

AN ACT concerning regulation.

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

Article 1. General Provisions

Section 1-1. Short title. This Act may be cited as the Payday Loan Reform Act.

Section 1-5. Purpose and construction. The purpose of this Act is to protect consumers who enter into payday loans and to regulate the lenders of payday loans. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose.

Section 1-10. Definitions. As used in this Act:

"Check" means a "negotiable instrument", as defined in Article 3 of the Uniform Commercial Code, that is drawn on a financial institution.

"Commercially reasonable method of verification" or "certified database" means a consumer reporting service database certified by the Department as effective in verifying that a proposed loan agreement is permissible under this Act, or, in the absence of the Department's certification, any reasonably reliable written verification by the consumer concerning (i) whether the consumer has any outstanding payday loans, (ii) the principal amount of those outstanding payday loans, and (iii) whether any payday loans have been paid in full by the consumer in the preceding 7 days.

"Consumer" means any natural person who, singly or jointly with another consumer, enters into a loan.

"Consumer reporting service" means an entity that provides a database certified by the Department.

"Department" means the Department of Financial and

Professional Regulation.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Gross monthly income" means monthly income as demonstrated by official documentation of the income, including, but not limited to, a pay stub or a receipt reflecting payment of government benefits, for the period 30 days prior to the date on which the loan is made.

"Lender" and "licensee" mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act.

"Loan agreement" means a written agreement between a lender and consumer to make a loan to the consumer, regardless of whether any loan proceeds are actually paid to the consumer on the date on which the loan agreement is made.

"Member of the military" means a person serving in the armed forces of the United States, the Illinois National Guard, or any reserve component of the armed forces of the United States. "Member of the military" includes those persons engaged in (i) active duty, (ii) training or education under the supervision of the United States preliminary to induction into military service, or (iii) a period of active duty with the State of Illinois under Title 10 or Title 32 of the United States Code pursuant to order of the President or the Governor of the State of Illinois.

"Outstanding balance" means the total amount owed by the consumer on a loan to a lender, including all principal,

finance charges, fees, and charges of every kind.

"Payday loan" or "loan" means a loan with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which:

(1) A lender accepts one or more checks dated on the date written and agrees to hold them for a period of days before deposit or presentment, or accepts one or more checks dated subsequent to the date written and agrees to hold them for deposit; or

(2) A lender accepts one or more authorizations to debit a consumer's bank account; or

(3) A lender accepts an interest in a consumer's wages, including, but not limited to, a wage assignment.

"Principal amount" means the amount received by the consumer from the lender due and owing on a loan, excluding any finance charges, interest, fees, or other loan-related charges.

"Rollover" means to refinance, renew, amend, or extend a loan beyond its original term.

Section 1-15. Applicability.

(a) Except as otherwise provided in this Section, this Act applies to any lender that offers or makes a payday loan to a consumer in Illinois.

(b) The provisions of this Act apply to any person or entity that seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

(c) Retail sellers who cash checks incidental to a retail sale and who charge no more than the fees as provided by the Check Cashing Act per check for the service are exempt from the provisions of this Act.

(d) Banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the

laws of this State or any other state or under the laws of the United States are exempt from the provisions of this Act.

(e) A lender, as defined in Section 1-10, that is an agent for a bank, savings bank, savings and loan association, credit union, or insurance company for the purpose of brokering, selling, or otherwise offering payday loans made by the bank, savings bank, savings and loan association, credit union, or insurance company shall be subject to all of the provisions of this Act, except those provisions related to finance charges.

Article 2. Payday Loans

Section 2-5. Loan terms.

(a) Without affecting the right of a consumer to prepay at any time without cost or penalty, no payday loan may have a minimum term of less than 13 days.

(b) No payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 45 consecutive days. Except as provided under Section 2-40, if a consumer has or has had loans outstanding for a period in excess of 45 consecutive days, no payday lender may offer or make a loan to the consumer for at least 7 calendar days after the date on which the outstanding balance of all payday loans made during the 45 consecutive day period is paid in full. For purposes of this subsection, the term "consecutive days" means a series of continuous calendar days in which the consumer has an outstanding balance on one or more payday loans; however, if a payday loan is made to a consumer within 6 days or less after the outstanding balance of all loans is paid in full, those days are counted as "consecutive days" for purposes of this subsection.

(c) No lender may make a payday loan to a consumer if the total principal amount of the loan, when combined with the principal amount of all of the consumer's other outstanding payday loans, exceeds \$1,000 or 25% of the consumer's gross

monthly income, whichever is less.

(d) No payday loan may be made to a consumer who has an outstanding balance on 2 payday loans.

(e) No lender may charge more than \$15.50 per \$100 loaned on any payday loan over the term of the loan. Except as provided in Section 2-25, this charge is considered fully earned as of the date on which the loan is made.

(f) A lender may not take or attempt to take an interest in any of the consumer's personal property to secure a payday loan.

(g) A consumer has the right to redeem a check or any other item described in the definition of payday loan under Section 1-10 issued in connection with a payday loan from the lender holding the check or other item at any time before the payday loan becomes payable by paying the full amount of the check or other item.

