



Sen. Jacqueline Y. Collins

Filed: 5/4/2005

09400HB1100sam001

LRB094 09280 MKM 45925 a

1 AMENDMENT TO HOUSE BILL 1100

2 AMENDMENT NO. _____. Amend House Bill 1100 by replacing
3 everything after the enacting clause with the following:

4 "Article 1. General Provisions

5 Section 1-1. Short title. This Act may be cited as the
6 Payday Loan Reform Act.

7 Section 1-5. Purpose and construction. The purpose of this
8 Act is to protect consumers who enter into payday loans and to
9 regulate the lenders of payday loans. This Act shall be
10 construed as a consumer protection law for all purposes. This
11 Act shall be liberally construed to effectuate its purpose.

12 Section 1-10. Definitions. As used in this Act:

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

16 "Commercially reasonable method of verification" or
17 "certified database" means a consumer reporting service
18 database certified by the Department as effective in verifying
19 that a proposed loan agreement is permissible under this Act,
20 or, in the absence of the Department's certification, any
21 reasonably reliable written verification by the consumer
22 concerning (i) whether the consumer has any outstanding payday

1 loans, (ii) the principal amount of those outstanding payday
2 loans, and (iii) whether any payday loans have been paid in
3 full by the consumer in the preceding 7 days.

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

6 "Consumer reporting service" means an entity that provides
7 a database certified by the Department.

8 "Department" means the Department of Financial and
9 Professional Regulation.

10 "Secretary" means the Secretary of Financial and
11 Professional Regulation.

12 "Gross monthly income" means monthly income as
13 demonstrated by official documentation of the income,
14 including, but not limited to, a pay stub or a receipt
15 reflecting payment of government benefits, for the period 30
16 days prior to the date on which the loan is made.

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

29 "Loan agreement" means a written agreement between a lender
30 and consumer to make a loan to the consumer, regardless of
31 whether any loan proceeds are actually paid to the consumer on
32 the date on which the loan agreement is made.

33 "Member of the military" means a person serving in the
34 armed forces of the United States, the Illinois National Guard,

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

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

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

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

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

24 (3) A lender accepts an interest in a consumer's wages,
25 including, but not limited to, a wage assignment.

26 "Principal amount" means the amount received by the
27 consumer from the lender due and owing on a loan, excluding any
28 finance charges, interest, fees, or other loan-related
29 charges.

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

32 Section 1-15. Applicability.

33 (a) Except as otherwise provided in this Section, this Act

1 applies to any lender that offers or makes a payday loan to a
2 consumer in Illinois.

3 (b) The provisions of this Act apply to any person or
4 entity that seeks to evade its applicability by any device,
5 subterfuge, or pretense whatsoever.

6 (c) Retail sellers who cash checks incidental to a retail
7 sale and who charge no more than the fees as provided by the
8 Check Cashing Act per check for the service are exempt from the
9 provisions of this Act.

10 (d) Banks, savings banks, savings and loan associations,
11 credit unions, and insurance companies organized, chartered,
12 or holding a certificate of authority to do business under the
13 laws of this State or any other state or under the laws of the
14 United States are exempt from the provisions of this Act.

15 (e) A lender, as defined in Section 1-10, that is an agent
16 for a bank, savings bank, savings and loan association, credit
17 union, or insurance company for the purpose of brokering,
18 selling, or otherwise offering payday loans made by the bank,
19 savings bank, savings and loan association, credit union, or
20 insurance company shall be subject to all of the provisions of
21 this Act, except those provisions related to finance charges.

22 Article 2. Payday Loans

23 Section 2-5. Loan terms.

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

27 (b) No payday loan may be made to a consumer if the loan
28 would result in the consumer being indebted to one or more
29 payday lenders for a period in excess of 45 consecutive days.
30 Except as provided under Section 2-40, if a consumer has or has
31 had loans outstanding for a period in excess of 45 consecutive
32 days, no payday lender may offer or make a loan to the consumer

1 for at least 7 calendar days after the date on which the
2 outstanding balance of all payday loans made during the 45
3 consecutive day period is paid in full. For purposes of this
4 subsection, the term "consecutive days" means a series of
5 continuous calendar days in which the consumer has an
6 outstanding balance on one or more payday loans; however, if a
7 payday loan is made to a consumer within 6 days or less after
8 the outstanding balance of all loans is paid in full, those
9 days are counted as "consecutive days" for purposes of this
10 subsection.

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

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

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

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

25 (g) A consumer has the right to redeem a check or any other
26 item described in the definition of payday loan under Section
27 1-10 issued in connection with a payday loan from the lender
28 holding the check or other item at any time before the payday
29 loan becomes payable by paying the full amount of the check or
30 other item.

