



Sen. Kimberly A. Lightford

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1 AMENDMENT TO SENATE BILL 1435

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1435 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 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

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

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

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

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

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

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

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

1 entity is engaged in a transaction that is in substance a  
2 disguised payday loan or a subterfuge for the purpose of  
3 avoiding this Act.

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

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

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

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

26 (1) A lender accepts one or more checks dated on the

1 date written and agrees to hold them for a period of days  
2 before deposit or presentment, or accepts one or more  
3 checks dated subsequent to the date written and agrees to  
4 hold them for deposit; or

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

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

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

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

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

16 (815 ILCS 122/2-5)

17 Sec. 2-5. Loan terms.

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

21 (b) No payday loan may be made to a consumer if the loan  
22 would result in the consumer being indebted to one or more  
23 payday lenders for a period in excess of 45 consecutive days.  
24 Except as provided under Section 2-40, if a consumer has or has  
25 had loans outstanding for a period in excess of 45 consecutive

1 days, no payday lender may offer or make a loan to the consumer  
2 for at least 7 calendar days after the date on which the  
3 outstanding balance of all payday loans made during the 45  
4 consecutive day period is paid in full. For purposes of this  
5 subsection, the term "consecutive days" means a series of  
6 continuous calendar days in which the consumer has an  
7 outstanding balance on one or more payday loans; however, if a  
8 payday loan is made to a consumer within 6 days or less after  
9 the outstanding balance of all loans is paid in full, those  
10 days are counted as "consecutive days" for purposes of this  
11 subsection.

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

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

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

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

26 (g) A consumer has the right to redeem a check or any other

1 item described in the definition of payday loan under Section  
2 1-10 issued in connection with a payday loan from the lender  
3 holding the check or other item at any time before the payday  
4 loan becomes payable by paying the full amount of the check or  
5 other item.

6 (h) When a consumer repays a payday loan in full before its  
7 due date, the lender shall rebate the unearned finance charges  
8 to the consumer on a straight-line amortization basis as of the  
9 date of repayment.

10 (i) No lender may make a payday loan with installment  
11 payments unless the installment payments are substantially  
12 equal term payments.

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

14 (815 ILCS 122/2-55)

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

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

20 (b) A licensee shall collect and maintain information  
21 annually for a report that shall disclose in detail and under  
22 appropriate headings:

23 (1) the total number of payday loans made during the  
24 preceding calendar year;

25 (2) the total number of payday loans outstanding as of

1 December 31 of the preceding calendar year;

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

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

7 (5) the total number of payday loans paid in full, the  
8 total number of loans that went into default, and the total  
9 number of loans written off during the preceding calendar  
10 year; and -

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

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

21 (c) No later than July 31 of the second year following the  
22 effective date of this Act, the Department shall publish an  
23 annual ~~a biennial~~ report that contains a compilation of  
24 aggregate data concerning the payday lending industry and shall  
25 make the report available to the Governor, the General  
26 Assembly, and the general public.

1 (d) The Department shall have the authority to conduct  
2 examinations of the books, records, and loan documents at any  
3 time.

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

5 (815 ILCS 122/4-5)

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

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

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

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

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

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

25 (6) Knowingly accepting any security, other than that



1 specified in the definition of payday loan in Section 1-10,  
2 for a payday loan.

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

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

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

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

14 (A) a confession of judgment clause;

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

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

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

26 (11) Selling any insurance of any kind whether or not

1 sold in connection with the making or collecting of a  
2 payday loan.

3 (12) Taking any power of attorney.

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

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

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

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

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

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

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

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

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

26 (22) Evading the requirements and prohibitions of this

1       Act by use of a device or subterfuge including, but not  
2       limited to, (i) disguising a payday loan as a different  
3       type of transaction, or (ii) characterizing a required fee  
4       as a purchase of a good or service in connection with a  
5       payday loan.

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

7             (815 ILCS 122/4-30)

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

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

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

25            (c) After the effective date of this Act, the Department

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

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

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

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

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

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