



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3935

Introduced 1/10/2012, by Rep. Greg Harris - Maria Antonia Berrios

SYNOPSIS AS INTRODUCED:

205 ILCS 670/20

from Ch. 17, par. 5426

815 ILCS 122/4-10

Amends the Consumer Installment Loan Act. Provides that if any person who is not licensed under the Act makes a loan pursuant to the Act to an Illinois consumer, then the loan shall be null and void and the person who made the loan shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan. Amends the Payday Loan Reform Act. Provides that if any lender who is not licensed under the Act makes a loan pursuant to the Act to an Illinois consumer, then the loan shall be null and void and the lender who made the loan shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan. Effective January 1, 2013.

LRB097 15548 AEK 60685 b

1 AN ACT concerning regulation.

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

4 Section 5. The Consumer Installment Loan Act is amended by
5 changing Section 20 as follows:

6 (205 ILCS 670/20) (from Ch. 17, par. 5426)

7 Sec. 20. Penalties for violation.

8 (a) Any person who engages in business as a Consumer
9 Installment Loan lender without the license required by this
10 Act shall be guilty of a Class 4 felony.

11 (b) The obligor, prior to the expiration of 2 years after
12 the date of his last scheduled payment, may recover such
13 reasonable attorney's fees and court costs as a court may
14 assess against such licensee or lender for a violation of
15 Sections 1, 12, 15, 15a, 15b, 15d, 15e, 16, 17, 18, or 19.1.
16 The balance due under the terms of the loan contract shall be
17 reduced by the amount which the obligor is thus entitled to
18 recover. A bona fide error by a licensee in calculating charges
19 or rebates is not a violation if the licensee corrects the
20 error within a reasonable time, after discovery.

21 (b-5) A license issued under this Act may be revoked if the
22 licensee, or any directors, managers of a limited liability
23 company, partners, or officer thereof is convicted of a felony.

1 (c) No provision of this Section imposing any liability
2 shall apply to any act done or omitted in conformity with any
3 rule or regulation or written interpretation thereof by the
4 Department of Financial Institutions, notwithstanding that
5 after such act or omission has occurred, such rule, regulation
6 or interpretation is amended, rescinded or determined by
7 judicial or other authority to be invalid for any reason. All
8 interpretations issued after January 1, 1998 must be written
9 and signed by the Department's Chief Counsel and approved by
10 the Director.

11 (d) Notwithstanding any other provision of this Section, if
12 any person who does not have a license issued under this Act
13 makes a loan pursuant to this Act to an Illinois consumer, then
14 the loan shall be null and void and the person who made the
15 loan shall have no right to collect, receive, or retain any
16 principal, interest, or charges related to the loan.

17 (Source: P.A. 90-437, eff. 1-1-98.)

18 Section 10. The Payday Loan Reform Act is amended by
19 changing Section 4-10 as follows:

20 (815 ILCS 122/4-10)

21 Sec. 4-10. Enforcement and remedies.

22 (a) The remedies provided in this Act are cumulative and
23 apply to persons or entities subject to this Act.

24 (b) Any material violation of this Act, including the

1 commission of an act prohibited under Section 4-5, constitutes
2 a violation of the Consumer Fraud and Deceptive Business
3 Practices Act.

4 (c) If any provision of the written agreement described in
5 subsection (b) of Section 2-20 violates this Act, then that
6 provision is unenforceable against the consumer.

7 (d) Subject to the Illinois Administrative Procedure Act,
8 the Secretary may hold hearings, make findings of fact,
9 conclusions of law, issue cease and desist orders, have the
10 power to issue fines of up to \$10,000 per violation, refer the
11 matter to the appropriate law enforcement agency for
12 prosecution under this Act, and suspend or revoke a license
13 granted under this Act. All proceedings shall be open to the
14 public.

15 (e) The Secretary may issue a cease and desist order to any
16 licensee or other person doing business without the required
17 license, when in the opinion of the Secretary the licensee or
18 other person is violating or is about to violate any provision
19 of this Act or any rule or requirement imposed in writing by
20 the Department as a condition of granting any authorization
21 permitted by this Act. The cease and desist order permitted by
22 this subsection (e) may be issued prior to a hearing.

