

# **PAYDAY LOANS: A Model State Statute**

written by

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**October, 2000**

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## **Acknowledgments**

The author would like to acknowledge the assistance of the following individuals in developing the model statute: Margot Saunders of the National Consumer Law Center; Jean Ann Fox of the Consumer Federation of America; Earl Lui of Consumers Union; and attorneys Kathleen Keest, Addison Parker, Richard Fisher, and Jack Block.

The project officer would like to acknowledge the assistance of staff from across AARP who reviewed this document. It required a level of commitment and purpose that went well beyond the normal review and comment process. Special thanks are due Dacosta Mason, Consumer Issues Team Leader, AARP State Legislation Department; Deborah Zuckerman, Staff Attorney, AARP Foundation Litigation; Sharon Hermanson, Senior Policy Advisor, Consumer Team, AARP Public Policy Institute; and Laura Polacheck, Consumer Issues Senior Analyst, AARP State Legislation Department. The project officer also would like to thank Monique Einhorn, Policy Research Analyst, AARP Public Policy Institute, for her editorial assistance; Ann McLarty Jackson, Policy Research Specialist, and Gabriel Montes, Senior Administrative Associate, AARP Public Policy Institute, for formatting the materials for printing; and Jean Ann Fox, Director of Consumer Protection of the Consumer Federation of America, for her valuable insights and advice.

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## Introduction

Deferred deposit loans, more commonly referred to as “payday loans,” are small, unsecured consumer loans that require repayment within a relatively short time period. In a payday loan transaction, the consumer provides the lender with a personal check and receives cash less the interest and fees charged by the lender. The check is then held for a scheduled period of time, generally until the consumer’s next payday, or a one- or two-week period, hence the term “payday” loan. When repayment is due, the consumer may redeem the check by paying the face amount, allow the check to be cashed, or refinance (that is, “roll over”) the loan by paying another fee. If the consumer is unable to redeem the check or lacks sufficient funds in his or her checking account, the consumer must find another way to repay the loan or possibly be subject to a civil bad check penalty.

Payday loans are marketed as a quick and easy way to get cash. To qualify, consumers need only be employed for a specified period with their current employer, maintain a personal checking account, and show a pay stub and bank statement. Credit checks or other inquiries about ability to repay are not routinely performed.

The number of payday lenders has grown from an estimated 300 in 1992 to nearly 8,000 in 1999.<sup>1</sup> A recent investment report indicates that the number of payday lenders may grow to 25,000 within two to three years.<sup>2</sup> The industry itself estimates the potential market for payday loans at approximately 35 million households.<sup>3</sup>

While most consumers have other sources for short-term, unsecured credit, such as credit cards and checking account overdraft protections, a significant portion of the population lacks this type of financial access. The latest (1998) Federal Reserve Survey of Consumer Finances indicates that approximately one-third of families (32%) do not have credit cards. Coupled with the decline in the availability of small, unsecured loans from banks and finance companies, many consumers, particularly those with modest incomes or impaired credit, find that payday loans represent their only source for small-sum, short-term credit.

While payday loans are a source of ready cash, they present a number of serious concerns. A recent survey of 230 payday lenders in 20 states found the average payday loan annual percentage rate (APR) was 474 percent and concluded that payday loans were being made in states, despite usury ceilings far below such APRs.<sup>4</sup> Often these loans become “debt treadmills” that exacerbate consumer financial problems. For example, a 1999 study by the Illinois Department of Financial Institutions found 21 percent of borrowers had more than 20 payday loans, and an average of 13 contracts per borrower annually.<sup>5</sup> Abuses also occur in the making and

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<sup>1</sup> Kilbourn, P., *National Prosperity Is Being Mined with Payday-Lending Traps*, The New York Times, June 18, 1999, p. A1.

<sup>2</sup> Robinson, J. L. and Lewis, G. L. *The Developing Payday Advance Business: The Next Innings: From Emergence to Development*. Stephens, Inc. 1999, p.8.

<sup>3</sup> The industry bases its estimate on the approximate number of households without a credit card. See Stephens, Inc., *Specialty Finance Industry Report*, Little Rock, Arkansas, January 26, 1998, p.16.

<sup>4</sup> Public Interest Research Groups (PIRGs) and the Consumer Federation of America (CFA). (February 2000). *Show Me the Money*, p.5-7.

<sup>5</sup> Woodstock Institute. *Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt*. Reinvestment Alert. (Vol. 14, March 2000), p.3.

collecting of payday loans. Some lenders fail to provide consumers with Truth in Lending Act (TILA) disclosures which makes it difficult for them to understand the terms and cost of these loans. In addition, there are numerous cases of lenders' threatening to use the criminal justice system to collect debts when a check is returned for insufficient funds.<sup>6</sup>

Currently, payday lending laws vary significantly across states, falling into three categories:

**Category One:** Eighteen states, the Virgin Islands, and Puerto Rico require payday lenders to comply with the state's small loan or criminal usury laws.<sup>7</sup> These laws maintain interest rate caps of up to 36 percent per annum. Typically, these laws contain extensive provisions specifying the maximum loan amount, the maximum and/or minimum term, the maximum interest rate and permitted charges, and penalties for the charging of excessive interest and other violations. Also addressed are licensing requirements, prepayment rebate formulas, the conditions under which lenders can require insurance, required contract provisions, prohibited contract provisions, and the circumstances, if any, under which annual reports must be filed.<sup>8</sup> Since the allowable interest rates and fees are substantially below that which the payday industry charges, lenders in these states who charge above the state maximum are operating illegally.<sup>9</sup>

**Category Two:** The small loan laws of eight states permit payday lenders to operate and charge any interest rate or fees agreed to by the parties to the loan. The lenders in these states must comply with other provisions of the states' small loan acts.<sup>10</sup>

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<sup>6</sup> National Consumer Law Center (NCLC). *NCLC Reports, Consumer Credit and Usury Edition*. Volume 18, November/December 1999, p.9.

<sup>7</sup> These states are Alabama, Alaska, Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oklahoma (minimum term of 60 days on loans over \$100 effectively prohibits most of these loans), Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

<sup>8</sup> Small loan laws were first adopted in the early part of the 20th century in response to the widespread problem of loansharking. They were largely the product of the research and promotional efforts of the Russell Sage Foundation, which, between 1916 and 1942, published several drafts of a Uniform Small Loan Law. This uniform law was widely adopted by the states, and language from the uniform statute appears in numerous consumer finance statutes today. Though these statutes may no longer be called small loan laws, they may now govern relatively large consumer loans. The concept behind the small loan law was to drive loan sharks out of business by making it profitable for regular businesses to make small loans to individuals. The uniform law created a class of licensed lenders authorized to charge rates (36 percent per year) significantly in excess of general usury rates. In return, these lenders accepted regulation, the risk involved in personal lending, and the higher administrative expense of small loans. The uniform law strictly limited the charges or fees other than interest that a lender could assess and provided harsh penalties, including voiding the entire loan (which meant that the lender lost both the interest charged and the principal) for statutory violations.

<sup>9</sup> One caveat is that the state enforcement agency may attempt to exempt payday lenders from the reach of the small loan act by administrative fiat. This has recently occurred in Michigan. This decision is now subject to challenge in the courts. Other similar cases are pending in Alabama and Maryland.

<sup>10</sup> These states are Delaware, Idaho, Illinois, Indiana (permits the charging of \$33 rather than the 36 percent per annum applicable to other loans), New Mexico, Oregon, South Dakota (small loan act was repealed in its entirety), and Wisconsin.

**Category Three:** Twenty-four states and the District of Columbia have passed statutes or promulgated regulations specifically authorizing payday lending.<sup>11</sup> Generally, these laws require either licensing or registration. Some states mandate that the lenders put up a bond and/or maintain a certain level of net assets or worth. These states typically specify a maximum term and maximum amount of the loan, and establish the interest rate or fees to be charged.

Many Category Three states obligate the lender to provide a written agreement to the consumer; approximately half of these states prohibit rollovers. Other states set a maximum number of times that borrowers can roll over their loans, or limit the number of payday loans that a borrower may have outstanding at any one time. Additionally, most Category Three states create some type of criminal or administrative penalties. However, only 10 states provide for even limited private right of action, which allows the borrower to obtain relief against the lender. Only a small number of states prohibit the lender from threatening to file or filing criminal charges against a borrower as a mechanism to collect on the debt. Finally, these payday loan laws apply only to check cashers in 10 of the 22 states and the District of Columbia.

The Model Statute contained in this publication is designed to reduce or eliminate the most serious problems associated with payday lending. Entitled the “Deferred Deposit Loan Act,” the Model Statute includes provisions that would stop the charging of usurious fees, the rolling over or refinancing of one payday loan with another, and the use or threatened use of the criminal courts to collect on these loans. The Model Statute codifies TILA disclosures that lenders would be required to make and specifies that documents be written in simple English and in the language in which the transaction was negotiated. (For example, if the loan was negotiated in Spanish, the accompanying loan documents would have to be written in Spanish.) In addition, the Model Statute contains licensing and regulatory requirements designed to facilitate state oversight and assure compliance with the consumer protection provisions of the act. Finally, the Model Statute grants consumers a private right of action against a lending operation and allows recovery of damages, fees, and costs.

