

**DEPARTMENT OF STATE**  
**OFFICE OF THE STATE BANK COMMISSIONER**  
Statutory Authority: 5 Delaware Code, Section 121(b) and 2235B(e)  
(5 Del.C. §121(b) and 2235B(e))

**PROPOSED**

**2210 Short-Term Consumer Loans**

**PUBLIC NOTICE**

**Summary**

The State Bank Commissioner proposes to adopt new Regulation 2210, "Short-Term Consumer Loans". This proposed new Regulation implements 78 **Del. Laws** Chapter 278 dealing with a type of short-term consumer loan commonly known as a "payday loan". The proposed new Regulation establishes standards for the administration and enforcement of the new statute, including among other things, the applicability of the new statutory requirements for short-term consumer loans, new procedures for making such loans, and the use of a new database for tracking such loans.

The State Bank Commissioner would adopt the proposed new Regulation 2210 on or after November 7, 2012. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the Delaware Code.

**Comments**

A copy of the proposed new regulation is published in the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. November 7, 2012.

**Public Hearing**

A public hearing on the proposed new Regulation will be held in the third floor hearing room of the Carvel State Office Building, 820 North French Street, Wilmington Delaware, 19801 on Wednesday, November 7, 2012, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

**2210 Short-Term Consumer Loans**

**1.0 Application of Statute**

- 1.1 5 Del.C. §§2235A, 2235B and 2235C and this regulation apply to all short-term consumer loans made in the State of Delaware or to any resident of this State by a licensee.
- 1.2 5 Del.C. §§2235A, 2235B and 2235C and this regulation do not apply to any short-term consumer loan that is not made in the State of Delaware or to a resident of this State.

**2.0 Definitions**

For the purpose of this regulation, the following definitions apply:

"Commissioner" means the State Bank Commissioner.

"Database" means the database established and maintained by the Commissioner pursuant to 5 Del.C. §2235B to verify requests from a licensee as to whether a potential borrower is eligible for a short-term consumer loan under 5 Del.C. § 2235A and to determine any other information a licensee may need in order to comply with 5 Del.C. Ch. 22 and this regulation.

"Licensee" means any person licensed under 5 Del.C. Ch.22.

“Right of rescission” means with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

“Rollover” means with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

“Short-term consumer loan” means a loan of \$1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle. This term also includes a rollover and a refinancing.

“Workout agreement” means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

### **3.0 Short-Term Consumer Loans**

- 3.1 All licensees shall comply with 5 Del.C. Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations. In addition, all short-term consumer loans shall be subject to the following:
- 3.1.1 Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than five short-term consumer loans from all licensees in any twelve-month period. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of 5 Del.C. §2235A is a violation of Chapter 25 of Title 6 of the Delaware Code.
  - 3.1.2 No licensee shall make more than four rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.
  - 3.1.3 No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.
  - 3.1.4 No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.
  - 3.1.5 No licensee shall make a short-term consumer loan unless the application for the loan shall be written in both English and Spanish.
- 3.2 Nothing in this regulation prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed by 5 Del.C. §2235A and this regulation.
- 3.3 In addition to such other disclosure requirements as are imposed pursuant to other provisions of 5 Del.C. Ch. 22, Subch. III and the regulations in 5 DE Admin. Code Ch. 22, no licensee shall make a short-term consumer loan unless the application for the loan contains a written disclosure, conspicuously displayed, that:
- 3.3.1 The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;
  - 3.3.2 Additional fees may accrue if the loan is rolled over; and
  - 3.3.3 Credit counseling services are available to consumers who are experiencing financial problems.
- 3.4 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."
- 3.5 A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of 5 Del.C. Ch. 22 and the regulations thereunder through any method including, but not limited to, mail, telephone, internet or any electronic means, including:
- 3.5.1 Offering, making, or assisting a borrower to obtain a loan in violation of 5 Del.C. §2235A and this regulation, or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.
  - 3.5.2 Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of 5 Del.C. §2235A and this regulation.

### **4.0 Short-Term Consumer Loan Database**

- 4.1 Prior to entering into a short-term consumer loan with a potential borrower, a licensee shall access the database to determine:
  - 4.1.1 Whether a potential borrower has an outstanding short-term consumer loan;
  - 4.1.2 The number of short-term consumer loans the borrower has outstanding;
  - 4.1.3 Whether the borrower is eligible for a short-term consumer loan under 5 Del.C. §2235A and this regulation; and
  - 4.1.4 Any other information necessary for the licensee to comply with 5 Del.C. Ch. 22.
- 4.2 Immediately upon entering into a short-term consumer loan with a borrower, a licensee shall accurately submit to the database in the appropriate format:
  - 4.2.1 The borrower's name, address, social security or employment authorization number, and gross monthly income;
  - 4.2.2 The amount of the transaction;
  - 4.2.3 The annual percentage rate of the transaction as computed under the federal Truth in Lending Act;
  - 4.2.4 The date of the transaction; and
  - 4.2.5 The anticipated date that the transaction will be paid off.
- 4.3 A licensee shall promptly submit to the database:
  - 4.3.1 The date that a short-term consumer loan is paid in full or is otherwise satisfied; or
  - 4.3.2 The date that a short-term consumer loan defaults and the amount of the default.
- 4.4 A licensee shall promptly correct any incorrect data entered into the database that was previously submitted.
- 4.5 A licensee must continue to enter and update all required information for any short-term consumer loans subject to 5 Del.C. §2235A that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by 5 Del.C. Ch.22.
  - 4.5.1 Within ten business days after ceasing to make such loans, the licensee must submit a plan for continuing compliance with 5 Del.C. §2235B(d) to the Commissioner for approval.
  - 4.5.2 The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with 5 Del.C. §2235B(d).
- 4.6 All borrower identifying information shall be deleted from the database on a regular and routine basis twelve months after the borrower's short-term consumer loan is paid off or otherwise satisfied.
- 4.7 All data collected pursuant to 5 Del.C. §2235B and this regulation shall be used only as prescribed by 5 Del.C. Ch.22 or for research and reporting as authorized by the Commissioner.

## **5.0 Fees**

- 5.1 In addition to the annual license fee required by 5 Del.C. §2203(b), each licensee making short-term consumer loans shall pay an annual high-cost loan license fee surcharge of \$1,500 for each licensed office.
- 5.2 Each licensee making short-term consumer loans shall pay a database fee for each transaction that the licensee submits to the database.
  - 5.2.1 The database fee shall be paid directly to the operator of the database, as agent of the Commissioner.
  - 5.2.2 Licensees shall not charge customers for the database fee.
- 5.3 The Commissioner shall establish the database fee as authorized by 5 Del.C. §2235B(e)(4).
  - 5.3.1 The database fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of 5 Del.C. §2235B.
  - 5.3.2 The Commissioner may revise the amount of the database fee as required from time to time based upon changes to those expenses.
  - 5.3.3 The Commissioner shall promptly notify all licensees in advance of any revisions to the amount of the database fee.