Section 2-7. Wage assignments. Any payday loan that is a transaction in which the lender accepts a wage assignment must meet the requirements of this Act, the requirements of the Illinois Wage Assignment Act, and the requirements of 16 C.F.R. 444.2(a)(3)(i) (2003, no subsequent amendments or editions are included). A violation of this Section constitutes a material violation of the Payday Loan Reform Act.

Section 2-10. Permitted fees.

(a) If there are insufficient funds to pay a check, Automatic Clearing House (ACH) debit, or any other item described in the definition of payday loan under Section 1-10 on the day of presentment and only after the lender has incurred an expense, a lender may charge a fee not to exceed \$25. Only one such fee may be collected by the lender with respect to a particular check, ACH debit, or item even if it has been deposited and returned more than once. A lender shall present the check, ACH debit, or other item described in the definition of payday loan under Section 1-10 for payment not

more than twice. A fee charged under this subsection (a) is a lender's exclusive charge for late payment.

(b) Except for the finance charges described in Section 2-5 and as specifically allowed by this Section, a lender may not impose on a consumer any additional finance charges, interest, fees, or charges of any sort for any purpose.

Section 2-15. Verification.

(a) Before entering into a loan agreement with a consumer, a lender must use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under this Act.

(b) Within 6 months after the effective date of this Act, the Department shall certify that one or more consumer reporting service databases are commercially reasonable methods of verification. Upon certifying that a consumer reporting service database is a commercially reasonable method of verification, the Department shall:

(1) provide reasonable notice to all licensees identifying the commercially reasonable methods of verification that are available; and

(2) immediately upon certification, require each licensee to use a commercially reasonable method of verification as a means of complying with subsection (a) of this Section.

(c) Except as otherwise provided in this Section, all personally identifiable information regarding any consumer obtained by way of the certified database and maintained by the Department is strictly confidential and shall be exempt from disclosure under Section 7(1)(b)(i) of the Freedom of Information Act.

(d) Notwithstanding any other provision of law to the contrary, a consumer seeking a payday loan may make a direct inquiry to the consumer reporting service to request a more detailed explanation of the basis for a consumer reporting service's determination that the consumer is ineligible for a

new payday loan.

(e) In certifying a commercially reasonable method of verification, the Department shall ensure that the certified database:

(1) provides real-time access through an Internet connection or, if real-time access through an Internet connection becomes unavailable to lenders due to a consumer reporting service's technical problems incurred by the consumer reporting service, through alternative verification mechanisms, including, but not limited to, verification by telephone;

(2) is accessible to the Department and to licensees in order to ensure compliance with this Act and in order to provide any other information that the Department deems necessary;

(3) requires licensees to input whatever information is required by the Department;

(4) maintains a real-time copy of the required reporting information that is available to the Department at all times and is the property of the Department;

(5) provides licensees only with a statement that a consumer is eligible or ineligible for a new payday loan and a description of the reason for the determination; and

(6) contains safeguards to ensure that all information contained in the database regarding consumers is kept strictly confidential.

(f) The licensee shall update the certified database by inputting all information required under item (3) of subsection (e):

(1) on the same day that a payday loan is made;

(2) on the same day that a consumer elects a repayment plan, as provided in Section 2-40; and

(3) on the same day that a consumer's payday loan is paid in full.

(g) A licensee may rely on the information contained in the certified database as accurate and is not subject to any

administrative penalty or liability as a result of relying on inaccurate information contained in the database.

(h) The certified consumer reporting service shall indemnify the licensee against all claims and actions arising from illegal or willful or wanton acts on the part of the certified consumer reporting service.

Section 2-17. Consumer reporting services qualification and bonding.

(a) Each consumer reporting service shall have at all times a net worth of not less than \$1,000,000 calculated in accordance with generally accepted accounting principles.

(b) Each application for certification under this Act shall be accompanied by a surety bond acceptable to the Department in the amount of \$1,000,000. The surety bond shall be in a form satisfactory to the Department and shall run to the State of Illinois for the benefit of any claimants against the consumer reporting service to secure the faithful performance of its obligations under this Act. The aggregate liability of the surety may exceed the principal sum of the bond. Claimants against the consumer reporting service may themselves bring suit directly on the surety bond or the Department may bring suit on behalf of claimants, either in one action or in successive actions.

(c) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Department. Cancellation shall not affect any liability incurred or accrued during that period.

(d) The surety bond shall remain in place for 5 years after the consumer reporting service ceases operation in the State.

(e) The surety bond proceeds and any cash or other collateral posted as security by a consumer reporting service shall be deemed by operation of law to be held in trust for any claimants under this Act in the event of the bankruptcy of the consumer reporting service.

(f) To the extent that any indemnity or fine exceeds the

amount of the surety bond described under this Section, the consumer reporting service shall be liable for that amount.

(g) Each application for certification under this Act shall be accompanied by a nonrefundable investigation fee of \$2,500, together with an initial certification fee of \$1,000.

(h) On or before March 1 of each year, each consumer reporting service qualified under this Section shall pay to the Department a certification fee in the amount of \$1,000.

Section 2-20. Required disclosures.

