

1 AN ACT concerning deferred deposit lending practices.

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

4 Section 5. The Consumer Installment Loan act is amended
5 by changing Section 15d and adding Sections 1.5, 8.2, 17.1,
6 17.2, 17.3, 17.4, 17.5, and 22.1 as follows:

7 (205 ILCS 670/1.5 new)

8 Sec. 1.5. Definitions.

9 "Deferred deposit loan" means a loan upon which interest
10 is charged at an annual percentage rate exceeding 36%
11 pursuant to a written agreement between a licensee and the
12 maker of a check whereby at commencement the licensee accepts
13 a post dated check from the maker dated on the date the loan
14 is due.

15 "Deferred deposit lender" means the following:

16 (1) Any person who offers or makes a deferred
17 deposit loan, who arranges a deferred deposit loan for a
18 third party, or who acts as an agent for a third party,
19 regardless of whether the third party is exempt from
20 licensing under this Act or whether approval, acceptance,
21 or ratification by the third party is necessary to create
22 a legal obligation for the third party.

23 (2) Notwithstanding the foregoing, a state or
24 federally chartered bank, saving and loan association,
25 credit union, or supervised lender shall not be
26 considered a deferred deposit lender for purposes of this
27 Act and shall be specifically exempt from the provisions
28 of this Act so long as all of the following are
29 satisfied:

30 (A) it initially advances the loan proceeds to
31 the customer;

1 (B) it does not sell, assign, or transfer in
2 the aggregate a preponderant economic interest in
3 the deferred deposit transactions to the arranger,
4 agent, or assistant or an affiliate or subsidiary of
5 the state or federally chartered bank, saving and
6 loan association, credit union, or supervised
7 lender, unless selling, assigning, or transferring a
8 preponderant economic interest is permitted by the
9 primary regulator of the state or federally
10 chartered bank, saving and loan association, credit
11 union, or supervised lender; and

12 (C) it develops the deferred deposit loan
13 program on its own.

14 (3) If a deferred deposit lender, as defined in
15 item (1) of this provision, offers, arranges, acts as an
16 agent for, or assists a state or federally chartered
17 bank, saving and loan association, credit union, or
18 supervised lender in any way in the making of a deferred
19 deposit loan and the state or federally chartered bank,
20 saving and loan association, credit union, or supervised
21 lender meets the standards set for the in item (2) of
22 this provision, the deferred deposit lender shall comply
23 with all other requirements of this Act to the extent
24 they are not preempted by other state or federal laws.

25 "Interest bearing loan" means a loan in which interest
26 is charged upon the principal amount borrowed.

27 "Simple interest" means that the interest on all deferred
28 deposit loans is computed as simple interest as defined in 38
29 Ill. Adm. Code 110.80.

30 "Check" means a personal check, draft, or other
31 negotiable instrument signed by the obligor and made payable
32 to a licensee and includes the electronic equivalent of a
33 check including, but not limited to, automatic clearing house
34 transactions.

1 "Renew" means to enter into a deferred deposit loan
2 within 7 days after the termination of a previous loan
3 between the consumer and the deferred deposit lender,
4 including the extension of an existing loan with only the
5 payment of the fee. If the previous deferred deposit loan
6 principal is paid in full, the renewed loan may be in a
7 principal amount allowed under this Act. If the previous
8 deferred deposit loan principal is not paid in full, as
9 permitted under subsection (b) of Section 17.1, the renewed
10 loan may be in a principal amount not to exceed the amount of
11 the unpaid principal of the previous loan.

12 (205 ILCS 670/8.2 new)

13 Sec. 8.2. Availability of debt management services.

14 (a) Before entering into a deferred deposit loan
15 agreement, a licensee must give to the obligor a pamphlet,
16 approved by the Director, describing the availability of debt
17 management services and the obligor's rights and
18 responsibilities in the transaction.

19 (b) Each deferred deposit loan agreement and refinancing
20 agreement executed by a licensee shall include a statement,
21 which shall be conspicuous and in close proximity to the
22 signature of the obligor, as follows: "I have received from
23 (name of lender) a toll free number from the Department of
24 Financial Institutions that I can call for information
25 regarding debt management services."

26 (c) At the time a deferred deposit lender conveys any
27 written notice to an obligor indicating the obligor is in
28 arrears or that the obligor is in default, the lender shall
29 include with the notice a statement indicating a toll free
30 number of the Department of Financial Institutions that the
31 obligor may contact for the purpose of the obligor receiving
32 information from the Department regarding debt management
33 services. The form and method of providing the information

1 shall be subject to approval of the Department.