31 Section 2-7. Wage assignments. Any payday loan that is a
32 transaction in which the lender accepts a wage assignment must
33 meet the requirements of this Act, the requirements of the

1 Illinois Wage Assignment Act, and the requirements of 16 C.F.R.
2 444.2(a)(3)(i) (2003, no subsequent amendments or editions are
3 included). A violation of this Section constitutes a material
4 violation of the Payday Loan Reform Act.

5 Section 2-10. Permitted fees.

6 (a) If there are insufficient funds to pay a check,
7 Automatic Clearing House (ACH) debit, or any other item
8 described in the definition of payday loan under Section 1-10
9 on the day of presentment and only after the lender has
10 incurred an expense, a lender may charge a fee not to exceed
11 \$25. Only one such fee may be collected by the lender with
12 respect to a particular check, ACH debit, or item even if it
13 has been deposited and returned more than once. A lender shall
14 present the check, ACH debit, or other item described in the
15 definition of payday loan under Section 1-10 for payment not
16 more than twice. A fee charged under this subsection (a) is a
17 lender's exclusive charge for late payment.

18 (b) Except for the finance charges described in Section 2-5
19 and as specifically allowed by this Section, a lender may not
20 impose on a consumer any additional finance charges, interest,
21 fees, or charges of any sort for any purpose.

22 Section 2-15. Verification.

23 (a) Before entering into a loan agreement with a consumer,
24 a lender must use a commercially reasonable method of
25 verification to verify that the proposed loan agreement is
26 permissible under this Act.

27 (b) Within 6 months after the effective date of this Act,
28 the Department shall certify that one or more consumer
29 reporting service databases are commercially reasonable
30 methods of verification. Upon certifying that a consumer
31 reporting service database is a commercially reasonable method
32 of verification, the Department shall:

1 (1) provide reasonable notice to all licensees
2 identifying the commercially reasonable methods of
3 verification that are available; and

4 (2) immediately upon certification, require each
5 licensee to use a commercially reasonable method of
6 verification as a means of complying with subsection (a) of
7 this Section.

8 (c) Except as otherwise provided in this Section, all
9 personally identifiable information regarding any consumer
10 obtained by way of the certified database and maintained by the
11 Department is strictly confidential and shall be exempt from
12 disclosure under Section 7(1)(b)(i) of the Freedom of
13 Information Act.

14 (d) Notwithstanding any other provision of law to the
15 contrary, a consumer seeking a payday loan may make a direct
16 inquiry to the consumer reporting service to request a more
17 detailed explanation of the basis for a consumer reporting
18 service's determination that the consumer is ineligible for a
19 new payday loan.

20 (e) In certifying a commercially reasonable method of
21 verification, the Department shall ensure that the certified
22 database:

23 (1) provides real-time access through an Internet
24 connection or, if real-time access through an Internet
25 connection becomes unavailable to lenders due to a consumer
26 reporting service's technical problems incurred by the
27 consumer reporting service, through alternative
28 verification mechanisms, including, but not limited to,
29 verification by telephone;

30 (2) is accessible to the Department and to licensees in
31 order to ensure compliance with this Act and in order to
32 provide any other information that the Department deems
33 necessary;

34 (3) requires licensees to input whatever information

1 is required by the Department;

2 (4) maintains a real-time copy of the required
3 reporting information that is available to the Department
4 at all times and is the property of the Department;

5 (5) provides licensees only with a statement that a
6 consumer is eligible or ineligible for a new payday loan
7 and a description of the reason for the determination; and

8 (6) contains safeguards to ensure that all information
9 contained in the database regarding consumers is kept
10 strictly confidential.

11 (f) The licensee shall update the certified database by
12 inputting all information required under item (3) of subsection
13 (e):

14 (1) on the same day that a payday loan is made;

15 (2) on the same day that a consumer elects a repayment
16 plan, as provided in Section 2-40; and

17 (3) on the same day that a consumer's payday loan is
18 paid in full.

19 (g) A licensee may rely on the information contained in the
20 certified database as accurate and is not subject to any
21 administrative penalty or liability as a result of relying on
22 inaccurate information contained in the database.

23 (h) The certified consumer reporting service shall
24 indemnify the licensee against all claims and actions arising
25 from illegal or willful or wanton acts on the part of the
26 certified consumer reporting service.

27 Section 2-17. Consumer reporting services qualification
28 and bonding.

29 (a) Each consumer reporting service shall have at all times
30 a net worth of not less than \$1,000,000 calculated in
31 accordance with generally accepted accounting principles.

32 (b) Each application for certification under this Act shall
33 be accompanied by a surety bond acceptable to the Department in

1 the amount of \$1,000,000. The surety bond shall be in a form
2 satisfactory to the Department and shall run to the State of
3 Illinois for the benefit of any claimants against the consumer
4 reporting service to secure the faithful performance of its
5 obligations under this Act. The aggregate liability of the
6 surety may exceed the principal sum of the bond. Claimants
7 against the consumer reporting service may themselves bring
8 suit directly on the surety bond or the Department may bring
9 suit on behalf of claimants, either in one action or in
10 successive actions.