(a) Before a payday loan is made, a lender shall deliver to the consumer a pamphlet prepared by the Secretary that:

(1) explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a payday loan transaction;

(2) includes a toll-free number to the Secretary's office to handle concerns or provide information about whether a lender is licensed, whether complaints have been filed with the Secretary, and the resolution of those complaints; and

(3) provides information regarding the availability of debt management services.

(b) Lenders shall provide consumers with a written agreement that may be kept by the consumer. The written agreement must include the following information in English and in the language in which the loan was negotiated:

(1) the name and address of the lender making the payday loan, and the name and title of the individual employee who signs the agreement on behalf of the lender;

(2) disclosures required by the federal Truth in Lending Act;

(3) a clear description of the consumer's payment obligations under the loan;

(4) the following statement, in at least 14-point bold type face: "You cannot be prosecuted in criminal court to collect this loan." The information required to be

disclosed under this subdivision (4) must be conspicuously disclosed in the loan document and shall be located immediately preceding the signature of the consumer; and

(5) the following statement, in at least 14-point bold type face:

"WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

(c) The following notices in English and Spanish must be conspicuously posted by a lender in each location of a business providing payday loans:

(1) A notice that informs consumers that the lender cannot use the criminal process against a consumer to collect any payday loan.

(2) The schedule of all finance charges to be charged on loans with an example of the amounts that would be charged on a \$100 loan payable in 13 days and a \$400 loan payable in 30 days, giving the corresponding annual percentage rate.

(3) In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement:

"WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

(4) In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement:

"INTEREST-FREE REPAYMENT PLAN: If you still owe on one or more payday loans after 35 days, you are entitled to

enter into a repayment plan. The repayment plan will give you at least 55 days to repay your loan in installments with no additional finance charges, interest, fees, or other charges of any kind."

Section 2-25. Right to cancel future payment obligations. A consumer may cancel future payment obligations on a payday loan, without cost or finance charges, no later than the end of the second business day immediately following the day on which the payday loan agreement was executed. To cancel future payment obligations on a payday loan, the consumer must inform the lender in writing that the consumer wants to cancel the future payment obligations on the payday loan and must return the uncashed proceeds, check or cash, in an amount equal to the principal amount of the loan.

Section 2-30. Rollovers prohibited. Rollover of a payday loan by any lender is prohibited. This Section does not prohibit entering into a repayment plan, as provided under Section 2-40.

Section 2-35. Proceeds and payments.

(a) A lender may issue the proceeds of a loan in the form of a check drawn on the lender's bank account, in cash, by money order, by debit card, or by electronic funds transfer. When the proceeds are issued in the form of a check drawn on the lender's bank account, by money order, or by electronic funds transfer, the lender may not charge a fee for cashing the check, money order, or electronic funds transfer. When the proceeds are issued in cash, the lender must provide the consumer with written verification of the cash transaction and shall maintain a record of the transaction for at least 3 years.

(b) After each payment made in full or in part on any loan, the lender shall give the consumer making the payment either a signed, dated receipt or a signed, computer-generated receipt

showing the amount paid and the balance due on the loan.

(c) Before a loan is made, the lender must provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in Section 2-20.

(d) The holder or assignee of any loan agreement or of any check written by a consumer in connection with a payday loan takes the loan agreement or check subject to all claims and defenses of the consumer against the maker.

(e) Upon receipt of a check from a consumer for a loan, the lender must immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a loan under the Payday Loan Reform Act, and any holder of this check takes it subject to all claims and defenses of the maker."

(f) Loan payments may be electronically debited from the consumer's bank account. Except as provided by federal law, the lender must obtain prior written approval from the consumer.

(g) A consumer may prepay on a loan in increments of \$5 or more at any time without cost or penalty.

(h) A loan is made on the date on which a loan agreement is signed by both parties, regardless of whether the lender gives any moneys to the consumer on that date.

Section 2-40. Repayment plan.

(a) At the time a payday loan is made, the lender must provide the consumer with a separate written notice signed by the consumer of the consumer's right to request a repayment plan. The written notice must comply with the requirements of subsection (c).

(b) The loan agreement must include the following language in at least 14-point bold type: IF YOU STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER 35 DAYS, YOU ARE ENTITLED TO ENTER INTO A REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 55 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

(c) At the time a payday loan is made, on the first page of

the loan agreement and in a separate document signed by the consumer, the following shall be inserted in at least 14-point bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 55 DAYS TO REPAY THE LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

(d) If the consumer has or has had one or more payday loans outstanding for 35 consecutive days, any payday loan outstanding on the 35th consecutive day shall be payable under the terms of a repayment plan as provided for in this Section, if the consumer requests the repayment plan. As to any loan that becomes eligible for a repayment plan under this subsection, the consumer has until 28 days after the default date of the loan to request a repayment plan. Within 48 hours after the request for a repayment plan is made, the lender must prepare the repayment plan agreement and both parties must execute the agreement. Execution of the repayment plan agreement shall be made in the same manner in which the loan was made and shall be evidenced in writing.

(e) The terms of the repayment plan for a payday loan must include the following:

(1) The lender may not impose any charge on the consumer for requesting or using a repayment plan. Performance of the terms of the repayment plan extinguishes the consumer's obligation on the loan.

