



Sen. Donne E. Trotter

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LRB095 19515 WGH 48272 a

1 AMENDMENT TO SENATE BILL 2866

2 AMENDMENT NO. _____. Amend Senate Bill 2866 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Payday Loan Reform Act is amended by
5 changing Sections 3-5 and 4-5 as follows:

6 (815 ILCS 122/3-5)

7 Sec. 3-5. Licensure.

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

14 (b) An application for a license shall be in writing and in
15 a form prescribed by the Secretary. The Secretary may not issue
16 a payday loan license unless and until the following findings

1 are made:

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

8 (2) that the applicant has submitted such other
9 information as the Secretary may deem necessary; and

10 (3) that the applicant has unencumbered assets of at
11 least \$50,000 per location.

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

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

1 immediately notify the licensee by registered mail, enclosing
2 the summons and specifying the hour and day of service.

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

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

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

13 (f) Not more than one place of business shall be maintained
14 under the same license, but the Secretary may issue more than
15 one license to the same licensee upon compliance with all the
16 provisions of this Act governing issuance of a single license.
17 The location, except those locations already in existence as of
18 June 1, 2005, may not be within one mile of a horse race track
19 subject to the Illinois Horse Racing Act of 1975, within one
20 mile of a facility at which gambling is conducted under the
21 Riverboat Gambling Act, within one mile of the location at
22 which a riverboat subject to the Riverboat Gambling Act docks,
23 or within one mile of any State of Illinois or United States
24 military base or naval installation. The location, except those
25 locations already in existence as of June 1, 2008, may not be
26 within 2,500 feet of the location of any other business

1 licensed under this Act.

2 (g) No licensee shall conduct the business of making loans
3 under this Act within any office, suite, room, or place of
4 business in which any other business is solicited or engaged in
5 unless the other business is licensed by the Department or, in
6 the opinion of the Secretary, the other business would not be
7 contrary to the best interests of consumers and is authorized
8 by the Secretary in writing.

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

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

17 (815 ILCS 122/4-5)

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

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

24 (2) Using any device or agreement that would have the
25 effect of charging or collecting more fees or charges than

1 allowed by this Act, including, but not limited to,
2 entering into a different type of transaction with the
3 consumer.

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

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

9 (5) Knowingly accepting payment in whole or in part of
10 a payday loan through the proceeds of another payday loan
11 provided by any licensee.

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

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

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

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

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

26 (A) a confession of judgment clause;

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

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

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

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

15 (12) Taking any power of attorney.

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

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

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

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

25 (17) Charging for, or attempting to collect,
26 attorney's fees, court costs, or arbitration costs

1 incurred in connection with the collection of a payday
2 loan.

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

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

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

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

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

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.".