

LEGISLATIVE HEARING CALENDAR

Positions to be taken by the City of Milwaukee on the following bills will be discussed by the

COMMITTEE ON JUDICIARY-LEGISLATION

MONDAY, JUNE 8, 2009 AT 2:15 PM

Room 301-B City Hall

LRB 1920/2 Finance charges for licensed lenders

LRB 1053/1 Payday loans

Update on State Budget



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1920/2
MDK:nwn:md

2009 BILL

1 AN ACT *to renumber and amend* 138.09 (1d); *to amend* 138.09 (1m) (a); and
2 *to create* 138.09 (1d) (b) and 138.09 (7m) of the statutes; **relating to:** finance
3 charges for licensed lenders.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union (financial institution) generally must obtain a license from the Division of Banking in the Department of Financial Institutions (DFI) to assess a finance charge for a consumer loan that is greater than 18 percent. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a consumer loan made by a licensed lender.

The bill changes the licensing requirement so that it is based on the amount of a loan, rather than the finance charge. Under the bill, a lender other than a financial institution must obtain a license if the lender makes a consumer loan of \$5,000 or less.

The bill also prohibits a lender who is so licensed from assessing a finance charge on a consumer loan that exceeds 36 percent per year. Under the bill, "finance charge" has the same definition as under the Wisconsin Consumer Act, which is also administered by DFI. The bill requires that DFI enforce the foregoing prohibition. A person who violates the prohibition is subject to the same penalty that applies under current law to a licensed lender who does not obtain a license, which is a fine of not more than \$500, imprisonment for not more than six months, or both. In

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addition, the bill allows a borrower to bring an action against a lender who violates the prohibition to recover damages in an amount equal to the greater of the following: 1) twice the amount of the finance charge in connection with the loan made to the borrower; or 2) the actual damages, including incidental and consequential damages, sustained by the borrower by reason of the violation. The bill also allows the borrower to recover the costs of the action, including reasonable attorney fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.09 (1d) of the statutes is renumbered 138.09 (1d) (intro.) and
2 amended to read:

3 138.09 (1d) (intro.) In this section, ~~“division”~~;

4 (a) “Division” means the division of banking.

5 **SECTION 2.** 138.09 (1d) (b) of the statutes is created to read:

6 138.09 (1d) (b) “Finance charge” has the meaning given in s. 421.301 (20).

7 **SECTION 3.** 138.09 (1m) (a) of the statutes is amended to read:

8 138.09 (1m) (a) Before any person may do business under this section or charge
9 the interest authorized by sub. (7) and before any creditor other than a bank, savings
10 bank, savings and loan association or credit union may ~~assess a finance charge on~~
11 make a consumer loan ~~in excess of 18% per year \$5,000 or less~~, that person shall first
12 obtain a license from the division. Applications for a license shall be in writing and
13 upon forms provided for this purpose by the division. An applicant at the time of
14 making an application shall pay to the division a nonrefundable \$300 fee for
15 investigating the application and a \$500 annual license fee for the period
16 terminating on the last day of the current calendar year. If the cost of the
17 investigation exceeds \$300, the applicant shall upon demand of the division pay to

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1 the division the amount by which the cost of the investigation exceeds the
2 nonrefundable fee.

3 **SECTION 4.** 138.09 (7m) of the statutes is created to read:

4 138.09 (7m) (a) No creditor who is licensed under sub. (1m) may assess a
5 finance charge on a consumer loan that is more than 36 percent per year.

6 (b) If a creditor makes a consumer loan that violates par. (a), the borrower may
7 bring an action against the creditor for an amount equal to twice the amount of the
8 finance charge in connection with the loan, or the actual damages, including any
9 incidental and consequential damages, sustained by the borrower by reason of the
10 violation, whichever is greater, and, notwithstanding s. 814.04 (1), the costs of the
11 action, including reasonable attorney fees.

12 **SECTION 5. Initial applicability.**

13 (1) This act first applies to loans made, refinanced, or consolidated on the
14 effective date of this subsection.

15 **SECTION 6. Effective date.**

16 (1) This act takes effect on the first day of the 3rd month beginning after
17 publication.

