



State of Wisconsin
2009 - 2010 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 447**

February 9, 2010 – Offered by Representatives FIELDS, HINTZ, JORGENSEN, SEIDEL,
SMITH and ZEPNICK.

1 **AN ACT** *to amend* 20.144 (1) (g); and *to create* 20.144 (1) (j), 138.09 (8) (f), 138.09
2 (8) (g), 138.09 (8) (h), 138.14 and 138.15 of the statutes; **relating to:** regulating
3 payday loan providers, requiring reporting of certain loans to credit reporting
4 agencies, prohibiting balloon payments for certain loans, prohibiting certain
5 motor vehicle title loans, providing an exemption from emergency rule
6 procedures, granting rule-making authority, making an appropriation, and
7 providing a penalty.

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 Division of Banking (division) in 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.” Current law also contains numerous provisions regulating consumer loans, which are generally loans of \$25,000 or less made to individuals for personal, family, or household purposes.

This substitute amendment prohibits a licensed lender from making or offering a motor vehicle title loan. The substitute amendment defines “motor vehicle title

loan” as a loan of \$25,000 or less to a borrower that is, or is to be, secured by a nonpurchase money security interest in the borrower’s motor vehicle and that has an original term of not more than three months. Under the substitute amendment, a “borrower” is an individual who obtains or seeks to obtain a motor vehicle title loan for personal, family, or household purposes.

This substitute amendment also creates certain requirements applicable to payday loan transactions. Under the substitute amendment, 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 one or more checks, hold the checks for a period of time before negotiating them, and, before negotiating the checks, loan the individual an agreed amount for a term of 90 days or less; or 2) accept the individual’s authorization to initiate one or more electronic fund transfers (EFTs) from the individual’s account, wait for a period of time before initiating the EFTs, and, before initiating the EFTs, loan the individual an agreed amount for a term of 90 days or less. The foregoing definitions apply regardless of whether a payday loan provider is physically located in this state.

The substitute amendment imposes certain restrictions on payday loans. The substitute amendment prohibits a payday loan provider from making a payday loan that exceeds, in principal amount and interest, \$600 or 35 percent of the applicant’s gross biweekly income, whichever is less. The substitute amendment does not otherwise affect the amount of interest that a payday loan provider charges, as long as the provider complies with the foregoing prohibition. In addition, the substitute amendment prohibits a payday loan provider from making a payday loan to an applicant who is liable for repayment on a payday loan made by another payday loan provider. A payday loan provider also may not make a payday loan if less than 24 hours have elapsed since the applicant repaid another payday loan in full or, if certain repayment requirements that are described below apply, less than one pay period of an applicant has elapsed since the applicant repaid the loan in full under those requirements. The substitute amendment also prohibits a payday loan provider from rolling over a payday loan that it has made to an individual. The substitute amendment defines “roll over” as the refinancing, renewal, amendment, or extension of a payday loan beyond its original maturity date, including the consolidation of payday loans and any transaction in which a payday loan is repaid with the proceeds of another payday loan made by the same payday loan provider.

In addition, the substitute amendment provides that a payday loan may not accrue interest after the loan maturity date and may not include any penalty arising from the customer’s prepayment, default, or late payment except that a payday loan provider may charge a fee not to exceed \$15 if the customer’s payment method is dishonored for insufficient funds. A payday loan provider may present a customer’s check for payment, or initiate an EFT from the customer’s account, only once. A payday loan provider may not accept from a customer a check or authorization to initiate an EFT if the amount of the check or authorization exceeds the limit for principal and interest described above. In addition, a customer has a right to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to

the payday loan provider by the close of business on the next business day after the payday loan is made. Also, if a customer fails to repay a payday loan in full at the end of the loan term, the payday loan provider must offer the customer the opportunity to repay the outstanding balance in four equal installments with due dates coinciding with the customer's pay period schedule. However, if a payday loan provider makes such an offer to a customer, then, for 12 months following the offer, no payday loan provider, including the payday loan provider making the offer, is required to make another offer to the customer. A payday loan provider may not impose any penalty on a customer who repays a loan in such a manner.

