

CHAPTER 164
FORMERLY
SENATE BILL NO. 108
AS AMENDED BY
SENATE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING
TO TITLE LOANS AND SHORT-TERM CONSUMER LOANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE (Three-fifths of all members elected to each house thereof
concurring therein):

Section 1. Amend Chapter 22 of Title 5 of the Delaware Code by adding a new Subchapter V
as follows:

“Subchapter V. Title Loans

§ 2250. Definitions.

As used in this Subchapter:

(1) ‘Business Day’ means all calendar days except Saturdays, Sundays and
legal holidays (as that term is defined in Chapter 5 of Title 1).

(2) ‘Conspicuous’ has the meaning set forth in Section 1-201 of Title 6.

(3) ‘Rollover’ means the extension of an outstanding and unpaid
indebtedness beyond the originally stated repayment period.

(4) ‘Title loan’ means a loan made to one or more natural persons by a
licensee and secured by the title to a motor vehicle, which loan is not used for the purpose of
purchasing the vehicle that is used as security and which loan has an originally stated
repayment period of 180 days or less.

(5) ‘Workout agreement’ means an agreement for repayment of the
outstanding and unpaid indebtedness on a title loan.

§ 2251. Deceptive advertising prohibited.

No licensee shall advertise, market the availability of, or otherwise seek to
induce any natural person to apply for, or enter into an obligation concerning, a title loan in
any manner that violates either Subchapter II (Consumer Fraud) or Subchapter III (Deceptive
Trade Practices) of Chapter 25 of Title 6. Further, no licensee shall advertise a title loan
interest rate that is lower for an initial period, if that interest rate increases during any
rollover.

§ 2252. Disclosures.

No licensee shall make a title loan without providing to the borrower,
before the borrower signs the loan agreement, all of the following written disclosures in a
conspicuous format:

(a) ‘The loan you are considering entering into is strictly for short-term
cash, and is not a solution for long-term financial problems.’

(b) ‘You, as borrower, are not compelled to complete the loan agreement
merely because you have received any disclosures.’

(c) 'If you sign the title loan agreement, the title loan lender will obtain a security interest in your motor vehicle, and if you fail to meet the obligations of the title loan agreement, the lender can take possession of your motor vehicle and sell it.'

(d) 'If the lender takes possession of your motor vehicle, you may lose equity in that vehicle.'

(e) 'You have a right to rescind the title loan agreement for any reason, at no cost to you, at any time up to the end of the business day following the day in which the loan proceeds of the title loan were disbursed to you by returning the full amount of the loan proceeds to the title lender.'

(f) 'You have the right to receive information about credit counseling services from the Office of the State Bank Commissioner.'

(g) 'You may file a complaint with the Office of the State Bank Commissioner if you believe your lender has violated any law regarding your title loan.'

§ 2253. Right of rescission.

(a) A title loan borrower may rescind a title loan for any reason up to the end of the business day following the day on which proceeds of the loan were disbursed to the borrower.

(b) If a licensee fails to make any disclosure required by §2252 of this subchapter, a title loan borrower may elect, in lieu of any other available remedy, to rescind the loan at any time up to one year from the date scheduled for the final payment on the loan as specified in the original loan agreement, any rollover of the loan, or any workout agreement on the loan, whatever occurs last.

(c) A title loan borrower shall not incur any fee, interest, or other charge by exercising a right of rescission, except any fee or charge incurred by the licensee in the normal course of business in connection with the making of the title loan.

(d) A title loan borrower may rescind a title loan by delivering within the appropriate time specified in this section a notice of rescission to the licensee that issued the loan.

(1) If the rescission is pursuant to subsection (a) of this section, the borrower shall at the same time also return to the licensee all loan proceeds that the borrower received.

(2) If the rescission is pursuant to subsection (b) of this section, the borrower shall at the same time also return to the licensee any unpaid balance of the loan proceeds that the borrower received less any fees, interest or other charges that the borrower paid the licensee on the loan. If such fees, interest, or other charges exceed the unpaid loan proceeds, the licensee shall promptly refund that excess to the borrower.

(e) Upon rescission of a title loan, the licensee that issued the loan shall promptly take all actions necessary or appropriate to terminate any security interest in the motor vehicle that is used as security for that loan if the borrower still owns that vehicle.

§ 2254. Rollover limit.

No licensee shall make a title loan rollover that would extend the repayment period for the loan beyond 180 days from the date on which the loan proceeds were disbursed to the borrower.

