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2010 Legislative Amendments to the Small Loan Act ("Payday Loans" or the "Small Loan Act") - Effective July 1, 2010

Questions, Answers, and Administrative Interpretations: This document contains a Q&A relating to new provisions in the Small Loan Act. Careful review of the entire Small Loan Act is recommended. The new provisions of the Small Loan Act can be found in Senate Bill 328 beginning at Section 82 (page 97) at the following link: http://www.in.gov/dfi/SB0328.PDF.

1. What amendments have been made to the warning that must be displayed to prospective borrowers in the lending area of each business location and in loan documents?

Answer – IC 24-4.5-7-301 has been amended to provide that the lender's notice under this section must clarify the requirements for rescission of the loan consistent with the highlighted language below:

> "WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.
> A borrower may rescind a small loan without cost ***by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made.***"

2. How can a borrower rescind a small loan?

Answer – IC 24-4.5-7-402(5) provides that a borrower may rescind a small loan without cost simply by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made. The law no longer indicates that the borrower must inform the lender of his/her desire to rescind the loan.

3. What changes have been made to how a lender is required to verify the total number of outstanding small loans and the total outstanding balance of those small loans?

Answer – IC 24-4.5-7-404(4) provides that a lender is in compliance with the verification obligations if the lender independently verifies the total number of outstanding small loans and the total outstanding balance of those small loans for a customer through a commercially reasonable method of verification. A lender's method of verifying whether a borrower has any outstanding small loans and the total outstanding balance of any loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

(a) the lender's own records, including both records maintained at the location where the borrower is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and
(b) an available third party data base provided by a private consumer reporting service, subject to the identification verification requirements set forth in IC 24-4.5-7-404(12).

The law no longer includes language regarding the borrower's representation that he/she has no additional outstanding loans.

4. What are the new statutory requirements relating to verifying a borrower's social security number or other government issued identification?

Answer – IC 24-4.5-7-404(12) provides that if a borrower provides the borrower's Social Security number to a lender in connection with any transaction or proposed transaction under the Small Loan Act, the lender shall:

(a) maintain procedures to verify that the Social Security number provided is legitimate and belongs to the borrower; and
(b) retain copies of any documents used to verify the borrower's Social Security number.

- Documentation under this provision may be in electronic form and the numbers may be truncated.
- If a borrower does not have a Social Security number, the lender may require and accept another valid form of government issued identification, subject to the requirements of subdivisions (a) and (b) with respect to the government issued identification accepted.

5. What amendment has been made to the requirement that a lender immediately stamp an endorsement on the back of the check?

Answer – IC 24-4.5-7-412 now provides for an exception in the case where a lender marks the check as void when the check is accepted (***see highlighted text***). The language provides that "[u]pon the receipt of a check from a borrower for a small loan, ***unless the check is marked as void at the time of acceptance by the lender***, the lender shall immediately stamp the back of the check with an endorsement that states:

'This check is being negotiated as part of a small loan under IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker.'"

6. What are the consequences for certain violations of the Small Loan Act?

Answer – In addition to other remedies available under the Small Loan Act, IC 24-4.5-7-102 provides that a loan that:

(a) does not qualify as a small loan under IC 24-4.5-7-104 (Definition of small loan);
(b) is for a term shorter than that specified in IC 24-4.5-7-401(1) (Term of loan); or
(c) is made in violation of IC 24-4.5-7-201 (Finance charges**)**, 401(Term of loan; consecutive small loans; extended payment plans), 402 (Limits based on borrower's income; payments; loan documents; rescission; renewals prohibited**)**, 404 (Limits on

number and amounts of outstanding loans; lender's verification; third party data base; civil penalties; excess finance charges), or 410 (Prohibited acts by lender);

is subject to the Small Loan Act. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508(a)(1).

7. What changes are being made to the surety bond requirements?

Answer – Effective July 1, 2010, the department through the adoption of a policy guideline will establish the amount of the surety required to be posted by small lenders at $50,000 per location up to a maximum of $200,000. IC 24-4.5-7-413. This change is consistent with the amount of surety bonds required from other consumer credit licensees.