

AN ACT concerning financial 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 Sections 1 and 15 and by adding Sections 17.1, 17.2, 17.3, 17.4, 17.5, and 19.2 as follows:

(205 ILCS 670/1) (from Ch. 17, par. 5401)

Sec. 1. License required to engage in business. No person, partnership, association, limited liability company, or corporation shall engage in the business of making loans of money in a principal amount not exceeding \$40,000 ~~\$25,000~~, and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act after first obtaining a license from the Director of Financial Institutions (hereinafter called the Director). No licensee, or employee or affiliate thereof, that is licensed under the Payday Loan Reform Act shall obtain a license under this Act except that a licensee under the Payday Loan Reform Act may obtain a license under this Act for the exclusive purpose and use of making title-secured loans, as defined in subsection (a) of Section 15 of this Act and governed by Title 38, Section

110.300 of the Illinois Administrative Code.

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

(205 ILCS 670/15) (from Ch. 17, par. 5415)

Sec. 15. Charges permitted.

(a) Every licensee may lend a principal amount not exceeding \$40,000 and, except as to small consumer loans as defined in this Section, may charge, contract for and receive thereon interest at an annual percentage the rate of no more than 36% ~~agreed upon by the licensee and the borrower,~~ subject to the provisions of this Act; provided, however, that the limitation on the annual percentage rate contained in this subsection (a) does not apply to title-secured loans, which are loans upon which interest is charged at an annual percentage rate exceeding 36%, in which, at commencement, an obligor provides to the licensee, as security for the loan, physical possession of the obligor's title to a motor vehicle, and upon which a licensee may charge, contract for, and receive thereon interest at the rate agreed upon by the licensee and borrower. For purposes of this Section, the annual percentage rate shall be calculated in accordance with the federal Truth in Lending Act.

(b) For purpose of this Section, the following terms shall have the meanings ascribed herein.

"Applicable interest" for a precomputed loan contract means the amount of interest attributable to each monthly

installment period. It is computed as if each installment period were one month and any interest charged for extending the first installment period beyond one month is ignored. The applicable interest for any monthly installment period is, for loans other than small consumer loans as defined in this Section, that portion of the precomputed interest that bears the same ratio to the total precomputed interest as the balances scheduled to be outstanding during that month bear to the sum of all scheduled monthly outstanding balances in the original contract. With respect to a small consumer loan, the applicable interest for any installment period is that portion of the precomputed monthly installment account handling charge attributable to the installment period calculated based on a method at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act.

"Interest-bearing loan" means a loan in which the debt is expressed as a principal amount plus interest charged on actual unpaid principal balances for the time actually outstanding.

"Precomputed loan" means a loan in which the debt is expressed as the sum of the original principal amount plus interest computed actuarially in advance, assuming all payments will be made when scheduled.

"Small consumer loan" means a loan upon which interest is charged at an annual percentage rate exceeding 36% and with an amount financed of \$4,000 or less. "Small consumer loan" does not include a title-secured loan as defined by subsection (a)

of this Section or a payday loan as defined by the Payday Loan Reform Act.

(c) Loans may be interest-bearing or precomputed.

(d) To compute time for either interest-bearing or precomputed loans for the calculation of interest and other purposes, a month shall be a calendar month and a day shall be considered 1/30th of a month when calculation is made for a fraction of a month. A month shall be 1/12th of a year. A calendar month is that period from a given date in one month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a month and a fraction of a month, the fraction of the month is considered to follow the whole month. In the alternative, for interest-bearing loans, the licensee may charge interest at the rate of 1/365th of the agreed annual rate for each day actually elapsed.

(d-5) No licensee or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers. Payment options, including, but not limited to, electronic fund transfers and Automatic Clearing House (ACH) transactions may be offered to consumers as a choice and method of payment chosen by the consumer.

(e) With respect to interest-bearing loans:

(1) Interest shall be computed on unpaid principal balances outstanding from time to time, for the time

outstanding, until fully paid. Each payment shall be applied first to the accumulated interest and the remainder of the payment applied to the unpaid principal balance; provided however, that if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest shall not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the new loan contract may include any unpaid interest which has accrued. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in paragraph (f), clause (3). The resulting loan contract shall be deemed a new and separate loan transaction for all purposes.

