



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 530**

April 2, 2010 – Offered by Senator SULLIVAN.

1 **AN ACT to amend** 20.144 (1) (g), 49.857 (1) (d) 12., 73.0301 (1) (d) 6., 138.04,
2 138.09 (1m) (a), 138.09 (3) (f), 138.10 (2m), 138.10 (15), 220.02 (2) (b), 220.04
3 (10), 220.285 (1), 321.60 (1) (a) 12., 403.414 (7), 422.201 (3) and 425.301 (4); and
4 **to create** 20.144 (1) (j), 59.69 (4h), 62.23 (7) (hi), 138.09 (1a), 138.09 (3) (e) 1.
5 g., 138.14 and 812.35 (1a) of the statutes; **relating to:** regulating payday loans,
6 limiting the areas in which a payday lender may operate, granting rule-making
7 authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a financial institution (i.e., 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. 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 loan entered into by a licensed lender. A lender who makes payday loans is typically required to be a licensed lender. In a standard payday loan transaction, the lender accepts a personal check from the

customer, pays the customer the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Except for the requirement to obtain a license as a licensed lender, current law does not specifically regulate payday loan transactions.

Licenses. This substitute amendment creates requirements for regulating certain payday loan and similar transactions by prohibiting a person from originating or servicing a “payday loan” involving a Wisconsin resident unless the division issues a new license, that is created in the substitute amendment, to the person. The substitute amendment defines “payday loan” as a transaction between an individual with an account at a financial establishment and another person in which the person 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 the person making the loan is physically located in this state. The substitute amendment requires a separate license for each place of business at which a person originates or services a payday loan involving a Wisconsin resident. Financial institutions and their affiliates are exempt from the requirement to be licensed under the substitute amendment. Also, a person who is licensed under the substitute amendment is not required to be licensed as a licensed lender.

Fees. Except for the maximum liability limit discussed below, the substitute amendment does not impose any limit on the interest that may be charged on a payday loan before the maturity date of the loan. The substitute amendment defines “maturity date” as the date specified when originating the loan on which the loan is required to be paid in full. If a payday loan is not paid in full on or before the maturity date, the substitute amendment limits the amount of interest that a licensee can charge after the maturity date to not more than 2.75 percent per month. Also, interest may not be assessed on any post-maturity date interest earned by the licensee. The substitute amendment also allows a customer to prepay a payday loan in whole or in part. If a loan is prepaid in full, the licensee must, as specified in the substitute amendment, refund any unearned interest that has been assessed. Also, the substitute amendment prohibits a licensee from imposing any penalty on a customer arising from the customer’s prepayment of or default or late payment on a payday loan, except for the dishonored check or denied EFT fee described below. In addition, the substitute amendment prohibits a licensee from assessing a fee or charge for accessing or using the statewide database described below.

Maximum liability and database. The substitute amendment prohibits a licensee from making a payday loan to a customer that results in the customer having an outstanding aggregate liability in principal, interest, and all other fees and charges, to all licensees who have made loans to the customer of more than \$1,500 or 35 percent of the customer’s gross monthly income, whichever is less. The substitute amendment requires DFI to contract with a third-party provider to

operate a single statewide database that licensees may access to determine compliance with the foregoing prohibition. The division must, by rule or order, specify a transaction fee of no more than \$1 that the database operator must charge licensees for accessing the database. DFI must use the fees to pay for developing, implementing, and maintaining the database and to promote financial literacy. In addition, the substitute amendment requires licensees to provide information to the database operator regarding the payday loans that they make and close. The substitute amendment also creates procedures that licensees must follow in the event that the database is not fully operational or that licensees are unable to access the database. The substitute amendment provides that any information in the database regarding a person's transactional history is confidential and not subject to the open records law.

Licensee requirements. The substitute amendment prohibits a licensee from making a payday loan to a customer with an invalid customer identification number. The substitute amendment requires the division to specify the manner for assigning customer identification numbers, which may not be based on a customer's social security number. In addition, the substitute amendment prohibits a licensee from making false or deceptive statements regarding payday loans.

The substitute amendment also requires a licensee to do all of the following: 1) maintain in force a bond of no more than \$5,000 for each place of business at which the licensee makes loans to Wisconsin residents; 2) post their license at each place of business or make them easily viewed on their Internet Web sites; 3) provide written notice to the division of changes of address for places of business; 4) comply with specified record-keeping and reporting requirements; and 5) provide customers with specified disclosures in both English and Spanish. The substitute amendment allows a licensee to charge a customer a fee not exceeding \$15 for a dishonored check or denial of an authorized ETF. Also, while the substitute amendment allows a licensee to bring an action against the customer to collect the amount of a returned check, the substitute amendment prohibits a licensee from threatening or pursuing criminal action against the customer.

In addition, if a customer fails to repay a payday loan in full at the end of the loan term, the licensee 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 licensee makes such an offer to a customer, then, for 12 months following the offer, no licensee, including the licensee making the offer, is required to make another such offer to the customer. As noted above, a licensee may not impose any penalty on a customer for late payment, including repayment made pursuant to such an offer.

Zoning requirements. Generally under current law, a city, village, town, or county (political subdivision) may engage in zoning and land use planning. This substitute amendment imposes some limitations on the locations in which a business, owned by a licensee, that makes payday loans (payday lender) may operate. Generally under the substitute amendment, a payday lender may not operate in a political subdivision unless it receives a permit to do so from the political subdivision's governing body or zoning agency, and the governing body or zoning

agency may not issue a permit to a payday lender if the business would be located within 1,500 feet of another payday lender or if the business would be located within 150 feet of certain residential zoning districts. A political subdivision may, however, enact a zoning ordinance that contains provisions even more restrictive than the conditions established in the substitute amendment. Also, if a political subdivision has enacted an ordinance regulating payday lenders that is in effect on the substitute amendment's effective date, the political subdivision may continue to enforce that ordinance, but only if that ordinance is at least as restrictive as the provisions created in the substitute amendment, except that the substitute amendment "grandfathers" a payday lender doing business at a nonconforming location on the effective date of the substitute amendment by allowing the payday lender to continue to do business at that location, even if the location does not comply with the substitute amendment's requirements.