The consumer protections included in the Deferred Deposit Loan Act can benefit the growing numbers of consumers who rely on payday loans for short-term credit. Such protections are essential to prevent abuses, particularly in communities that lack traditional banking services.

George Gaberlavage  
Project Officer

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<sup>11</sup> These states are Arizona, Arkansas, California, Colorado, Florida, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, South Carolina, Tennessee, Texas, Utah, Washington, and Wyoming.

## Notes

# **THE DEFERRED DEPOSIT LOAN ACT**

## Model Act and Commentary

*This Act shall be known as the Deferred Deposit Loan Act. This Act shall be liberally construed to effectuate its purpose. The purpose of the Act is to protect consumers who enter into short-term, high rate loans from abuses that occur in the credit marketplace when such lenders are unregulated. This Act is to be construed as a consumer protection statute for all purposes.*

This section sets the stage for the remainder of the act by clearly announcing that the legislature intends that: the act must be liberally construed to carry out its purpose; it enunciates a specific purpose; and it is a consumer protection law. These directives will give guidance to the courts when its provisions are applied and interpreted.

*(a) Deferred deposit loan includes any arrangement in which a person accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.*

*(b) Licensee means any person licensed by the Commissioner of \_\_\_ under the provisions of this Act to engage in deferred deposit loans or any facilitator as defined in Section 2(b). For purposes of all sections of this Act with the exception of Section 4, a licensee includes any bank, savings and loan association, credit union, or other state or federally regulated financial institution.*

*(c) Commissioner shall mean the Commissioner of \_\_\_.*

*(d) Person shall include any natural person, firm, partnership, association or corporation, or other entity who makes a deferred deposit loan in this state or any facilitator as defined in Section 2(b).*

*(e) Consumer shall mean any natural person who, singly or jointly with another consumer, enters into a deferred deposit loan.*

*(f) Check as used in this Act shall mean a negotiable instrument as defined in Article 3 of the Uniform Commercial Code which is drawn on a bank and is to be payable on demand at maturity of the deferred deposit loan.*

Only six terms are defined but they are critical:

(a) A “deferred deposit loan”<sup>12</sup> includes a loan involving two types of checks: one that is dated on the date written but which is held until a date in the future (the date that

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<sup>12</sup> This title for the loan was selected since it most accurately describes how they operate.

**TITLE;  
PURPOSE**

**Commentary:  
Purpose**

**Section 1:  
DEFINITIONS**

**Commentary:  
Definitions**

payment on the loan is due) when it is to be deposited; and the other that is dated for a date in the future at which time payment is due, and it is deposited to cover the debt. Some state payday loan laws only apply to transactions involving presently dated or post-dated checks, e.g., South Carolina and Wyoming. This act provides the broadest coverage. The use of the word “loan” is important because experience indicates that the industry will characterize these transactions as “services” and the fees involved as “service fees” to attempt to circumvent state small loan laws and the federal Truth-In-Lending Act.

(b) A “licensee” includes not only those “persons” who make these types of loans but also banks and other financial institutions who need not obtain a license under this act but whose actions are, nevertheless, regulated under most of the provisions of the act.<sup>13</sup>

(c) A “person” refers to the lender and includes natural persons and business or other entities or any facilitator (discussed below in Section 2).

(d) A “consumer” includes any natural person who enters into a deferred deposit loan.

(e) The “Commissioner” is the head of the agency charged with the responsibility of enforcing the act.

(f) A “check” is defined as a negotiable instrument as defined in Article 3 of the Uniform Commercial Code which is drawn on a bank and is to be payable on demand at maturity of the deferred deposit loan.

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**Section 2:  
APPLICABILITY**

***(a) In General. Except as otherwise provided in this section, this Act applies to any person who, for a fee, service charge, or other consideration, accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.***

***(b) Facilitators. This Act applies to any person who facilitates, enables, or acts as a conduit for another person, who is or may be exempt from licensing, who makes deferred deposit loans.***

***(c) Financial Institutions. To the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institution are exempt by virtue of other state or federal laws from the provisions of this Act regarding limitations on interest rates and fees, all other provisions except the requirements for licensure in Section 4 apply to these financial institutions.***

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<sup>13</sup> Banks and other financial institutions receive oversight from a variety of federal and state agencies, rendering licensing under this act unnecessary. Compliance with other provisions is crucial, however.

**Commentary:  
Applicability**

***(d) Evasion of Applicability. The provisions of this Act shall apply to any person who seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.***

In addition to the lenders themselves, the act establishes jurisdiction over those who facilitate, enable, or act as a conduit for another person who is or may be exempt from licensing but who makes deferred deposit loans. The purpose of expanding coverage to include such persons is to require those who act as conduits for entities, such as banks, other financial institutions, or finance companies, to be licensed and make sure that the true lender follows the law.

An example of the problem this subsection is designed to address is the following: an out-of-state bank from a state where there is little or no regulation of these loans arranges with an in-state check cashing company or retail store to make these loans. The loan is in the name of the out-of-state bank, and the bank uses the local place of business as the conduit. The bank can legally charge whatever it wishes under the law of its home state due to what is known as the “exportation doctrine” that exists under federal law.<sup>14</sup> However, this model act would require that the local conduit be licensed, and it would ensure that the out-of-state lender complies with local law. This provision is intended to reduce the incidence of out-of-state businesses exporting the lack of interest rate and fees cap and other protections in its home state to this state.

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***(a) Retail Sellers. Retail sellers who cash checks incidental to or independent of a sale and who charge no more than \$2 per check for the service are exempt from the provisions of this Act.***

***(b) Financial Institutions. To the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions are exempt by virtue of other state or federal laws from the provisions of this Act regarding limitations on interest and rates, all other sections of this Act apply except Section 4.***

Most state payday acts exempt certain retail sellers who only incidentally cash checks as well as certain financial institutions. This section duplicates those exemptions with the exception that banks and other financial institutions need not obtain a license but must otherwise comply with this act where applicable.

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***(a) Necessity for License; Prerequisites to Issuance. No person shall engage in or offer to engage in the business regulated by this Act unless and until a license has been issued by the Commissioner. The Commissioner shall not issue or renew any such license unless and until the following findings are made:***

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<sup>14</sup> See National Consumer Law Center, *The Cost of Credit* Ch. 3, 2nd Edition (2000).

**Section 3:  
EXEMPTIONS**

**Commentary:  
Exemptions**

**Section 4:  
LICENSING**

# A MODEL ACT

- (1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business;*
- (2) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, and within the provisions and purposes of this Act;*
- (3) That neither the applicant, nor any principals of the applicant (which includes any persons owning at least 5% of the applicant) have been convicted of any crimes;*
- (4) That the applicant has unencumbered assets of at least \$25,000 per location;*
- (5) That the applicant has provided a sworn statement that the applicant has not used in the past, nor will in the future directly or indirectly use the criminal process to collect the payment of deferred deposit loans;*
- (6) Such other information as the Commissioner may deem necessary.*

*(b) Annual Review of Compliance with Law. No license shall be issued for longer than one year, and no renewal of a license may be provided if licensee has violated this Act.*

*(c) Public Hearing. A public hearing shall be held for each original application and for renewals if one is requested in writing by five or more members of the public or the Commissioner.*

*(d) Bond. Each licensee must post a bond in the amount \$50,000 per location which must continue in effect for five years after the licensee ceases operation in the state. Such bond must be available to pay damages and penalties to consumers harmed by any violation of this Act.*

*(e) Fees. An annual fee of \_\_\_ and investigative fee of \_\_\_ shall be paid by each licensee.*

*(f) Business Location. Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Article governing issuance of a single license.*

*(g) Other Business. No licensee shall conduct the business of making loans under this Act within any office, suite, room or place of business in which any other business is solicited or engaged in unless, in the opinion of the Commissioner, such other business would not be contrary to the best interests of consumers and is authorized by the Commissioner in writing.*

*(h) Revocation of License. If the Commissioner shall find, after due notice and hearing, or opportunity for hearing that any licensee, or an officer, agent, employee or representative thereof, has violated any of the provisions of this Article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Commission, or has failed or refused to make its reports to the Commissioner, or has furnished false information to the Commissioner, the Commissioner may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in this state as a licensee. No revocation, suspension,*

*or surrender of any license shall relieve the licensee from civil or criminal liability for acts committed prior thereto.*

*(i) List of Licensees; Complaint Process; Powers of the Commissioner. The Commissioner shall maintain a list of licensees which shall be available to interested persons and the public. The Commissioner shall create a toll free number whereby consumers may obtain information about licensees. The Commissioner shall also establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a licensee or non-licensee who violates any provision of this Act. The Commissioner shall hold hearings upon the request of a party to the complaint, make findings of fact, conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act. All such proceedings shall be open to the public.*

*(j) Regulations. The Commissioner may promulgate regulations to carry out the provisions of this Act.*

The act puts the burden on the Commissioner to make certain findings following a public hearing before issuing a license. The most critical findings are those that relate to whether the applicant has ever been convicted of a crime, has unencumbered assets of at least \$25,000 per location, and has ever threatened or used the criminal process to collect the payment of a deferred deposit loan. The public hearing is crucial as it gives the community the opportunity to provide relevant information regarding the necessity of such businesses in its neighborhood. Licensees must renew annually.

