

Bill Summary

COMMITTEE: Banking and Insurance

DATE: 4/19/10

PRIME SPONSOR: Browne

BILL NO: SB1071

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A. Synopsis:

SB1071 amends Title 7 (Banks and Banking) and Title 18 (Crimes and Offenses) to provide for short-term loan protection, and for fraudulent business practices and unlicensed short-term lending.

B. Summary:

Nature and Effect of Short Term Loans:

This legislation requires individuals to obtain a license prior to taking any part in issuing a short-term loan.

Loan requirements:

Each loan will be documented by a detailed loan agreement. A deferment period may not be in excess of 60 days nor less than an individual's pay period or seven days, whichever is greater. The deferment date will be calculated from the date of the loan agreement.

A loan agreement or any document in connection with the loan will not contain: a mandatory arbitration clause that doesn't comply with the American Arbitration Association, a hold harmless for the benefit of the short term lender, a confession of judgment clause, or a waiver by the consumer of any contractual right or provision of this chapter.

This bill provides for short term lending at a maximum interest rate of 36%, and it allows lenders to charge originating fees for providing these short term loans. This originating fee may not exceed 10% of the amount of the loan advanced to the borrower or \$50.00, whichever is less. A licensee may also charge a \$5 verification fee.

The loans may also not exceed \$500.00 or 25% of the consumer's gross monthly income. The bill has provisions for a consumer to enact his rights to rescind a loan, and a loan transaction will be completed when the lender receives payment in full. A short-term lender cannot knowingly make a loan to a consumer who has an existing loan that exceeds the maximum amount.

The legislation prohibits: more than eight short term loans in any twelve-month period, and loans to a consumer if the loan will result in debt for more than 60 days. A consumer will

verify the above items in writing, and the lender will confirm this. A procedure is set to determine outstanding loans and repayment dates.

Additional Provisions under this section:

- The lender is prohibited to be within 100 feet of a gaming facility under the bill.
- A short term loan may not be renewed.
- The form of the loan will be a check, money order, cash, debt card, or credit.
- A lender may not negotiate a payment unless the instrument is endorsed with the actual business name of the lender.
- Prior to the negotiation, the consumer has the right to redeem the check if the consumer pays the full amount.
- Authorized charges are in place for dishonored repayment mechanisms.
- A lender may post in public view a notice of charges for dishonored repayment mechanisms.
- A lender shall inform a consumer in writing of the name, address, and phone number to who the loan is assigned.
- A consumer will not be subject to a criminal penalty for entering into a loan agreement, or when a consumer's repayment mechanism is dishonored.
- A person may not engage in unfair or deceptive acts.
- A lender may offer extended payment plans if the consumer is unable to pay.
- The legislation clearly indicates prohibited practices regarding loans.
- The Commonwealth Financial Literacy Account will be established to deposit funds.
- Military provisions are in place

Administrative and Licensure Provisions:

Application provisions are in place, including initial application, updating, and financial structure:

An applicant for a license shall pay a fee of \$1,000, and an additional \$1,000 for each branch office. Each applicant for a new license is required to post notice where license is being requested. Upon receipt of an application for a license, the department may conduct an investigation to determine the applicant is of good character.

A license must be renewed annually.

A licensee is required to display its license at each place of business, maintain records, file annual reports, be subject to examination by the department, and indicate the licensee is licensed by the department. Their accounting records will be in compliance with department

regulation, and copies shall be available. They may not practice under another name, nor conduct business other than the short term loan business. They may surrender his or her license under certain provisions.

The Department has certain powers and duties, including hearings, injunctions, final orders, and appeals. They may suspend, revoke, or refuse new licenses, or issue penalties.

Miscellaneous provisions and preemptions are included for loans made in this commonwealth.

Items involving Title 7 will take effect upon the effective date of the regulations promulgated by the Department. The remainder will take effect in 60 days.