11 (c) The surety bond shall remain in effect until
12 cancellation, which may occur only after 90 days' written
13 notice to the Department. Cancellation shall not affect any
14 liability incurred or accrued during that period.

15 (d) The surety bond shall remain in place for 5 years after
16 the consumer reporting service ceases operation in the State.

17 (e) The surety bond proceeds and any cash or other
18 collateral posted as security by a consumer reporting service
19 shall be deemed by operation of law to be held in trust for any
20 claimants under this Act in the event of the bankruptcy of the
21 consumer reporting service.

22 (f) To the extent that any indemnity or fine exceeds the
23 amount of the surety bond described under this Section, the
24 consumer reporting service shall be liable for that amount.

25 (g) Each application for certification under this Act shall
26 be accompanied by a nonrefundable investigation fee of \$2,500,
27 together with an initial certification fee of \$1,000.

28 (h) On or before March 1 of each year, each consumer
29 reporting service qualified under this Section shall pay to the
30 Department a certification fee in the amount of \$1,000.

31 Section 2-20. Required disclosures.

32 (a) Before a payday loan is made, a lender shall deliver to
33 the consumer a pamphlet prepared by the Secretary that:

1 (1) explains, in simple English and Spanish, all of the
2 consumer's rights and responsibilities in a payday loan
3 transaction;

4 (2) includes a toll-free number to the Secretary's
5 office to handle concerns or provide information about
6 whether a lender is licensed, whether complaints have been
7 filed with the Secretary, and the resolution of those
8 complaints; and

9 (3) provides information regarding the availability of
10 debt management services.

11 (b) Lenders shall provide consumers with a written
12 agreement that may be kept by the consumer. The written
13 agreement must include the following information in English and
14 in the language in which the loan was negotiated:

15 (1) the name and address of the lender making the
16 payday loan, and the name and title of the individual
17 employee who signs the agreement on behalf of the lender;

18 (2) disclosures required by the federal Truth in
19 Lending Act;

20 (3) a clear description of the consumer's payment
21 obligations under the loan;

22 (4) the following statement, in at least 14-point bold
23 type face: "You cannot be prosecuted in criminal court to
24 collect this loan.". The information required to be
25 disclosed under this subdivision (4) must be conspicuously
26 disclosed in the loan document and shall be located
27 immediately preceding the signature of the consumer; and

28 (5) the following statement, in at least 14-point bold
29 type face:

30 "WARNING: This loan is not intended to meet long-term
31 financial needs. This loan should be used only to meet
32 short-term cash needs. The cost of your loan may be higher
33 than loans offered by other lending institutions. This loan
34 is regulated by the Department of Financial and

1 Professional Regulation."

2 (c) The following notices in English and Spanish must be
3 conspicuously posted by a lender in each location of a business
4 providing payday loans:

5 (1) A notice that informs consumers that the lender
6 cannot use the criminal process against a consumer to
7 collect any payday loan.

8 (2) The schedule of all finance charges to be charged
9 on loans with an example of the amounts that would be
10 charged on a \$100 loan payable in 13 days and a \$400 loan
11 payable in 30 days, giving the corresponding annual
12 percentage rate.

13 (3) In one-inch bold type, a notice to the public in
14 the lending area of each business location containing the
15 following statement:

16 "WARNING: This loan is not intended to meet long-term
17 financial needs. This loan should be used only to meet
18 short-term cash needs. The cost of your loan may be higher
19 than loans offered by other lending institutions. This loan
20 is regulated by the Department of Financial and
21 Professional Regulation."

22 (4) In one-inch bold type, a notice to the public in
23 the lending area of each business location containing the
24 following statement:

25 "INTEREST-FREE REPAYMENT PLAN: If you still owe on one
26 or more payday loans after 35 days, you are entitled to
27 enter into a repayment plan. The repayment plan will give
28 you at least 55 days to repay your loan in installments
29 with no additional finance charges, interest, fees, or
30 other charges of any kind."

31 Section 2-25. Right to cancel future payment obligations. A
32 consumer may cancel future payment obligations on a payday
33 loan, without cost or finance charges, no later than the end of

1 the second business day immediately following the day on which
2 the payday loan agreement was executed. To cancel future
3 payment obligations on a payday loan, the consumer must inform
4 the lender in writing that the consumer wants to cancel the
5 future payment obligations on the payday loan and must return
6 the uncashed proceeds, check or cash, in an amount equal to the
7 principal amount of the loan.

8 Section 2-30. Rollovers prohibited. Rollover of a payday
9 loan by any lender is prohibited. This Section does not
10 prohibit entering into a repayment plan, as provided under
11 Section 2-40.