This section also mandates that the applicant post a bond in the amount of \$50,000 per location which must be available to pay damages and penalties to consumers harmed by any violations of the act. In tandem with the asset requirement, the bond provides a source of compensation to harmed consumers. Without these protections, these businesses could sell, transfer, or skim off their assets and leave nothing from which a consumer could satisfy a judgment obtained due to the illegal acts of the company.

Other important provisions include the powers given to the Commissioner to establish a complaint process for consumers, to revoke or suspend a license under certain circumstances, and to promulgate regulations to carry out the provisions of the act.

Finally, the public is also given the right to review the list of licensees and to have access to complaints that have been filed against a particular licensee, the nature of the complaint, and the resulting decision of the Commissioner.

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*(a) Supervision by Commissioner. Each licensee shall keep and use books, accounts, and records which will enable the Commissioner to determine if the licensee is complying with the provisions of the Act and maintain any other records as required by the Commissioner. The Commissioner, or designee, is authorized to examine such records at any reasonable time. All such records must be kept for four years following the last entry on a loan and according to generally accepted accounting procedures which means that an examiner must be able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.*

**Commentary:  
Licensing**

**Section 5:  
INFORMATION  
AND ANNUAL  
REPORTS**

**(b) Licensee Information.** Each licensee shall file an annual report with the Commissioner on or before the last day of March for the 12-month period in the preceding year on forms prescribed by the Commissioner. Such reports shall disclose in detail and under appropriate headings:

- (1) the resources, assets, and liabilities of such licensee at the beginning and the end of the period.**
- (2) the income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.**
- (3) the total number of deferred deposit loans made in the calendar year ending as of December 31<sup>st</sup> of the previous year.**
- (4) the total number of such loans outstanding as of December 31<sup>st</sup> of the previous year.**
- (5) the minimum, maximum, and average dollar amount of checks whose deposits were deferred in the calendar year ending as of December 31<sup>st</sup> of the previous year.**
- (6) the average annual percentage rate and the average number of days a deposit of a check is deferred during the calendar year ending as of December 31<sup>st</sup> of the previous year.**
- (7) the total of returned checks, the total of checks recovered, and the total of checks charged off during the calendar year ending as of December 31<sup>st</sup> of the previous year.**
- (8) verification that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loans during the calendar year ending as of December 31<sup>st</sup> of the previous year.**

Such reports shall be verified by the oath or affirmation of the owner, manager, or president of the licensee.

**(c) Other Business.** If a licensee conducts another business or is affiliated with other licensees under this Act, or if any other situation exists under which allocations of expense are necessary, the licensee shall make such allocation according to appropriate and reasonable accounting principles as approved by the Commissioner. Information about other business conducted on the same premises as that of deferred deposit loans shall be provided as required by the Commissioner.

**(d) Annual Reports.** The Commissioner shall compile annual reports of deferred deposit lending in this state from the information provided under this Section and provide a copy to the Governor and the Legislature. Annual reports shall be available to interested parties and to the general public.

**(e) Copy of Contract and Fee Schedule.** Each licensee shall file a copy of the contract described in Section 7(b) and the fee schedule described in Section 7(c) with the Commissioner prior to the date of commencement of business at each location, at the time any changes are made to the documents or schedule, and annually thereafter upon renewal of the license. These documents shall be available to interested parties and to the general public.

Licenseses are mandated to keep certain books and accounts which can be examined by the Commissioner at any reasonable time. In addition, licenseses must file an annual report in which they must list, among other things, the number of deferred deposit loans, the volume of loans in dollars, the average APRs on the loans, and other important information which will be compiled by the Commissioner and made available to the public, the governor, and the legislature. This information is critical in gauging the growth of the industry and in determining if the act serves the purposes for which it is intended.

This section also requires licenseses to verify that they have not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loans during the prior calendar year. As noted in the introduction, the filing of check fraud charges has been used as a debt collection tactic by many payday lenders. The verification provision is intended to severely curtail such practices.

Finally, each licensee must file a copy of the loan documents and fee schedules with the Commissioner. In this way, the Commissioner can evaluate compliance with Sections 6, 7, and 8.

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*(a) Each deferred deposit loan must have a minimum term of no less than two weeks for each \$50 owed on the loan.*

*(b) A consumer shall be permitted to make partial payments (in amounts equal to no less than \$5 increments) on the loan at any time, without charge.*

*(c) The maximum amount of the deferred deposit loan shall not exceed \$300.*

*(d) After each payment made, in full or in part, on any loan, the licensee shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance due on the loan.*

*(e) The minimum amount of a deferred deposit loan is \$50.*

*(f) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.*

*(g) Upon receipt of the check from the consumer for a deferred deposit loan, the licensee must immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a deferred deposit loan pursuant to [include the Code citation to this Act], and any holder of this check takes it subject to all claims and defenses of the maker."*

*(h) Any facilitator, as defined in Section 2, is subject to enforcement under Sections 4 and the civil remedies provision of Section 10, if the person making the deferred deposit loans fails to comply with the requirements of this Act.*

*(i) The licensee must provide the consumer, or each consumer if there are more than one, with a copy of the loan documents described in Section 7 prior to the consummation of the loan.*

**Commentary:  
Required Acts**

***(j) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.***

The teeth of the consumer protections in the model act appear in Sections 6-10. Section 6 obligates licensees to provide that the term of the loan be no less than two weeks per \$50. This allows consumers a better chance of paying off the loan rather than defaulting and possibly facing criminal charges or renewing at exorbitant rates. Also, the section sets the maximum amount of the loan at \$300 and the minimum at \$50. This is typical of several other state payday loan laws.

What is not common is a provision in Section 6 which requires the licensee to immediately stamp the back of a check taken from the consumer in the course of a deferred deposit transaction with an endorsement that states fundamental information for two different audiences: first, the endorsement states that the check is being negotiated as part of a deferred deposit loan. This lets the courts and prosecuting attorneys know that this check cannot be the subject of a criminal prosecution since this is prohibited under Section 9. Second, the endorsement states that any holder of the check takes it subject to all claims and defenses of the maker. In other words, if the check is sold to an assignee, the consumer can still raise claims and defenses he or she had with the original lender against any subsequent holder. This provision is similar to the Federal Trade Commission rule which eliminates limitations on assignee liability for consumer claims or defenses in credit transactions involving the sale of goods.<sup>15</sup>

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***(a) Information Pamphlet Provided to All Consumers. Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by the Commissioner which explains, in simple English and Spanish, all of the consumer’s rights and responsibilities in a deferred deposit loan transaction, includes a toll free number to the Commissioner’s office to handle concerns or complaints by consumers, and informs consumers that the Commissioner’s office can provide information about whether a lender is licensed, whether complaints have been filed with the Commissioner, and the resolution of such complaints.***

***(b) Loan Documents. Licensees shall provide consumers with a written agreement on a form specified or approved by the Commissioner that can be kept by the consumer, and must include the following information in English and in the language in which the loan was negotiated:***

- (1) The name, address, telephone number of the licensee making the deferred deposit loan, and the name and title of the individual employee who signs the agreement on behalf of the licensee;***
- (2) An itemization of the fees and interest charges to be paid by the consumer;***
- (3) Disclosures required by the federal Truth in Lending Act, regardless of whether the Truth in Lending Act applies to the particular deferred deposit loan;***

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<sup>15</sup> See National Consumer Law Center, The Cost of Credit, Chapter 10.10.6.1.2.2.