(3) Loans must be fully amortizing and be repayable in substantially equal and consecutive weekly, biweekly, semimonthly, or monthly installments. ~~Notwithstanding this requirement, may be payable as agreed between the parties, including payment at irregular times or in unequal amounts~~ and rates ~~that~~ may vary according to ~~with~~ an index that is independently verifiable and beyond the control of the licensee.

(4) The lender or creditor may, if the contract provides, collect a delinquency or collection charge on each installment in default for a period of not less than 10 days in an amount not exceeding 5% of the installment on installments in excess of \$200, or \$10 on installments of \$200 or less, but only one delinquency and collection charge may be collected on any installment regardless of the period during which it remains in default.

(f) With respect to precomputed loans:

(1) Loans shall be repayable in substantially equal and consecutive weekly, biweekly, semimonthly, or monthly installments of principal and interest combined, except that the first installment period may be longer than one month by not more than 15 days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days; and provided further that monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and precomputed interest until the loan is fully paid. Payments shall be applied in the order in which they become due, except that any insurance proceeds received as a result of any claim made on any insurance, unless sufficient to prepay the contract in full, may be applied to the unpaid installments of the total of payments in

inverse order.

(3) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one month or more before the final installment due date, a licensee shall refund or credit the obligor with the total of the applicable interest for all fully unexpired installment periods, as originally scheduled or as deferred, which follow the day of prepayment; provided, if the prepayment occurs prior to the first installment due date, the licensee may retain 1/30 of the applicable interest for a first installment period of one month for each day from the date of the loan to the date of prepayment, and shall refund or credit the obligor with the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgement is entered.

(4) The lender or creditor may, if the contract provides, collect a delinquency or collection charge on each installment in default for a period of not less than 10 days in an amount not exceeding 5% of the installment on installments in excess of \$200, or \$10 on installments of \$200 or less, but only one delinquency or collection charge may be collected on any installment regardless of the period during which it remains in default.

(5) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a licensee may grant a deferment and may collect a deferment charge as provided in this Section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one month period may not exceed the applicable interest for the installment period immediately following the due date of the last undeferred payment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. Should a loan be prepaid in full during a deferment period, the licensee shall credit to the obligor a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(6) If two or more installments are delinquent one full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit which would be required for prepayment in full on the due date of the most recent maturing

installment in default. Thereafter, and in lieu of any other default or deferment charges, the agreed rate of interest or, in the case of small consumer loans, interest at the rate of 18% per annum, may be charged on the unpaid balance until fully paid.

(7) Fifteen days after the final installment as originally scheduled or deferred, the licensee, for any loan contract which has not previously been converted to interest-bearing under paragraph (f), clause (6), may compute and charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at the agreed rate of interest or, in the case of small consumer loans, interest at the rate of 18% per annum, until fully paid. At the time of payment of said final installment, the licensee shall give notice to the obligor stating any amounts unpaid.

(Source: P.A. 93-264, eff. 1-1-04.)

(205 ILCS 670/17.1 new)

Sec. 17.1. Small consumer loans; definition. Sections 17.1, 17.2, 17.3, 17.4, and 17.5 of this Act apply exclusively to small consumer loans as defined in Section 15 of this Act.

(205 ILCS 670/17.2 new)

Sec. 17.2. Small consumer loans; charges permitted.

(a) With respect to a small consumer loan of \$1,500 or

less:

(1) A licensee may charge, contract for and receive interest at an annual percentage rate of no more than 99% calculated in accordance with the federal Truth in Lending Act.

(2) A licensee may charge an acquisition charge not to exceed 10% of the amount financed. The acquisition charge is in lieu of the fee permitted under Section 15d(5) and is fully earned at the time the loan is made and shall not be subject to refund.

(b) With respect to a small consumer loan over \$1,500:

(1) A licensee may charge the following finance charges:

(A) an acquisition charge for making the original loan, not to exceed \$100; for purposes of this subsection (b), "original loan" means a loan in which none of the proceeds are used by the licensee to pay off the outstanding balance of another small consumer loan made to the same consumer by the same licensee or any employee or affiliate of the licensee;

(B) an acquisition charge for the first time that an original loan is refinanced, not to exceed \$50;

(C) an acquisition charge for any subsequent refinancing not to exceed \$25; for purposes of this subsection (b), "refinancing" occurs when an existing small consumer loan is satisfied and replaced by a new

small consumer loan made to the same consumer by the same licensee or any employee or affiliate of the licensee; and