The substitute amendment also requires the division to develop and administer a database that provides payday loan providers with real-time access, through an Internet connection, to all payday loan information necessary for payday loan providers to comply with the requirements of the substitute amendment. The division is also allowed to contract for the development or administration of the database. The database must assign a unique identification number for each customer that must be used each time the customer enters into a payday loan transaction. Customer identification numbers may not be based on social security numbers. Each time that a payday loan provider enters into a payday loan transaction with a customer, the payday loan provider must submit certain information about the customer and the loan to the database. Also, a payday loan provider must submit information when a repayment offer described above is made or a payday loan is paid in full. The division must, by rule, impose a fee of no more than \$1 each time a payday loan provider submits data to the database. DFI must use the fees to pay for the development and administration of the database and to promote financial literacy. The substitute amendment allows a payday loan provider to rely on the information contained in the database as accurate, and provides that a payday loan provider is not subject to any penalty or liability for relying on inaccurate information contained in the database. In addition, information maintained in the database is not subject to inspection or copying under the open records law. Also, if the division contracts for development or administration of the database, the contract must ensure the confidentiality of information in the database.

The substitute amendment also does the following:

1. Requires a payday loan provider, at least 15 minutes before entering into a payday loan, to disclose to the applicant the total amount of all fees and costs, in dollars, and the annual percentage rate, to be paid by the applicant assuming that the loan is paid in full at the end of the loan term and to make other disclosures regarding the requirements of this substitute amendment.

2. Requires the division to develop written materials about payday loans and the payday loan industry. A payday loan provider must provide the materials to an applicant when making the disclosures described above.

3. Requires payday loan providers to make annual reports about their business to the division.

4. Prohibits a payday loan provider or database contractor from selling to any person information about customers and payday loans made to customers.

5. Allows a customer to bring an action against a payday loan provider who makes a payday loan that violates the substitute amendment. In such an action, the customer may obtain an amount equal to twice the interest charged for the loan, or the actual damages, whichever is greater, as well as costs and attorney fees.

6. Provides that whoever violates the substitute amendment is subject to a criminal fine of not more than \$500 nor more than \$1,000, imprisonment for not more than 6 months, or both.

7. Requires any licensed lender, upon making a loan for a term of more than 90 days, to report the loan to a credit reporting agency, which is referred to as a consumer reporting agency under federal law.

8. Prohibits a licensed lender from requiring a schedule of payments by a borrower under which: 1) any one payment is not equal or substantially equal to all other payments; or 2) the intervals between any consecutive payments differ substantially.

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

1 **SECTION 1.** 20.144 (1) (g) of the statutes is amended to read:

2 20.144 (1) (g) *General program operations.* The amounts in the schedule for
3 the general program operations of the department of financial institutions. Except
4 as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department,
5 other than by the office of credit unions and the division of banking, and 88% of all
6 moneys received by the department's division of banking shall be credited to this
7 appropriation, but any balance at the close of a fiscal year under this appropriation
8 shall lapse to the general fund. Annually, \$200,000 of the amounts received under
9 this appropriation account shall be transferred to the appropriation account under
10 s. 20.575 (1) (g).

11 **SECTION 2.** 20.144 (1) (j) of the statutes is created to read:

12 20.144 (1) (j) *Financial literacy.* All moneys received under s. 138.14 (8) (e), for
13 developing and administering, or contracting for the development and

1 administration of, the database under s. 138.14 (8) and for promoting financial
2 literacy.

3 **SECTION 3.** 138.09 (8) (f) of the statutes is created to read:

4 138.09 (8) (f) When making a payday loan, as defined in s. 138.14 (1) (g), comply
5 with s. 138.14 and rules promulgated under s. 138.14.

6 **SECTION 4.** 138.09 (8) (g) of the statutes is created to read:

7 138.09 (8) (g) Upon making a loan for a term of more than 90 days, report the
8 loan to a consumer reporting agency, as defined in 15 USC 1681a (f).

9 **SECTION 5.** 138.09 (8) (h) of the statutes is created to read:

10 138.09 (8) (h) Make no loan which requires a schedule of payments by a
11 borrower under which any one payment is not equal or substantially equal to all
12 other payments, or under which the intervals between any consecutive payments
13 differ substantially.

14 **SECTION 6.** 138.14 of the statutes is created to read:

15 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

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

17 (b) "Check" has the meaning given in s. 403.104 (6).

18 (c) "Customer" means an individual who enters into a payday loan with a
19 payday loan provider.

20 (d) "Division" means the division of banking in the department of financial
21 institutions.

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

25 (f) "Organization" has the meaning given in s. 19.42 (11).

1 (g) “Payday loan” means any of the following:

2 1. A transaction between an individual with an account at a financial
3 establishment and another person, including a person who is not physically located
4 in this state, in which the person agrees to accept from the individual one or more
5 checks, to hold the check or checks for a period of time before negotiating or
6 presenting the check or checks for payment, and to loan to the individual, for a term
7 of 90 days or less, before negotiating or presenting the check or checks for payment,
8 an amount that is agreed to by the individual.