2 (205 ILCS 670/15d) (from Ch. 17, par. 5419)

3 Sec. 15d. Extra charges prohibited; exceptions. No
4 amount in addition to the charges authorized by this Act
5 shall be directly or indirectly charged, contracted for, or
6 received, except (1) lawful fees paid to any public officer
7 or agency to record, file or release security; (2) (i) costs
8 and disbursements actually incurred in connection with a real
9 estate loan, for any title insurance, title examination,
10 abstract of title, survey, or appraisal, or paid to a trustee
11 in connection with a trust deed, and (ii) in connection with
12 a real estate loan those charges authorized by Section 4.1a
13 of the Interest Act, whether called "points" or otherwise,
14 which charges are imposed as a condition for making the loan
15 and are not refundable in the event of prepayment of the
16 loan; (3) costs and disbursements, including reasonable
17 attorney's fees, incurred in legal proceedings to collect a
18 loan or to realize on a security after default; (4) an amount
19 not exceeding \$25, plus any actual expenses incurred in
20 connection with a check or draft that is not honored because
21 of insufficient or uncollected funds or because no such
22 account exists, provided, that in connection with a deferred
23 deposit loan, the amount authorized under this item (4) shall
24 not exceed \$20 plus any actual expenses so incurred; and (5)
25 a document preparation fee not to exceed \$25 for obtaining
26 and reviewing credit reports and preparation of other
27 documents; and (6) a deferred deposit loan delinquency fee,
28 if provided for in the written agreement between licensee and
29 obligor, not to exceed \$5 for a deferred deposit loan in
30 default in any amount for a period not less than 10 days,
31 which may be assessed once on any loan regardless of the
32 period during which it remains in default. A deferred deposit
33 lender may not contract for or collect attorney's fees from

1 obligors on legal actions arising from deferred deposit loans
2 made under this Act, unless the legal action against the
3 obligor is based upon fraud, nor may a deferred deposit
4 lender use or threaten to use the criminal process to collect
5 a deferred deposit loan. This Section does not prohibit the
6 receipt of a commission, dividend, charge, or other benefit
7 by the licensee or by an employee, affiliate, or associate of
8 the licensee from the insurance permitted by Sections 15a and
9 15b of this Act or from insurance in lieu of perfecting a
10 security interest provided that the premiums for such
11 insurance do not exceed the fees that otherwise could be
12 contracted for by the licensee under this Section. Obtaining
13 any of the items referred to in clause (i) of item (2) of
14 this Section through the licensee or from any person
15 specified by the licensee shall not be a condition precedent
16 to the granting of the loan.

17 (Source: P.A. 89-400, eff. 8-20-95; 90-437, eff. 1-1-98.)

18 (205 ILCS 670/17.1 new)

19 Sec. 17.1 Deferred deposit loan terms.

20 (a) A deferred deposit loan may not exceed \$400 in
21 principal amount. However, no loan shall be made in such
22 amount that the principal and interest payments for the
23 stated duration of the loan exceed 50% of the obligor's gross
24 income for that period.

25 (b) An obligor may renew a deferred deposit loan one
26 time after the original loan.

27 An obligor may renew a deferred deposit loan a second
28 time if he repays at least 25% of the principal of the
29 previous loan.

30 An obligor may renew a deferred deposit loan a third time
31 if he repays at least 50% of the principal of the previous
32 loan.

33 An obligor may renew a deferred deposit loan more than 3

1 times if:

2 (1) he repays the entire principal of the previous
3 loan; and

4 (2) he is provided the opportunity to convert the
5 term of the loan to the Mandatory Payment Plan, as
6 provided in subsection (c).

7 (c) A lender must provide the obligor written notice of
8 the obligor's right to request a repayment plan under the
9 conditions established in this subsection. The form of the
10 written notice shall be either prescribed or approved by the
11 Department and shall be set forth conspicuously both at the
12 point-of-sale and in every deferred deposit loan agreement.

13 If an obligor renews a deferred deposit loan a fourth
14 time, that fourth renewed loan and each renewed loan
15 thereafter is subject to a mandatory prepayment plan that
16 allows the obligor to repay the renewed loan on the following
17 terms:

18 (1) the obligor must request the repayment plan, in
19 writing, not later than 24 hours prior to the due date of
20 the deferred deposit loan;

21 (2) the obligor shall be allowed to repay the
22 deferred deposit loan in 4 equal installments with one
23 installment due on each of the obligor's next 4 pay dates
24 (with at least 13 days between installments);

25 (3) the obligor shall pay a fee not to exceed \$15
26 for electing the payment plan; and

27 (4) the obligor shall agree not to enter into any
28 additional deferred deposit loan during the payment plan
29 term or for a period of 14 days after termination of the
30 payment plan term.

31 (d) The post-dated check used as security for a deferred
32 deposit loan must name the lender as payee.

33 (e) The loan agreement for a deferred deposit loan must
34 include a separate statement signed by the obligor attesting

1 that the obligor is not barred from obtaining a deferred
2 deposit loan under the requirements of this Act. The lender
3 shall further verify the statement by means of any database
4 created by or approved by the Department of Financial
5 Institutions that purpose.

6 (f) The loan agreement shall advise the obligor that
7 matters involving improprieties in the making of the loan or
8 in loan collection practices may be referred to the
9 Department and shall prominently disclose the Department's
10 address and telephone number.