(D) a monthly installment account handling charge, not to exceed the following amounts:

<u>Amount financed</u>	<u>Per month charge</u>
<u>\$1,500.01 - \$1,600</u>	<u>\$69</u>
<u>\$1,600.01 - \$1,700</u>	<u>\$72</u>
<u>\$1,700.01 - \$1,800</u>	<u>\$75</u>
<u>\$1,800.01 - \$1,900</u>	<u>\$78</u>
<u>\$1,900.01 - \$2,000</u>	<u>\$81</u>
<u>\$2,000.01 - \$2,100</u>	<u>\$84</u>
<u>\$2,100.01 - \$2,200</u>	<u>\$87</u>
<u>\$2,200.01 - \$2,300</u>	<u>\$90</u>
<u>\$2,300.01 - \$2,400</u>	<u>\$92</u>
<u>\$2,400.01 - \$2,500</u>	<u>\$94</u>
<u>\$2,500.01 - \$2,600</u>	<u>\$96</u>
<u>\$2,600.01 - \$2,700</u>	<u>\$98</u>
<u>\$2,700.01 - \$2,800</u>	<u>\$100</u>
<u>\$2,800.01 - \$2,900</u>	<u>\$102</u>
<u>\$2,900.01 - \$3,000</u>	<u>\$104</u>
<u>\$3,000.01 - \$3,100</u>	<u>\$106</u>
<u>\$3,100.01 - \$3,200</u>	<u>\$108</u>
<u>\$3,200.01 - \$3,300</u>	<u>\$110</u>
<u>\$3,300.01 - \$3,400</u>	<u>\$112</u>

<u>\$3,400.01 - \$3,500</u>	<u>\$114</u>
<u>\$3,500.01 - \$3,600</u>	<u>\$116</u>
<u>\$3,600.01 - \$3,700</u>	<u>\$118</u>
<u>\$3,700.01 - \$3,800</u>	<u>\$120</u>
<u>\$3,800.01 - \$3,900</u>	<u>\$122</u>
<u>\$3,900.01 - \$4,000</u>	<u>\$124</u>

(2) The acquisition charge is in lieu of the fee permitted under Section 15d(5) and is fully earned at the time the loan is made and shall not be subject to refund; except that, if the loan is paid in full within the first 60 days of the loan term, the first \$25 of the acquisition charge may be retained by the licensee and the remainder of the acquisition charge shall be refunded at a rate of one-sixtieth of the remainder of the acquisition charge per day, beginning on the day after the date of the prepayment and ending on the sixtieth day after the loan was made.

(3) In no event shall the annual percentage rate on the loan transaction as calculated in accordance with the federal Truth in Lending Act exceed 99%.

(c) In addition to the charges permitted in subsections (a) and (b) of this Section, a licensee may charge a consumer a fee not to exceed \$1 to cover the licensee's cost of submitting loan information into the consumer reporting service, as required under Section 17.5 of this Act. Only one such fee may be collected by the licensee with respect to a particular loan.

(d) When any loan contract is paid in full by cash, renewal, or refinancing, or a new loan, the licensee shall refund any unearned interest or unearned portion of the monthly installment account handling charge, whichever is applicable. The unearned interest or unearned portion of the monthly installment account handling charge that is refunded shall be calculated based on a method that is at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act. The sum of the digits or rule of 78ths method of calculating prepaid interest refunds is prohibited.

(e) The maximum acquisition charges that are expressed as flat dollar amounts under this Section shall be subject to an annual adjustment as of the first day of each year following the effective date of this amendatory Act of the 96th General Assembly equal to the percentage change in the Consumer Price Index compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers, or, if no such index is chosen by the Bureau of Labor Statistics, the index chosen by the Department as most accurately reflecting the changes in the purchasing power of the dollar for consumers. The adjusted amounts shall take effect on July 1 of the year of the computations.

(205 ILCS 670/17.3 new)

Sec. 17.3. Small consumer loans; terms.

(a) A small consumer loan shall be fully amortizing and be repayable in its entirety in a minimum of 6 substantially equal and consecutive payments with a period of not less than 180 days to maturity.

(b) No licensee, or employee or affiliate thereof, may extend to or have open with a consumer more than one small consumer loan at any time; provided, however, that loans acquired by a licensee from another licensee are not included within this prohibition.

