

# HB1323



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1323

by Rep. Lou Lang

### SYNOPSIS AS INTRODUCED:

815 ILCS 122/4-10  
205 ILCS 670/9

from Ch. 17, par. 5409

Amends the Payday Loan Reform Act and the Consumer Installment Loan Act. Allows the Department of Financial and Professional Regulation to set rules for the imposition and amount of fines.

LRB098 07738 MGM 37816 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Payday Loan Reform Act is amended by  
5 changing Section 4-10 as follows:

6 (815 ILCS 122/4-10)

7 Sec. 4-10. Enforcement and remedies.

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

10 (b) Any material violation of this Act, including the  
11 commission of an act prohibited under Section 4-5, constitutes  
12 a violation of the Consumer Fraud and Deceptive Business  
13 Practices Act.

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

17 (d) Subject to the Illinois Administrative Procedure Act,  
18 the Secretary may hold hearings, make findings of fact,  
19 conclusions of law, issue cease and desist orders, have the  
20 power to issue fines of up to \$10,000 per violation, refer the  
21 matter to the appropriate law enforcement agency for  
22 prosecution under this Act, and suspend or revoke a license  
23 granted under this Act. All proceedings shall be open to the

1 public.

2 (e) The Secretary may issue a cease and desist order to any  
3 licensee or other person doing business without the required  
4 license, when in the opinion of the Secretary the licensee or  
5 other person is violating or is about to violate any provision  
6 of this Act or any rule or requirement imposed in writing by  
7 the Department as a condition of granting any authorization  
8 permitted by this Act. The cease and desist order permitted by  
9 this subsection (e) may be issued prior to a hearing.

10 The Secretary shall serve notice of his or her action,  
11 including, but not limited to, a statement of the reasons for  
12 the action, either personally or by certified mail, return  
13 receipt requested. Service by certified mail shall be deemed  
14 completed when the notice is deposited in the U.S. Mail.

15 Within 10 days of service of the cease and desist order,  
16 the licensee or other person may request a hearing in writing.  
17 The Secretary shall schedule a hearing within 30 days after the  
18 request for a hearing unless otherwise agreed to by the  
19 parties.

20 If it is determined that the Secretary had the authority to  
21 issue the cease and desist order, he or she may issue such  
22 orders as may be reasonably necessary to correct, eliminate, or  
23 remedy the conduct.

24 The powers vested in the Secretary by this subsection (e)  
25 are additional to any and all other powers and remedies vested  
26 in the Secretary by law, and nothing in this subsection (e)

1 shall be construed as requiring that the Secretary shall employ  
2 the power conferred in this subsection instead of or as a  
3 condition precedent to the exercise of any other power or  
4 remedy vested in the Secretary.

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

11 (1) the licensee has failed to comply with any  
12 provision of this Act or any order, decision, finding,  
13 rule, regulation, or direction of the Secretary lawfully  
14 made pursuant to the authority of this Act; or

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

19 The Secretary may fine, suspend, or revoke only the  
20 particular license with respect to which grounds for the fine,  
21 revocation, or suspension occur or exist, but if the Secretary  
22 finds that grounds for revocation are of general application to  
23 all offices or to more than one office of the licensee, the  
24 Secretary shall fine, suspend, or revoke every license to which  
25 the grounds apply.

26 The Department shall establish by rule and publish a

1 schedule of fines, the purpose of which shall be remedial and  
2 not punitive, that are reasonably tailored to ensure compliance  
3 with the provisions of this Act. Such rules shall set forth the  
4 standards and procedures to be used in imposing any such fines.

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

8 The Secretary may issue a new license to a licensee whose  
9 license has been revoked when facts or conditions which clearly  
10 would have warranted the Secretary in refusing originally to  
11 issue the license no longer exist.

12 In every case in which a license is suspended or revoked or  
13 an application for a license or renewal of a license is denied,  
14 the Secretary shall serve the licensee with notice of his or  
15 her action, including a statement of the reasons for his or her  
16 actions, either personally, or by certified mail, return  
17 receipt requested. Service by certified mail shall be deemed  
18 completed when the notice is deposited in the U.S. Mail.