Other requirements. The substitute amendment creates other requirements for payday loans, including the following:

1. The substitute amendment specifies requirements for license applications, including the payment of a \$300 application investigation fee and an annual \$500 fee. The substitute amendment also requires the applicant to acknowledge the applicant is subject to the debt collection requirements of the Wisconsin Consumer Act with respect to payday loans.

2. The substitute amendment requires the database to report invalid customer identification numbers to licensees or the division.

3. The substitute amendment allows the division to revoke or suspend licenses based on violations, promulgate rules and issue orders to enforce the substitute amendment's requirements, and assess administrative forfeitures of \$100 per day against licensees who fail to notify the database operator about loans that are closed.

4. The substitute amendment provides that a violation of any of the substitute amendment's requirements is a misdemeanor subject to a fine of not more than \$500, imprisonment for not more than six months, or both.

5. The substitute amendment allows a customer to recover damages of \$250 or the amount of the payday loan, whichever is greater, as well as costs and attorney fees, from a person who makes a payday loan to the customer in violation of the substitute amendment's requirements.

6. The substitute amendment voids any payday loan made by a person who does not have a license required under the substitute amendment and allows a customer to recover any amounts paid to such a person.

7. The substitute amendment provides that licensees are not subject to civil forfeitures as a result of relying on inaccurate information contained in the database.

8. The substitute amendment allows a customer to repay a payday loan with proceeds of a subsequent payday loan made by the same or another licensee or an affiliate of the same or another licensee. In addition, if a licensee makes such a subsequent payday loan, the substitute amendment prohibits the customer from repaying the subsequent payday loan with another payday loan made by the same or another licensee or affiliate.

9. The substitute amendment allows a customer to rescind a payday loan, without incurring any fee, by returning the payday loan proceeds to the licensee by the close of business on the next business day after the payday loan is made.

10. The substitute amendment allows the division to operate the database described above, as an alternative to contracting with a third-party provider.

11. The substitute amendment prohibits a licensee or third-party provider from selling any information regarding a customer or a payday loan made to a customer.

12. The substitute amendment prohibits earnings garnishment actions to recover amounts owed on a payday loan.

13. The substitute amendment requires the division to make annual reports to the legislature regarding payday loans made in the preceding year.

Finally, the substitute amendment eliminates a requirement under current law that certain annual reports made by licensed lenders to the division must be verified by oath or affirmation. Instead, the substitute amendment requires the reports to be made in the form and manner prescribed by the division.

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:

1 20.144 (1) (j) *Payday loan database and financial literacy*. All moneys received
2 under s. 138.14 (14) (h), for developing, implementing, maintaining, or contracting
3 for operating, the database under s. 138.14 (14), and for promoting financial literacy.

4 **SECTION 3.** 49.857 (1) (d) 12. of the statutes, as affected by 2009 Wisconsin Act
5 2, is amended to read:

6 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,
7 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72,
8 224.725, 224.93 or subch. IV of ch. 551.

9 **SECTION 4.** 59.69 (4h) of the statutes is created to read:

10 59.69 (4h) PAYDAY LENDERS. (a) *Definitions*. In this subsection:

11 1. “Licensee” has the meaning given in s. 138.14 (1) (i).

12 2. “Payday lender” means a business, owned by a licensee, that makes payday
13 loans.

14 3. “Payday loan” has the meaning given in s. 138.14 (1) (k).

15 (b) *Limits on locations of payday lenders*. Except as provided in par. (c), no
16 payday lender may operate in a county unless it receives a permit to do so from the
17 county zoning agency, and the county zoning agency may not issue a permit to a
18 payday lender if any of the following applies:

19 1. The payday lender would be located within 1,500 feet of another payday
20 lender.

21 2. The payday lender would be located within 150 feet of a single-family or
22 2-family residential zoning district.

23 (c) *Exceptions*. 1. Paragraph (b) only applies in the unincorporated parts of the
24 county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).

1 2. A county may regulate payday lenders by enacting a zoning ordinance that
2 contains provisions that are more strict than those specified in par. (b).

3 3. If a county has enacted an ordinance regulating payday lenders that is in
4 effect on the effective date of this subdivision [LRB inserts date], the ordinance
5 may continue to apply and the county may continue to enforce the ordinance, but only
6 if the ordinance is at least as restrictive as the provisions of par. (b).

7 4. Notwithstanding the provisions of subd. 3., if a payday lender that is doing
8 business on the effective date of this subdivision [LRB inserts date], from a
9 location that does not comply with the provisions of par. (b), the payday lender may
10 continue to operate from that location notwithstanding the provisions of par. (b).

11 **SECTION 5.** 62.23 (7) (hi) of the statutes is created to read:

12 62.23 (7) (hi) *Payday lenders.* 1. In this paragraph:

13 a. "Licensee" has the meaning given in s. 138.14 (1) (i).

14 b. "Payday lender" means a business, owned by a licensee, that makes payday
15 loans.

16 c. "Payday loan" has the meaning given in s. 138.14 (1) (k).

17 2. Except as provided in subds. 3., 4., and 5., no payday lender may operate in
18 a city unless it receives a permit to do so from the city council, and the city council
19 may not issue a permit to a payday lender if any of the following applies:

20 a. The payday lender would be located within 1,500 feet of another payday
21 lender.

22 b. The payday lender would be located within 150 feet of a single-family or
23 2-family residential zoning district.

24 3. A city may regulate payday lenders by enacting a zoning ordinance that
25 contains provisions that are more strict than those specified in subd. 2.