(c) A licensee is prohibited from refinancing a small consumer loan during the first 75 days of the loan term. For purposes of this Act, a refinancing occurs when an existing small consumer loan is satisfied and replaced by a new small consumer loan made to the same consumer by the same licensee or any employee or affiliate of the licensee.

(d) Except for the deferment charge permitted by item (5) of subsection (f) of Section 15, a licensee is prohibited from collecting any fee, charge, or remuneration of any sort for renewing, amending, or extending a small consumer loan beyond its original term.

(e) Before entering into a small consumer loan agreement, a licensee must provide to the consumer a pamphlet, prepared by the Director, describing general information about consumer credit and about the consumer's rights and responsibilities in

a small consumer loan transaction. Each small consumer loan agreement executed by a licensee shall include a statement, located just above the signature line for the consumer, and shall provide as follows: "In addition to agreeing to the terms of this agreement, I acknowledge, by my signature below, receipt from (name of lender) a pamphlet regarding small consumer loans."

(f) Each small consumer loan agreement entered into between a licensee and a consumer shall include a notification, in such loan agreement, of a toll-free number furnished by the Department of Financial and Professional Regulation, Division of Financial Institutions that the consumer may contact for the purpose of receiving information from the Division regarding credit or assistance with credit problems.

(205 ILCS 670/17.4 new)

Sec. 17.4. Small consumer loans; loan amount. A licensee is prohibited from making a small consumer loan to a consumer if the total of all payments to be made in any month on the loan exceeds 22.5% of the consumer's gross monthly income, as demonstrated by official documentation of the income, including, but not limited to, the consumer's most recent pay stub, receipt reflecting payment of government benefits, or other official documentation. "Official documentation" includes tax returns and documentation prepared by the source of the income. A statement by the consumer is not official

documentation.

(205 ILCS 670/17.5 new)

Sec. 17.5. Consumer reporting service.

(a) For the purpose of this Section, "certified database" means the consumer reporting service database established pursuant to the Payday Loan Reform Act.

(b) Within 90 days after making a small consumer loan, a licensee shall enter information about the loan into the certified database.

(c) For every small consumer loan made, the licensee shall input the following information into the certified database within 90 days after the loan is made:

(i) the consumer's name and official identification number (for purposes of this Act, "official identification number" includes a Social Security Number, an Individual Taxpayer Identification Number, a Federal Employer Identification Number, an Alien Registration Number, or an identification number imprinted on a passport or consular identification document issued by a foreign government);

(ii) the consumer's gross monthly income;

(iii) the date of the loan;

(iv) the amount financed;

(v) the term of the loan;

(vi) the acquisition charge;

(vii) the monthly installment account handling charge;

(viii) the verification fee;
(ix) the number and amount of payments; and
(x) whether the loan is a first or subsequent
refinancing of a prior small consumer loan.

(d) Once a loan is entered with the certified database, the
certified database shall provide to the licensee a dated,
time-stamped statement acknowledging the certified database's
receipt of the information and assigning each loan a unique
loan number.

(e) The licensee shall update the certified database within
90 days if any of the following events occur:

(i) the loan is paid in full by cash;
(ii) the loan is refinanced;
(iii) the loan is renewed;
(iv) the loan is satisfied in full or in part by
collateral being sold after default;
(v) the loan is cancelled or rescinded; or
(vi) the consumer's obligation on the loan is otherwise
discharged by the licensee.

(f) To the extent a licensee sells a product or service to
a consumer, other than a small consumer loan, and finances any
portion of the cost of the product or service, the licensee
shall, in addition to and at the same time as the information
inputted under subsection (d) of this Section, enter into the
certified database:

(i) a description of the product or service sold;

(ii) the charge for the product or service; and

(iii) the portion of the charge for the product or service, if any, that is included in the amount financed by a small consumer loan.

(g) The certified database provider shall indemnify the licensee against all claims and actions arising from illegal or willful or wanton acts on the part of the certified database provider. The certified database provider may charge a fee not to exceed \$1 for each loan entered into the certified database under subsection (d) of this Section. The database provider shall not charge any additional fees or charges to the licensee.

(h) All personally identifiable information regarding any consumer obtained by way of the certified database and maintained by the Department is strictly confidential and shall be exempt from disclosure under provision (i) of item (b) of subsection (1) of Section 7 of the Freedom of Information Act.