- (4) Disclosures required under any other state law;*
- (5) A clear description of the consumer’s payment obligations under the loan;*
- (6) In a manner which is more conspicuous than the other information provided in the loan document and is in at least 14 point bold type face, a statement that “you cannot be prosecuted in criminal court to collect this loan.”*

*Such notice shall be located immediately preceding the signature of the consumer.*

*(c) Posting Requirements. The following notices in English, Spanish, as well as other languages in which a significant amount of deferred deposit loan business is conducted, must be conspicuously posted by all licensees in each location of a business providing deferred deposit loans:*

- (1) Informs consumers that the licensee cannot use the criminal process against a consumer to collect any deferred deposit loan.*
- (2) The schedule of all interest and fees to be charged on such loans with an example of the amounts that would be charged on a \$300 loan payable in 14 days and 30 days, giving the corresponding annual percentage rate.*

*(d) Posting Requirements for Financial Institutions Not Governed by Section 8 on Permitted Fees. Financial institutions making deferred deposit loans, which, because of the application of other state or federal law, are exempt from the fee limitations of this Act in Section 8, and which charge fees, interest, and charges greater than that authorized in Section 8 of this Act, must post, in a conspicuous place in the branch in which the deferred deposit loans are entered into, the notice below. A single instance of charging a consumer more than the fees, interest, and other charges permitted in Section 8 requires the financial institution to post this notice.*

*“WARNING: The fees and interest charged on deferred deposit loans made at this institution are higher than those charged at other financial institutions.”*

This section describes the disclosures which must be given to consumers prior to entering into a deferred deposit loan. These include:

- 1) an informational pamphlet notifying the consumers of their rights in both English and Spanish and explaining how to contact the Commissioner to investigate a lender or to file a complaint;
- 2) a written agreement, in English and in the language in which the loan was negotiated, informing the consumer about the terms of the loan, including an itemization of the fees and charges to be paid, Truth-In-Lending Act (TILA) disclosures, a clear description of the consumer’s repayment obligations, and a statement printed in bold type informing the consumer that he or she cannot be criminally prosecuted if the check does not clear the bank;
- 3) posted notices in various languages informing consumers that the licensee cannot use criminal process against them to collect the debt and listing the schedule of interest and fees to be charged.

**Commentary:  
Required  
Disclosures**

In addition to these other disclosures, financial institutions which are exempt from the interest rate and fee cap in Section 8 must post a warning informing consumers, where applicable, that the fees charged on these loans are higher than those charged at other financial institutions.

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***No licensee shall charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this Section.***

***(a) Fees. A licensee shall be permitted to charge an administrative fee of no more than \$5 for each deferred deposit loan entered into with a consumer.***

***(b) Interest. In addition to the administrative fee, the licensee shall be permitted to charge interest on the amount of cash delivered to the consumer in a deferred deposit loan in an amount no greater than 36% per annum (defined as a 365-day year). The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term. Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance. Principal balance means the balance due and owed exclusive of any interest, service charges, or other loan-related charges.***

***(c) Insufficient Fund Fee. If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed the lesser of \$15 or the fee imposed upon the licensee by the financial institution. Only one such fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.***

***(d) Rebates of Unearned Charges. When a loan is repaid before its due date, unearned interest charges must be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.***

This is one of the most important provisions of the act. It is designed to curb the exorbitant fees and charges that are currently the norm in this industry while allowing lenders a reasonable rate of return for the risk they take by making small, unsecured loans (though this risk is significantly reduced by holding a negotiable check).

The interest rate is set at 36% per year (or 1.38% per two-week period) on the amount of cash paid to the consumer. This rate cap is compatible with those in states which have retained interest rate caps under their small loan acts. In addition, lenders can charge an administrative fee of up to \$5. On a loan in which the borrower receives \$200 in cash (face amount is \$207.76 [\$200 + \$2.76 interest + \$5 fee]) and is payable in two weeks, the interest and fee translate into an APR of 100.88%, far below what the industry commands at the present time. If this same loan (face amount is \$211 [\$200 + \$6 interest + \$5 fee]) were repayable in 30 days, the APR drops to 66%. If the interest rate cap is raised, the minimum term requirement in Section 6 should be reviewed. The longer the term, the more interest in actual dollars will be reaped by the lender. It may be less favorable to consumers to allow an extended term if the interest cap is raised beyond the 36% in the model act.

If a check is returned for insufficient funds, lenders may charge a one-time fee of the lesser of \$15 or the charge imposed by the financial institution. California's statute contains a similar provision.

Finally, if the loan is repaid before its due date, any unearned interest must be refunded using a formula at least as favorable to the consumer as the actuarial method. This provision outlaws the use of the lender-friendly Rule of 78s.<sup>16</sup>

Section 9:  
Prohibited Acts

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***No licensee making deferred deposit loans shall commit, or have committed on behalf of the licensee, any of the following prohibited acts:***

- (a) Engaging in the business of deferred deposit lending unless the Commissioner has first issued a valid license.***
- (b) Threatening to use or using the criminal process in this or any other state to collect on the loan.***
- (c) Altering the date or any other information on the check.***
- (d) Using any device or agreement which would have the effect of charging or collecting more fees, charges, or interest than allowed by this Act, including but not limited to entering into a different type of transaction with the consumer.***
- (e) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a deferred deposit loan.***
- (f) Entering into a deferred deposit loan with a consumer which is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration shall be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's net income for the term of the loan.***
- (g) Charging to cash a check representing the proceeds of the deferred deposit loan.***
- (h) Using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law.***
- (i) Accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate.***
- (j) Making more than one deferred deposit loan to a consumer at a time.***
- (k) Making a deferred deposit loan, which, when combined with another outstanding deferred deposit loan owed to another licensee, exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. The licensee shall make inquiry of the consumer or utilize***

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<sup>16</sup> A mathematical formula used to estimate refunds of prepaid interest and insurance charges when a loan is repaid early. Hand-held calculators can easily perform more accurate actuarial calculations. Use of the rule typically results in a smaller refund for the borrower.

**Commentary:  
Prohibited Acts**

*available information bases to determine whether such loans are outstanding. In no event, shall a licensee make a loan to a consumer who has two or more such loans outstanding, regardless of the total value of the loans.*

*(l) Renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made by the same consumer. Upon termination of a deferred deposit loan through the payment of the consumer's check by the drawee bank, the return of a check to a consumer who redeems it for consideration, or any other method of termination, the licensee shall not enter into another deferred deposit loan with the same consumer for at least 30 days thereafter, provided, that a licensee may extend the term of the loan beyond the due date without charge.*

*(m) Accepting any collateral for a deferred deposit loan.*

*(n) Charging any interest, fees, or charges other than those specifically authorized by this Act, including but not limited to:*

- (1) charges for insurance;*
- (2) attorneys fees or other collection costs.*

*(o) Threatening to take any action against a consumer that is prohibited by this Act, or making any misleading or deceptive statements regarding the deferred deposit loan or any consequences thereof.*

*(p) Making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license.*

*(q) Including any of the following provisions in loan documents required by Section 7(b):*

- (1) A hold harmless clause;*
- (2) A confession of judgment clause;*
- (3) A waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;*
- (4) A mandatory arbitration clause;*
- (5) Any assignment of or order for payment of wages or other compensation for services;*
- (6) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract;*
- (7) A waiver of any provision of the Act.*

*(r) Selling any insurance of any kind whether or not sold in connection with the making or collecting of a deferred deposit loan.*

The list of prohibited acts in this section is crucial to protecting consumers from abusive behavior. Among the most significant are: 1) engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a deferred deposit loan, 2) entering into an unconscionable transaction with a consumer, repaying or refinancing a deferred deposit loan with the proceeds of another, 3) threatening to use or using the criminal process in this or any other state to collect on the loan, 4) entering into another such loan with a consumer for at least 30 days (to stop rollovers and prevent the use of subterfuges, like loan splitting, to evade the act), 5)

including certain harmful provisions in the loan (such as a hold harmless provision that would allow a lender to take any action against a borrower without liability or a confession of judgment clause that permits a lender to obtain a judgment against a borrower without serving papers or permitting a defense), and 6) selling insurance.

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**(a) Civil. The remedies provided herein are cumulative and apply to licensees and unlicensed persons to whom this Act applies and who failed to obtain a license:**

- (1) Any violation of any state law prohibiting unfair or deceptive trade practices constitutes a violation of this Act.**
- (2) Any violation of this Act constitutes a violation of any state law prohibiting unfair or deceptive trade practices.**
- (3) The violation of any provision of this Act, or regulation thereunder, except as the result of accidental or bona fide error of computation, renders the loan void, and the person shall have no right to collect, receive, or retain any principal, interest, or other charges whatsoever with respect to the loan.**
- (4) Any person found to have violated this Act shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of \$1000 for each violation (to be increased by the Commissioner to reflect inflation), plus costs, and attorneys fees.**
- (5) A consumer may sue for injunctive and other appropriate equitable relief to stop any person from violating any provisions of this Act.**
- (6) The consumer may bring a class action suit to enforce this Act.**
- (7) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.**

**(b) Criminal. Any person, including members, officers, and directors of the person who knowingly violates this act is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or is subject to imprisonment not exceeding 6 months, or both.**

This section has two subparts which provide for civil and criminal remedies. The civil remedy gives individual consumers a private right of action, enabling them to enforce provisions of the act. This right permits consumers to directly sue lenders and to seek relief for the wrongs performed by licensed and unlicensed violators. Agency enforcement through the complaint process alone may be inadequate, given the growth of the industry and the fact that agencies often do not have sufficient resources to investigate problems and undertake enforcement actions. Providing consumers with the right to seek relief directly is one of the key provisions of the act. Thus, this section allows the consumer to sue for actual, consequential, and punitive damages and imposes a statutory penalty of \$1000 per violation. This penalty is important because the actual damages in these cases may be small given the size of the loans. The recovery of actual damages alone may not deter a business from violating this act again. For this reason, and to assist groups of borrowers who have been injured by violation, a provision allowing for class actions is also included.