1 4. If a city has enacted an ordinance regulating payday lenders that is in effect
2 on the effective date of this subdivision [LRB inserts date], the ordinance may
3 continue to apply and the city may continue to enforce the ordinance, but only if the
4 ordinance is at least as restrictive as the provisions of subd. 2.

5 5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing
6 business on the effective date of this subdivision [LRB inserts date], from a
7 location that does not comply with the provisions of subd. 2., the payday lender may
8 continue to operate from that location notwithstanding the provisions of subd. 2.

9 **SECTION 6.** 73.0301 (1) (d) 6. of the statutes, as affected by 2009 Wisconsin Act
10 2, is amended to read:

11 73.0301 (1) (d) 6. A license or certificate of registration issued by the
12 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
13 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725,
14 224.93 or under subch. IV of ch. 551.

15 **SECTION 7.** 138.04 of the statutes is amended to read:

16 **138.04 Legal rate.** The rate of interest upon the loan or forbearance of any
17 money, goods or things in action shall be \$5 upon the \$100 for one year and according
18 to that rate for a greater or less sum or for a longer or a shorter time; but parties may
19 contract for the payment and receipt of a rate of interest not exceeding the rate
20 allowed in ss. 138.041 to 138.056, 138.09 to ~~138.12~~ 138.14, 218.0101 to 218.0163, or
21 422.201, in which case such rate shall be clearly expressed in writing.

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

23 138.09 (1a) This section does not apply to any of the following:

24 (a) Banks, savings banks, savings and loan associations, trust companies,
25 credit unions, or any of their affiliates.

1 (b) Payday loans made under s. 138.14.

2 **SECTION 9.** 138.09 (1m) (a) of the statutes is amended to read:

3 138.09 **(1m)** (a) Before any person may do business under this section ~~or~~, charge
4 the interest authorized by sub. (7) ~~and before any creditor other than a bank, savings~~
5 ~~bank, savings and loan association or credit union may, or~~ assess a finance charge
6 on a consumer loan in excess of 18% per year, that person shall first obtain a license
7 from the division. Applications for a license shall be in writing and upon forms
8 provided for this purpose by the division. An applicant at the time of making an
9 application shall pay to the division a nonrefundable \$300 fee for investigating the
10 application and a \$500 annual license fee for the period terminating on the last day
11 of the current calendar year. If the cost of the investigation exceeds \$300, the
12 applicant shall upon demand of the division pay to the division the amount by which
13 the cost of the investigation exceeds the nonrefundable fee.

14 **SECTION 10.** 138.09 (3) (e) 1. g. of the statutes is created to read:

15 138.09 **(3)** (e) 1. g. A payday loan licensee under s. 138.14.

16 **SECTION 11.** 138.09 (3) (f) of the statutes is amended to read:

17 138.09 **(3)** (f) Every licensee shall make an annual report to the division for
18 each calendar year on or before March 15 of the following year. The report shall ~~cover~~
19 include business transacted by the licensee under the provisions of this section and
20 shall give all reasonable and relevant information that the division may require. The
21 reports shall be made upon forms furnished in the form and manner prescribed by
22 the division ~~and shall be signed and verified by the oath or affirmation of the licensee~~
23 ~~if an individual, one of the partners if a partnership, a member or manager if a~~
24 ~~limited liability company or an officer of the corporation or association if a~~
25 ~~corporation or association.~~ Any licensee operating under this section shall keep the

1 records affecting loans made pursuant to this section separate and distinct from the
2 records of any other business of the licensee.

3 **SECTION 12.** 138.10 (2m) of the statutes is amended to read:

4 138.10 (2m) PAWNBROKING BY LICENSED LENDERS. The division of banking may
5 promulgate rules regulating the conduct of pawnbroking by persons licensed under
6 s. 138.09 or 138.14.

7 **SECTION 13.** 138.10 (15) of the statutes is amended to read:

8 138.10 (15) EXCEPTION. This section does not apply to any person that is
9 licensed under s. 138.09 or 138.14.

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

11 **138.14 Payday loans. (1) DEFINITIONS.** In this section:

12 (a) “Affiliate” means, with respect to a person, another person who owns or
13 controls, is owned or controlled by, or is under common ownership or control with,
14 such person. In this paragraph “control” means any of the following:

15 1. For a corporation, direct or indirect ownership of, or the right to control, 10
16 percent or more of the voting shares of the corporation, or the ability of a person to
17 elect a majority of the directors or otherwise effect a change in policy.

18 2. For any entity other than a corporation, the ability to change the active or
19 passive principals of the organization.

20 (b) “Check” has the meaning given in s. 403.104 (6).

21 (bm) “Customer” means an individual who enters into a payday loan with a
22 licensee.

23 (c) “Database” means the statewide database described in sub. (14).

1 (d) "Database provider" means a 3rd-party provider with whom the
2 department contracts to operate the database or, if the division elects to operate the
3 database, the division.

4 (e) "Department" means the department of financial institutions.

5 (f) "Division" means the division of banking.

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

9 (h) "General order" means an order that is not a special order.

10 (i) "Licensee" means a person holding a license issued by the division under sub.
11 (5).

12 (j) "Maturity date" means the date specified when originating a payday loan
13 on which the loan is required to be paid in full.

14 (k) "Payday loan" means any of the following:

15 1. A transaction between an individual with an account at a financial
16 establishment and another person, including a person who is not physically located
17 in this state, in which the person agrees to accept from the individual one or more
18 checks, to hold the check or checks for a period of time before negotiating or
19 presenting the check or checks for payment, and to loan to the individual, for a term
20 of 90 days or less, before negotiating or presenting the check or checks for payment,
21 an amount that is agreed to by the individual.