(i) A licensee who submits information to a certified database provider in accordance with this Section shall not be liable to any person for any subsequent release or disclosure of that information by the certified database provider, the Department, or any other person acquiring possession of the information, regardless of whether such subsequent release or disclosure was lawful, authorized, or intentional.

(j) To the extent the certified database becomes unavailable to a licensee as a result of some event or events

outside the control of the licensee or the certified database is decertified, the requirements of this Section and Section 17.4 of this Act are suspended until such time as the certified database becomes available.

(205 ILCS 670/19.2 new)

Sec. 19.2. Licensee; prohibition against accepting certain checks. At the time a loan is made or within 20 days after a loan is made, a licensee shall not (i) accept a check and agree to hold it for a period of days before deposit or presentment or (ii) accept a check dated subsequent to the date written.

Section 10. The Illinois Financial Services Development Act is amended by changing Section 3 as follows:

(205 ILCS 675/3) (from Ch. 17, par. 7003)

Sec. 3. As used in this Section:

(a) "Financial institution" means any bank with its main office or, after May 31, 1997, a branch in this State, any state or federal savings and loan association or savings bank with its main office or branch in this State, any state or federal credit union with its main office in this State, and any lender licensed under the Consumer Installment Loan Act or the Sales Finance Agency Act; provided, however, that lenders licensed under the Consumer Installment Loan Act or the Sales Finance Agency Act are prohibited from charging interest in

excess of 36% per annum for any extension of credit under this Act.

(b) "Revolving credit plan" or "plan" means a plan contemplating the extension of credit under an account governed by an agreement between a financial institution and a borrower who is a natural person pursuant to which:

(1) The financial institution permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to time to make purchases and to obtain loans by any means whatsoever, including use of a credit device primarily for personal, family or household purposes;

(2) the amounts of such purchases and loans are charged to the borrower's account under the revolving credit plan;

(3) the borrower is required to pay the financial institution the amounts of all purchases and loans charged to such borrower's account under the plan but has the privilege of paying such amounts outstanding from time to time in full or installments; and

(4) interest may be charged and collected by the financial institution from time to time on the outstanding unpaid indebtedness under such plan.

(c) "Credit device" means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(d) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of that day and, if the agreement governing the plan so provides, may include the amount of any billed and unpaid interest and other charges.

(Source: P.A. 89-208, eff. 9-29-95.)

Section 15. The Payday Loan Reform Act is amended by changing Sections 1-10, 2-5, 2-10, 2-15, 2-17, 2-20, 2-30, 2-40, 2-45, 3-5, and 4-5 as follows:

(815 ILCS 122/1-10)

Sec. 1-10. Definitions. As used in this Act:

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

"Commercially reasonable method of verification" or "certified database" means a consumer reporting service database certified by the Department as effective in verifying that a proposed loan agreement is permissible under this Act, or, in the absence of the Department's certification, any

reasonably reliable written verification by the consumer concerning (i) whether the consumer has any outstanding payday loans, (ii) the principal amount of those outstanding payday loans, and (iii) whether any payday loans have been paid in full by the consumer in the preceding 7 days.

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

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

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

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

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

"Lender" and "licensee" mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person

or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act.

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

"Member of the military" means a person serving in the armed forces of the United States, the Illinois National Guard, or any reserve component of the armed forces of the United States. "Member of the military" includes those persons engaged in (i) active duty, (ii) training or education under the supervision of the United States preliminary to induction into military service, or (iii) a period of active duty with the State of Illinois under Title 10 or Title 32 of the United States Code pursuant to order of the President or the Governor of the State of Illinois.

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

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

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

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

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

The term "payday loan" includes "installment payday loan", unless otherwise specified in this Act.

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

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

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

(815 ILCS 122/2-5)

Sec. 2-5. Loan terms.

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

(b) Except for an installment payday loan as defined in this Section, no ~~No~~ payday loan may be made to a consumer if

the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 45 consecutive days. Except as provided under subsection (c) of this Section and Section 2-40, if a consumer has or has had loans outstanding for a period in excess of 45 consecutive days, no payday lender may offer or make a loan to the consumer for at least 7 calendar days after the date on which the outstanding balance of all payday loans made during the 45 consecutive day period is paid in full. For purposes of this subsection, the term "consecutive days" means a series of continuous calendar days in which the consumer has an outstanding balance on one or more payday loans; however, if a payday loan is made to a consumer within 6 days or less after the outstanding balance of all loans is paid in full, those days are counted as "consecutive days" for purposes of this subsection.