(2) No lender shall charge the consumer any finance charges, interest, fees, or other charges of any kind, except a fee for insufficient funds, as provided under Section 2-10.

(3) The consumer shall be allowed to repay the loan in at least 4 equal installments with at least 13 days between installments, provided that the term of the repayment plan does not exceed 90 days. The first payment under the repayment plan shall not be due before at least 13 days after the repayment plan is signed by both parties. The

consumer may prepay the amount due under the repayment plan at any time, without charge or penalty.

(4) The length of time between installments may be extended by the parties so long as the total period of repayment does not exceed 90 days. Any such modification must be in writing and signed by both parties.

(f) Notwithstanding any provision of law to the contrary, a lender is prohibited from making a payday loan to a consumer who has a payday loan outstanding under a repayment plan and for at least 14 days after the outstanding balance of the loan under the repayment plan and the outstanding balance of all other payday loans outstanding during the term of the repayment plan are paid in full.

(g) A lender may not accept postdated checks for payments under a repayment plan.

(h) Notwithstanding any provision of law to the contrary, a lender may voluntarily agree to enter into a repayment plan with a consumer at any time. If a consumer is eligible for a repayment plan under subsection (d), any repayment agreement constitutes a repayment plan under this Section and all provisions of this Section apply to that agreement.

Section 2-45. Default.

(a) No legal proceeding of any kind, including, but not limited to, a lawsuit or arbitration, may be filed or initiated against a consumer to collect on a payday loan until 28 days after the default date of the loan, or, in the case of a payday loan under a repayment plan, for 28 days after the default date under the terms of the repayment plan.

(b) Upon and after default, a lender shall not charge the consumer any finance charges, interest, fees, or charges of any kind, other than the insufficient fund fee described in Section 2-10.

(c) Notwithstanding whether a loan is or has been in default, once the loan becomes subject to a repayment plan, the loan shall not be construed to be in default until the default

date provided under the terms of the repayment plan.

Section 2-50. Practices concerning members of the military.

(a) A lender may not garnish the wages or salaries of a consumer who is a member of the military.

(b) In addition to any rights and obligations provided under the federal Servicemembers Civil Relief Act, a lender shall suspend and defer collection activity against a consumer who is a member of the military and who has been deployed to a combat or combat support posting for the duration of the deployment.

(c) A lender may not knowingly contact the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan.

(d) Lenders must honor the terms of any repayment plan that they have entered into with any consumer, including a repayment agreement negotiated through military counselors or third-party credit counselors.

Section 2-55. Information, reporting, and examination.

(a) A licensee shall keep and use books, accounts, and records that will enable the Secretary to determine if the licensee is complying with the provisions of this Act and maintain any other records as required by the Secretary.

(b) A licensee shall collect and maintain information annually for a report that shall disclose in detail and under appropriate headings:

(1) the total number of payday loans made during the preceding calendar year;

(2) the total number of payday loans outstanding as of December 31 of the preceding calendar year;

(3) the minimum, maximum, and average dollar amount of payday loans made during the preceding calendar year;

(4) the average annual percentage rate and the average term of payday loans made during the preceding calendar

year; and

(5) the total number of payday loans paid in full, the total number of loans that went into default, and the total number of loans written off during the preceding calendar year.

The report shall be verified by the oath or affirmation of the owner, manager, or president of the licensee. The report must be filed with the Secretary no later than March 1 of the year following the year for which the report discloses the information specified in this subsection (b). The Secretary may impose upon the licensee a fine of \$25 per day for each day beyond the filing deadline that the report is not filed.

(c) No later than July 31 of the second year following the effective date of this Act, the Department shall publish a biennial report that contains a compilation of aggregate data concerning the payday lending industry and shall make the report available to the Governor, the General Assembly, and the general public.

(d) The Department shall have the authority to conduct examinations of the books, records, and loan documents at any time.

Section 2-60. Advertising.

(a) Advertising for loans transacted under this Act may not be false, misleading, or deceptive. Payday loan advertising, if it states a rate or amount of charge for a loan, must state the rate as an annual percentage rate. No licensee may advertise in any manner so as to indicate or imply that its rates or charges for loans are in any way recommended, approved, set, or established by the State government or by this Act.

(b) If any advertisement to which this Section applies states the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The amount of the loan.

(2) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(3) The finance charge expressed as an annual percentage rate.

Article 3. Licensure

Section 3-3. Licensure requirement.

(a) Except as provided in subsection (b), on and after the effective date of this Act, a person or entity acting as a payday lender must be licensed by the Department as provided in this Article.

(b) A person or entity acting as a payday lender who is licensed on the effective date of this Act under the Consumer Installment Loan Act need not comply with subsection (a) until the Department takes action on the person's or entity's application for a payday loan license. The application must be submitted to the Department within 9 months after the effective date of this Act. If the application is not submitted within 9 months after the effective date of this Act, the person or entity acting as a payday lender is subject to subsection (a).

Section 3-5. Licensure.

(a) A license to make a payday loan shall state the address, including city and state, at which the business is to be conducted and shall state fully the name of the licensee. The license shall be conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) An application for a license shall be in writing and in a form prescribed by the Secretary. The Secretary may not issue a payday loan license unless and until the following findings are made:

(1) that the financial responsibility, experience, character, and general fitness of the applicant are such as

to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly and within the provisions and purposes of this Act; and

(2) that the applicant has submitted such other information as the Secretary may deem necessary.