22 2. A transaction between an individual with an account at a financial
23 establishment and another person, including a person who is not physically located
24 in this state, in which the person agrees to accept the individual's authorization to
25 initiate one or more electronic fund transfers from the account, to wait a period of

1 time before initiating the electronic fund transfer or transfers, and to loan to the
2 individual, for a term of 90 days or less, before initiating the electronic fund transfer
3 or transfers, an amount that is agreed to by the individual.

4 (L) “Special order” means an order against a person.

5 **(2) LICENSE REQUIRED.** A person may not originate or service a payday loan
6 involving a Wisconsin resident without first having obtained from the division a
7 license under sub. (5) for each place of business at which the person originates or
8 services payday loans involving Wisconsin residents. Such a license is required for,
9 and this section applies to, all payday loans made to a Wisconsin resident, regardless
10 of whether the loan is made by face-to-face contact, mail, telephone, Internet, or any
11 other means.

12 **(3) EXEMPTIONS.** This section does not apply to banks, savings banks, savings
13 and loan associations, trust companies, credit unions, or any of their affiliates.

14 **(4) APPLICATIONS; FEES; BOND.** (a) 1. Application for licenses under sub. (5) shall
15 be made to the division in writing in the form and manner prescribed by the division
16 and shall include all of the following:

17 a. Except as provided in subd. 3., if the applicant is an individual, the
18 applicant’s social security number.

19 b. If the applicant is not an individual, the applicant’s federal employer
20 identification number.

21 c. A statement signed by or on behalf of the applicant that acknowledges that
22 the applicant is subject to the debt collection requirements under ch. 427 with respect
23 to payday loans.

24 2. The division may not disclose any information received under subd. 1. a. or
25 b. to any person except as follows:

1 a. The division may disclose information under subd. 1. a. or b. to the
2 department of revenue for the sole purpose of requesting certifications under s.
3 73.0301.

4 b. The division may disclose information under subd. 1. a. to the department
5 of workforce development in accordance with a memorandum of understanding
6 under s. 49.857.

7 3. If an applicant who is an individual does not have a social security number,
8 the applicant, as a condition of applying for a license, shall submit a statement made
9 or subscribed under oath or affirmation to the division that the applicant does not
10 have a social security number. The form of the statement shall be prescribed by the
11 department of workforce development. Any license issued in reliance upon a false
12 statement submitted by an applicant is invalid.

13 (b) At the time of making application, an applicant for a license shall pay to the
14 division a nonrefundable \$300 fee for investigating the application and a \$500
15 annual license fee. If the cost of the investigation exceeds \$300, the applicant shall
16 upon demand of the division pay to the division the amount by which the cost of the
17 investigation exceeds the nonrefundable fee.

18 (c) The division shall require any applicant or licensee to file and maintain in
19 force a bond in a sum not to exceed \$5,000 for each place of business at which the
20 applicant or licensee makes payday loans to a Wisconsin resident. The bond shall
21 be in a form prescribed by and acceptable to the division.

22 **(5) LICENSES.** (a) Upon the filing of an application under sub. (4) and the
23 payment of the required fees, the division shall investigate the relevant facts. Except
24 as provided in par. (b), if the division finds that the character and general fitness and
25 the financial responsibility of the applicant, and the members thereof if the applicant

1 is a partnership, limited liability company, or association, and the officers and
2 directors thereof if the applicant is a corporation, warrant the belief that the business
3 will be operated in compliance with this section, the division shall issue a license to
4 the applicant. If the division does not make such finding, the division shall deny the
5 application.

6 (b) The division may not issue a license to an applicant if any of the following
7 applies:

8 1. The applicant fails to provide any information required under sub. (4) (a).

9 2. The department of revenue certifies under s. 73.0301 that the applicant is
10 liable for delinquent taxes.

11 3. The applicant fails to comply, after appropriate notice, with a subpoena or
12 warrant issued by the department of workforce development or a county child
13 support agency under s. 59.53 (5) and related to paternity or child support
14 proceedings.

15 4. The applicant is delinquent in making court-ordered payments of child or
16 family support, maintenance, birth expenses, medical expenses, or other expenses
17 related to the support of a child or former spouse, as provided in a memorandum of
18 understanding entered into under s. 49.857.

19 (c) A license shall remain in force and effect until suspended or revoked in
20 accordance with this section or surrendered by the licensee, and a licensee shall, on
21 or before each December 10, pay to the division the annual license fee for the next
22 succeeding calendar year.

23 (d) A license is not assignable and permits operation under it only at or from
24 the place of business specified in the license.

1 (e) A licensee shall conspicuously post a license at the place of business where
2 the licensee makes payday loans, or if conducting business through the Internet, on
3 the licensee's Web site so that the license is easily viewed by a consumer.

4 **(6) RELOCATION; OTHER BUSINESS.** (a) Whenever a licensee changes the address
5 of its place of business to another location within the same city, village, or town, the
6 licensee shall give written notice thereof, in a form and manner prescribed by the
7 division, to the division within 10 business days of the relocation and the division
8 shall replace the original license with an amended license showing the new address.
9 No change in the place of business of a licensee to a different city, village, or town is
10 permitted under the same license.

11 (b) 1. Except as provided in subd. 2., a licensee may conduct, and permit others
12 to conduct, at the place of business specified in its license, one or more of the following
13 businesses not subject to this section:

14 a. A currency exchange under s. 218.05.

15 b. A seller of checks business under ch. 217.

16 c. A loan business under s. 138.09.

17 d. A sales finance company under ss. 218.0101 to 218.0163.

18 2. A licensee may not sell merchandise or conduct other business at the place
19 of business specified in the license unless written authorization is granted to the
20 licensee by the division.

21 **(7) RECORDS; REPORTS.** (a) Except as provided in par. (b), a licensee shall keep
22 such books and records in the licensee's place of business that, in the opinion of the
23 division, will enable the division to determine compliance with this section. A
24 licensee shall preserve the records of final entry used in such business for a period
25 of at least 2 years after the making of any loan recorded therein.