23 The Secretary shall serve notice of his or her action,
24 including, but not limited to, a statement of the reasons for
25 the action, either personally or by certified mail, return
26 receipt requested. Service by certified mail shall be deemed

1 completed when the notice is deposited in the U.S. Mail.

2 Within 10 days of service of the cease and desist order,
3 the licensee or other person may request a hearing in writing.
4 The Secretary shall schedule a hearing within 30 days after the
5 request for a hearing unless otherwise agreed to by the
6 parties.

7 If it is determined that the Secretary had the authority to
8 issue the cease and desist order, he or she may issue such
9 orders as may be reasonably necessary to correct, eliminate, or
10 remedy the conduct.

11 The powers vested in the Secretary by this subsection (e)
12 are additional to any and all other powers and remedies vested
13 in the Secretary by law, and nothing in this subsection (e)
14 shall be construed as requiring that the Secretary shall employ
15 the power conferred in this subsection instead of or as a
16 condition precedent to the exercise of any other power or
17 remedy vested in the Secretary.

18 (f) The Secretary may, after 10 days notice by registered
19 mail to the licensee at the address set forth in the license
20 stating the contemplated action and in general the grounds
21 therefore, fine the licensee an amount not exceeding \$10,000
22 per violation, or revoke or suspend any license issued
23 hereunder if he or she finds that:

24 (1) the licensee has failed to comply with any
25 provision of this Act or any order, decision, finding,
26 rule, regulation, or direction of the Secretary lawfully

1 made pursuant to the authority of this Act; or

2 (2) any fact or condition exists which, if it had
3 existed at the time of the original application for the
4 license, clearly would have warranted the Secretary in
5 refusing to issue the license.

6 The Secretary may fine, suspend, or revoke only the
7 particular license with respect to which grounds for the fine,
8 revocation, or suspension occur or exist, but if the Secretary
9 finds that grounds for revocation are of general application to
10 all offices or to more than one office of the licensee, the
11 Secretary shall fine, suspend, or revoke every license to which
12 the grounds apply.

13 No revocation, suspension, or surrender of any license
14 shall impair or affect the obligation of any pre-existing
15 lawful contract between the licensee and any obligor.

16 The Secretary may issue a new license to a licensee whose
17 license has been revoked when facts or conditions which clearly
18 would have warranted the Secretary in refusing originally to
19 issue the license no longer exist.

20 In every case in which a license is suspended or revoked or
21 an application for a license or renewal of a license is denied,
22 the Secretary shall serve the licensee with notice of his or
23 her action, including a statement of the reasons for his or her
24 actions, either personally, or by certified mail, return
25 receipt requested. Service by certified mail shall be deemed
26 completed when the notice is deposited in the U.S. Mail.

1 An order assessing a fine, an order revoking or suspending
2 a license, or an order denying renewal of a license shall take
3 effect upon service of the order unless the licensee requests a
4 hearing, in writing, within 10 days after the date of service.
5 In the event a hearing is requested, the order shall be stayed
6 until a final administrative order is entered.

7 If the licensee requests a hearing, the Secretary shall
8 schedule a hearing within 30 days after the request for a
9 hearing unless otherwise agreed to by the parties.

10 The hearing shall be held at the time and place designated
11 by the Secretary. The Secretary and any administrative law
12 judge designated by him or her shall have the power to
13 administer oaths and affirmations, subpoena witnesses and
14 compel their attendance, take evidence, and require the
15 production of books, papers, correspondence, and other records
16 or information that he or she considers relevant or material to
17 the inquiry.

18 (g) The costs of administrative hearings conducted
19 pursuant to this Section shall be paid by the licensee.

20 (h) Notwithstanding any other provision of this Section, if
21 a lender who does not have a license issued under this Act
22 makes a loan pursuant to this Act to an Illinois consumer, then
23 the loan shall be null and void and the lender who made the
24 loan shall have no right to collect, receive, or retain any
25 principal, interest, or charges related to the loan.

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

1 Section 99. Effective date. This Act takes effect January
2 1, 2013.