(c) A license shall be issued for no longer than one year, and no renewal of a license may be provided if a licensee has substantially violated this Act and has not cured the violation to the satisfaction of the Department.

(d) A licensee shall appoint, in writing, the Secretary as attorney-in-fact upon whom all lawful process against the licensee may be served with the same legal force and validity as if served on the licensee. A copy of the written appointment, duly certified, shall be filed in the office of the Secretary, and a copy thereof certified by the Secretary shall be sufficient evidence to subject a licensee to jurisdiction in a court of law. This appointment shall remain in effect while any liability remains outstanding in this State against the licensee. When summons is served upon the Secretary as attorney-in-fact for a licensee, the Secretary shall immediately notify the licensee by registered mail, enclosing the summons and specifying the hour and day of service.

(e) A licensee must pay an annual fee of \$1,000. In addition to the license fee, the reasonable expense of any examination or hearing by the Secretary under any provisions of this Act shall be borne by the licensee. If a licensee fails to renew its license by December 31, its license shall automatically expire; however, the Secretary, in his or her discretion, may reinstate an expired license upon:

(1) payment of the annual fee within 30 days of the date of expiration; and

(2) proof of good cause for failure to renew.

(f) Not more than one place of business shall be maintained under the same license, but the Secretary may issue more than one license to the same licensee upon compliance with all the

provisions of this Act governing issuance of a single license. The location, except those locations already in existence as of June 1, 2005, may not be within one mile of a horse race track subject to the Illinois Horse Racing Act of 1975, within one mile of a facility at which gambling is conducted under the Riverboat Gambling Act, within one mile of the location at which a riverboat subject to the Riverboat Gambling Act docks, or within one mile of any State of Illinois or United States military base or naval installation.

(g) No licensee shall conduct the business of making loans under this Act within any office, suite, room, or place of business in which any other business is solicited or engaged in unless the other business is licensed by the Department or, in the opinion of the Secretary, the other business would not be contrary to the best interests of consumers and is authorized by the Secretary in writing.

(h) The Secretary shall maintain a list of licensees that shall be available to interested consumers and lenders and the public. The Secretary shall maintain a toll-free number whereby consumers may obtain information about licensees. The Secretary shall also establish a complaint process under which an aggrieved consumer may file a complaint against a licensee or non-licensee who violates any provision of this Act.

Section 3-10. Closing of business; surrender of license. At least 10 days before a licensee ceases operations, closes the business, or files for bankruptcy, the licensee shall:

(1) Notify the Department of its intended action in writing.

(2) With the exception of filing for bankruptcy, surrender its license to the Secretary for cancellation. The surrender of the license shall not affect the licensee's civil or criminal liability for acts committed before or after the surrender or entitle the licensee to a return of any part of the annual license fee.

(3) Notify the Department of the location where the

books, accounts, contracts, and records will be maintained.

The accounts, books, records, and contracts shall be maintained and serviced by the licensee, by another licensee under this Act, or by the Department.

Article 4. Administrative Provisions

Section 4-5. Prohibited acts. A licensee or unlicensed person or entity making payday loans may not commit, or have committed on behalf of the licensee or unlicensed person or entity, any of the following acts:

(1) Threatening to use or using the criminal process in this or any other state to collect on the loan.

(2) Using any device or agreement that would have the effect of charging or collecting more fees or charges than allowed by this Act, including, but not limited to, entering into a different type of transaction with the consumer.

(3) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a payday loan.

(4) Using or attempting to use the check provided by the consumer in a payday loan as collateral for a transaction not related to a payday loan.

(5) Knowingly accepting payment in whole or in part of a payday loan through the proceeds of another payday loan provided by any licensee.

(6) Knowingly accepting any security, other than that specified in the definition of payday loan in Section 1-10, for a payday loan.

(7) Charging any fees or charges other than those specifically authorized by this Act.

(8) Threatening to take any action against a consumer that is prohibited by this Act or making any misleading or deceptive statements regarding the payday loan or any consequences thereof.

(9) Making a misrepresentation of a material fact by an applicant for licensure in obtaining or attempting to obtain a license.

(10) Including any of the following provisions in loan documents required by subsection (b) of Section 2-20:

(A) a confession of judgment clause;

(B) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer, unless the waiver is included in an arbitration clause allowed under subparagraph (C) of this paragraph (11);

(C) a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers; or

(D) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract.

(11) Selling any insurance of any kind whether or not sold in connection with the making or collecting of a payday loan.

(12) Taking any power of attorney.

(13) Taking any security interest in real estate.

(14) Collecting a delinquency or collection charge on any installment regardless of the period in which it remains in default.

(15) Collecting treble damages on an amount owing from a payday loan.

(16) Refusing, or intentionally delaying or inhibiting, the consumer's right to enter into a repayment plan pursuant to this Act.

(17) Charging for, or attempting to collect, attorney's fees, court costs, or arbitration costs incurred in connection with the collection of a payday loan.

(18) Making a loan in violation of this Act.

(19) Garnishing the wages or salaries of a consumer who

is a member of the military.