12 Section 2-35. Proceeds and payments.

13 (a) A lender may issue the proceeds of a loan in the form
14 of a check drawn on the lender's bank account, in cash, by
15 money order, by debit card, or by electronic funds transfer.
16 When the proceeds are issued in the form of a check drawn on
17 the lender's bank account, by money order, or by electronic
18 funds transfer, the lender may not charge a fee for cashing the
19 check, money order, or electronic funds transfer. When the
20 proceeds are issued in cash, the lender must provide the
21 consumer with written verification of the cash transaction and
22 shall maintain a record of the transaction for at least 3
23 years.

24 (b) After each payment made in full or in part on any loan,
25 the lender shall give the consumer making the payment either a
26 signed, dated receipt or a signed, computer-generated receipt
27 showing the amount paid and the balance due on the loan.

28 (c) Before a loan is made, the lender must provide the
29 consumer, or each consumer if there is more than one, with a
30 copy of the loan documents described in Section 2-20.

31 (d) The holder or assignee of any loan agreement or of any
32 check written by a consumer in connection with a payday loan

1 takes the loan agreement or check subject to all claims and
2 defenses of the consumer against the maker.

3 (e) Upon receipt of a check from a consumer for a loan, the
4 lender must immediately stamp the back of the check with an
5 endorsement that states: "This check is being negotiated as
6 part of a loan under the Payday Loan Reform Act, and any holder
7 of this check takes it subject to all claims and defenses of
8 the maker."

9 (f) Loan payments may be electronically debited from the
10 consumer's bank account. Except as provided by federal law, the
11 lender must obtain prior written approval from the consumer.

12 (g) A consumer may prepay on a loan in increments of \$5 or
13 more at any time without cost or penalty.

14 (h) A loan is made on the date on which a loan agreement is
15 signed by both parties, regardless of whether the lender gives
16 any moneys to the consumer on that date.

17 Section 2-40. Repayment plan.

18 (a) At the time a payday loan is made, the lender must
19 provide the consumer with a separate written notice signed by
20 the consumer of the consumer's right to request a repayment
21 plan. The written notice must comply with the requirements of
22 subsection (c).

23 (b) The loan agreement must include the following language
24 in at least 14-point bold type: IF YOU STILL OWE ON ONE OR MORE
25 PAYDAY LOANS AFTER 35 DAYS, YOU ARE ENTITLED TO ENTER INTO A
26 REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 55
27 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL
28 FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

29 (c) At the time a payday loan is made, on the first page of
30 the loan agreement and in a separate document signed by the
31 consumer, the following shall be inserted in at least 14-point
32 bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE
33 PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A

1 REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 55 DAYS TO REPAY THE
2 LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES,
3 INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

4 (d) If the consumer has or has had one or more payday loans
5 outstanding for 35 consecutive days, any payday loan
6 outstanding on the 35th consecutive day shall be payable under
7 the terms of a repayment plan as provided for in this Section,
8 if the consumer requests the repayment plan. As to any loan
9 that becomes eligible for a repayment plan under this
10 subsection, the consumer has until 28 days after the default
11 date of the loan to request a repayment plan. Within 48 hours
12 after the request for a repayment plan is made, the lender must
13 prepare the repayment plan agreement and both parties must
14 execute the agreement. Execution of the repayment plan
15 agreement shall be made in the same manner in which the loan
16 was made and shall be evidenced in writing.

17 (e) The terms of the repayment plan for a payday loan must
18 include the following:

19 (1) The lender may not impose any charge on the
20 consumer for requesting or using a repayment plan.
21 Performance of the terms of the repayment plan extinguishes
22 the consumer's obligation on the loan.

23 (2) No lender shall charge the consumer any finance
24 charges, interest, fees, or other charges of any kind,
25 except a fee for insufficient funds, as provided under
26 Section 2-10.

27 (3) The consumer shall be allowed to repay the loan in
28 at least 4 equal installments with at least 13 days between
29 installments, provided that the term of the repayment plan
30 does not exceed 90 days. The first payment under the
31 repayment plan shall not be due before at least 13 days
32 after the repayment plan is signed by both parties. The
33 consumer may prepay the amount due under the repayment plan
34 at any time, without charge or penalty.

1 (4) The length of time between installments may be
2 extended by the parties so long as the total period of
3 repayment does not exceed 90 days. Any such modification
4 must be in writing and signed by both parties.

5 (f) Notwithstanding any provision of law to the contrary, a
6 lender is prohibited from making a payday loan to a consumer
7 who has a payday loan outstanding under a repayment plan and
8 for at least 14 days after the outstanding balance of the loan
9 under the repayment plan and the outstanding balance of all
10 other payday loans outstanding during the term of the repayment
11 plan are paid in full.

12 (g) A lender may not accept postdated checks for payments
13 under a repayment plan.

