are counted as "consecutive  
7 days" for purposes of this subsection.

8 (c) Notwithstanding anything in this Act to the contrary, a  
9 payday loan shall also include any installment loan otherwise  
10 meeting the definition of payday loan contained in Section  
11 1-10, but that has a term agreed by the parties of not less  
12 than 112 days and not exceeding 180 days; hereinafter an  
13 "installment payday loan". The following provisions shall  
14 apply:

15 (i) Any installment payday loan must be fully  
16 amortizing, with a finance charge not exceeding an annual  
17 percentage rate of 36% calculated on the principal balances  
18 scheduled to be outstanding and be repayable in  
19 substantially equal and consecutive installments,  
20 according to a payment schedule agreed by the parties with  
21 not less than 13 days and not more than one month between  
22 payments; except that the first installment period may be  
23 longer than the remaining installment periods by not more  
24 than 15 days, and the first installment payment may be  
25 larger than the remaining installment payments by the  
26 amount of finance charges applicable to the extra days. ~~In~~

1 ~~calculating finance charges under this subsection, when~~  
2 ~~the first installment period is longer than the remaining~~  
3 ~~installment periods, the amount of the finance charges~~  
4 ~~applicable to the extra days shall not be greater than~~  
5 ~~\$15.50 per \$100 of the original principal balance divided~~  
6 ~~by the number of days in a regularly scheduled installment~~  
7 ~~period and multiplied by the number of extra days~~  
8 ~~determined by subtracting the number of days in a regularly~~  
9 ~~scheduled installment period from the number of days in the~~  
10 ~~first installment period.~~

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

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

26 (iv) No installment payday loan may be made to a

1 consumer if the loan would result in the consumer being  
2 indebted to one or more payday lenders for a period in  
3 excess of 180 consecutive days. The term "consecutive days"  
4 does not include the date on which a consumer makes the  
5 final installment payment.

6 (d) (Blank).

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

12 (1) \$1,000; or

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

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

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

19 No loan shall be made to a consumer who has an outstanding  
20 balance on 2 payday loans, except that, for a period of 12  
21 months after March 21, 2011 (the effective date of Public Act  
22 96-936), consumers with an existing CILA loan may be issued an  
23 installment loan issued under this Act from the company from  
24 which their CILA loan was issued.

25 (e-5) No ~~Except as provided in subsection (e) (i),~~ no lender  
26 may impose a finance charge exceeding an annual percentage rate



1 ~~of 36% more than \$15.50 per \$100 loaned on any payday loan, or~~  
2 ~~more than \$15.50 per \$100 on the initial principal balance and~~  
3 ~~on the principal balances scheduled to be~~ outstanding during  
4 any installment period on any installment payday loan. Except  
5 for installment payday loans and except as provided in Section  
6 2-25, this charge is considered fully earned as of the date on  
7 which the loan is made. For purposes of determining the finance  
8 charge earned on an installment payday loan, the disclosed  
9 annual percentage rate shall be applied to the principal  
10 balances outstanding from time to time until the loan is paid  
11 in full, or until the maturity date, whichever occurs first. No  
12 finance charge may be imposed after the final scheduled  
13 maturity date.

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

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

24 (g) A consumer has the right to redeem a check or any other  
25 item described in the definition of payday loan under Section  
26 1-10 issued in connection with a payday loan from the lender

1 holding the check or other item at any time before the payday  
2 loan becomes payable by paying the full amount of the check or  
3 other item.

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

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