9 2. A transaction between an individual with an account at a financial
10 establishment and another person, including a person who is not physically located
11 in this state, in which the person agrees to accept the individual’s authorization to
12 initiate one or more electronic fund transfers from the account, to wait a period of
13 time before initiating the electronic fund transfer or transfers, and to loan to the
14 individual, for a term of 90 days or less, before initiating the electronic fund transfer
15 or transfers, an amount that is agreed to by the individual.

16 (h) “Payday loan provider” means a person who is required to be licensed under
17 s. 138.09 and who makes payday loans.

18 (i) “Rollover” or “rolled over” means the refinancing, renewal, amendment, or
19 extension of a payday loan beyond its original date of maturity. “Rollover” or “rolled
20 over” includes the consolidation of payday loans and any transaction in which a
21 payday loan is repaid with the proceeds of another payday loan made by the same
22 payday loan provider.

23 **(2) DISCLOSURE REQUIREMENTS.** (a) Not less than 15 minutes before any payday
24 loan provider enters into a payday loan with an applicant, the payday loan provider
25 shall do all of the following:

1 1. Disclose to the applicant the total amount of all fees and costs, in dollars, to
2 be paid by the applicant for the loan assuming that the loan is paid in full at the end
3 of the loan term.

4 2. Disclose to the applicant the annual percentage rate to be paid by the
5 applicant on the loan assuming that the loan is paid in full at the end of the loan term.

6 3. Provide to the applicant a copy of the written informational materials
7 specified in sub. (4).

8 4. Disclose to the applicant that he or she has the right to rescind the loan
9 transaction as provided in sub. (6).

10 5. Disclose to the applicant the service charge that may apply under sub. (3)
11 (g).

12 6. Disclose to the applicant the payment requirements that may apply under
13 sub. (7) (a) if the loan is not paid in full at the end of the loan term.

14 (b) A payday loan provider shall retain, for at least 3 years after the origination
15 date of any payday loan, a record of compliance with par. (a) with respect to the loan.

16 **(3) LOAN RESTRICTIONS.** (a) No payday loan provider may make a payday loan
17 that exceeds, in principal amount and interest, \$600 or 35 percent of the applicant's
18 gross biweekly income, whichever is less.

19 (b) No payday loan provider may make a payday loan to individual who is liable
20 for repayment of any amount on a payday loan made by another payday loan
21 provider. No payday loan provider may make a payday loan to an individual if less
22 than 24 hours have elapsed since the individual repaid another payday loan in full
23 or, if repayment is subject to sub. (7) (a), if less than a time period equal to the
24 applicant's pay period has elapsed since the individual repaid the loan in full under
25 sub. (7) (a).

1 (c) No payday loan provider may require the payment of any interest on a
2 payday loan that accrues after the original maturity date of the payday loan.

3 (d) Except as provided in par. (g), no payday loan provider may impose any
4 penalty on a customer arising from the customer's prepayment of or default or late
5 payment on a payday loan, including any payment under sub. (7) (a).

6 (e) No payday loan provider may accept from a customer a check or
7 authorization to initiate an electronic fund transfer if the amount of the check or
8 authorization exceeds the amount specified in par. (a).

9 (f) A payday loan provider may not rollover a payday loan.

10 (g) A payday loan provider may present a customer's check for payment no
11 more than once. For each customer authorization to initiate an electronic fund
12 transfer from the customer's account, a payday loan provider may initiate an
13 electronic fund transfer no more than once. The only charge that a payday loan
14 provider may impose for dishonor of a customer's check or denial of the payday loan
15 provider's instruction to execute an electronic fund transfer is a service charge that
16 does not exceed \$15.

17 **(4) INFORMATIONAL MATERIALS.** (a) The division shall develop written
18 informational materials on payday loans and the payday loan industry. These
19 informational materials shall be designed to educate individuals regarding the
20 operation and potential costs of payday loans and of other options for borrowing
21 funds that may be available.

22 (b) The informational materials under par. (a) shall include a clear and
23 conspicuous notice that a payday loan is not intended to meet long-term financial
24 needs and that a payday loan applicant should use a payday loan only to provide
25 funds in a financial emergency.

1 (c) The informational materials under par. (a) shall include all of the following
2 information, based upon aggregated information from reports submitted under sub.
3 (5) for the most recent reporting period:

4 1. The average annual percentage rate for payday loans.

5 2. The percentage of customers originating payday loans who defaulted on the
6 loan.

7 3. The percentage of customers originating payday loans whose payment
8 method was dishonored or denied for insufficient funds.

9 4. The percentage of customers originating payday loans that resulted in
10 repayment under sub. (7) (a).