14 (h) Notwithstanding any provision of law to the contrary, a
15 lender may voluntarily agree to enter into a repayment plan
16 with a consumer at any time. If a consumer is eligible for a
17 repayment plan under subsection (d), any repayment agreement
18 constitutes a repayment plan under this Section and all
19 provisions of this Section apply to that agreement.

20 Section 2-45. Default.

21 (a) No legal proceeding of any kind, including, but not
22 limited to, a lawsuit or arbitration, may be filed or initiated
23 against a consumer to collect on a payday loan until 28 days
24 after the default date of the loan, or, in the case of a payday
25 loan under a repayment plan, for 28 days after the default date
26 under the terms of the repayment plan.

27 (b) Upon and after default, a lender shall not charge the
28 consumer any finance charges, interest, fees, or charges of any
29 kind, other than the insufficient fund fee described in Section
30 2-10.

31 (c) Notwithstanding whether a loan is or has been in
32 default, once the loan becomes subject to a repayment plan, the
33 loan shall not be construed to be in default until the default

1 date provided under the terms of the repayment plan.

2 Section 2-50. Practices concerning members of the
3 military.

4 (a) A lender may not garnish the wages or salaries of a
5 consumer who is a member of the military.

6 (b) In addition to any rights and obligations provided
7 under the federal Servicemembers Civil Relief Act, a lender
8 shall suspend and defer collection activity against a consumer
9 who is a member of the military and who has been deployed to a
10 combat or combat support posting for the duration of the
11 deployment.

12 (c) A lender may not knowingly contact the military chain
13 of command of a consumer who is a member of the military in an
14 effort to collect on a payday loan.

15 (d) Lenders must honor the terms of any repayment plan that
16 they have entered into with any consumer, including a repayment
17 agreement negotiated through military counselors or
18 third-party credit counselors.

19 Section 2-55. Information, reporting, and examination.

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

24 (b) A licensee shall collect and maintain information
25 annually for a report that shall disclose in detail and under
26 appropriate headings:

27 (1) the total number of payday loans made during the
28 preceding calendar year;

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

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

1 (4) the average annual percentage rate and the average
2 term of payday loans made during the preceding calendar
3 year; and

4 (5) the total number of payday loans paid in full, the
5 total number of loans that went into default, and the total
6 number of loans written off during the preceding calendar
7 year.

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

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

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

24 Section 2-60. Advertising.

25 (a) Advertising for loans transacted under this Act may not
26 be false, misleading, or deceptive. Payday loan advertising, if
27 it states a rate or amount of charge for a loan, must state the
28 rate as an annual percentage rate. No licensee may advertise in
29 any manner so as to indicate or imply that its rates or charges
30 for loans are in any way recommended, approved, set, or
31 established by the State government or by this Act.

32 (b) If any advertisement to which this Section applies
33 states the amount of any installment payment, the dollar amount

1 of any finance charge, or the number of installments or the
2 period of repayment, then the advertisement shall state all of
3 the following items:

4 (1) The amount of the loan.

5 (2) The number, amount, and due dates or period of
6 payments scheduled to repay the indebtedness if the credit
7 is extended.

8 (3) The finance charge expressed as an annual
9 percentage rate.

10 Article 3. Licensure

11 Section 3-3. Licensure requirement.

12 (a) Except as provided in subsection (b), on and after the
13 effective date of this Act, a person or entity acting as a
14 payday lender must be licensed by the Department as provided in
15 this Article.

16 (b) A person or entity acting as a payday lender who is
17 licensed on the effective date of this Act under the Consumer
18 Installment Loan Act need not comply with subsection (a) until
19 the Department takes action on the person's or entity's
20 application for a payday loan license. The application must be
21 submitted to the Department within 9 months after the effective
22 date of this Act. If the application is not submitted within 9
23 months after the effective date of this Act, the person or
24 entity acting as a payday lender is subject to subsection (a).

25 Section 3-5. Licensure.

26 (a) A license to make a payday loan shall state the
27 address, including city and state, at which the business is to
28 be conducted and shall state fully the name of the licensee.
29 The license shall be conspicuously posted in the place of
30 business of the licensee and shall not be transferable or
31 assignable.

1 (b) An application for a license shall be in writing and in
2 a form prescribed by the Secretary. The Secretary may not issue
3 a payday loan license unless and until the following findings
4 are made:

5 (1) that the financial responsibility, experience,
6 character, and general fitness of the applicant are such as
7 to command the confidence of the public and to warrant the
8 belief that the business will be operated lawfully and
9 fairly and within the provisions and purposes of this Act;
10 and

11 (2) that the applicant has submitted such other
12 information as the Secretary may deem necessary.

13 (c) A license shall be issued for no longer than one year,
14 and no renewal of a license may be provided if a licensee has
15 substantially violated this Act and has not cured the violation
16 to the satisfaction of the Department.