1 (b) A licensee may keep the books and records specified in par. (a) at a single
2 location inside or outside of this state if the books and records are kept at a place of
3 business licensed under this section. A licensee shall organize the books and records
4 by the place of business where the records originated.

5 (c) A licensee shall keep the books and records affecting loans made pursuant
6 to this section separate and distinct from the records of any other business of the
7 licensee.

8 (d) A licensee shall make an annual report to the division for each calendar year
9 on or before March 15 of the following year. The report shall include business
10 transacted by the licensee under this section and shall give all reasonable and
11 relevant information that the division may require, including the information
12 required for the division's reports under par. (e). The reports shall be made in the
13 form and manner prescribed by the division.

14 (e) The division shall submit an annual report to the appropriate standing
15 committees of the legislature in the manner provided under s. 13.172 (3) that
16 includes all of the following:

17 1. The number of payday loans made by all licensees during the preceding year.

18 2. The average principal amount for all payday loans made during the
19 preceding year.

20 3. The average interest, fees, and other charges for all payday loans made
21 during the preceding year.

22 4. Based on subd. 3., the average annual percentage rate for all payday loans
23 made during the preceding year.

24 5. The number of payday loans made during the preceding year that were paid
25 in full on the maturity date.

1 6. The number of payday loans made during the preceding year that resulted
2 in repayment under sub. (11g) (a).

3 7. The number of payday loans made during the preceding year that were
4 repaid with the proceeds of a subsequent payday loan.

5 8. The number of payday loans made during the preceding year that resulted
6 in default.

7 9. The number of payday loans made during the preceding year for which a
8 customer's payment method was dishonored or denied due to insufficient funds.

9 **(8) POWERS OF THE DIVISION.** (a) The division may issue any general or special
10 order in execution of or supplementary to this section.

11 (b) The division may promulgate such rules as it considers necessary for the
12 administration of this section, including rules establishing database transaction fees
13 under sub. (14) (h) and other fees considered reasonable and necessary by the
14 division.

15 (c) The division shall have the same power to conduct hearings, take testimony,
16 and secure evidence as is provided in ss. 217.17 and 217.18.

17 (d) The division for the purpose of discovering violations of this section may
18 investigate the business of a licensee transacted under this section, and shall
19 investigate convictions reported to the division by any district attorney for violation
20 by a licensee of this section. The place of business, books of account, papers, records,
21 safes, and vaults of a licensee shall be open to inspection and examination by the
22 division for the purpose of such investigation and the division may examine under
23 oath all persons whose testimony the division may require relative to such
24 investigation.

1 (e) The cost of any investigation, examination, or hearing, including witness
2 fees or any other expenses, conducted by the division under this section involving a
3 licensee shall be paid by the licensee within 30 days after demand therefore by the
4 division, and the state may maintain an action for the recovery of such costs and
5 expenses.

6 (f) Actual costs incurred by the division to examine books and records
7 maintained outside of this state shall be paid by the licensee.

8 **(9) REVOCATION AND SUSPENSION OF LICENSES.** (a) The division may suspend or
9 revoke any license issued under this section if the division finds any of the following:

10 1. That the licensee has violated any provision of this section, any rule
11 promulgated thereunder, or any lawful order of the division made thereunder.

12 2. That the licensee has violated any of the provisions of chs. 421 to 427.

13 3. That any fact or condition exists which, if it had existed at the time of the
14 original application for such license, would have warranted the division in refusing
15 to issue such license.

16 4. That the licensee made a material misstatement in an application for a
17 license or in information furnished to the division.

18 5. That the licensee has failed to pay the annual license fee or to maintain in
19 effect the bond required under sub. (4) (c).

20 (b) The division shall restrict or suspend a license issued under this section if
21 the division finds that the licensee is an individual who fails to comply, after
22 appropriate notice, with a subpoena or warrant issued by the department of
23 workforce development or a county child support agency under s. 59.53 (5) and
24 related to paternity or child support proceedings or who is delinquent in making
25 court-ordered payments of child or family support, maintenance, birth expenses,

1 medical expenses, or other expenses related to the support of a child or former
2 spouse, as provided in a memorandum of understanding entered into under s.
3 49.857. A licensee whose license is restricted or suspended under this paragraph is
4 entitled to a notice and hearing only as provided in a memorandum of understanding
5 entered into under s. 49.857 and is not entitled to any other notice or hearing under
6 this section.

7 (c) The division shall revoke a license issued under this section if the
8 department of revenue certifies under s. 73.0301 that the licensee is liable for
9 delinquent taxes. A licensee whose license is revoked under this paragraph for
10 delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing
11 under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this
12 section.

13 (d) Except as provided in pars. (b) and (c), no license shall be revoked or
14 suspended except after a hearing under this section. A complaint stating the
15 grounds for suspension or revocation together with a notice of hearing shall be
16 delivered to the licensee at least 5 days in advance of the hearing. In the event the
17 licensee cannot be found, complaint and notice of hearing may be left at the place of
18 business stated in the license, which shall be considered the equivalent of delivering
19 the notice of hearing and complaint to the licensee.

20 **(10) INTEREST, PENALTIES, AND FEES.** (a) *Interest.* 1. Except as provided in sub.
21 (12) (b), this section imposes no limit on the interest that a licensee may charge before
22 the maturity date of a payday loan.

23 2. If a payday loan is not paid in full on or before the maturity date, a licensee
24 may charge, after the maturity date, interest at a rate not exceeding 2.75 percent per
25 month, except that if a licensee makes a subsequent payday loan to the customer

1 under sub. (12) (a), and the customer does not pay the subsequent loan in full on or
2 before the maturity date of the subsequent loan, the licensee may charge, after the
3 maturity date of the subsequent loan, interest at a rate not exceeding 2.75 percent
4 per month on the subsequent loan and the licensee may not charge any interest
5 under this subdivision on the prior loan. Interest earned under this subdivision shall
6 be calculated at the rate of one-thirtieth of the monthly rate charged for each
7 calendar day that the balance of the loan is outstanding. Interest may not be
8 assessed on any interest earned under this subdivision.