## **Section 10: ENFORCEMENT**

### **Commentary: Enforcement**

Criminal penalties are an important deterrent to abuses of the act. Any knowing violation of the act is a misdemeanor and subjects the violator to a \$1,000 fine or imprisonment not to exceed six months or both.

**Section 11:  
SEVERABILITY**

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*If any portion of this Act is determined to be invalid for any reason by a final nonappealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.*

**Appendix A**

**SUMMARY OF STATE PAYDAY LOAN\* LAWS**

\*Also called deferred payment/deposit or cash advance loans.

**ALABAMA**

None. Small loan act applies. *Ala. Code §5-18-1 et seq.* (interest is limited to three percent per month for amounts up to \$200 and two percent per month on amounts of \$201-\$749).\*\*

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**ALASKA**

None. Small loan act applies. *Alaska Stat. §06.20.230 et seq.* (36 percent per year interest rate cap).

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\*\*The percentage or numbers in parentheses following the legal citation for a small or other consumer loan law is the interest rate cap imposed by the law in that state.

**Ariz. Rev. Stat. §6-1251 et seq.**

(effective Sept. 1, 2000; sunsets on July 1, 2010)

**Applicability:** The statute applies to any transaction made pursuant to a written agreement in which a licensee accepts a check and agrees to hold it for a period of time before presentment for payment or deposit.

**Exemptions:** Banks, savings and loan associations, or financing/lending institutions authorized or licensed to transact business under the laws of the United States or Arizona are exempt. Any person that is principally engaged in the retail sale of goods or services and who from time to time cashes checks, drafts, or money orders for a fee or other consideration which does not exceed \$2.00 is exempt.

**Licensing Requirements:** Applicants must provide required information, including a financial statement and a credit report. An applicant must be a U.S. citizen, not have been convicted of a crime that involves moral turpitude, and not have defaulted on payment of money collected. A licensee must have a minimum net worth in cash or cash equivalent of at least \$50,000. Licenses are renewed annually. There are certain reasons for revocation or suspension of licenses are listed, including violating this law.

**Disclosures:** A licensee must: 1) conspicuously post a notice that states the fees charged at every location that is licensed, and 2) have a written agreement for each loan that contains the name of the licensee, the transaction date, the amount of the check, the amount to be paid by the consumer, and a statement of the total amount of the fees charged, expressed as both a dollar amount and as an annual percentage rate (in compliance with state and federal truth in lending laws). The written agreement must also state prominently: "No customer may have outstanding more than one deferred presentment service agreement at one time and the face amount, exclusive of fees, cannot be more than \$500."

**Prohibited Acts:** Prohibited acts include: failing to pay annual renewal fees or file the annual financial statement; insolvency; violating the act; conviction of any crime which is a felony or other crime that is a breach of trust or dishonesty; making a material misstatement or omission on the application for a license; operating without a license for each location from which the business is conducted; making a loan without first obtaining reasonable evidence that the account on which the check is drawn is open and active; making loans or extensions of credit other than those allowed under this law; advertising in any way which contains false, misleading, or deceptive statements; engaging in unfair or fraudulent practices; altering or deleting the date on the check accepted by the licensee; accepting an undated check; failing to take measures to ensure that no customer has more than one deferred presentment loan outstanding at any time with any licensed lender in the state; requiring security for the loan other than the check or requiring a guarantee; and providing gaming or lottery tickets, alcoholic beverages, or requiring the purchase of other goods and services in order to get a loan at any licensed location. A licensee may not use the criminal process to collect on a deferred presentment loan.

**Permitted Charges:** Not more than 15 percent of face amount of the check. This fee can be charged only once for each transaction. The fee is earned at the outset and need not be refunded if the consumer repays early. The fee is not interest for any purposes.

**Loan Terms:** The loan can be no greater than \$500, excluding the permitted fees. The loan agreement must be in writing; and cannot be extended more than three consecutive times. For each extension, the licensee shall terminate the previous agreement and sign a separate agreement. The licensee may charge the permitted fee for each extension.

**Enforcement:** Criminal penalties for making loans without a license is a misdemeanor. The license can be revoked for violation of the law.

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## ARKANSAS

# ARKANSAS

**Check-Cashers Act of 1999** (not yet codified). Otherwise, maximum interest rate in state constitution applies. **Ark. Const. art. 19, §13.** (17 percent per year interest rate cap).

**Applicability:** To a person that for compensation engages in the check-cashing business and who, pursuant to a written agreement, accepts personal checks on the date they were written, pays the customer an amount less than the face value of the check and grants the customer the “option to repurchase” the check for an agreed period of time prior to presentment of the check.

**Exemptions:** The United States or state governments, any federally or state chartered bank, savings and loan association, credit union; any retail seller engaged in the retail sale of goods or services who from time to time cashes checks, drafts, or money orders provided that the revenue from such fees does not exceed three percent of gross revenues.

**Permit Requirements:** State Board of Collection Agencies enforces. Must submit application and financial statement, pay a permit fee of \$500. Must be renewed annually (renewal fee is \$400). Must show liquid assets of at least \$20,000 for the operation of each location. Must post a bond payable to the State of Arkansas of \$50,000. Must show financial responsibility and business experience. A permit may be denied if the registrant has a felony conviction involving dishonesty, fraud, or deceit and the crime is substantially related to the qualifications, function, duties of a person engaged in this business.

**Permitted Fees:** A reasonable administrative fee not to exceed \$10 plus 10 percent of the face amount of the check and no more than \$5 to set up the account and issue an identification card (which are not deemed interest for any purpose and the transaction is not a loan).

**Loan Terms:** The agreement must contain a clear and understandable explanation of the fees and the date on which the check will be cashed, the total amount of any fees charged expressed in a dollar amount and as an annual percentage rate. If the check casher accepts partial payment, the check may not be deposited nor may another fee be imposed. Loan term can be no fewer than six calendar days nor more than 31 days. Check amount cannot exceed \$400. If a check is returned, the check casher has the right to all civil remedies allowed by law to collect the check and be entitled to recover any returned check fee authorized by state law and reasonable attorney’s fees paid to a non-employee and costs. Must pay proceeds of check in cash to consumer.

**Prohibited Acts:** Cannot pursue criminal charges for bad checks, unless the check casher would otherwise be entitled to file such charges under state law AND the check is returned to the check casher because the account was closed or payment was stopped. Cannot accept security for the transaction. Cannot alter or delete the date on any check. Cannot accept an undated check or a check dated on a date other than the date of the transaction. Cannot have more than one deferred presentment check outstanding at any time from any one customer. Cannot renew or consolidate one deferred presentment check with the proceeds of another. Cannot conduct any other business at same location without first obtaining prior permission of the Department.

**Disclosures:** Must post a schedule of all fees. Must provide a written agreement which is signed by the check maker (consumer). The agreement must contain a

clear and understandable explanation of the fees and the date on which the check will be cashed, the total amount of any fees charged expressed in a dollar amount and as an annual percentage rate. A copy must be given to the consumer. Must post permit conspicuously in the office.

**Enforcement Actions:** The Department can suspend or revoke the permit if the check casher has knowingly or through lack of due care failed to pay the annual fee, violated any provision of the act, made a false statement in the application, etc. Can also issue a cease or desist order and require the check casher to refund any fees collected in violation of the act. Can inspect books and records at any reasonable time. The Attorney General also has the specific authority to investigate any complaints of any deceptive trade practices. The Department has authority to issue subpoenas, administer oaths, conduct hearings and compel the production of documents.

**Penalties:** The Department can impose a fine of up to \$1,000 per transaction. Wilfully engaging in the check-cashing business in violation of the act is a misdemeanor.

**Private Right of Action:** Any action for a civil remedy by the Department or by any other person must be commenced within five years of the act complained of.

## CALIFORNIA

# CALIFORNIA

### *Cal. Civ. Code §1789.30 et. seq.*

**Applicability:** To check cashers only. Consumer loan act applies to other lenders. Cal. Fin. Code §22201 *et seq.* (Interest rate cap under state's small or consumer loan act is 2.5 percent per month on up to \$225; two percent per month on \$226 to \$900.)

**Exemptions:** State or federally chartered banks, savings associations, credit unions, or industrial loan companies, retail sellers which cash checks or issue money orders as a service that is incidental to its main purpose or business.

**Permit Requirements:** Must have a check cashers permit with Department of Justice.

**Prohibited Acts:** Cannot have more than one deferred payment agreement outstanding at a time; cannot prosecute consumer for failure to comply with any agreement. Cannot accept collateral.

