

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 289

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO LOANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §2227, Title 5 of the Delaware Code by making insertions as shown by underling and deletions as shown by strike through as follows:

§ 2227. Definitions.

As used in this subchapter:

(1) "Business day" means, with respect to rescission under § 2235A of this title, all calendar days except Sundays and legal public holidays.

(2) "Closed end credit" means the extension of credit by a licensee to a borrower pursuant to an arrangement or agreement which is not a revolving credit plan as defined in subchapter II of this chapter.

(3) "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

(4) "Loan" means any single extension of closed end credit.

(5) "Right of rescission" means, with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

(6) "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(7) "Short-term consumer loan" means a loan of ~~\$500~~1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(8) "Workout agreement" means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness, ~~which requires a net reduction of not less than 10% of such indebtedness per payment period.~~ The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

Section 2. Amend §2235A, Title 5 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2235A. Short-term consumer loans.

(a) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

(1) Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than five (5) short-term consumer loans from all licensees in any twelve-month period. For the purposes of this section a rollover or a refinancing shall be considered a short-term consumer loan. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of this section is a violation of Chapter 25 of Title 6 of the Delaware Code.

~~(2)~~ No licensee shall make more than 4 rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

~~(3)~~ No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.

~~(4)~~ No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(b) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No licensee shall make a short-term consumer loan unless the application for such loan, which application shall be written in both English and Spanish, contains a written disclosure, conspicuously displayed, that:

(1) The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

(2) Additional fees may accrue if the loan is rolled over; and

(3) Credit counseling services are available to consumers who are experiencing financial problems.

(c) Nothing in this section prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(d) The Commissioner is authorized to promulgate rules and regulations to exempt certain loans or classes of loans from the requirements of this section.

(e) Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."

(f) A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of this chapter through any method including, but not limited to, mail, telephone, internet or any electronic means, including:

(1) Offering, making, or assisting a borrower to obtain a loan in violation of subsection (a), or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.

(2) Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of subsection (a).

Section 3. Amend Title 5 of the Delaware Code by inserting a new section 2235B as shown by underlining as follows:

§2235B. Database.

(a) The Commissioner shall, by contract with a third-party provider or otherwise, develop and implement a common database with real-time access through an Internet connection by means of which a licensee may determine:

(1) Whether a borrower has an outstanding short-term consumer loan;

(2) The number of short-term consumer loans the borrower has outstanding;

(3) Whether the borrower is eligible for a loan under subsection (a) of § 2235A of this chapter; and

(4) Any other information necessary to comply with this chapter.

(b) The Commissioner shall ensure that the provider of the database referred to in this section is responsible to:

(1) Establish and maintain a process for responding to transaction verification requests from a licensee in the event the database is inaccessible due to technical difficulties;

(2) Take reasonable measures to prevent identity theft;

(3) Provide accurate and secure receipt, transmission and storage of borrower data; and

(4) Provide the Commissioner or his designee complete access to the database.

(c) Licensees shall:

(1) When entering into a short-term consumer loan, accurately and immediately submit to the database any data in the format that the Commissioner may require, including the borrower's name, address, social security or employment authorization number, gross monthly income, amount of transaction, interest rate, date of transaction, anticipated date loan will be paid off;

(2) Promptly correct any incorrect data entered into the database that was previously submitted; and

(3) Promptly record the date a short-term consumer loan is paid in full.

(d) A licensee must continue to enter and update all required information for any short-term consumer loans subject to this section that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by this chapter. Within ten business days after ceasing to make loans subject to this section, the licensee must submit a plan for continuing compliance with this subsection to the Commissioner for approval. The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this section.

(e) The Commissioner shall adopt rules or regulations for the administration and enforcement of this section. Such regulations shall include:

(1) A requirement that identifying borrower information is deleted from the database on a regular and routine basis, twelve months after the loan is paid off;

(2) Standards for the retention, archiving, and deletion of information entered or stored in the database;

(3) A requirement that data collected pursuant to this section be used only as prescribed in this chapter or for research and reporting as authorized by the Banking Commissioner;

(4) A Rule authorizing a fee per transaction for data required to be submitted. The fee shall be payable by the licensee to the Commissioner. The fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of this section. A customer shall not be charged all or part of the fee.

(f) The database established under this section shall not be considered a public record for purposes of the Freedom of Information Act in Chapter 100, Title 29 of this Code.

Section 4. Amend Title 5 of the Delaware Code inserting a new section 2235C as shown by underlining as follows:

§ 2235C. Report by Commissioner

(a) The Commissioner shall collect and submit the following information to the Banking Committee of the Senate and the Economic Development/Banking/Insurance/Commerce Committee of the House of Representatives on or before March 15 of each year:

(1) The total number and dollar amount of short-term consumer loan transactions;

(2) The total number of individual borrowers who entered into short-term consumer loan transactions along with their gross monthly income;

(3) The minimum, maximum, and average amount of short-term consumer loan transactions;

(4) The minimum, maximum, and average annual percentage rate of short-term consumer loans;

(5) The average number of days a short-term consumer loan is outstanding;

(6) The number of borrowers entering into each permissible number of short-term consumer loans, one transaction to five transactions;

(7) The default rate on short-term consumer loans;

(8) Any other information that the commissioner believes is relevant or useful; and

(9) Any other information requested by the banking committees at least 60 days before the Commissioner's report is due.

(b) The Commissioner shall require the database operator and licensees to submit any and all information necessary for the Commissioner to prepare the report referenced in subsection (a).

Section 5. This Act shall be effective on January 1, 2013.