17 (d) A licensee shall appoint, in writing, the Secretary as
18 attorney-in-fact upon whom all lawful process against the
19 licensee may be served with the same legal force and validity
20 as if served on the licensee. A copy of the written
21 appointment, duly certified, shall be filed in the office of
22 the Secretary, and a copy thereof certified by the Secretary
23 shall be sufficient evidence to subject a licensee to
24 jurisdiction in a court of law. This appointment shall remain
25 in effect while any liability remains outstanding in this State
26 against the licensee. When summons is served upon the Secretary
27 as attorney-in-fact for a licensee, the Secretary shall
28 immediately notify the licensee by registered mail, enclosing
29 the summons and specifying the hour and day of service.

30 (e) A licensee must pay an annual fee of \$1,000. In
31 addition to the license fee, the reasonable expense of any
32 examination or hearing by the Secretary under any provisions of
33 this Act shall be borne by the licensee. If a licensee fails to
34 renew its license by December 31, its license shall

1 automatically expire; however, the Secretary, in his or her
2 discretion, may reinstate an expired license upon:

3 (1) payment of the annual fee within 30 days of the
4 date of expiration; and

5 (2) proof of good cause for failure to renew.

6 (f) Not more than one place of business shall be maintained
7 under the same license, but the Secretary may issue more than
8 one license to the same licensee upon compliance with all the
9 provisions of this Act governing issuance of a single license.
10 The location, except those locations already in existence as of
11 June 1, 2005, may not be within one mile of a horse race track
12 subject to the Illinois Horse Racing Act of 1975, within one
13 mile of a facility at which gambling is conducted under the
14 Riverboat Gambling Act, within one mile of the location at
15 which a riverboat subject to the Riverboat Gambling Act docks,
16 or within one mile of any State of Illinois or United States
17 military base or naval installation.

18 (g) No licensee shall conduct the business of making loans
19 under this Act within any office, suite, room, or place of
20 business in which any other business is solicited or engaged in
21 unless the other business is licensed by the Department or, in
22 the opinion of the Secretary, the other business would not be
23 contrary to the best interests of consumers and is authorized
24 by the Secretary in writing.

25 (h) The Secretary shall maintain a list of licensees that
26 shall be available to interested consumers and lenders and the
27 public. The Secretary shall maintain a toll-free number whereby
28 consumers may obtain information about licensees. The
29 Secretary shall also establish a complaint process under which
30 an aggrieved consumer may file a complaint against a licensee
31 or non-licensee who violates any provision of this Act.

32 Section 3-10. Closing of business; surrender of license. At
33 least 10 days before a licensee ceases operations, closes the

1 business, or files for bankruptcy, the licensee shall:

2 (1) Notify the Department of its intended action in
3 writing.

4 (2) With the exception of filing for bankruptcy,
5 surrender its license to the Secretary for cancellation.
6 The surrender of the license shall not affect the
7 licensee's civil or criminal liability for acts committed
8 before or after the surrender or entitle the licensee to a
9 return of any part of the annual license fee.

10 (3) Notify the Department of the location where the
11 books, accounts, contracts, and records will be
12 maintained.

13 The accounts, books, records, and contracts shall be
14 maintained and serviced by the licensee, by another licensee
15 under this Act, or by the Department.

16 Article 4. Administrative Provisions

17 Section 4-5. Prohibited acts. A licensee or unlicensed
18 person or entity making payday loans may not commit, or have
19 committed on behalf of the licensee or unlicensed person or
20 entity, any of the following acts:

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

23 (2) Using any device or agreement that would have the
24 effect of charging or collecting more fees or charges than
25 allowed by this Act, including, but not limited to,
26 entering into a different type of transaction with the
27 consumer.

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

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

1 (5) Knowingly accepting payment in whole or in part of
2 a payday loan through the proceeds of another payday loan
3 provided by any licensee.

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

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

9 (8) Threatening to take any action against a consumer
10 that is prohibited by this Act or making any misleading or
11 deceptive statements regarding the payday loan or any
12 consequences thereof.

13 (9) Making a misrepresentation of a material fact by an
14 applicant for licensure in obtaining or attempting to
15 obtain a license.

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

18 (A) a confession of judgment clause;

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

24 (C) a mandatory arbitration clause that is
25 oppressive, unfair, unconscionable, or substantially
26 in derogation of the rights of consumers; or

27 (D) a provision in which the consumer agrees not to
28 assert any claim or defense arising out of the
29 contract.

30 (11) Selling any insurance of any kind whether or not
31 sold in connection with the making or collecting of a
32 payday loan.

33 (12) Taking any power of attorney.

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

1 (14) Collecting a delinquency or collection charge on
2 any installment regardless of the period in which it
3 remains in default.