**Permitted Charges:** Not to exceed 15 percent of face value of check; \$15 for return of dishonored check.

**Disclosure:** Must have a written agreement signed by customer which contains the total amount of fees charged in dollars and as an APR. Agreement must authorize the check casher to defer deposit of the personal check until a specific date not later than 30 days from the date the agreement was signed.

**Loan Terms:** The face amount of the check cannot exceed \$300.

**Civil/Criminal Penalties:** Civil penalty up to \$2,000, and violation is a misdemeanor if willful.

**Private Right of Action:** Yes. Consumer can bring action for damages up to three times the damages actually incurred capped by the amount the consumer actually paid to the lender plus attorney's fees and costs. If the violation is willful, can obtain punitive damages. Can also seek equitable relief.

**5 Colo. Rev. Stat. §§5-3-501 et seq.** (effective July 1, 2000)

**COLORADO**

**Applicability:** The statute applies to deferred deposit loans whereby the lender, for a fee, accepts a dated instrument from the consumer, agrees to hold it for a period of time prior to negotiation or deposit, and pays to the consumer the amount of the instrument less finance charges as permitted. One who acts as an agent for a third party is covered even if the third party is exempt.

**Exemptions:** Lenders not covered as supervised lenders under §5-1-301(17) are exempt. Banks and other financial institutions that may be exempt by federal law from the interest rate limitations are, nevertheless, subject to all other provisions.

**Permitted Charges:** 36 percent per year interest on balances of \$630 or less; 21 percent on balance of \$630-\$2,100. If contracted for, \$20 for return of dishonored check.

**License Requirements:** Lenders must be licensed.

**Permitted Charges:** Not more than 20 percent of the first \$300 plus 7.5 percent of the excess may be charged. Loans can be renewed once and the renewal fee can be no more than 20 percent of the first \$300 plus 7.5 percent of the excess. The lender must refund a prorated portion of the finance charge if the renewal occurs before the maturity date of the loan. Lender may contract to receive a \$25 fee if, upon deposit, the consumer's check is returned for insufficient funds, plus court costs and reasonable attorney fees in the event of default.

**Disclosure:** The licensee must reduce the agreement to writing and contain the name of the consumer, the transaction date, the amount of the check, the annual percentage rate, the total amount of the finance charges charged, expressed both as a dollar amount and as an annual percentage rate and other disclosures required for supervised lenders. In addition, the following notice must be prominently placed in the loan agreement in at least 10-point type:

*A deferred deposit loan is not intended to meet long-term financial needs.  
A deferred deposit loan should be used only to meet short-term cash needs.*

*Renewing the deferred deposit loan rather than paying the debt in full will require additional finance charge.*

*State law prohibits deferred deposit loans exceeding \$500 total debt from a deferred deposit lender. Exceeding this amount may create financial hardships for you and your family. You have the right to rescind this transaction by 5 P.M. the next business day following this transaction.*

The lender must also post a notice of the charges imposed for such loans at its place of business. Prior to selling or assigning the check or loan, the lender must place a notice on the check in at least 10-point type which says: "This is a deferred deposit loan instrument."

**Prohibited Acts:** The lender may not make a deferred deposit loan without a license. A licensee may not engage in unfair or deceptive acts, practices, or advertising in connection with deferred deposit loans. The licensee may not change its location without giving the administrator advance written notice. The licensee may not make loans at a location for which it does not have a license or engage in business under any name other than that on the license. A loan shall not be

# COLORADO

renewed more than once. If the loan is not paid after one renewal, the lender may deposit the check. The lender cannot charge a fee for cashing the lender's check. The lender cannot present a check for payment unless it is endorsed with the actual business name of the lender. The lender cannot attempt to collect on the loan or check by using the criminal process. Provisions of Colorado law regulating other lenders are applicable unless inconsistent with this act.

**Loan Terms:** Loan cannot be greater than \$500 exclusive of the finance charge.

## **CONNECTICUT**

None. Usury act applies or small loan act applies. *Conn. Gen. Stat. §§36a-563.* (\$17 for each \$100 borrowed up to \$600 [maximum fee: \$17x6]).

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## **DELAWARE**

*Delaware Code Ann. tit. 5, §2744.*

Check cashers are prohibited from advancing any monies on a postdated check.

Small loan act applies to other lenders but no limit on interest rate (contract rate). *Del. Code Ann. tit. 5 §2229.*

CONNECTICUT,  
DELAWARE

***D.C. Code Ann. §28-4701 et seq. (1998 Supp.) (“Check Cashers Act of 1998”)***

**Applicability:** To check cashers. Consumer loan act applies to other lenders. D.C. Code Ann. §26-701 *et seq.* (24 percent per year interest rate cap).

**Exemptions:** Banks, building and loan associations, credit unions, trust companies, savings and loan associations; the United States Postal Service; any person who cashes checks for free.

**License Requirements:** Superintendent of the Office of Banking and Financial Institutions. Must apply in writing which includes certain information, pay a fee of \$300, obtain a \$5,000 bond, demonstrate the availability of capital of at least \$25,000 at each location, demonstrate that business will be conducted honestly and fairly. Must renew annually.

**Permitted Charges:** 10 percent of the face amount of the check; and, if the licensee enters into an agreement with the customer, may charge an additional fee (to cover verification, handling, and documentation processing) of no more than \$5 on a personal check with a face amount of up to \$250; \$10—\$250.01 to \$500; \$15—\$500.01 to \$750; \$20—\$750.01 to \$1,000.

**Prohibited Acts:** Cannot accept post-dated checks; the personal check must bear an issue date of not later than the date the check is cashed and the deferred deposit agreement is originated; cannot hold a check for longer than 31 days following the issue date of the check.

**Required Acts:** Must display license conspicuously; must give a receipt for the transaction.

**Disclosure:** Must conspicuously post in both English and Spanish a schedule of fees and charges permitted under the act which must be approved by the Superintendent of the Office of Banking and Financial Institutions.

**Loan Terms:** The aggregate face amount of the checks being held for deferred deposit cannot exceed \$1,000. Minimum amount cannot be less than \$50.

**Civil/Criminal Penalties:** None.

**Enforcement:** Superintendent may seek a cease and desist order and seek to suspend or revoke a license.

**Private Right of Action:** None specified.

## **FLORIDA**

*Fla. Stat. Ann. §560.201 et seq.; Fla. Admin. Code Ann. R. 3C-560.101 et seq.*

**Applicability:** Check cashers, payment instrument sellers, funds transmitters, foreign currency exchangers. Otherwise, consumer finance act applies. Fla. Stat. Ann. §516.031. (30 percent per year interest rate cap).

**Registration Requirements:** Division of Banking enforces. For check cashers, must pay \$250 fee and \$500 renewal fee plus \$50 fee for each location. Renewal every two years. Bond required in an amount set by DBF-C-94 but cannot exceed \$250,000 except in extraordinary circumstances and must remain in place for five years after the registrant ceases operations in the state.

**Disclosures:** Must post a clearly legible schedule of fees charged in a conspicuous place, i.e., a place reasonably calculated to impart the information to the public.

**Permitted fees:** 10 percent of face amount of personal check or \$5, whichever is greater, plus a \$5 verification fee per transaction.

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## **GEORGIA**

None. Industrial loan act applies (*Ga. Code Ann. §7-3-14*)(10 percent per year discount interest plus fee of eight percent up to \$600 plus four percent on the excess). Check cashers are required to send checks for deposit to their accounts at the depository institution not later than the close of business on the next business day after the date on which the check was cashed. Ga. Comp. R. Regs. r. 80 §3- 1.02(7).

FLORIDA,  
GEORGIA,

## HAWAII

Hawaii enacted a **Check Casher Act, H.B. 460** (not yet codified) effective 7/1/99 which allows deferred deposit transactions. The act will terminate by its terms on 7/1/2001. Until this act, the small loan act applied. Haw. Rev. Stat. §412:9-100 (24 percent per year interest rate cap).

**Applicability:** To any transaction in which a check casher refrains from depositing a personal check written by a customer until a date after the transaction date pursuant to a written agreement.

**Exemptions:** Does not apply to any person who is principally engaged in the bona fide sale of goods or services and who from time to time cashes items for a fee for not more than \$2 or two percent of the amount of the check, whichever is greater; to any bank, or financial institution organized under the laws of the United States or any state or territory.

**Disclosures:** Must post the fees charged in a conspicuous place in the business and a notice that complaints may be filed with the Department of Commerce and Consumer Affairs. Must also provide the consumer with written notice of the fees that is separate from and in addition to the posted notice. Must obtain written acknowledgment from the customer that written notice of the fees was provided and provide each consumer with a receipt documenting any and all fees charged. Deferred deposit transaction must be in writing, and it shall contain the statement of the total amount of any fees charged, expressed both in U.S. dollar amount and as an annual percentage rate.

**Permitted Fees:** Not to exceed 15 percent of the face amount of the check. Dishonored check fee cannot be more than \$20.