11 (d) The informational materials under par. (a) shall include a summary of all
12 actions that the payday loan provider may take against a payday loan customer if
13 the customer defaults on the payday loan or if the customer's check or electronic fund
14 transfer is dishonored or denied for insufficient funds.

15 (e) The division shall annually update the informational materials under par.
16 (a), based upon the division's analysis of reports received under sub. (5).

17 (f) The division shall make copies of the informational materials under par. (a)
18 available, upon request, to payday loan providers and to the public, including
19 making these informational materials available on the Internet site of the
20 department of financial institutions. The division may charge payday loan providers
21 a reasonable fee for printed copies of informational materials supplied under this
22 paragraph.

23 **(5) REPORTING AND RECORD KEEPING.** (a) On or before March 15 of each year,
24 every payday loan provider shall make an annual report to the division. The report
25 shall cover business relating to payday loans made by the payday loan provider

1 during the preceding calendar year and shall include any relevant information
2 required by the division. The report shall be made upon forms prescribed by the
3 division and shall be signed and verified by the oath or affirmation of the payday loan
4 provider if an individual, one of the partners if a partnership, a member or manager
5 if a limited liability company, or an officer of the corporation or association if a
6 corporation or association. A payday loan provider may include the information
7 required to be reported under this subsection in the payday loan provider's report
8 under s. 138.09 (3) (f), if the information required under this subsection is stated
9 separately in the report from information relating to the payday loan provider's other
10 business.

11 (b) The division shall require that the report under par. (a) include, for the
12 applicable reporting period, all of the following aggregated information:

13 1. The number of payday loans originated by the payday loan provider.

14 2. The average of the total amount of all fees and costs, in dollars, and the
15 average loan term, for all payday loans of the payday loan provider.

16 3. Based upon the information specified in subd. 2., the average annual
17 percentage rate for all payday loans of the payday loan provider.

18 4. The number of payday loans originated by the payday loan provider that
19 resulted in repayment under sub. (7) (a).

20 5. The number of payday loans originated by the payday loan provider that
21 resulted in default on the loan by the customer.

22 6. The number of payday loans originated by the payday loan provider on which
23 the customer's payment method was dishonored or denied because the customer's
24 check was drawn on, or the customer's authorization to initiate an electronic fund
25 transfer was from, an account at a financial establishment containing insufficient

1 funds when the check was presented for payment or the electronic fund transfer was
2 initiated.

3 **(6) RESCISSION.** A customer may rescind a payday loan, before the close of
4 business on the next day of business after the loan is made, by returning to the
5 payday loan provider the proceeds of the payday loan. The payday loan provider may
6 not charge the customer any fee for rescinding the payday loan as provided in this
7 subsection.

8 **(7) REPAYMENT AFTER TERM OF LOAN.** (a) Except as provided in par. (b), if a
9 customer fails to repay a payday loan in full at the end of the loan term, the payday
10 loan provider shall offer the customer the opportunity to repay the outstanding
11 balance of the loan in four equal installments with due dates coinciding with the
12 customer's pay period schedule.

13 (b) If a payday loan provider offers a customer the opportunity to make
14 repayment under par. (a), then, during the 12-month period following the offer, no
15 payday loan provider, including the payday loan provider making the offer, is
16 required to offer the customer another opportunity to repay a payday loan under par.
17 (a).

18 **(8) DATABASE.** (a) The division shall develop and administer, or contract for the
19 development and administration of, a database that provides payday loan providers
20 with real-time access, through an Internet connection, to all payday loan
21 information necessary for payday loan providers to comply with this section. The
22 database shall assign a unique identification number for each customer that shall
23 be used each time the customer enters into a payday loan transaction. A customer
24 identification number may not be based on a customer's social security number. The
25 database shall also assign a unique identifying transaction number for each payday

1 loan transaction that is entered into the database by a payday loan provider under
2 par. (b).

3 (b) At the time a payday loan provider enters into a payday loan transaction
4 with a customer, the payday loan provider shall submit to the database under par.
5 (a), in the form and manner prescribed by the division, information relating to the
6 payday loan, including all of the following:

- 7 1. The customer's name and address.
- 8 2. The customer's identification number that is assigned by the database.
- 9 3. The principal amount and interest for the payday loan.
- 10 4. The date on which the payday loan agreement is signed.
- 11 5. The date of maturity of the payday loan.
- 12 6. The customer's pay period.
- 13 7. Any other information required by the division by rule.

14 (c) At any time a payday loan provider offers a customer the opportunity to
15 agree to repay a payday loan under sub. (7) (a), the payday loan provider shall submit
16 the date of the offer to the database under par. (a).