18 (END)

2009 BILL

1 AN ACT *to create* 138.09 (8) (f) and 138.14 of the statutes; **relating to:** payday
2 loans.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the Department of Financial Institutions (DFI) to assess a finance charge greater than 18 percent per year. This type of lender is generally referred to as a "licensed lender." A licensed lender must have a separate license for each place of business it maintains.

This bill creates certain requirements applicable to payday loan transactions. Under the bill, a "payday loan provider" is a licensed lender that makes payday loans. A "payday loan" is a transaction between an individual with an account at a financial establishment and the payday loan provider in which the provider agrees to either: 1) accept from the individual a check, hold the check for at least three days before negotiating it, and before negotiating the check pay the individual an agreed amount; or 2) accept the individual's authorization to initiate an electronic fund transfer (EFT) from the individual's account, wait for at least three days before initiating the EFT, and before initiating the EFT pay the individual an agreed amount. A payday loan provider may not make a payday loan in a principal amount that exceeds \$800 or 50 percent of the applicant's next paycheck, whichever is greater. The bill also limits a consumer's ability to "rollover" a payday loan. The bill defines "rollover" as the refinancing, renewal, amendment, or extension of a payday loan. Under the bill, a payday loan provider may enter into no more than one rollover of a consumer's payday loan and, before entering into such a rollover, the consumer

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must make payment, applied to the existing payday loan, that reduces the outstanding balance on the existing payday loan by at least 50 percent.

The bill also prohibits DFI, or any other state agency, from establishing or maintaining a database of individuals who enter into payday loans.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.09 (8) (f) of the statutes is created to read:

2 138.09 **(8)** (f) With respect to any payday loan, as defined in s. 138.14 (1) (h),
3 made or offered by the licensee, comply with s. 138.14 (2) and (3).

4 **SECTION 2.** 138.14 of the statutes is created to read:

5 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

6 (a) "Agency" has the meaning given in s. 13.62 (2).

7 (b) "Applicant" means an individual who seeks to obtain a payday loan.

8 (c) "Check" has the meaning given in s. 403.104 (6).

9 (d) "Consumer" means an individual who enters into a payday loan with a
10 payday loan provider.

11 (e) "Department" means the Department of Financial Institutions.

12 (f) "Financial establishment" means any organization that is authorized to do
13 business under state or federal law and that holds a demand deposit, savings deposit,
14 or other asset account belonging to an individual.

15 (g) "Organization" has the meaning given in s. 19.42 (11).

16 (h) "Payday loan" means any of the following:

17 1. A transaction between an individual with an account at a financial
18 establishment and another person, in which the person agrees to accept from the
19 individual a check, to hold the check for at least 3 days before negotiating or
20 presenting the check for payment, and to pay to the individual, at any time before

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1 negotiating or presenting the check for payment, an amount that is agreed to by the
2 individual.

3 2. A transaction between an individual with an account at a financial
4 establishment and another person, in which the person agrees to accept the
5 individual's authorization to initiate an electronic fund transfer from the account, to
6 wait for at least 3 days before initiating the electronic fund transfer, and to pay to
7 the individual, at any time before initiating the electronic fund transfer, an amount
8 that is agreed to by the individual.

9 (i) "Payday loan provider" means a person who is required to be licensed under
10 s. 138.09 and who makes payday loans.

11 (j) "Rollover" means the refinancing, renewal, amendment, or extension of a
12 payday loan beyond its original term.

13 (2) MAXIMUM PAYDAY LOAN AMOUNT. No payday loan provider may make a
14 payday loan that exceeds, in principal amount, \$800 or 50 percent of the applicant's
15 next paycheck, whichever is greater.

16 (3) ROLLOVER LIMITATIONS. (a) Subject to par. (b), a payday loan provider may
17 enter into not more than one rollover of a consumer's payday loan. After a payday
18 loan provider enters into a rollover of a consumer's payday loan, the payday loan
19 provider may not, until the consumer pays the loan in full, enter into another payday
20 loan with the consumer.

21 (b) A payday loan provider may enter into a rollover of a consumer's payday
22 loan only if, at or prior to the time of the rollover, the consumer makes payment,
23 applied to the existing payday loan, that reduces the outstanding balance on the
24 existing payday loan by at least 50 percent.