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

(i) Any installment payday loan must be fully amortizing, with a finance charge calculated on the principal balances scheduled to be outstanding and be repayable in substantially equal and consecutive

installments, according to a payment schedule agreed by the parties with not less than 13 days and not more than one month between payments; except that the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of finance charges applicable to the extra days.

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

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

(iv) No installment payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 180 consecutive days.

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

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

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

(1) \$1,000; or

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

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

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

No loan shall be made to a consumer who has an outstanding balance on 2 payday loans, except that, for a period of 12 months after the effective date of this amendatory Act of the 96th General Assembly, consumers with an existing CILA loan may be issued an installment loan issued under this Act from the company from which their CILA loan was issued.

(e-5) No lender may charge more than \$15.50 per \$100 loaned

on any payday loan, or more than \$15.50 per \$100 on the initial principal balance and on the principal balances scheduled to be outstanding during any installment period on any installment payday loan over the term of the loan. Except for installment payday loans and except as provided in Section 2-25, this charge is considered fully earned as of the date on which the loan is made. For purposes of determining the finance charge earned on an installment payday loan, the disclosed annual percentage rate shall be applied to the principal balances outstanding from time to time until the loan is paid in full, or until the maturity date, which ever occurs first. No finance charge may be imposed after the final scheduled maturity date.

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

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

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

loan becomes payable by paying the full amount of the check or other item.

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

(815 ILCS 122/2-10)

Sec. 2-10. Permitted fees.

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

(a-5) A lender may charge a borrower a fee not to exceed \$1 for the verification required under Section 2-15 of this Act. Only one such fee may be collected by the lender with respect to a particular loan.

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

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

(815 ILCS 122/2-15)

Sec. 2-15. Verification.

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

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

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

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

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

Information Act.

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

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

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

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

(3) requires licensees to input whatever information is required by the Department;

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

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

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

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

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

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

(3) on the same day that a consumer's payday loan is paid in full, including the refinancing of an installment payday loan as permitted under subsection (c) of Section 2-5.

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

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

(i) The certified consumer reporting service may charge a verification fee not to exceed \$1 upon a loan being made or

entered into in the database. The certified consumer reporting service shall not charge any additional fees or charges.

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

(815 ILCS 122/2-17)

Sec. 2-17. Consumer reporting services qualification and bonding.

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

(b) Each application for certification under this Act shall be accompanied by a surety bond acceptable to the Department in the amount of \$1,000,000. The surety bond shall be in a form satisfactory to the Department and shall run to the State of Illinois for the benefit of any claimants against the consumer reporting service to secure the faithful performance of its obligations under this Act. The aggregate liability of the surety may exceed the principal sum of the bond. Claimants against the consumer reporting service may themselves bring suit directly on the surety bond or the Department may bring suit on behalf of claimants, either in one action or in successive actions.

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

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

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

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

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

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

(i) Each consumer reporting service shall maintain at all times an ID Theft Red Flag Program that meets the standards established by the Federal Trade Commission's Red Flags Rule, promulgated under the Fair and Accurate Credit Transactions Act of 2003.

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

(815 ILCS 122/2-20)

Sec. 2-20. Required disclosures.

(a) Before a payday loan is made, a lender shall deliver to

the consumer a pamphlet prepared by the Secretary that:

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

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

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

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

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

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

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

(4) the following statement, in at least 14-point bold type face: "You cannot be prosecuted in criminal court to collect this loan." The information required to be disclosed under this subdivision (4) must be conspicuously

disclosed in the loan document and shall be located immediately preceding the signature of the consumer; and

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

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

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

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

(2) The schedule of all finance charges to be charged on loans with an example of the amounts that would be charged on a \$100 loan payable in 13 days, ~~and~~ a \$400 loan payable in 30 days, and an installment payday loan of \$400 payable on a monthly basis over 180 days, giving the corresponding annual percentage rate.

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

"WARNING: This loan is not intended to meet long-term

financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

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

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

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

(815 ILCS 122/2-30)

Sec. 2-30. Rollovers prohibited. Rollover of a payday loan by any lender is prohibited, except as provided in subsection (c) of Section 2-5. This Section does not prohibit entering into a repayment plan, as provided under Section 2-40.

