



Legislation Text

File #: Int 0176-2004, **Version:** A

Int. No. 176-A

By Council Members Comrie, Nelson, Sears and The Speaker (Council Member Miller), Baez, Brewer, Clarke, Felder, Fidler, Gennaro, Gerson, Jackson, Jennings, Katz, Koppell, Lopez, Monserrate, Perkins, Quinn, Reed, Rivera, Sanders, Seabrook, Stewart, Weprin, Yassky, Moskowitz, Addabbo, Barron, Gentile, Martinez, McMahon, Recchia, Liu and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to payday loans.

Be it enacted by the Council as follows:

Section 1. Legislative declaration. The Council finds that certain payday lenders may be unfairly taking advantage of New Yorkers throughout the City. These lenders, which can conduct business as storefront establishments, by mail, electronic, the Internet, or telephonic means, often charge high interest rates and fees for short-term loans. Accordingly, low-income New Yorkers may become trapped in burdensome high-interest loans.

State law and federal regulations, including provisions of the U.S.C.A. and C.F.R., extensively govern the operating procedures and lending requirements of state and federally chartered lending institutions. Further, federal regulations enable state and federally chartered banks to export their home usury caps, if any, to states in which those institutions issue loans.

Without limiting in any manner the scope of this subchapter, the Council declares that it is the general intent of this subchapter to reiterate that in the city of New York, some of the practices in activities commonly referred to as payday lending, deferred deposit advances, cash on demand, or cash advance services and other similar activities are currently illegal, subject to the exemption of certain entities by federal law, and to strengthen the penalties for those engaging in such activities.

The Council finds that companies not subject to state and federal regulatory policies that elect to engage

in the practice of payday lending must clearly disclose the terms of their loans to otherwise uninformed consumers. Accordingly, the Council intends to take action where permissible and require lenders to provide a disclosure notice to each would-be borrower so that he or she has a clear sense of the lender's operations and intentions. In addition, the Council is requiring such payday lenders to provide both the Department of Consumer Affairs and the Council with demographic information on the individuals taking out payday loans to ensure better tracking and public education in the future.

§2. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 15 to read as follows:

SUBCHAPTER 15

PAYDAY LOANS

§20-780. Definitions

§20-781. Disclosure of Loan Information

§20-782. Consumer Information

§20-783. Penalties

§20-784. Hearing authority

§20-780 **Definitions.** a. "Person" shall mean any individual, firm, partnership, trust, association, corporation or other legal entity. This term shall not include any individual, firm, partnership, trust, association, corporation or other legal entity that accepts federally insured deposits, such as national banks, state-chartered banks, or savings and loan associations, or any individual, firm, partnership, trust, association, corporation or other legal entity regulated by or subject to the rules and regulations of the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation or Office of Thrift Supervision of the Department of the Treasury.

b. "Payday loan," also known as, among other terms, "deferred deposit advances," "cash on demand" or "cash advance," shall mean any transaction in which funds are provided to a consumer for a limited time period in exchange for (i) a consumer's personal check or share draft, in the amount of the funds provided to the consumer plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or (ii) a consumer's authorization to debit the consumer's transaction account, in the amount of the funds provided to the consumer plus a fee, where such account will be

debited on or after a designated future date.

§20-781. **Disclosure of loan information.** Before any consumer enters into a payday loan, the person offering, providing, or facilitating such loan shall provide to the consumer in writing all disclosure required pursuant to the federal Truth in Lending Act in addition to the following disclosure, in English and Spanish, in at least 20-point type:

: YOU ARE NOT REQUIRED TO ENTER INTO THIS PAYDAY LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.

: IF YOU DO SIGN A CONTRACT FOR A PAYDAY LOAN, YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND FEES.

: IF YOU CANNOT PAY OFF THIS LOAN IN FULL, THE LENDER MIGHT NOT PERMIT YOU TO MAKE A PARTIAL PAYMENT. IN THAT SITUATION, YOU MAY BE REQUIRED TO TAKE OUT AN ADDITIONAL PAYDAY LOAN TO PAY OFF YOUR INITIAL DEBT.

: EACH TIME YOU EXTEND THIS PAYDAY LOAN OR TAKE OUT AN ADDITIONAL PAYDAY LOAN, YOU WILL BE CHARGED ADDITIONAL COSTS AND FEES.

: IF YOU DO TAKE OUT THIS PAYDAY LOAN, YOU WILL BE RESPONSIBLE TO PAY \$ [insert amount] IN FINANCE CHARGES FOR THE LOAN. AFTER THESE FINANCE CHARGES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ [insert amount] AS YOUR LOAN.

: THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR PAYDAY LOAN IS [insert amount]%. THIS IS THE COST OF YOUR CREDIT AT A YEARLY RATE.

It shall be the obligation of the person offering, providing, or facilitating the payday loan to complete the required disclosure accurately with all relevant information for each consumer and to ensure that the completed disclosure form is signed by the consumer before he or she enters into the payday loan.

§20-782. **Consumer information.** Not later than the first day of February of the year two thousand and five and on a quarterly basis thereafter, not later than February first, May first, August first, and November first of each year, any person offering, providing, or facilitating a payday loan in New York city shall submit to the department of consumer affairs and the council the residential zipcode of each consumer who lives within the city boundaries and has entered into a payday loan during the immediately preceding quarter.

§20-783. **Penalties.** Any person who shall violate any of the provisions of this subchapter shall be subject to a civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars for each violation.

§20-784. **Hearing authority.** (1) Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this subchapter. The department shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-783 of this subchapter for each such violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules

promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§3. This local law shall take effect forty-five days after its enactment.