



## 96TH GENERAL ASSEMBLY

### State of Illinois

#### 2009 and 2010

##### HB3901

Introduced 2/26/2009, by Rep. Jehan A. Gordon - Elizabeth Hernandez

#### SYNOPSIS AS INTRODUCED:

815 ILCS 122/1-10  
815 ILCS 122/2-5  
815 ILCS 122/2-55  
815 ILCS 122/4-5  
815 ILCS 122/4-30

Amends the Payday Loan Reform Act. Changes the definition of "payday loan" to include any loan with a finance charge exceeding an annual percentage rate of 36% (instead of with a finance charge exceeding an annual percentage rate of 36% and with 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 no lender may make a payday loan with installment payments unless the installment payments are substantially equal term payments, and 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. Requires the licensee, as part of the information that he or she must collect and maintain, to include the total number of lawsuits filed by the licensee or its agent against consumers to collect on payday loans from consumers during the preceding calendar year. 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, (i) disguising a payday loan as a different type of transaction, or (ii) characterizing a required fee as a purchase of a good or service in connection with a payday loan. Authorizes the Department of Financial and Professional Regulation to develop rules to determine if any person or entity seeks to evade the applicability of this Act by any device, subterfuge, or pretense. Effective immediately.

LRB096 08484 KTG 18604 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, 2-55, 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 (i) No lender may make a payday loan with installment  
4 payments unless the installment payments are substantially  
5 equal term payments.

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

7 (815 ILCS 122/2-55)

8 Sec. 2-55. Information, reporting, and examination.

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

13 (b) A licensee shall collect and maintain information  
14 annually for a report that shall disclose in detail and under  
15 appropriate headings:

16 (1) the total number of payday loans made during the  
17 preceding calendar year;

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

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

22 (4) the average annual percentage rate and the average  
23 term of payday loans made during the preceding calendar  
24 year; ~~and~~

25 (5) the total number of payday loans paid in full, the

1 total number of loans that went into default, and the total  
2 number of loans written off during the preceding calendar  
3 year; and -

4 (6) the total number of lawsuits filed by the licensee  
5 or its agent against consumers to collect on payday loans  
6 from consumers during the preceding calendar year.

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

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

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

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

24 (815 ILCS 122/4-5)

25 Sec. 4-5. Prohibited acts. A licensee or unlicensed person



1 or entity making payday loans may not commit, or have committed  
2 on behalf of the licensee or unlicensed person or entity, any  
3 of the following acts:

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

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

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

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

16 (5) Knowingly accepting payment in whole or in part of  
17 a payday loan through the proceeds of another payday loan  
18 provided by any licensee.

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

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

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

1 consequences thereof.

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

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

7 (A) a confession of judgment clause;

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

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

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

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

22 (12) Taking any power of attorney.

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

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

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

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

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

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

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

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

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

19          (22) Evading the requirements and prohibitions of this  
20          Act by use of a device or subterfuge including, but not  
21          limited to, (i) disguising a payday loan as a different  
22          type of transaction, or (ii) characterizing a required fee  
23          as a purchase of a good or service in connection with a  
24          payday loan.

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

1 (815 ILCS 122/4-30)

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

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

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

19 (c) After the effective date of this Act, the Department  
20 shall, over a 3-year period, conduct a study of the payday loan  
21 industry to determine the impact and effectiveness of this Act.  
22 The Department shall report its findings to the General  
23 Assembly within 3 months of the third anniversary of the  
24 effective date of this Act. The study shall determine the  
25 effect of this Act on the protection of consumers in this State  
26 and on the fair and reasonable regulation of the payday loan

1 industry. The study shall include, but shall not be limited to,  
2 an analysis of the ability of the industry to use private  
3 reporting tools that:

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

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

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

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

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.