19 An order assessing a fine, an order revoking or suspending  
20 a license, or an order denying renewal of a license shall take  
21 effect upon service of the order unless the licensee requests a  
22 hearing, in writing, within 10 days after the date of service.  
23 In the event a hearing is requested, the order shall be stayed  
24 until a final administrative order is entered.

25 If the licensee requests a hearing, the Secretary shall  
26 schedule a hearing within 30 days after the request for a

1 hearing unless otherwise agreed to by the parties.

2 The hearing shall be held at the time and place designated  
3 by the Secretary. The Secretary and any administrative law  
4 judge designated by him or her shall have the power to  
5 administer oaths and affirmations, subpoena witnesses and  
6 compel their attendance, take evidence, and require the  
7 production of books, papers, correspondence, and other records  
8 or information that he or she considers relevant or material to  
9 the inquiry.

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

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

18 (Source: P.A. 97-1039, eff. 1-1-13.)

19 Section 10. The Consumer Installment Loan Act is amended by  
20 changing Section 9 as follows:

21 (205 ILCS 670/9) (from Ch. 17, par. 5409)

22 Sec. 9. Fines, Suspension or Revocation of license.

23 (a) The Director may, after 10 days notice by registered  
24 mail to the licensee at the address set forth in the license,

1 stating the contemplated action and in general the grounds  
2 therefor, fine such licensee an amount not exceeding \$10,000  
3 per violation, or revoke or suspend any license issued  
4 hereunder if he or she finds that:

5 (1) The licensee has failed to comply with any  
6 provision of this Act or any order, decision, finding,  
7 rule, regulation or direction of the Director lawfully made  
8 pursuant to the authority of this Act; or

9 (2) Any fact or condition exists which, if it had  
10 existed at the time of the original application for the  
11 license, clearly would have warranted the Director in  
12 refusing to issue the license.

13 (b) The Director may fine, suspend, or revoke only the  
14 particular license with respect to which grounds for the fine,  
15 revocation or suspension occur or exist, but if the Director  
16 shall find that grounds for revocation are of general  
17 application to all offices or to more than one office of the  
18 licensee, the Director shall fine, suspend, or revoke every  
19 license to which such grounds apply.

20 (c) (Blank).

21 (d) No revocation, suspension, or surrender of any license  
22 shall impair or affect the obligation of any pre-existing  
23 lawful contract between the licensee and any obligor.

24 (e) The Director may issue a new license to a licensee  
25 whose license has been revoked when facts or conditions which  
26 clearly would have warranted the Director in refusing

1 originally to issue the license no longer exist.

2 (f) (Blank).

3 (g) In every case in which a license is suspended or  
4 revoked or an application for a license or renewal of a license  
5 is denied, the Director shall serve the licensee with notice of  
6 his or her action, including a statement of the reasons for his  
7 or her actions, either personally, or by certified mail, return  
8 receipt requested. Service by certified mail shall be deemed  
9 completed when the notice is deposited in the U.S. Mail.

10 (h) An order assessing a fine, an order revoking or  
11 suspending a license or, an order denying renewal of a license  
12 shall take effect upon service of the order unless the licensee  
13 requests, in writing, within 10 days after the date of service,  
14 a hearing. In the event a hearing is requested, the order shall  
15 be stayed until a final administrative order is entered.

16 (i) If the licensee requests a hearing, the Director shall  
17 schedule a hearing within 30 days after the request for a  
18 hearing unless otherwise agreed to by the parties.

19 (j) The hearing shall be held at the time and place  
20 designated by the Director. The Director and any administrative  
21 law judge designated by him or her shall have the power to  
22 administer oaths and affirmations, subpoena witnesses and  
23 compel their attendance, take evidence, and require the  
24 production of books, papers, correspondence, and other records  
25 or information that he or she considers relevant or material to  
26 the inquiry.



1           (k) The costs for the administrative hearing shall be set  
2 by rule.

3           (l) The Director shall have the authority to prescribe  
4 rules for the administration of this Section.

5           (m) The Department shall establish by rule and publish a  
6 schedule of fines, the purpose of which shall be remedial and  
7 not punitive, that are reasonably tailored to ensure compliance  
8 with the provisions of this Act. Such rules shall set forth the  
9 standards and procedures to be used in imposing any such fines.

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