9 (am) *Penalties*. Except as provided in par. (b) 2., no licensee may impose any
10 penalty on a customer arising from the customer's prepayment of or default or late
11 payment on a payday loan, including any payment under sub. (11g) (a).

12 (b) *Fees*. 1. A licensee may not assess a customer any fee or charge for database
13 access or usage.

14 2. A licensee may charge a fee not to exceed \$15 for each dishonor of a
15 customer's check or denial of the licensee's instruction to execute an electronic fund
16 transfer authorized by the customer.

17 **(11)** PREPAYMENT. (a) A customer may pay a payday loan in whole or in part
18 prior to the maturity date of the loan.

19 (b) Upon prepayment in full, a refund of the unearned portion of any interest
20 assessed by the licensee must be allowed. The amount of such refund shall not be
21 less than the difference between the interest charged and the interest earned at the
22 agreed rate computed upon the unpaid principal balance of the loan from time to time
23 outstanding prior to repayment in full.

24 **(11g)** REPAYMENT AFTER TERM OF LOAN. (a) Except as provided in par. (b), if a
25 customer fails to repay a payday loan in full at the end of the loan term, the licensee

1 that made the loan shall offer the customer the opportunity to repay the outstanding
2 balance of the loan in 4 equal installments with due dates coinciding with the
3 customer's pay period schedule.

4 (b) If a licensee offers a customer the opportunity to make repayment under par.
5 (a), then, during the 12-month period following the offer, no licensee, including the
6 licensee making the offer, is required to offer the customer another opportunity to
7 repay a payday loan under par. (a).

8 **(11r) RESCISSION.** A customer may rescind a payday loan, before the close of
9 business on the next day of business after the loan is made, by returning to the
10 licensee the proceeds of the payday loan. The licensee may not charge the customer
11 any fee for rescinding the payday loan as provided in this subsection.

12 **(12) PROHIBITIONS.** (a) A customer may repay a payday loan with the proceeds
13 of a subsequent payday loan made by the same or another licensee or an affiliate of
14 the same or another licensee, but if the customer does so, the customer may not repay
15 the subsequent payday loan with the proceeds of another payday loan made by the
16 same or another licensee or an affiliate of the same or another licensee. A repayment
17 of a subsequent payday loan and the origination of a new payday loan from the same
18 or another licensee or an affiliate of the same or another licensee within a 24-hour
19 period shall be considered proof of violation of the prohibition under this paragraph.

20 (b) No licensee may make a payday loan to a customer that results in the
21 customer having an outstanding aggregate liability in principal, interest, and all
22 other fees and charges, to all licensees who have made payday loans to the customer
23 of more than \$1,500 or 35 percent of the customer's gross monthly income, whichever
24 is less.

1 (c) No licensee may make a payday loan to a customer if the licensee
2 determines, knows, or should have known, that the customer identification number
3 of the customer is invalid.

4 (d) No licensee may take a note, promise to pay, or any other instrument, in
5 which blanks are left to be filled in after the payday loan has been made.

6 (e) No licensee may advertise, print, display, publish, distribute, or broadcast,
7 or cause to be printed, displayed, published, distributed, or broadcast, in any
8 manner, any statement with regard to the rates, terms, or conditions of a payday loan
9 that is false or calculated to deceive. With respect to matters specifically governed
10 by s. 423.301, compliance with such section satisfies the requirements of this
11 paragraph.

12 (f) If a check held by a licensee as a result of a payday loan is dishonored, or an
13 instruction to execute an electronic funds transfer authorized as the result of a
14 payday loan is denied, the licensee may bring an action to collect the amount of the
15 check or electronic funds transfer, but may not threaten or pursue criminal action
16 against a debtor as a result of the debtor's dishonored check or denied electronic
17 funds transfer or the debtor's payday loan not being paid.

18 **(13) OTHER PROVISIONS.** (a) All payday loans shall be governed by chs. 421 to
19 426, but to the extent that chs. 421 to 426 are inconsistent with this section, this
20 section shall govern. All payday loans shall be governed by ch. 427.

21 (b) A licensee shall deliver to the customer, at the time a payday loan is made,
22 a statement in the English and Spanish languages including all the disclosures
23 required by the federal Consumer Credit Protection Act. The statement shall
24 disclose that the customer may prepay the customer's loan in whole or in part and
25 that if the loan is prepaid in full the customer will receive a refund of interest as

1 provided by this section. The statement shall also clearly and conspicuously indicate
2 the percentage per year of interest charged for the payday loan.

3 (c) A licensee shall give to the customer a plain and complete receipt for all cash
4 payments made on account of any payday loan at the time such payments are made.

5 (d) No payday loan, wherever made, for which a greater rate or amount of
6 interest than is allowed under sub. (10) (a) 2. has been contracted for or received, may
7 be enforced in this state, and every person in any way participating therein in this
8 state shall be subject to this section. If a licensee makes an excessive charge of such
9 interest as the result of an unintentional mistake, but upon demand makes
10 correction of such mistake, the loan shall be enforceable and treated as if no violation
11 occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights
12 or remedies afforded in chs. 421 to 427 to a customer in a consumer credit
13 transaction.

14 **(14) DATABASE.** (a) The division or a database provider shall develop,
15 implement, and maintain a single statewide database that has real-time access
16 through an Internet connection, is accessible at all times to licensees and the
17 division, and otherwise meets the requirements of this section.

18 (b) The division may operate the database or may contract with a single
19 3rd-party provider to operate the database. If the division contracts with a
20 3rd-party provider for the operation of the database, the division shall do all the
21 following:

22 1. Ensure that the 3rd-party provider operates the database according to the
23 provisions of this section.

