

1 AN ACT concerning deferred deposit lending practices.

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

4 Section 5. The Consumer Installment Loan act is amended  
5 by changing Section 15d and adding Sections 1.5, 8.2, 17.1,  
6 17.2, 17.3, 17.4, 17.5, and 22.1 as follows:

7 (205 ILCS 670/1.5 new)

8 Sec. 1.5. Definitions.

9 "Deferred deposit loan" means a loan upon which interest  
10 is charged at an annual percentage rate exceeding 36%  
11 pursuant to a written agreement between a licensee and the  
12 maker of a check whereby at commencement the licensee accepts  
13 a post dated check from the maker dated on the date the loan  
14 is due.

15 "Deferred deposit lender" means the following:

16 (1) Any person who offers or makes a deferred  
17 deposit loan, who arranges a deferred deposit loan for a  
18 third party, or who acts as an agent for a third party,  
19 regardless of whether the third party is exempt from  
20 licensing under this Act or whether approval, acceptance,  
21 or ratification by the third party is necessary to create  
22 a legal obligation for the third party.

23 (2) Notwithstanding the foregoing, a state or  
24 federally chartered bank, saving and loan association,  
25 credit union, or supervised lender shall not be  
26 considered a deferred deposit lender for purposes of this  
27 Act and shall be specifically exempt from the provisions  
28 of this Act so long as all of the following are  
29 satisfied:

30 (A) it initially advances the loan proceeds to  
31 the customer;

1           (B) it does not sell, assign, or transfer in  
2           the aggregate a preponderant economic interest in  
3           the deferred deposit transactions to the arranger,  
4           agent, or assistant or an affiliate or subsidiary of  
5           the state or federally chartered bank, saving and  
6           loan association, credit union, or supervised  
7           lender, unless selling, assigning, or transferring a  
8           preponderant economic interest is permitted by the  
9           primary regulator of the state or federally  
10           chartered bank, saving and loan association, credit  
11           union, or supervised lender; and

12           (C) it develops the deferred deposit loan  
13           program on its own.

14           (3) If a deferred deposit lender, as defined in  
15           item (1) of this provision, offers, arranges, acts as an  
16           agent for, or assists a state or federally chartered  
17           bank, saving and loan association, credit union, or  
18           supervised lender in any way in the making of a deferred  
19           deposit loan and the state or federally chartered bank,  
20           saving and loan association, credit union, or supervised  
21           lender meets the standards set for the in item (2) of  
22           this provision, the deferred deposit lender shall comply  
23           with all other requirements of this Act to the extent  
24           they are not preempted by other state or federal laws.

25           "Interest bearing loan" means a loan in which interest  
26           is charged upon the principal amount borrowed.

27           "Simple interest" means that the interest on all deferred  
28           deposit loans is computed as simple interest as defined in 38  
29           Ill. Adm. Code 110.80.

30           "Check" means a personal check, draft, or other  
31           negotiable instrument signed by the obligor and made payable  
32           to a licensee and includes the electronic equivalent of a  
33           check including, but not limited to, automatic clearing house  
34           transactions.

1       "Renew" means to enter into a deferred deposit loan  
2 within 7 days after the termination of a previous loan  
3 between the consumer and the deferred deposit lender,  
4 including the extension of an existing loan with only the  
5 payment of the fee. If the previous deferred deposit loan  
6 principal is paid in full, the renewed loan may be in a  
7 principal amount allowed under this Act. If the previous  
8 deferred deposit loan principal is not paid in full, as  
9 permitted under subsection (b) of Section 17.1, the renewed  
10 loan may be in a principal amount not to exceed the amount of  
11 the unpaid principal of the previous loan.

12           (205 ILCS 670/8.2 new)

13       Sec. 8.2. Availability of debt management services.

14       (a) Before entering into a deferred deposit loan  
15 agreement, a licensee must give to the obligor a pamphlet,  
16 approved by the Director, describing the availability of debt  
17 management services and the obligor's rights and  
18 responsibilities in the transaction.

19       (b) Each deferred deposit loan agreement and refinancing  
20 agreement executed by a licensee shall include a statement,  
21 which shall be conspicuous and in close proximity to the  
22 signature of the obligor, as follows: "I have received from  
23 (name of lender) a toll free number from the Department of  
24 Financial Institutions that I can call for information  
25 regarding debt management services."

26       (c) At the time a deferred deposit lender conveys any  
27 written notice to an obligor indicating the obligor is in  
28 arrears or that the obligor is in default, the lender shall  
29 include with the notice a statement indicating a toll free  
30 number of the Department of Financial Institutions that the  
31 obligor may contact for the purpose of the obligor receiving  
32 information from the Department regarding debt management  
33 services. The form and method of providing the information

1 shall be subject to approval of the Department.