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

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

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

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

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

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

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

22 Section 4-10. Enforcement and remedies.

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

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

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

32 (d) Subject to the Illinois Administrative Procedure Act,
33 the Secretary may hold hearings, make findings of fact,

1 conclusions of law, issue cease and desist orders, have the
2 power to issue fines of up to \$10,000 per violation, refer the
3 matter to the appropriate law enforcement agency for
4 prosecution under this Act, and suspend or revoke a license
5 granted under this Act. All proceedings shall be open to the
6 public.

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

15 The Secretary shall serve notice of his or her action,
16 including, but not limited to, a statement of the reasons for
17 the action, either personally or by certified mail, return
18 receipt requested. Service by certified mail shall be deemed
19 completed when the notice is deposited in the U.S. Mail.

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

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

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

1 remedy vested in the Secretary.

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

8 (1) the licensee has failed to comply with any
9 provision of this Act or any order, decision, finding,
10 rule, regulation, or direction of the Secretary lawfully
11 made pursuant to the authority of this Act; or

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

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

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

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

30 In every case in which a license is suspended or revoked or
31 an application for a license or renewal of a license is denied,
32 the Secretary shall serve the licensee with notice of his or
33 her action, including a statement of the reasons for his or her
34 actions, either personally, or by certified mail, return

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

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

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

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

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

22 Section 4-15. Bonding.

23 (a) A person or entity engaged in making payday loans under
24 this Act shall post a bond to the Department in the amount of
25 \$50,000 for each location where loans will be made, up to a
26 maximum bond amount of \$500,000.

27 (b) A bond posted under subsection (a) must continue in
28 effect for the period of licensure and for 3 additional years
29 if the bond is still available. The bond must be available to
30 pay damages and penalties to a consumer harmed by a violation
31 of this Act.

32 (c) From time to time the Secretary may require a licensee
33 to file a bond in an additional sum if the Secretary determines

1 it to be necessary. In no case shall the bond be more than the
2 outstanding liabilities of the licensee.

3 Section 4-20. Preemption of administrative rules. Any
4 administrative rule promulgated prior to the effective date of
5 this Act by the Department regarding payday loans is preempted.

6 Section 4-25. Reporting of violations. The Department
7 shall report to the Attorney General all material violations of
8 this Act of which it becomes aware.

9 Section 4-30. Rulemaking; industry review.

10 (a) The Department may make and enforce such reasonable
11 rules, regulations, directions, orders, decisions, and
12 findings as the execution and enforcement of the provisions of
13 this Act require, and as are not inconsistent therewith. All
14 rules, regulations, and directions of a general character shall
15 be printed and copies thereof mailed to all licensees.

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

23 (c) After the effective date of this Act, the Department
24 shall, over a 3-year period, conduct a study of the payday loan
25 industry to determine the impact and effectiveness of this Act.
26 The Department shall report its findings to the General
27 Assembly within 3 months of the third anniversary of the
28 effective date of this Act. The study shall determine the
29 effect of this Act on the protection of consumers in this State
30 and on the fair and reasonable regulation of the payday loan
31 industry. The study shall include, but shall not be limited to,

1 an analysis of the ability of the industry to use private
2 reporting tools that:

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

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

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

13 Section 4-35. Judicial review. All final administrative
14 decisions of the Department under this Act are subject to
15 judicial review pursuant to the provisions of the
16 Administrative Review Law and any rules adopted pursuant
17 thereto.

18 Section 4-40. No waivers. There shall be no waiver of any
19 provision of this Act.

20 Section 4-45. Superiority of Act. To the extent this Act
21 conflicts with any other State financial regulation laws, this
22 Act is superior and supersedes those laws for the purposes of
23 regulating payday loans in Illinois, provided that nothing
24 herein shall apply to any lender that is a bank, savings bank,
25 savings and loan association, credit union, or insurance
26 company organized, chartered, or holding a certificate of
27 authority to do business under the laws of this State or any
28 other state or under the laws of the United States.

29 Section 4-50. Severability. The provisions of this Act are
30 severable under Section 1.31 of the Statute on Statutes.

1 Article 90. Amendatory Provisions

2 Section 90-5. The Financial Institutions Code is amended by
3 changing Sections 4 and 6 as follows:

4 (20 ILCS 1205/4) (from Ch. 17, par. 104)

5 Sec. 4. As used in this Act:

6 (a) "Department" means the Department of Financial
7 Institutions.

8 (b) "Director" means the Director of Financial
9 Institutions.

10 (c) "Person" means any individual, partnership, joint
11 venture, trust, estate, firm, corporation, association or
12 cooperative society or association.

13 (d) "Financial institutions" means ambulatory and
14 community currency exchanges, credit unions, guaranteed credit
15 unions, persons engaged in the business of transmitting money
16 to foreign countries or buying and selling foreign money,
17 pawners' societies, title insuring or guaranteeing companies,
18 and persons engaged in the business of making loans of \$800 or
19 less, all as respectively defined in the laws referred to in
20 Section 6 of this Act. The term includes sales finance
21 agencies, as defined in the "Sales Finance Agency Act", enacted
22 by the 75th General Assembly.