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

(815 ILCS 122/2-40)

Sec. 2-40. Repayment plan.

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

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

(c) At the time a payday loan is made, on the first page of the loan agreement and in a separate document signed by the consumer, the following shall be inserted in at least 14-point bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 55 DAYS TO REPAY THE LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

(d) If the consumer has or has had one or more payday loans outstanding for 35 consecutive days, any payday loan outstanding on the 35th consecutive day shall be payable under the terms of a repayment plan as provided for in this Section, if the consumer requests the repayment plan. As to any loan that becomes eligible for a repayment plan under this subsection, the consumer has until 28 days after the default

date of the loan to request a repayment plan. Within 48 hours after the request for a repayment plan is made, the lender must prepare the repayment plan agreement and both parties must execute the agreement. Execution of the repayment plan agreement shall be made in the same manner in which the loan was made and shall be evidenced in writing.

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

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

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

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

(4) The length of time between installments may be extended by the parties so long as the total period of

repayment does not exceed 90 days. Any such modification must be in writing and signed by both parties.

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

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

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

(i) The provisions of this Section 2-40 do not apply to an installment payday loan, except for subsection (f) of this Section.

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

(815 ILCS 122/2-45)

Sec. 2-45. Default.

(a) No legal proceeding of any kind, including, but not limited to, a lawsuit or arbitration, may be filed or initiated

against a consumer to collect on a payday loan until 28 days after the default date of the loan, or, in the case of a payday loan under a repayment plan, for 28 days after the default date under the terms of the repayment plan, or in the case of an installment payday loan, for 28 days after default in making a scheduled payment.

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

(c) Notwithstanding whether a loan is or has been in default, once the loan becomes subject to a repayment plan, the loan shall not be construed to be in default until the default date provided under the terms of the repayment plan.

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

(815 ILCS 122/3-5)

Sec. 3-5. Licensure.

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

(b) An application for a license shall be in writing and in a form prescribed by the Secretary. The Secretary may not issue

a payday loan license unless and until the following findings are made:

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

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

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

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

the summons and specifying the hour and day of service.

(e) A licensee must pay an annual fee of \$1,000. In addition to the license fee, the reasonable expense of any examination or hearing by the Secretary under any provisions of this Act shall be borne by the licensee. If a licensee fails to renew its license by December 31, its license shall automatically expire; however, the Secretary, in his or her discretion, may reinstate an expired license upon:

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

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

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

(g) No licensee shall conduct the business of making loans under this Act within any office, suite, room, or place of business in which (1) any loans are offered or made under the

Consumer Installment Loan Act other than title secured loans as defined in subsection (a) of Section 15 of the Consumer Installment Loan Act and governed by Title 38, Section 110.330 of the Illinois Administrative Code or (2) any other business is solicited or engaged in unless the other business is licensed by the Department or, in the opinion of the Secretary, the other business would not be contrary to the best interests of consumers and is authorized by the Secretary in writing.

(g-5) Notwithstanding subsection (g) of this Section, a licensee may obtain a license under the Consumer Installment Loan Act (CILA) for the exclusive purpose and use of making title secured loans, as defined in subsection (a) of Section 15 of CILA and governed by Title 38, Section 110.300 of the Illinois Administrative Code. A licensee may continue to service Consumer Installment Loan Act loans that were outstanding as of the effective date of this amendatory Act of the 96th General Assembly.

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

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

(815 ILCS 122/4-5)

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

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

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

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

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

(5) Knowingly accepting payment in whole or in part of a payday loan through the proceeds of another payday loan provided by any licensee, except as provided in subsection (c) of Section 2.5.

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

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

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

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

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

(A) a confession of judgment clause;

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

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

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

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

(12) Taking any power of attorney.

(13) Taking any security interest in real estate.

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

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

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

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

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

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

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

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

(22) Making or offering to make any loan other than a payday loan or a title-secured loan, provided however, that to make or offer to make a title-secured loan, a licensee must obtain a license under the Consumer Installment Loan Act.

Public Act 096-0936

HB0537 Enrolled

LRB096 06068 MJR 16150 b

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

Section 99. Effective date. This Act takes effect 9 months after becoming law.