2 (205 ILCS 670/15d) (from Ch. 17, par. 5419)

3 Sec. 15d. Extra charges prohibited; exceptions. No  
4 amount in addition to the charges authorized by this Act  
5 shall be directly or indirectly charged, contracted for, or  
6 received, except (1) lawful fees paid to any public officer  
7 or agency to record, file or release security; (2) (i) costs  
8 and disbursements actually incurred in connection with a real  
9 estate loan, for any title insurance, title examination,  
10 abstract of title, survey, or appraisal, or paid to a trustee  
11 in connection with a trust deed, and (ii) in connection with  
12 a real estate loan those charges authorized by Section 4.1a  
13 of the Interest Act, whether called "points" or otherwise,  
14 which charges are imposed as a condition for making the loan  
15 and are not refundable in the event of prepayment of the  
16 loan; (3) costs and disbursements, including reasonable  
17 attorney's fees, incurred in legal proceedings to collect a  
18 loan or to realize on a security after default; (4) an amount  
19 not exceeding \$25, plus any actual expenses incurred in  
20 connection with a check or draft that is not honored because  
21 of insufficient or uncollected funds or because no such  
22 account exists, provided, that in connection with a deferred  
23 deposit loan, the amount authorized under this item (4) shall  
24 not exceed \$20 plus any actual expenses so incurred; and (5)  
25 a document preparation fee not to exceed \$25 for obtaining  
26 and reviewing credit reports and preparation of other  
27 documents; and (6) a deferred deposit loan delinquency fee,  
28 if provided for in the written agreement between licensee and  
29 obligor, not to exceed \$5 for a deferred deposit loan in  
30 default in any amount for a period not less than 10 days,  
31 which may be assessed once on any loan regardless of the  
32 period during which it remains in default. A deferred deposit  
33 lender may not contract for or collect attorney's fees from

1 obligors on legal actions arising from deferred deposit loans  
2 made under this Act, unless the legal action against the  
3 obligor is based upon fraud, nor may a deferred deposit  
4 lender use or threaten to use the criminal process to collect  
5 a deferred deposit loan. This Section does not prohibit the  
6 receipt of a commission, dividend, charge, or other benefit  
7 by the licensee or by an employee, affiliate, or associate of  
8 the licensee from the insurance permitted by Sections 15a and  
9 15b of this Act or from insurance in lieu of perfecting a  
10 security interest provided that the premiums for such  
11 insurance do not exceed the fees that otherwise could be  
12 contracted for by the licensee under this Section. Obtaining  
13 any of the items referred to in clause (i) of item (2) of  
14 this Section through the licensee or from any person  
15 specified by the licensee shall not be a condition precedent  
16 to the granting of the loan.

17 (Source: P.A. 89-400, eff. 8-20-95; 90-437, eff. 1-1-98.)

18 (205 ILCS 670/17.1 new)

19 Sec. 17.1 Deferred deposit loan terms.

20 (a) A deferred deposit loan may not exceed \$400 in  
21 principal amount. However, no loan shall be made in such  
22 amount that the principal and interest payments for the  
23 stated duration of the loan exceed 50% of the obligor's gross  
24 income for that period.

25 (b) An obligor may renew a deferred deposit loan one  
26 time after the original loan.

27 An obligor may renew a deferred deposit loan a second  
28 time if he repays at least 25% of the principal of the  
29 previous loan.

30 An obligor may renew a deferred deposit loan a third time  
31 if he repays at least 50% of the principal of the previous  
32 loan.

33 An obligor may renew a deferred deposit loan more than 3

1 times if:

2 (1) he repays the entire principal of the previous  
3 loan; and

4 (2) he is provided the opportunity to convert the  
5 term of the loan to the Mandatory Payment Plan, as  
6 provided in subsection (c).

7 (c) A lender must provide the obligor written notice of  
8 the obligor's right to request a repayment plan under the  
9 conditions established in this subsection. The form of the  
10 written notice shall be either prescribed or approved by the  
11 Department and shall be set forth conspicuously both at the  
12 point-of-sale and in every deferred deposit loan agreement.

13 If an obligor renews a deferred deposit loan a fourth  
14 time, that fourth renewed loan and each renewed loan  
15 thereafter is subject to a mandatory prepayment plan that  
16 allows the obligor to repay the renewed loan on the following  
17 terms:

18 (1) the obligor must request the repayment plan, in  
19 writing, not later than 24 hours prior to the due date of  
20 the deferred deposit loan;

21 (2) the obligor shall be allowed to repay the  
22 deferred deposit loan in 4 equal installments with one  
23 installment due on each of the obligor's next 4 pay dates  
24 (with at least 13 days between installments);

25 (3) the obligor shall pay a fee not to exceed \$15  
26 for electing the payment plan; and

27 (4) the obligor shall agree not to enter into any  
28 additional deferred deposit loan during the payment plan  
29 term or for a period of 14 days after termination of the  
30 payment plan term.

31 (d) The post-dated check used as security for a deferred  
32 deposit loan must name the lender as payee.

33 (e) The loan agreement for a deferred deposit loan must  
34 include a separate statement signed by the obligor attesting

1 that the obligor is not barred from obtaining a deferred  
2 deposit loan under the requirements of this Act. The lender  
3 shall further verify the statement by means of any database  
4 created by or approved by the Department of Financial  
5 Institutions that purpose.

