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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:

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

3 § 2227. Definitions.

4 As used in this subchapter:

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

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

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

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

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

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

18 (7) "Short-term consumer loan" means a loan of ~~\$500~~1,000 or less made to an individual borrower that charges
19 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.

20 (8) "Workout agreement" means an agreement between an individual borrower and a licensee for the repayment
21 of an outstanding and unpaid indebtedness, ~~which requires a net reduction of not less than 10% of such indebtedness per~~

22 ~~payment period.~~ The workout agreement must provide for payments in equal installments over a period of at least 90 days
23 and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the
24 loan into a workout agreement.

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

27 § 2235A. Short-term consumer loans.

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

30 (1) Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-
31 term consumer loan that would cause the borrower to have more than five (5) short-term consumer loans from all licensees
32 in any twelve-month period. For the purposes of this section a rollover or a refinancing shall be considered a short-term
33 consumer loan. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right
34 to collect, receive, or retain any principal, interest, fees or other charges. A violation of this section is a violation of Chapter
35 25 of Title 6 of the Delaware Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

65 Section 3. Amend Title 5 of the Delaware Code by inserting a new section 2235B as shown by underlining as follows:
66 §2235B. Database.

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

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

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

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

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

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

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

76 (2) Take reasonable measures to prevent identity theft;

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

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

79 (c) Licensees shall:

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

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

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

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

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

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

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

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

99 (4) A rule authorizing a fee per transaction for data required to be submitted. The fee shall be payable to the
100 database provider in a manner prescribed by the Commissioner. A licensee may not charge a customer all or part of the fee.

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

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

105 § 2235C. Report by Commissioner

106 (a) The Commissioner shall collect and submit the following information to the Banking Committee of the Senate and
107 the Economic Development/Banking/Insurance/Commerce Committee of the House of Representatives on or before March
108 15 of each year:

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

110 (2) The total number of individual borrowers who entered into short-term consumer loan transactions along with
111 their gross monthly income;
112 (3) The minimum, maximum, and average amount of short-term consumer loan transactions;
113 (4) The minimum, maximum, and average annual percentage rate of short-term consumer loans;
114 (5) The average number of days a short-term consumer loan is outstanding;
115 (6) The number of borrowers entering into each permissible number of short-term consumer loans, one transaction
116 to five transactions;
117 (7) The default rate on short-term consumer loans;
118 (8) Any other information that the commissioner believes is relevant or useful; and
119 (9) Any other information requested by the banking committees at least 60 days before the Commissioner's report
120 is due.
121 (b) The Commissioner shall require the database operator and licensees to submit any and all information necessary for
122 the Commissioner to prepare the report referenced in subsection (a).
123 Section 5. This Act shall be effective on January 1, 2013.

SYNOPSIS

This bill limits to five the number of short-term consumer loans (sometimes called payday loans) that any one borrower may obtain in a twelve month period. It changes the definition of short-term consumer loan to include loans up to \$1000 rather than \$500. The bill also provides for establishment of a database to track the number of short-term consumer loans an individual has obtained in a twelve month period. Finally, the Banking Commissioner is directed to provide a report on the prevalence and nature of these payday loans to the General Assembly.