



2013 ASSEMBLY BILL 301

August 23, 2013 – Introduced by Representatives HINTZ, BARNES, KOLSTE, GOYKE, BEWLEY, JOHNSON, BERNARD SCHABER, SHANKLAND, MASON, SINICKI, BERCEAU, ZEPNICK, RICHARDS, WRIGHT, POPE, DOYLE, YOUNG, KAHL, WACHS, CLARK, JORGENSEN, OHNSTAD, HEBL, MILROY, BILLINGS and BARCA. Referred to Joint Committee on Finance.

- 1 **AN ACT to repeal** 425.103 (2) (am); and **to amend** 425.103 (2) (a) of the statutes;
- 2 **relating to:** defaults on payday loans and loans by licensed lenders.

Analysis by the Legislative Reference Bureau

Under current law, a person must be licensed by the Division of Banking (division) in the Department of Financial Institutions to originate or service a payday loan involving a Wisconsin resident. A “payday loan” is defined as a transaction between an individual with an account at a financial establishment and another person (payday lender) in which the payday lender agrees to accept a check or electronic fund transfer (EFT) authorization from the individual, to delay negotiating the check or initiating the EFT for a period of time, and to extend a loan to the individual for a term of 90 days or less.

Also under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the division to assess a finance charge for a consumer loan that is greater than 18 percent. This type of lender is generally referred to as a “licensed lender.” A “consumer loan” is a loan made to an individual for personal, family, or household purposes that is payable in installments or for which a finance charge may be imposed.

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A “consumer credit transaction” is generally a transaction in which property, services, or money is acquired on credit and the consumer’s obligation is payable in installments or a finance charge may be imposed. The WCA includes requirements for a creditor to

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satisfy to enforce rights arising from a consumer credit transaction that is subject to the WCA. Under the WCA, a creditor's cause of action against a consumer to enforce the consumer's obligation in a consumer credit transaction accrues only upon default by the consumer. In general, a default in a consumer credit transaction means the following: 1) if the interval between scheduled payments is two months or less, to have outstanding an amount exceeding one full payment that has remained unpaid for more than ten days after the scheduled or deferred due dates or to fail to pay the first or last payment within 40 days of its scheduled or deferred due date; 2) if the interval between scheduled payments is more than two months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or 3) if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date. However, as created in 2013 Wisconsin Act 20, default in a consumer credit transaction, not secured by a motor vehicle, involving an installment loan by a licensed lender or a payday loan by a payday lender means having outstanding an amount of one full payment or more that has remained unpaid for more than ten days after the scheduled or deferred due date.

This bill repeals the default provision specific to installment loans by licensed lenders and payday loans that was created in 2013 Wisconsin Act 20.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 425.103 (2) (a) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:
3 425.103 (2) (a) With respect to a transaction other than one pursuant to an
4 open-end plan ~~and except as provided in par. (am)~~; if the interval between scheduled
5 payments is 2 months or less, to have outstanding an amount exceeding one full
6 payment which has remained unpaid for more than 10 days after the scheduled or
7 deferred due dates, or the failure to pay the first payment or the last payment, within
8 40 days of its scheduled or deferred due date; if the interval between scheduled
9 payments is more than 2 months, to have all or any part of one scheduled payment
10 unpaid for more than 60 days after its scheduled or deferred due date; or, if the
11 transaction is scheduled to be repaid in a single payment, to have all or any part of
12 the payment unpaid for more than 40 days after its scheduled or deferred due date.

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1 For purposes of this paragraph the amount outstanding shall not include any
2 delinquency or deferral charges and shall be computed by applying each payment
3 first to the installment most delinquent and then to subsequent installments in the
4 order they come due;

5 **SECTION 2.** 425.103 (2) (am) of the statutes, as created by 2013 Wisconsin Act
6 20, is repealed.

7 **(END)**