(20) Failing to suspend or defer collection activity against a consumer who is a member of the military and who has been deployed to a combat or combat-support posting.

(21) Contacting the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan.

Section 4-10. Enforcement and remedies.

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

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

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

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

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

The Secretary shall serve notice of his or her action, including, but not limited to, a statement of the reasons for

the action, either personally or by certified mail, return receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

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

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

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

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

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

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

The Secretary may fine, suspend, or revoke only the particular license with respect to which grounds for the fine, revocation, or suspension occur or exist, but if the Secretary

finds that grounds for revocation are of general application to all offices or to more than one office of the licensee, the Secretary shall fine, suspend, or revoke every license to which the grounds apply.

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

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

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

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

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

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

(g) The costs of administrative hearings conducted

pursuant to this Section shall be paid by the licensee.

Section 4-15. Bonding.

(a) A person or entity engaged in making payday loans under this Act shall post a bond to the Department in the amount of \$50,000 for each location where loans will be made, up to a maximum bond amount of \$500,000.

(b) A bond posted under subsection (a) must continue in effect for the period of licensure and for 3 additional years if the bond is still available. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this Act.

(c) From time to time the Secretary may require a licensee to file a bond in an additional sum if the Secretary determines it to be necessary. In no case shall the bond be more than the outstanding liabilities of the licensee.

Section 4-20. Preemption of administrative rules. Any administrative rule promulgated prior to the effective date of this Act by the Department regarding payday loans is preempted.

Section 4-25. Reporting of violations. The Department shall report to the Attorney General all material violations of this Act of which it becomes aware.

Section 4-30. Rulemaking; industry review.

(a) The Department may make and enforce such reasonable rules, regulations, directions, orders, decisions, and findings as the execution and enforcement of the provisions of this Act require, and as are not inconsistent therewith. All rules, regulations, and directions of a general character shall be printed and copies thereof mailed to all licensees.

(b) Within 6 months after the effective date of this Act, the Department shall promulgate reasonable rules regarding the issuance of payday loans by banks, savings banks, savings and loan associations, credit unions, and insurance companies.

These rules shall be consistent with this Act and shall be limited in scope to the actual products and services offered by lenders governed by this Act.

(c) After the effective date of this Act, the Department shall, over a 3-year period, conduct a study of the payday loan industry to determine the impact and effectiveness of this Act. The Department shall report its findings to the General Assembly within 3 months of the third anniversary of the effective date of this Act. The study shall determine the effect of this Act on the protection of consumers in this State and on the fair and reasonable regulation of the payday loan industry. The study shall include, but shall not be limited to, an analysis of the ability of the industry to use private reporting tools that:

(1) ensure substantial compliance with this Act, including real time reporting of outstanding payday loans; and

(2) provide data to the Department in an appropriate form and with appropriate content to allow the Department to adequately monitor the industry.

The report of the Department shall, if necessary, identify and recommend specific amendments to this Act to further protect consumers and to guarantee fair and reasonable regulation of the payday loan industry.

Section 4-35. Judicial review. All final administrative decisions of the Department under this Act are subject to judicial review pursuant to the provisions of the Administrative Review Law and any rules adopted pursuant thereto.

Section 4-40. No waivers. There shall be no waiver of any provision of this Act.

Section 4-45. Superiority of Act. To the extent this Act conflicts with any other State financial regulation laws, this

Act is superior and supersedes those laws for the purposes of regulating payday loans in Illinois, provided that nothing herein shall apply to any lender that is a bank, savings bank, savings and loan association, credit union, or insurance company organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States.

Section 4-50. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Article 90. Amendatory Provisions

Section 90-5. The Financial Institutions Code is amended by changing Sections 4 and 6 as follows:

(20 ILCS 1205/4) (from Ch. 17, par. 104)

Sec. 4. As used in this Act:

(a) "Department" means the Department of Financial Institutions.

(b) "Director" means the Director of Financial Institutions.

(c) "Person" means any individual, partnership, joint venture, trust, estate, firm, corporation, association or cooperative society or association.

(d) "Financial institutions" means ambulatory and community currency exchanges, credit unions, guaranteed credit unions, persons engaged in the business of transmitting money to foreign countries or buying and selling foreign money, pawnbrokers' societies, title insuring or guaranteeing companies, and persons engaged in the business of making loans of \$800 or less, all as respectively defined in the laws referred to in Section 6 of this Act. The term includes sales finance agencies, as defined in the "Sales Finance Agency Act", enacted by the 75th General Assembly.

(e) "Payday loan" has the meaning ascribed to that term in

the Payday Loan Reform Act.

(Source: Laws 1967, p. 2211.)

(20 ILCS 1205/6) (from Ch. 17, par. 106)

Sec. 6. In addition to the duties imposed elsewhere in this Act, the Department has the following powers:

(1) To exercise the rights, powers and duties vested by law in the Auditor of Public Accounts under "An Act to provide for the incorporation, management and regulation of pawners' societies and limiting the rate of compensation to be paid for advances, storage and insurance on pawns and pledges and to allow the loaning of money upon personal property", approved March 29, 1899, as amended.

