SPONSOR: Rep. Keeley & Rep. Schwartzkopf & Rep. Ramone & Sen. Lopez & Sen. McDowell

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 446

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:

Section 1. Amend Subchapter III, Chapter 22, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2229. Interest.

A licensee may charge and collect interest in respect of a loan at ~~such daily, weekly, monthly, annual or other periodic percentage rate of rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest of such other method as the agreement governing the loan provides~~ a rate not exceeding 100% per year. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the licensee may determine.

§ 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:

(5) No licensee shall make any automated withdrawal from the borrower's bank account in an amount greater than the scheduled periodic payment amount on the loan. Delinquency or accelerated payments pursuant to a default may not be collected through an automated withdrawal. If an automated withdrawal is declined, a licensee may not attempt any additional automated withdrawal on the same account for at least 5 business days, unless they receive written consent from the borrower.

SYNOPSIS

This bill imposes a cap on the interest rate that may be charged for "alternative financial services" at an annual rate of interest of 100%. "Alternative financial services" is a term sometimes used for payday loans, installment loans, and other credit products generally targeted towards working class people without access to more traditional banking or credit card services. Over the years, this state and others have made various efforts to regulate the industry, to assure that it is operating fairly and in a non-predatory manner. Generally, lenders in this industry have restructured their loan products to avoid such laws and regulations. *See, e.g., James v. National Financial, LLC*, 132 A.3d 799, 834-838 (Del. Ch. 2016). By

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placing a cap on interest rate in Chapter 22, the purpose of this bill is to circumscribe the ability of short-term, sub-prime lenders to take advantage of unsophisticated borrowers – regardless of the name or structure they may give the credit products. By its terms, Chapter 22 does not apply to more traditional financial products offered by banks, credit unions, credit card companies, and the like. Traditional financial products are already extensively regulated by state and federal law, and are less amenable to abuse.

The bill also prohibits the use of automated withdrawals on short-term loans regulated by Chapter 22 for delinquency payments or accelerated default payments. It prohibits repeat attempts to make an automated withdrawal for at least 5 days after a declined payment, unless the borrower authorizes another attempt in writing. This will prevent borrowers from being charged multiple fees by their banks for overdrafts or declined withdrawals when licensees try repeatedly in a short time frame to process an automated withdrawal.

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