11 (g) Each deferred deposit loan refinancing agreement
12 executed by a licensee shall include a statement, which shall
13 be initialed by the obligor, as follows: "I have received
14 from (name of lender) a toll free number from the Department
15 of Financial Institutions that I can call for information
16 regarding debt management services."

17 (205 ILCS 670/17.2 new)

18 Sec. 17.2. Deferred deposit loan notifications. At the
19 time a deferred deposit lender conveys a second notice to an
20 obligor indicating the obligor is in arrears or at the time
21 of any notice that the obligor is in default for a debt owed
22 to the deferred deposit lender, the licensee shall include
23 with the notice a statement indicating a telephone number of
24 the Department of Financial Institutions that the obligor may
25 contact for the purpose of the obligor receiving information
26 from the Department regarding debt management services for
27 assisting the obligor. The form and method of the notice
28 provided by the lender shall be subject to approval by the
29 Director.

30 (205 ILCS 670/17.3 new)

31 Sec. 17.3. Security interest. A deferred deposit lender
32 may not take a security interest in any of the obligor's

1 property other than the check as tendered to the lender at
2 the time of the making of the loan.

3 (205 ILCS 670/17.4 new)

4 Sec. 17.4. Deferred deposit loan proceeds. A deferred
5 deposit lender must issue the proceeds of a deferred deposit
6 loan in the form of a check drawn on the licensee's bank
7 account, in cash, or by money order. When the proceeds are
8 issued in the form of a check drawn on the lender's bank
9 account or by money order, the lender may not charge a fee
10 for cashing the check or money order if cashing services are
11 offered at the location. When the proceeds are issued in
12 cash, the lender must provide the obligor with a written
13 verification of the cash transaction and shall maintain a
14 record of the transaction.

15 (205 ILCS 670/17.5 new)

16 Sec. 17.5. Right of rescission. An obligor may rescind a
17 deferred deposit loan agreement without cost no later than
18 the end of the business day immediately following the day on
19 which the deferred deposit loan was made. To rescind the
20 deferred deposit loan, an obligor must inform the lender that
21 the obligor wants to rescind the deferred deposit loan and
22 return the uncashed proceeds check or cash in an amount equal
23 to the amount loaned pursuant to the written agreement.

24 (205 ILCS 670/22.1 new)

25 Sec. 22.1. Preemption of administrative rules. The
26 provisions of this Act that are applicable to deferred
27 deposit lenders, including Sections 1.5, 2.5, 8.2, 15d, 17.1,
28 17.2, 17.3, 17.4, and 17.5, preempt the provisions of the
29 Illinois Administrative Code that are applicable to deferred
30 deposit lenders providing deferred deposit loans, including
31 38 Ill. Adm. Code 110.300, 110.310, 110.320, 110.330,

1 110.360, 110.370, 110.380, 110.390, 110.400, and 110.410.

2 Section 15. The Criminal Code of 1961 is amended by
3 changing Section 17-1a as follows:

4 (720 ILCS 5/17-1a) (from Ch. 38, par. 17-1a)

5 Sec. 17-1a. Civil liability for deceptive practices. A
6 person who issues a check or order to a payee in violation of
7 Section 17-1(B) (d) and who fails to pay the amount of the
8 check or order to the payee within 30 days following either
9 delivery and acceptance by the addressee of a written demand
10 by both certified mail and by first class mail to the
11 person's last know address; or attempted delivery of a
12 written demand sent by both certified mail and by first class
13 mail to the person's last known address and the demand by
14 certified mail is returned to the sender with a notation that
15 delivery was refused or unclaimed, shall be liable to the
16 payee or a person subrogated to the rights of the payee for,
17 in addition to the amount owing upon such check or order,
18 damages of treble the amount so owing, but in no case less
19 than \$100 nor more than \$1,500, plus attorney fees and court
20 costs, provided that a deferred deposit lender, as that term
21 is defined in Section 1.5 of the Consumer Installment Loan
22 Act, shall not be entitled to collect damages of treble on an
23 amount owing from a deferred deposit loan.

24 A cause of action under this Section may be brought in
25 small claims court or in any other appropriate court. As
26 part of the written demand required by this Section, the
27 plaintiff shall provide written notice to the defendant of
28 the fact that prior to the hearing of any action under this
29 Section, the defendant may tender to the plaintiff and the
30 plaintiff shall accept as satisfaction of the claim, an
31 amount of money equal to the sum of the amount of the check
32 and the incurred court costs, and service and attorney fees.

1 (Source: P.A. 89-378, eff. 8-18-95; 90-227, eff. 1-1-98;
2 90-721, eff. 1-1-99.)

3 Section 97. Severability. The provisions of this Act are
4 severable under Section 1.31 of the Statute on Statutes.

5 Section 99. Effective date. This Act takes effect on
6 October 1, 2003.