(2) To exercise the rights, powers and duties vested by law in the Auditor of Public Accounts under "An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended.

(3) To exercise the rights, powers, and duties vested by law in the Auditor of Public Accounts under "An Act in relation to the buying and selling of foreign exchange and the transmission or transfer of money to foreign countries", approved June 28, 1923, as amended.

(4) To exercise the rights, powers, and duties vested by law in the Auditor of Public Accounts under "An Act to provide for and regulate the business of guaranteeing titles to real estate by corporations", approved May 13, 1901, as amended.

(5) To exercise the rights, powers and duties vested by law in the Department of Insurance under "An Act to define, license, and regulate the business of making loans of eight hundred dollars or less, permitting an interest charge thereon greater than otherwise allowed by law, authorizing and regulating the assignment of wages or salary when taken as security for any such loan or as consideration for a payment of

eight hundred dollars or less, providing penalties, and to repeal Acts therein named", approved July 11, 1935, as amended.

(6) To administer and enforce "An Act to license and regulate the keeping and letting of safety deposit boxes, safes, and vaults, and the opening thereof, and to repeal a certain Act therein named", approved June 13, 1945, as amended.

(7) Whenever the Department is authorized or required by law to consider some aspect of criminal history record information for the purpose of carrying out its statutory powers and responsibilities, then, upon request and payment of fees in conformance with the requirements of Section 2605-400 of the Department of State Police Law (20 ILCS 2605/2605-400), the Department of State Police is authorized to furnish, pursuant to positive identification, such information contained in State files as is necessary to fulfill the request.

(8) To administer the Payday Loan Reform Act.

(Source: P.A. 91-239, eff. 1-1-00.)

Section 90-10. The Consumer Installment Loan Act is amended by changing Section 21 as follows:

(205 ILCS 670/21) (from Ch. 17, par. 5427)

Sec. 21. Application of act. This Act does not apply to any person, partnership, association, limited liability company, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings and loan associations, savings banks, credit unions, or licensees under the Residential Mortgage License Act for residential mortgage loans made pursuant to that Act. This Act does not apply to business loans. This Act does not apply to payday loans.

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

Section 90-12. The Interest Act is amended by changing Section 4 as follows:

(815 ILCS 205/4) (from Ch. 17, par. 6404)

Sec. 4. General interest rate.

(1) In all written contracts it shall be lawful for the parties to stipulate or agree that 9% per annum, or any less sum of interest, shall be taken and paid upon every \$100 of money loaned or in any manner due and owing from any person to any other person or corporation in this state, and after that rate for a greater or less sum, or for a longer or shorter time, except as herein provided.

The maximum rate of interest that may lawfully be contracted for is determined by the law applicable thereto at the time the contract is made. Any provision in any contract, whether made before or after July 1, 1969, which provides for or purports to authorize, contingent upon a change in the Illinois law after the contract is made, any rate of interest greater than the maximum lawful rate at the time the contract is made, is void.

It is lawful for a state bank or a branch of an out-of-state bank, as those terms are defined in Section 2 of the Illinois Banking Act, to receive or to contract to receive and collect interest and charges at any rate or rates agreed upon by the bank or branch and the borrower. It is lawful for a savings bank chartered under the Savings Bank Act or a savings association chartered under the Illinois Savings and Loan Act of 1985 to receive or contract to receive and collect interest and charges at any rate agreed upon by the savings bank or savings association and the borrower.

It is lawful to receive or to contract to receive and collect interest and charges as authorized by this Act and as authorized by the Consumer Installment Loan Act and by the "Consumer Finance Act", approved July 10, 1935, as now or hereafter amended, or by the Payday Loan Reform Act. It is lawful to charge, contract for, and receive any rate or amount of interest or compensation with respect to the following transactions:

(a) Any loan made to a corporation;

(b) Advances of money, repayable on demand, to an amount not less than \$5,000, which are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, if evidenced by a writing;

(c) Any credit transaction between a merchandise wholesaler and retailer; any business loan to a business association or copartnership or to a person owning and operating a business as sole proprietor or to any persons owning and operating a business as joint venturers, joint tenants or tenants in common, or to any limited partnership, or to any trustee owning and operating a business or whose beneficiaries own and operate a business, except that any loan which is secured (1) by an assignment of an individual obligor's salary, wages, commissions or other compensation for services, or (2) by his household furniture or other goods used for his personal, family or household purposes shall be deemed not to be a loan within the meaning of this subsection; and provided further that a loan which otherwise qualifies as a business loan within the meaning of this subsection shall not be deemed as not so qualifying because of the inclusion, with other security consisting of business assets of any such obligor, of real estate occupied by an individual obligor solely as his residence. The term "business" shall be deemed to mean a commercial, agricultural or industrial enterprise which is carried on for the purpose of investment or profit, but shall not be deemed to mean the ownership or maintenance of real estate occupied by an individual obligor solely as his residence;

(d) Any loan made in accordance with the provisions of Subchapter I of Chapter 13 of Title 12 of the United States Code, which is designated as "Housing Renovation and Modernization";

(e) Any mortgage loan insured or upon which a commitment to insure has been issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code;