6 (f) The loan agreement shall advise the obligor that  
7 matters involving improprieties in the making of the loan or  
8 in loan collection practices may be referred to the  
9 Department and shall prominently disclose the Department's  
10 address and telephone number.

11 (g) Each deferred deposit loan refinancing agreement  
12 executed by a licensee shall include a statement, which shall  
13 be initialed by the obligor, as follows: "I have received  
14 from (name of lender) a toll free number from the Department  
15 of Financial Institutions that I can call for information  
16 regarding debt management services."

17 (205 ILCS 670/17.2 new)

18 Sec. 17.2. Deferred deposit loan notifications. At the  
19 time a deferred deposit lender conveys a second notice to an  
20 obligor indicating the obligor is in arrears or at the time  
21 of any notice that the obligor is in default for a debt owed  
22 to the deferred deposit lender, the licensee shall include  
23 with the notice a statement indicating a telephone number of  
24 the Department of Financial Institutions that the obligor may  
25 contact for the purpose of the obligor receiving information  
26 from the Department regarding debt management services for  
27 assisting the obligor. The form and method of the notice  
28 provided by the lender shall be subject to approval by the  
29 Director.

30 (205 ILCS 670/17.3 new)

31 Sec. 17.3. Security interest. A deferred deposit lender  
32 may not take a security interest in any of the obligor's

1 property other than the check as tendered to the lender at  
2 the time of the making of the loan.

3 (205 ILCS 670/17.4 new)

4 Sec. 17.4. Deferred deposit loan proceeds. A deferred  
5 deposit lender must issue the proceeds of a deferred deposit  
6 loan in the form of a check drawn on the licensee's bank  
7 account, in cash, or by money order. When the proceeds are  
8 issued in the form of a check drawn on the lender's bank  
9 account or by money order, the lender may not charge a fee  
10 for cashing the check or money order if cashing services are  
11 offered at the location. When the proceeds are issued in  
12 cash, the lender must provide the obligor with a written  
13 verification of the cash transaction and shall maintain a  
14 record of the transaction.

15 (205 ILCS 670/17.5 new)

16 Sec. 17.5. Right of rescission. An obligor may rescind a  
17 deferred deposit loan agreement without cost no later than  
18 the end of the business day immediately following the day on  
19 which the deferred deposit loan was made. To rescind the  
20 deferred deposit loan, an obligor must inform the lender that  
21 the obligor wants to rescind the deferred deposit loan and  
22 return the uncashed proceeds check or cash in an amount equal  
23 to the amount loaned pursuant to the written agreement.

24 (205 ILCS 670/22.1 new)

25 Sec. 22.1. Preemption of administrative rules. The  
26 provisions of this Act that are applicable to deferred  
27 deposit lenders, including Sections 1.5, 2.5, 8.2, 15d, 17.1,  
28 17.2, 17.3, 17.4, and 17.5, preempt the provisions of the  
29 Illinois Administrative Code that are applicable to deferred  
30 deposit lenders providing deferred deposit loans, including  
31 38 Ill. Adm. Code 110.300, 110.310, 110.320, 110.330,

1 110.360, 110.370, 110.380, 110.390, 110.400, and 110.410.

2 Section 15. The Criminal Code of 1961 is amended by  
3 changing Section 17-1a as follows:

4 (720 ILCS 5/17-1a) (from Ch. 38, par. 17-1a)

5 Sec. 17-1a. Civil liability for deceptive practices. A  
6 person who issues a check or order to a payee in violation of  
7 Section 17-1(B) (d) and who fails to pay the amount of the  
8 check or order to the payee within 30 days following either  
9 delivery and acceptance by the addressee of a written demand  
10 by both certified mail and by first class mail to the  
11 person's last know address; or attempted delivery of a  
12 written demand sent by both certified mail and by first class  
13 mail to the person's last known address and the demand by  
14 certified mail is returned to the sender with a notation that  
15 delivery was refused or unclaimed, shall be liable to the  
16 payee or a person subrogated to the rights of the payee for,  
17 in addition to the amount owing upon such check or order,  
18 damages of treble the amount so owing, but in no case less  
19 than \$100 nor more than \$1,500, plus attorney fees and court  
20 costs, provided that a deferred deposit lender, as that term  
21 is defined in Section 1.5 of the Consumer Installment Loan  
22 Act, shall not be entitled to collect damages of treble on an  
23 amount owing from a deferred deposit loan.

24 A cause of action under this Section may be brought in  
25 small claims court or in any other appropriate court. As  
26 part of the written demand required by this Section, the  
27 plaintiff shall provide written notice to the defendant of  
28 the fact that prior to the hearing of any action under this  
29 Section, the defendant may tender to the plaintiff and the  
30 plaintiff shall accept as satisfaction of the claim, an  
31 amount of money equal to the sum of the amount of the check  
32 and the incurred court costs, and service and attorney fees.

1 (Source: P.A. 89-378, eff. 8-18-95; 90-227, eff. 1-1-98;  
2 90-721, eff. 1-1-99.)

3 Section 97. Severability. The provisions of this Act are  
4 severable under Section 1.31 of the Statute on Statutes.

5 Section 99. Effective date. This Act takes effect on  
6 October 1, 2003.