23 (e) "Payday loan" has the meaning ascribed to that term in
24 the Payday Loan Reform Act.

25 (Source: Laws 1967, p. 2211.)

26 (20 ILCS 1205/6) (from Ch. 17, par. 106)

27 Sec. 6. In addition to the duties imposed elsewhere in this
28 Act, the Department has the following powers:

29 (1) To exercise the rights, powers and duties vested by law
30 in the Auditor of Public Accounts under "An Act to provide for

1 the incorporation, management and regulation of pawners'
2 societies and limiting the rate of compensation to be paid for
3 advances, storage and insurance on pawns and pledges and to
4 allow the loaning of money upon personal property", approved
5 March 29, 1899, as amended.

6 (2) To exercise the rights, powers and duties vested by law
7 in the Auditor of Public Accounts under "An Act in relation to
8 the definition, licensing and regulation of community currency
9 exchanges and ambulatory currency exchanges, and the operators
10 and employees thereof, and to make an appropriation therefor,
11 and to provide penalties and remedies for the violation
12 thereof", approved June 30, 1943, as amended.

13 (3) To exercise the rights, powers, and duties vested by
14 law in the Auditor of Public Accounts under "An Act in relation
15 to the buying and selling of foreign exchange and the
16 transmission or transfer of money to foreign countries",
17 approved June 28, 1923, as amended.

18 (4) To exercise the rights, powers, and duties vested by
19 law in the Auditor of Public Accounts under "An Act to provide
20 for and regulate the business of guaranteeing titles to real
21 estate by corporations", approved May 13, 1901, as amended.

22 (5) To exercise the rights, powers and duties vested by law
23 in the Department of Insurance under "An Act to define,
24 license, and regulate the business of making loans of eight
25 hundred dollars or less, permitting an interest charge thereon
26 greater than otherwise allowed by law, authorizing and
27 regulating the assignment of wages or salary when taken as
28 security for any such loan or as consideration for a payment of
29 eight hundred dollars or less, providing penalties, and to
30 repeal Acts therein named", approved July 11, 1935, as amended.

31 (6) To administer and enforce "An Act to license and
32 regulate the keeping and letting of safety deposit boxes,
33 safes, and vaults, and the opening thereof, and to repeal a
34 certain Act therein named", approved June 13, 1945, as amended.

1 (7) Whenever the Department is authorized or required by
2 law to consider some aspect of criminal history record
3 information for the purpose of carrying out its statutory
4 powers and responsibilities, then, upon request and payment of
5 fees in conformance with the requirements of Section 2605-400
6 of the Department of State Police Law (20 ILCS 2605/2605-400),
7 the Department of State Police is authorized to furnish,
8 pursuant to positive identification, such information
9 contained in State files as is necessary to fulfill the
10 request.

11 (8) To administer the Payday Loan Reform Act.

12 (Source: P.A. 91-239, eff. 1-1-00.)

13 Section 90-10. The Consumer Installment Loan Act is amended
14 by changing Section 21 as follows:

15 (205 ILCS 670/21) (from Ch. 17, par. 5427)

16 Sec. 21. Application of act. This Act does not apply to any
17 person, partnership, association, limited liability company,
18 or corporation doing business under and as permitted by any law
19 of this State or of the United States relating to banks,
20 savings and loan associations, savings banks, credit unions, or
21 licensees under the Residential Mortgage License Act for
22 residential mortgage loans made pursuant to that Act. This Act
23 does not apply to business loans. This Act does not apply to
24 payday loans.

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

26 Section 90-15. The Consumer Fraud and Deceptive Business
27 Practices Act is amended by changing Section 2Z as follows:

28 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

29 Sec. 2Z. Violations of other Acts. Any person who knowingly
30 violates the Automotive Repair Act, the Home Repair and

1 Remodeling Act, the Dance Studio Act, the Physical Fitness
2 Services Act, the Hearing Instrument Consumer Protection Act,
3 the Illinois Union Label Act, the Job Referral and Job Listing
4 Services Consumer Protection Act, the Travel Promotion
5 Consumer Protection Act, the Credit Services Organizations
6 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call
7 Services Consumer Protection Act, the Telephone Solicitations
8 Act, the Illinois Funeral or Burial Funds Act, the Cemetery
9 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery
10 Sales Act, the High Risk Home Loan Act, the Payday Loan Reform
11 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
12 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use
13 Tax Act, the Electronic Mail Act, paragraph (6) of subsection
14 (k) of Section 6-305 of the Illinois Vehicle Code, or the
15 Automatic Contract Renewal Act commits an unlawful practice
16 within the meaning of this Act.

17 (Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950,
18 eff. 1-1-05.)

19 Article 99. Effective Date

20 Section 99. Effective date. This Act takes effect 180 days
21 after becoming law."