24 2. In selecting a 3rd-party provider, consider the cost of providing the service
25 and the 3rd-party provider's ability to meet all the requirements of this section.

1 3. In selecting a 3rd-party provider, give strong consideration to all of the
2 following:

3 a. The 3rd-party provider's ability to prevent fraud, abuse, and other unlawful
4 activity associated with payday loan transactions, and to provide additional tools for
5 the administration and enforcement of this section.

6 b. Whether the provider is currently providing a similar service for another
7 state.

8 (c) The database shall do all of the following:

9 1. Allow a licensee accessing the database to check a customer's unique
10 identification number that is assigned to the customer in a manner specified by the
11 division. A customer's unique identification number may not be based on the
12 customer's social security number.

13 2. Allow a licensee accessing the database to determine if making a new payday
14 loan would cause a violation of this section.

15 3. Provide information necessary to aid a licensee in complying with any
16 requirements imposed under federal law by the office of foreign assets control of U.S.
17 department of the treasury.

18 4. Provide any other information that the division determines is necessary and
19 requires by rule or contract with the database provider.

20 (d) The database provider shall do all the following:

21 1. Use the data collected under this section only as prescribed in this section
22 and, in the case of a 3rd-party provider, as prescribed in the contract with the
23 division, and for no other purpose.

1 2. Establish and maintain an alternate process for responding to transaction
2 authorization requests necessary because of technical difficulties occurring with the
3 database that prevent a licensee from accessing the database through the Internet.

4 3. Upon receiving notification that a payday loan is paid, designate the
5 transaction as closed in the database no later than 11:59 p.m. on the day that such
6 notification is received.

7 4. Automatically designate a payday loan as paid in the database 5 days after
8 the maturity date of the loan unless a licensee reports to the database provider before
9 that time that the loan remains open because of the customer's failure to make
10 payment; that the loan is open because the customer's check or an electronic
11 redeposit is in the process of clearing the banking system; that the loan remains open
12 because the customer's check is being returned to the licensee for insufficient funds,
13 a closed account, or a stop payment order; or that any other factors determined by
14 the division are applicable. If a licensee makes such a report, the database provider
15 shall designate the payday loan as an open transaction until the database provider
16 is notified that the transaction is closed.

17 5. If a licensee stops making payday loans, designate all open transactions with
18 that licensee as closed in the database 60 days after the date on which the licensee
19 stops making payday loans, unless the licensee reports to the database provider
20 before the expiration of the 60-day period which of its transactions remain open and
21 the specific reason each transaction remains open.

22 6. In response to an inquiry from a licensee, state only that a person is eligible
23 or ineligible for a new payday loan and describe the reason for that determination.
24 Only the person seeking the loan may make a direct inquiry to the database provider
25 to request a more detailed explanation of an ineligibility determination.

1 (e) If at any time the division determines that a licensee that has stopped
2 making payday loans is not updating the database in accordance with a plan
3 approved under par. (o), the division shall immediately close or instruct the database
4 provider to immediately close all remaining open transactions of that licensee.

5 (f) The division may, without cost, access the database for the purposes of
6 enforcing this section.

7 (g) The division shall, by order or rule, stipulate the period for which data is
8 to be retained in the database only as required to ensure licensee compliance with
9 this act or for enforcement or compliance purposes. The division may require that
10 any identifying customer information be deleted from the database when data is
11 archived. The division may maintain access to archived data for future legislative
12 or policy review.

13 (h) The division shall, by order or rule, specify a database transaction fee of no
14 more than \$1 that the database provider shall charge to licensees to cover the costs
15 of developing and implementing the database, and accessing the database to verify
16 that a customer does not have any payday loans with the licensee or others that in
17 combination with a new transaction will create a violation of this section. The
18 database fee is payable directly to the division in a manner prescribed by the division
19 and, if the department has contracted with a 3rd-party provider to operate the
20 database, the division shall remit the fee to the 3rd-party provider as specified in the
21 contract.

22 (i) A licensee shall verify a customer's eligibility to enter into a payday loan by
23 doing one of the following, as applicable:

24 1. If the database, as determined by the division, is not implemented or is not
25 fully operational, verifying that the customer does not have an open payday loan with

1 the licensee that in conjunction with a new payday loan would cause a violation of
2 this section. The licensee shall maintain a database of all of the licensee's payday
3 loans at all of its places of business and search that database to meet its obligation
4 under this subdivision.

5 2. If the database, as determined by the division, is implemented and fully
6 operational, accessing the database and verifying that the customer does not have
7 an outstanding payday loan with the licensee and does not have open payday loans
8 with other licensees that in conjunction with a new payday loan would cause a
9 violation of this section.

10 (j) If the database, as determined by the division, is not fully operational, or the
11 licensee is unable to access the database and, as determined under rules
12 promulgated by the division, the alternate process established under par. (d) 2. is
13 also unavailable, a licensee may rely upon the written verification of the customer
14 in a statement provided in substantially the following form in at least 12-point type:

15 "I DO NOT HAVE ANY OUTSTANDING PAYDAY LOANS WITH THIS
16 LICENSEE AND I DO NOT HAVE MORE PAYDAY LOANS WITH ANY OTHER
17 LICENSED PAYDAY LOAN PROVIDER IN THIS STATE."

18 (k) If, as determined by the division, a licensee is unable to access the database
19 due to technical difficulties occurring with the database, the licensee shall utilize the
20 alternate process established under par. (d) 2.

21 (L) A licensee may rely on the information contained in the database as
22 accurate and is not subject to any administrative forfeiture as a result of relying on
23 inaccurate information contained in the database.

24 (m) Before entering into a payday loan, a licensee shall submit to the database
25 provider the customer's name; unique identification number that is assigned in a

1 manner specified by the division; address; driver license number or other method of
2 state identification; the amount of the transaction; the customer's check number, if
3 applicable; the date of the transaction; the maturity date of the loan; and any other
4 information reasonably required by the division, in a format approved by the
5 division.