(f) Any mortgage loan guaranteed or upon which a commitment to guaranty has been issued under the provisions of the Veterans' Benefits Act, Subchapter II of Chapter 37 of Title 38 of the United States Code;

(g) Interest charged by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or registered under the Illinois Securities Law of 1953, approved July 13, 1953, as now or hereafter amended, on a debit balance in an account for a customer if such debit balance is payable at will without penalty and is secured by securities as defined in Uniform Commercial Code-Investment Securities;

(h) Any loan made by a participating bank as part of any loan guarantee program which provides for loans and for the refinancing of such loans to medical students, interns and residents and which are guaranteed by the American Medical Association Education and Research Foundation;

(i) Any loan made, guaranteed, or insured in accordance with the provisions of the Housing Act of 1949, Subchapter III of Chapter 8A of Title 42 of the United States Code and the Consolidated Farm and Rural Development Act, Subchapters I, II, and III of Chapter 50 of Title 7 of the United States Code;

(j) Any loan by an employee pension benefit plan, as defined in Section 3 (2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002), to an individual participating in such plan, provided that such loan satisfies the prohibited transaction exemption requirements of Section 408 (b) (1) (29 U.S.C.A. Sec. 1108 (b) (1)) or Section 2003 (a) (26 U.S.C.A. Sec. 4975 (d) (1)) of the Employee Retirement Income Security Act of 1974;

(k) Written contracts, agreements or bonds for deed providing for installment purchase of real estate;

(l) Loans secured by a mortgage on real estate;

(m) Loans made by a sole proprietorship, partnership, or corporation to an employee or to a person who has been offered employment by such sole proprietorship, partnership, or corporation made for the sole purpose of transferring an employee or person who has been offered employment to another office maintained and operated by the same sole proprietorship, partnership, or corporation;

(n) Loans to or for the benefit of students made by an institution of higher education.

(2) Except for loans described in subparagraph (a), (c), (d), (e), (f) or (i) of subsection (1) of this Section, and except to the extent permitted by the applicable statute for loans made pursuant to Section 4a or pursuant to the Consumer Installment Loan Act:

(a) Whenever the rate of interest exceeds 8% per annum on any written contract, agreement or bond for deed providing for the installment purchase of residential real estate, or on any loan secured by a mortgage on residential real estate, it shall be unlawful to provide for a prepayment penalty or other charge for prepayment.

(b) No agreement, note or other instrument evidencing a loan secured by a mortgage on residential real estate, or written contract, agreement or bond for deed providing for the installment purchase of residential real estate, may provide for any change in the contract rate of interest during the term thereof. However, if the Congress of the United States or any federal agency authorizes any class of lender to enter, within limitations, into mortgage contracts or written contracts, agreements or bonds for deed in which the rate of interest may be changed during the term of the contract, any person, firm, corporation or other entity not otherwise prohibited from entering into mortgage contracts or written contracts, agreements or

bonds for deed in Illinois may enter into mortgage contracts or written contracts, agreements or bonds for deed in which the rate of interest may be changed during the term of the contract, within the same limitations.

(3) In any contract or loan which is secured by a mortgage, deed of trust, or conveyance in the nature of a mortgage, on residential real estate, the interest which is computed, calculated, charged, or collected pursuant to such contract or loan, or pursuant to any regulation or rule promulgated pursuant to this Act, may not be computed, calculated, charged or collected for any period of time occurring after the date on which the total indebtedness, with the exception of late payment penalties, is paid in full.

For purposes of this Section, a prepayment shall mean the payment of the total indebtedness, with the exception of late payment penalties if incurred or charged, on any date before the date specified in the contract or loan agreement on which the total indebtedness shall be paid in full, or before the date on which all payments, if timely made, shall have been made. In the event of a prepayment of the indebtedness which is made on a date after the date on which interest on the indebtedness was last computed, calculated, charged, or collected but before the next date on which interest on the indebtedness was to be calculated, computed, charged, or collected, the lender may calculate, charge and collect interest on the indebtedness for the period which elapsed between the date on which the prepayment is made and the date on which interest on the indebtedness was last computed, calculated, charged or collected at a rate equal to $1/360$ of the annual rate for each day which so elapsed, which rate shall be applied to the indebtedness outstanding as of the date of prepayment. The lender shall refund to the borrower any interest charged or collected which exceeds that which the lender may charge or collect pursuant to the preceding sentence. The provisions of this amendatory Act of 1985 shall apply only to contracts or loans entered into on or after the

effective date of this amendatory Act, but shall not apply to contracts or loans entered into on or after that date that are subject to Section 4a of this Act, the Consumer Installment Loan Act, the Payday Loan Reform Act, or the Retail Installment Sales Act, or that provide for the refund of precomputed interest on prepayment in the manner provided by such Act.

(Source: P.A. 92-483, eff. 8-23-01.)

Section 90-15. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2Z as follows:

(815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

Sec. 2Z. Violations of other Acts. Any person who knowingly violates the Automotive Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, or the Automatic Contract Renewal Act commits an unlawful practice within the meaning of this Act.

(Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950, eff. 1-1-05.)

Article 99. Effective Date

Section 99. Effective date. This Act takes effect 180 days

Public Act 094-0013

HB1100 Enrolled

LRB094 09280 MKM 39518 b

after becoming law.