**Prohibited Acts:** No collateral products, e.g., insurance, can be sold. Deferred deposit cannot exceed 31 days. No collateral may be accepted to secure the loan. Face amount of the loan cannot exceed \$300. A check casher cannot enter into another agreement with a consumer during a period of time that an earlier agreement is in effect. Cannot repay, refinance, or consolidate one transaction by or with the proceeds of another. Cannot take any action to collect on a check passed with insufficient funds except to charge and recover the dishonored check fee. Cannot prosecute customer for criminal violations unless the check is dishonored because of stopped payment on the check.

**Private Right of Action:** Any injured consumer may seek remedies allowed by Haw. Rev. Stat. §480-13(b). Any violation of this act constitutes an unfair and deceptive trade practice under state law. Any person injured by a wilful violation of the act may bring an action for the recovery of damages and seek to enjoin the violations. Plaintiff shall be awarded damages of not less than \$1,000 or three times the damages, whichever is greater, reasonable attorneys' fees and costs.

**Criminal/Civil Penalties:** A wilful violation is punishable by a fine of up to \$500 and up to 30 days imprisonment. Penalties are cumulative with any other which are otherwise available for the same conduct.

## **IDAHO**

None. Idaho credit code applies. Allows interest at any contract rate. *Idaho Code §28-42-201.*

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## **ILLINOIS**

None. Ill. Consumer Installments Loan Act allows interest at rate agreed upon. *205 Ill. Comp. Stat. 670/15.*

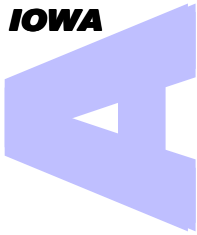
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## **INDIANA**

None. Uniform consumer credit code applies. *Ind. Code §24-4.5-3-501 et seq.* (36 percent per year interest rate cap or \$33). This ability to charge \$33 on a small loan effectively allows payday lenders to operate in this state as long as they comply with the other provisions of the UCCC.

IDAHO, ILLINOIS,  
INDIANA

## IOWA



### *Iowa Code §13-533D.*

**Applicability:** To a person who accepts a check dated subsequent to the date it was written or who accepts a check dated on the date it was written and holds the check for a period of time prior to deposit. Otherwise, UCCC applies. (36 percent per year interest rate cap for unsupervised loans).

**Exemptions:** Banks incorporated under the provisions of state or federal law, a savings and loan association, a credit union, a licensed industrial loan company.

**Licensing Requirements:** An applicant must execute a bond in the amount of \$25,000 and pay a fee of \$150. The Superintendent of Banking will issue a license if the applicant can conduct the business honestly and fairly, has not been convicted of a felony, is financially responsible, and has unencumbered assets of at least \$25,000. Enforced by the Division of Banking in the Department of Commerce.

**Permitted Charges:** \$15 on first \$100 of the face amount of a check; \$10 on subsequent \$100 increments or a pro rata portion of \$100 face value.

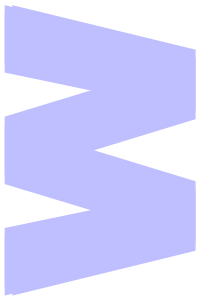
**Prohibited Acts:** A person cannot operate a delayed deposit services business in this state unless the person is licensed by the Superintendent. A licensee cannot: hold any more than two checks at a time from the same person; hold checks aggregating more than \$500 at any one time; require the maker to receive payment by a method which causes the maker to pay additional fees; repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee (by Interpretive Bulletin, this means that the licensee must wait at least one day between depositing or redeeming a check and the acceptance of a new postdated check unless the aggregate amount of the check maturing and the new check being written do not exceed \$500 in which case this can be done on the same day.); charge more than allowed under the act; collect more than one Not Sufficient Funds (NSF) charge on one check no matter how long the check remains unpaid.

**Disclosure:** Licensee shall give the maker notice written in clear, understandable language; the APR on the first \$100 and the APR on the subsequent \$100 increments if different; the date on which the check will be deposited, all fees, charges, and penalties for all services in all branches.

**Loan Terms:** The face amount of the checks held at any one time cannot exceed \$500. The number of checks held for any one maker may not exceed two.

**Civil/Criminal Penalties:** The Superintendent of Banking can impose a fine of up to \$5,000 for each violation of the act. A person who operates without a license is guilty of a misdemeanor.

**Enforcement:** The Superintendent of Banking can suspend or revoke a license and issue cease and desist order. If a pattern and practice of violating the act is occurring, the attorney general can initiate an action to enjoin the wrongdoer.



**Kan. Stat. Ann. §16a-2-404.** (A provision amending the UCCC)

**Applicability:** To consumer loan transactions in which cash is advanced, with a short term, a single repayment is anticipated, and in an amount less than \$780 (which amount is adjustable based upon an index). Otherwise, UCCC applies. (36 percent per year interest rate cap for unsupervised loans).

**Licensing Requirements:** Same as under UCCC. Enforced by the Consumer Credit Commissioner.

**Permitted Charges:** \$5.50 for amounts of \$0 to \$50; 10 percent of loan proceeds and \$5 administrative fee for amounts \$50 to \$100; seven percent of loan proceeds with a minimum of \$10, plus a \$5 administrative fee for amounts \$100 to \$250; six percent of the loan proceeds with a minimum of \$17.50, plus a \$5 administrative fee for amounts \$250 to \$300. On a consumer loan transaction in which cash is advanced in exchange for a personal check, a return check charge may be assessed if the check is deemed insufficient.

**Prohibited Acts:** Any loan made under this section cannot be paid by proceeds of another loan by the same lender nor can the proceeds from any loan under this section be applied to any other loan from the same lender or related lender. The post-maturity contract rate of any loan cannot exceed three percent per month of the loan proceeds. No insurance charges or other charges are permitted, including any charges for cashing the loan proceeds if they are given in check form, unless expressly provided in this section. To determine whether a consumer loan transaction is unconscionable, consideration shall be given to the ability of the borrower to repay within the terms of the loan made under this section or whether the amount and term of the loan comply with the provisions of this section.

**Loan Terms:** Amount of loan limited to \$780 or less in 1996 (annually adjusted). The maximum loan term permitted is 30 days.

**KANSAS**

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## KENTUCKY



*Ky. Rev. Stat. Ann. §368.010 et seq.*

**Applicability:** To check cashers and payday lenders, i.e., accepting a check and holding the check for a period of time prior to deposit in accordance with an express or implied agreement. Consumer loan law applies to other lenders. Ky. Rev. Stat. Ann. §288.530. (36 percent per year interest rate cap).

**Exemptions:** Any bank, savings and loan association, trust company, credit union, or industrial loan corporation authorized to do business in the state; anyone who cashes checks for free, and any retail sellers who cash checks or issue money orders as a service that is incidental to or independent of a retail sale.

**Licensing:** Lender must apply and deposit an irrevocable letter of credit in an amount ranging from \$50,000 to \$200,000, depending on the lender's number of locations; show financial responsibility; disclose criminal activity, fraud, any act constituting a breach of fiduciary duty; intend to comply with all worker's compensation and unemployment laws of the state; and pay a fee of \$500. License renewed annually. Lenders must file annual reports but information is confidential. Enforced by the Department of Financial Institutions.

**Permitted Charges:** Not to exceed \$15 per \$100 of the face amount of the check for a period of 14 days. Can prorate any fee, based upon the maximum fee of \$15. Fee shall be deemed a service charge, not interest. Lender cannot require any security or guarantor; cannot have more than one transaction from any one customer at any one time with a face value greater than \$500; cannot use any device or agreement with the intent to obtain greater charges than are authorized by this section; cannot hold a deferred deposit transaction for more than 60 days; cannot for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer; cannot prosecute or threaten to prosecute. Must inquire whether a customer has any outstanding deferred deposit transaction outstanding with any licensee and can only enter into another with that customer if he/she represents in writing that there is no more than one other and it is less than \$500. Both transactions cannot exceed \$500.

**Disclosure:** Lender must post license in conspicuous place at place of business. Must have a written agreement, dated and signed by the customer and licensee. Copy to customer. Must conspicuously display a sign that states: "No person who enters into a post-dated check or deferred deposit check transaction with this business establishment will be prosecuted or convicted of writing cold checks or of theft by deception." Must give Truth In Lending Act (TILA) disclosures. Must conspicuously display the schedule of all fees and charges for services.

**Prohibited Acts:** No licensee shall engage in unfair or deceptive acts, practices or advertising in the conducting of its business.

**Loan Terms:** Must make TILA disclosures. Must disclose check collection charges for a returned or dishonored check in contract in order to collect such fees.

**Enforcement:** Commissioner may suspend or revoke a license. Customer may make a written complaint to the Commissioner who may investigate.

**La. Rev. Stat. Ann. §9:3577.1 et seq, as amended in 1999.** Amendments effective on 1/1/2000.

**Applicability:** To deferred presentment transaction in which the licensee accepts a check from the consumer dated on the date it was written and agrees to hold the check for a period not to exceed 30 days and pays the consumer the face amount less permitted fees. Otherwise, consumer credit code applies. La. Rev. Stat. Ann. §9.3519. (36 percent per year interest rate cap).