6 (n) When a payday loan is closed, the licensee shall designate the transaction
7 as closed and notify the database provider no later than 11:59 p.m. on the day on
8 which the transaction is closed. The division shall assess an administrative
9 forfeiture of \$100 for each day that the licensee fails to notify the database provider
10 that the payday loan has been closed. It is a defense to the assessment of an
11 administrative forfeiture that notifying the database provider was not possible due
12 to temporary technical problems with the database or to circumstances beyond the
13 licensee's control.

14 (o) If the licensee stops making payday loans, the licensee shall provide to the
15 division a plan acceptable to the division that outlines how the licensee will continue
16 to update the database after it stops making payday loans. The division shall
17 approve or disapprove the plan and within 5 business days notify the licensee of the
18 decision. If a plan is disapproved, the licensee may submit a new or modified plan
19 for the division to approve or disapprove.

20 (p) Any information in the database regarding any person's transactional
21 history is confidential and is not subject to public copying or inspection under s. 19.35
22 (1).

23 **(14m) CUSTOMER INFORMATION.** No licensee or person with whom the division
24 contracts for operation of the database under sub. (14) (b) may sell to another person
25 any information regarding a customer or a payday loan made to a customer.

1 **(15) PENALTIES.** (a) Any person, partnership, or corporation, or the officers or
2 employees thereof, who violates this section is guilty of a misdemeanor and shall be
3 fined not more than \$500 or imprisoned for not more than 6 months or both.

4 (b) If a person who is not licensed under this section makes a payday loan to
5 a customer, the loan is void, the customer is not obligated to pay any amounts owed
6 on the loan, and the customer may recover from the person all amounts the customer
7 has paid to the person. An action to recover such amounts shall be commenced within
8 one year after the date of the last scheduled payment on the loan or shall be barred.

9 **(16) PRIVATE CAUSE OF ACTION.** If a person makes a payday loan to a customer
10 in violation of this section, the customer may bring an action against the person for
11 damages of \$250 or the amount of the payday loan, whichever is greater, plus costs,
12 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

13 **SECTION 15.** 220.02 (2) (b) of the statutes is amended to read:

14 220.02 **(2)** (b) The lending of money under s. 138.09 or 138.14, or those relating
15 to finance companies, motor vehicle dealers, adjustment service companies,
16 community currency exchanges and collection agencies under ch. 218.

17 **SECTION 16.** 220.04 (10) of the statutes is amended to read:

18 220.04 **(10)** If it appears to the division that a person has engaged or is about
19 to engage in an act or practice constituting a violation of the laws of this state relating
20 to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and ss.
21 138.09 and, 138.12, and 138.14, or a rule promulgated or order issued under those
22 laws, the division may bring an action in the name of the state in the circuit court
23 of the appropriate county to enjoin the acts or practices and to enforce compliance
24 with the laws, rules or orders, or the division may refer the matter to the district
25 attorney of the appropriate county or, if the alleged violation may be enforced by the

1 attorney general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide
2 in nature, to the attorney general. Upon a proper showing, the court may grant a
3 permanent or temporary injunction or restraining order, appoint a receiver for the
4 defendant or the defendant's assets or order rescission of any acts determined to be
5 unlawful. The court may not require the division to post a bond.

6 **SECTION 17.** 220.285 (1) of the statutes, as affected by 2009 Wisconsin Act 2,
7 is amended to read:

8 220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09,
9 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.725 or
10 ch. 217 may cause any or all records kept by such bank, licensee, or registered person
11 to be recorded, copied or reproduced by any photostatic, photographic or miniature
12 photographic process or by optical imaging if the process employed correctly,
13 accurately and permanently copies, reproduces or forms a medium for copying,
14 reproducing or recording the original record on a film or other durable material. A
15 bank, licensee, or registered person may thereafter dispose of the original record
16 after first obtaining the written consent of the division. This section, excepting that
17 part of it which requires written consent of the division, is applicable to national
18 banking associations insofar as it does not contravene federal law.

19 **SECTION 18.** 321.60 (1) (a) 12. of the statutes, as affected by 2009 Wisconsin Act
20 2, is amended to read:

21 321.60 (1) (a) 12. A license or certificate of registration issued by the
22 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
23 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, or
24 224.93 or subch. IV of ch. 551.

25 **SECTION 19.** 403.414 (7) of the statutes is amended to read:

1 403.414 (7) A person who issues a check or other draft that is not honored upon
2 presentment, because the drawer does not have an account with the drawee or
3 because the drawer does not have sufficient funds in his or her account or sufficient
4 credit with the drawee, is liable for all reasonable costs and expenses in connection
5 with the collection of the amount for which the check or draft was written, except
6 recovery is not permitted under this section if a person licensed under s. 138.09 or
7 138.14 or any other person collected or could have collected a charge for that check
8 or other draft under s. 422.202 (1) (d) or (2m).

9 **SECTION 20.** 422.201 (3) of the statutes is amended to read:

10 422.201 (3) For licensees under s. 138.09 and or 138.14 or under ss. 218.0101
11 to 218.0163, the finance charge, calculated according to those sections, may not
12 exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163,
13 respectively.

14 **SECTION 21.** 425.301 (4) of the statutes is amended to read:

15 425.301 (4) The liability of a merchant under chs. 421 to 427 is in lieu of and
16 not in addition to any liability under the federal consumer credit protection act and
17 ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation
18 under chs. 421 to 427 may not be maintained if a final judgment has been rendered
19 for or against that person with respect to the same violation under the federal
20 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a
21 final judgment is entered against any merchant under chs. 421 to 427 and the federal
22 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the
23 same violation, the merchant has a cause of action for appropriate relief to the extent
24 necessary to avoid double liability.

25 **SECTION 22.** 812.35 (1a) of the statutes is created to read:

