



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1993

Introduced 2/7/2008, by Sen. Kimberly A. Lightford -
Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

815 ILCS 122/1-10
815 ILCS 122/2-5
815 ILCS 122/4-5
815 ILCS 122/4-30

Amends the Payday Loan Reform Act. In the elements of the definition of "payday loan", deletes the element that it have a term that does not exceed 120 days. Deletes a provision that a specified charge is considered fully earned as of the date on which the loan is made. Provides that when a consumer repays a payday loan in full before its due date, the lender shall rebate the unearned finance charges to the consumer on a straight-line amortization basis as of the date of repayment. Prohibits a licensee or a person making payday loans from evading the requirements and prohibitions of the Act by use of a device or subterfuge including, but not limited to, disguising a payday loan as a different type of transaction or characterizing a required fee as a purchase of a good or service in connection with a payday loan, and authorizes the Department of Financial and Professional Regulation to develop rules to determine if a person or entity seeks to evade the applicability of the Act by any device, subterfuge, or pretense. Effective immediately.

LRB095 18191 WGH 44890 b

1 AN ACT concerning business.

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

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

6 (815 ILCS 122/1-10)

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

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

11 "Commercially reasonable method of verification" or
12 "certified database" means a consumer reporting service
13 database certified by the Department as effective in verifying
14 that a proposed loan agreement is permissible under this Act,
15 or, in the absence of the Department's certification, any
16 reasonably reliable written verification by the consumer
17 concerning (i) whether the consumer has any outstanding payday
18 loans, (ii) the principal amount of those outstanding payday
19 loans, and (iii) whether any payday loans have been paid in
20 full by the consumer in the preceding 7 days.

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

23 "Consumer reporting service" means an entity that provides

1 a database certified by the Department.

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

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

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

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

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

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

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

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

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

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

26 (3) A lender accepts an interest in a consumer's wages,

1 including, but not limited to, a wage assignment.

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

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

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

9 (815 ILCS 122/2-5)

10 Sec. 2-5. Loan terms.

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

14 (b) No payday loan may be made to a consumer if the loan
15 would result in the consumer being indebted to one or more
16 payday lenders for a period in excess of 45 consecutive days.
17 Except as provided under Section 2-40, if a consumer has or has
18 had loans outstanding for a period in excess of 45 consecutive
19 days, no payday lender may offer or make a loan to the consumer
20 for at least 7 calendar days after the date on which the
21 outstanding balance of all payday loans made during the 45
22 consecutive day period is paid in full. For purposes of this
23 subsection, the term "consecutive days" means a series of
24 continuous calendar days in which the consumer has an
25 outstanding balance on one or more payday loans; however, if a

1 payday loan is made to a consumer within 6 days or less after
2 the outstanding balance of all loans is paid in full, those
3 days are counted as "consecutive days" for purposes of this
4 subsection.

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

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

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

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

19 (g) A consumer has the right to redeem a check or any other
20 item described in the definition of payday loan under Section
21 1-10 issued in connection with a payday loan from the lender
22 holding the check or other item at any time before the payday
23 loan becomes payable by paying the full amount of the check or
24 other item.

25 (h) When a consumer repays a payday loan in full before its
26 due date, the lender shall rebate the unearned finance charges

1 to the consumer on a straight-line amortization basis as of the
2 date of repayment.

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

4 (815 ILCS 122/4-5)

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

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

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

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

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

21 (5) Knowingly accepting payment in whole or in part of
22 a payday loan through the proceeds of another payday loan
23 provided by any licensee.

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

1 for a payday loan.

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

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

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

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

13 (A) a confession of judgment clause;

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

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

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

25 (11) Selling any insurance of any kind whether or not
26 sold in connection with the making or collecting of a

1 payday loan.

2 (12) Taking any power of attorney.

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

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

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

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

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

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

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

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

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

25 (22) Evading the requirements and prohibitions of this
26 Act by use of a device or subterfuge including, but not

1 limited to, (i) disguising a payday loan as a different
2 type of transaction, or (ii) characterizing a required fee
3 as a purchase of a good or service in connection with a
4 payday loan.

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

6 (815 ILCS 122/4-30)

7 Sec. 4-30. Rulemaking; industry review.

8 (a) The Department may make and enforce such reasonable
9 rules, regulations, directions, orders, decisions, and
10 findings as the execution and enforcement of the provisions of
11 this Act require, and as are not inconsistent therewith. The
12 Department may develop rules to determine if any person or
13 entity seeks to evade the applicability of this Act by any
14 device, subterfuge, or pretense. All rules, regulations, and
15 directions of a general character shall be printed and copies
16 thereof mailed to all licensees.

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

24 (c) After the effective date of this Act, the Department
25 shall, over a 3-year period, conduct a study of the payday loan

1 industry to determine the impact and effectiveness of this Act.
2 The Department shall report its findings to the General
3 Assembly within 3 months of the third anniversary of the
4 effective date of this Act. The study shall determine the
5 effect of this Act on the protection of consumers in this State
6 and on the fair and reasonable regulation of the payday loan
7 industry. The study shall include, but shall not be limited to,
8 an analysis of the ability of the industry to use private
9 reporting tools that:

10 (1) ensure substantial compliance with this Act,
11 including real time reporting of outstanding payday loans;
12 and

13 (2) provide data to the Department in an appropriate
14 form and with appropriate content to allow the Department
15 to adequately monitor the industry.

16 The report of the Department shall, if necessary, identify
17 and recommend specific amendments to this Act to further
18 protect consumers and to guarantee fair and reasonable
19 regulation of the payday loan industry.

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.