§ 2255. Workout agreement.

(a) If a title loan borrower fails to repay the loan in accordance with the original provisions of the loan or any rollover of the loan, a licensee shall not take possession of the motor vehicle that is used as security for that loan or file suit on the loan until the licensee offers the borrower a workout agreement. Every workout agreement shall require a net reduction of at least 10% of the outstanding and unpaid indebtedness on the loan every month. A borrower shall have at least 10 business days to accept a workout agreement before the licensee takes possession of the motor vehicle.

(b) A title loan borrower who enters into a workout agreement with a licensee shall not be considered in default of the loan, and a licensee shall not take possession of a motor vehicle that is used as security for that loan or file suit against the borrower, unless the borrower defaults under the workout agreement.

§ 2256. Federal Fair Debt Collection Practices Act.

No licensee who employs a debt collector, as defined in the Federal Fair Debt Collection Practices Act, as amended (Pub. L. No. 95-109, 91 Stat. 874), to collect any outstanding and unpaid indebtedness under a title loan shall knowingly cause or permit such debt collector to act in a manner which violates that Act.

§ 2257. Threat of criminal prosecution prohibited.

No licensee shall seek or threaten to seek the criminal prosecution of a title loan borrower in connection with the non-payment of any amount due under the loan, including the unpaid return of any check or automated clearing house transaction.

§ 2258. Interest after default or repossession.

If a title loan borrower defaults on the loan, interest shall accrue on that loan at the rate specified in the original loan agreement for the original title loan period, any rollover period, and the period of any workout agreement. If the borrower remains in default at the expiration of the last of those periods, interest shall accrue from that point forward at no more than the legal rate specified in § 2301 of Title 6 as of that time. In all such cases, interest shall cease to accrue at the time a licensee takes possession of the motor vehicle that is used as security for that loan. Interest following a judgment that is rendered by a court of competent jurisdiction in favor of the licensee in any suit for breach of the loan agreement shall accrue at a rate determined by the court.

§ 2259. Possession of motor vehicle after default.

A licensee may take possession of the motor vehicle that is used as security for a title loan only in accordance with procedures specified in Part 6 (Default) of Article 9 (Uniform Commercial Code – Secured Transactions) of Title 6.

§ 2260. Sale of motor vehicle.

Notwithstanding any other provision of law, the proceeds of a licensee's sale of a motor vehicle that is used as security for a title loan shall satisfy all outstanding and unpaid indebtedness under that loan, and the borrower on that loan shall not be liable for any deficiency resulting from that sale. The licensee shall nevertheless still be required to pay the borrower any surplus arising from the sale of that motor vehicle as required by Part 6 (Default) of Article 9 (Uniform Commercial Code – Secured Transactions) of Title 6.

§ 2261. Notice to borrower.

In addition to any other requirement of law, a licensee shall provide to the borrower, within 30 days of the date of the sale of any motor vehicle that is used as security for a title loan, a written explanation of the disposition of the proceeds of that sale. The explanation shall include all of the information required for an explanation under § 9-616 of Title 6, and shall be provided whether or not the sale resulted in a surplus or deficiency with respect to the amount owed by the borrower. The explanation shall include a notice that the sale has satisfied all outstanding and unpaid indebtedness under the title loan.”

Section 2. Amend §2203 of Title 5 of the Delaware Code by adding a new subsection (c), as follows:

"(c) In addition to the annual license fee required by subsection (b) of this section, each licensee making short-term consumer loans, as defined in Section 2227 of this title, and/or title loans, as defined in Section 2250 of this title, shall pay an annual high-cost loan license fee surcharge of \$1,500 for each licensed office. There is hereby created within the State Treasury a special fund to be designated as the Financial Literacy Education Fund which shall be used to fund grants to or contracts with schools or other organizations that provide financial and economic literacy skills to adults and youth in accordance with guidelines and/or regulations to be established by the Commissioner and the Delaware Secretary of Education. All fees which are by law payable under this subsection shall be paid into the State Treasury and to the credit of the Financial Literacy Education Fund."

Section 3. If any provision of this Act or the application of any section or part thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 4. The provisions of this Act shall be effective upon its enactment into law.

Section 5. Amend §2235A, Title 5, Delaware Code, by adding the following new subsection:

“(e) Every short term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that “A payday loan is not intended to meet long-term financial needs.”

Approved July 16, 2009