17 (d) At the time the outstanding balance of a payday loan is repaid in full, the
18 payday loan provider shall submit to the database under par. (a), in the form and
19 manner prescribed by the division, information specifying that the payday loan has
20 terminated, including the date and time that the payday loan terminated.

21 (e) The division shall by rule impose on a payday loan provider a fee of no more
22 than \$1 each time the payday loan provider submits data required under pars. (b),
23 (c), and (d).

1 (f) A payday loan provider may rely on the information contained in the
2 database under par. (a) as accurate and is not subject to any penalty or liability due
3 to its reliance on inaccurate information contained in the database.

4 (g) Information maintained in the database under par. (a) is not subject to
5 inspection or copying under s. 19.35 (1) and shall remain confidential except as
6 needed by payday loan providers to satisfy the requirements of this section and by
7 the division to enforce this section.

8 (h) If the division contracts with a person for the development or
9 administration of the database under par. (a), the division shall ensure that the
10 contract requires the person to maintain the confidentiality of information contained
11 in the database.

12 (i) The division shall establish procedures monitoring use of the database by
13 payday loan providers, including procedures for determining compliance with par.
14 (b) 2.

15 **(9) CUSTOMER INFORMATION.** No payday loan provider or person with whom the
16 division contracts for development or administration of the database under sub. (8)
17 (a) may sell to another person any information regarding a customer or a payday loan
18 made to a customer.

19 **(10) PRIVATE CAUSE OF ACTION.** If a payday loan provider makes a payday loan
20 to a customer that violates this section, the customer may bring an action against the
21 payday loan provider for an amount equal to twice the interest charged for the loan,
22 or the actual damages, including any incidental and consequential damages,
23 sustained by the customer by reason of the violation, whichever is greater, and,
24 notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney
25 fees.

1 **(11) PENALTY.** Whoever violates this section may be fined not more than \$500
2 nor more than \$1,000, imprisoned for not more than 6 months, or both.

3 **(12) RULES.** The division shall promulgate rules necessary to implement,
4 administer, and enforce this section, including prescribing the form and content of
5 any report required under sub. (5) and the method of filing such a report.

6 **SECTION 7.** 138.15 of the statutes is created to read:

7 **138.15 Motor vehicle title loans. (1) DEFINITIONS.** In this section:

8 (a) “Borrower” means an individual who obtains or seeks to obtain a motor
9 vehicle title loan for personal, family, or household purposes.

10 (b) “Motor vehicle title loan” means a loan of \$25,000 or less to a borrower that
11 is, or is to be, secured by an interest, other than a purchase money security interest,
12 in the borrower’s motor vehicle and that has an original term of not more than 3
13 months.

14 **(2) TITLE LOANS PROHIBITED.** No person required to be licensed under s. 138.09
15 may make or offer any motor vehicle title loan.

16 **SECTION 8. Nonstatutory provisions.**

17 (1) In this SECTION, “division” means the division of banking in the department
18 of financial institutions.

19 (2) The division shall submit in proposed form the rules required under section
20 138.14 (8) (b) 7. and (e) and (12) of the statutes, as created by this act, to the
21 legislative council staff under section 227.15 (1) of the statutes no later than the first
22 day of the 6th month beginning after the effective date of this subsection.

23 (3) Using the emergency rules procedure under section 227.24 of the statutes,
24 the division shall promulgate the rules required under section 138.14 (8) (b) 7. and
25 (e) and (12) of the statutes, as created by this act, for purposes of implementing this

1 act, for the period before the effective date of the rules submitted under subsection
2 (2). The division shall promulgate these emergency rules no later than the first day
3 of the 6th month beginning after the effective date of this subsection.
4 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules
5 may remain in effect until July 1, 2011, or the date on which permanent rules take
6 effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the
7 statutes, the division is not required to provide evidence that promulgating a rule
8 under this subsection as an emergency rule is necessary for the preservation of the
9 public peace, health, safety, or welfare and is not required to provide a finding of
10 emergency for a rule promulgated under this subsection.

11 **SECTION 9. Initial applicability.**

12 (1) The treatment of section 138.09 (8) (g) and (h) of the statutes first applies
13 to loans made on the effective date of this subsection.

14 (2) The treatment of section 138.14 of the statutes first applies to payday loans
15 made or offered on the effective date of this subsection.

16 (3) The treatment of section 138.15 of the statutes first applies to motor vehicle
17 title loans made or offered on the effective date of this subsection.

18 **SECTION 10. Effective dates.** This act takes effect on the first day of the 6th
19 month beginning after publication, except as follows:

20 (1) SECTION 8 of this act takes effect on the day after publication.

21 (END)