**Licensing Requirements:** Must be licensed by the Office of Financial Institutions.

**Permitted Charges:** Fee permitted of 16.75 percent of the face amount of the check but no more than \$45. If unpaid at maturity, can charge an annual interest rate of 36 percent for the first year and 18 percent thereafter if still unpaid. Can only charge the amount of an insufficient funds fee as the licensee's depository institution imposes and may only charge it once per check. If the deferred presentment transaction is prepaid in full within the first five days, the licensee must refund any and all unearned charges by a method no less favorable to the consumer than the actuarial method, less \$20 of the original fee.

**Prohibited Acts:** Cannot charge a fee greater than that allowed; sell any goods or services, e.g., insurance, without the approval of the Commissioner; refuse a partial loan payment of \$50 or more. Cannot renew or roll over the transaction BUT the licensee may do so after accepting a partial payment of 25 percent of the amount advanced plus fees charged and enter into a new transaction. It is unlawful for any licensee to threaten any customer with prosecution for any check accepted or to refer the consumer for prosecution. Cannot divide the transaction into multiple agreements for the purpose of obtaining higher fees.

**Loan Terms:** Shall not exceed 30 days and amount paid to the consumer can be no more than \$300.

**Disclosure:** Must post a notice provided by the Commissioner which includes a toll free number for its office and must post the fee schedule in a conspicuous place in the lending location.

# MAINE, MARYLAND MASSACHUSETTS MICHIGAN

## **MAINE**

**32 M.R.S.A. §6131 et seq.** prohibits a check casher from cashing or advancing any money on a postdated check. §6138(4)(D). Otherwise, Maine's UCCC applies. 9-A M.R.S.A. §2-301. (\$5 for loans under \$75; \$7.50 for loans from \$75 to \$250).

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## **MARYLAND**

None. Consumer loan act applies. **Md. Code Ann. Com. Law II §12-301 et seq.** (2.75 percent per month interest rate cap).

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## **MASSACHUSETTS**

None. Small loan act applies. **Mass. Gen. Laws Ann. ch. 140 §96 et seq.** (23 percent per year interest rate cap on amount financed plus \$20 administrative fee). Check cashers are specifically prohibited from making loans unless licensed under the small loan act. Mass. Regs. Code pit. 209, §45:14(8).

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## **MICHIGAN**

None. Regulatory loan act applies. **Mich. Comp. Laws §493.1 et seq.** (25 percent per year interest rate cap and allows a loan processing fee of up to two percent of the loan amount).

**Minnesota Stat. Ann. §47.60 et seq.**

**MINNESOTA**

**Applicability:** To loan a short term, unsecured loan to be repaid in a single installment not to exceed \$350. A consumer small loan lender is a financial institution which includes regulated lenders or a person registered with the Commissioner and engaged in the business of making consumer small loans. (Otherwise, 33 percent per year interest rate cap).

**Filing Requirements:** Must file with the Commissioner as a consumer small loan lender. The filing must be on a form prescribed by the Commissioner accompanied by a \$150 fee. The applicant must disclose any liquid assets of at least \$50,000. Revocation of the filing and the right to engage in the business of making small loans is the same as in the case of a regulated lender under §56.09.

**Permitted Charges:** In lieu of interest, finance charges, or fees, a consumer small loan lender may charge the following: 1) \$5.50 for loans from \$0 to \$50; 2) 10 percent of loan proceeds and \$5 administrative fee for loans from \$50 to \$100; 3) seven percent of loan proceeds with a minimum of \$10, plus a \$5 administrative fee on loans from \$100 to \$250; and 4) six percent of the loan proceeds with a minimum of \$17.50, plus a \$5 administrative fee for loans from \$250 to \$350.

On a loan transaction in which cash is advanced in exchange for a personal check, a return check may be charged. After the maturity date, the contract rate cannot exceed 2.75 percent per month of the remaining loan proceeds calculated at 1/30 of the monthly rate in the contract for each calendar day that the balance is outstanding. No insurance charges or other charges can be charged, collected, or imposed.

**Prohibited Acts:** Insurance charges or other charges are not permitted. A loan cannot be repaid by the proceeds of another loan made by the same lender. The proceeds from a loan cannot be applied to another loan from the same lender. A loan to a single borrower cannot be split or divided and a borrower cannot have more than one loan outstanding with the result of collecting a higher charge than permitted or in an aggregate amount of principal cannot ever exceed \$350.

**Disclosures:** In addition to disclosures required by the Truth In Lending Act, the lender must furnish a copy of the loan contract to a person obligated by it upon that person's request. The lender must prominently display a schedule of charges which must be approved by the Commissioner. The schedule of charges must include a notice that says "These loan charges are higher than otherwise permitted under Minnesota law. Minnesota permits these higher charges only because short term loans might otherwise not be available to consumers. If you have another source of a loan, you may be able to benefit from a lower interest rate and other loan charges." Upon repayment of the loan in full, lender shall mark it "paid" or "canceled" within 20 days after repayment.

**Loan Terms:** Term of loan cannot be for more than 30 days.

**Civil/Criminal Penalties:** A person obligated to a lender can file a written complaint with the Commissioner. Upon receipt of the complaint, the Commissioner may inspect the lenders accounts and records. Revocation of a license will not affect the obligation of any preexisting lawful contract between the licensee and any borrower. Violation is also a gross misdemeanor.

# MINNESOTA

**Private Right of Action:** If unlicensed, loan is void and debtor may recover all amounts paid if brought within one year. For intentional violations, consumer can recover \$100 for each violation as long as no other remedy is available under state and federal law.

**Miss. Code Ann. §75-67-501 et seq., amended in 1999.**

**MISSISSIPPI**

**Applicability:** To check cashers. Otherwise, small loan regulatory law applies. Miss. Code Ann. §75-67-135.

**Licensing Requirements:** Department of Banking & Consumer Finance enforces. Must not have been convicted of a felony within last ten years; file a bond of \$10,000. Must submit a set of fingerprints to the enforcement agency; show a net worth of at least \$20,000 for the first license and \$5,000 for each additional license which is required for each additional location. Must pay an initial fee of \$750 and \$475 for each renewal. Annual renewal. The Department may charge a fee of up to \$300 to examine the books and records of any licensee plus any actual expenses.

**Exemptions:** Any bank, trust company, savings association, savings and loan association, savings bank or credit union domiciled in the state; any person who cashes a check for free; retail seller of goods or services who cashes checks from time to time as an incident or independently of a retail sale and does not charge more than 3 percent of face amount of check or \$10, whichever is greater.

**Permitted Fees:** 18 percent of the face amount of the check.

**Prohibited Acts:** Cannot accept a postdated check. Cannot accept a check without identification. Cannot institute criminal prosecution for a check returned due to insufficient funds with the intent of aiding in the collection of or enforcing payment of the amount of the check. Cannot defer deposit of a check exceeding \$400 on the face of the check. Each customer is limited to a maximum amount of \$400 at any one time. Cannot offer coupon redemption, catalog sales or other similar inducements as part of the transaction. May not charge a late fee or collection fee as a result of a returned check or the default of the customer unless awarded by the court. Cannot charge the consumer for a money order or check if the licensee pays the customer in that form.

**Disclosures:** Display license in conspicuous place in business. Display fee schedule in a conspicuous place in business. Must be a written agreement signed by customer and licensee which shall contain the total amount of any fees charged, expressed as a dollar amount and as an APR.

**Loan Terms:** Can defer deposit of check for up to 30 days.

**Civil/Criminal Penalties:** Misdemeanor to operate without a license, punishable by up to one year in prison or up to \$1,000 fine or both. If wilful violation of any provision of the act, can be fined up to \$1,000 per violation. Commissioner may impose a civil penalty for any violation of the act of up to \$500 per violation.

**Enforcement:** Commissioner may suspend or revoke the license for specific reasons. May issue cease and desist order and obtain injunction from a court.

**Sunset:** 7/1/02.

## MISSOURI

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*Missouri Rev. Stat. §408.500; 4 Mo. Code Reg. 140-11.010 et seq.*

**Applicability:** Lenders exclusively in the business of making unsecured loans under \$500 and who are not otherwise registered under other lending laws. Otherwise, consumer loan act applies. Mo. Rev. Stat. §408.200. (rates are as agreed to by the parties).

**Registration Requirement:** Must register with Director of the Division of Finance and pay annual fee of \$300.

**Permitted Charges:** Can charge whatever rate is approved by the Director (which must approve a rate comparable with those lawfully charged in the marketplace for similar loans). In determining marketplace interest rates, the Director shall consider the appropriateness of rate requests made by lenders and rates allowed on similar loans in the states contiguous to Missouri. If the Director takes no action within 30 days of submission of a rate request, it is deemed approved. Interest cannot be discounted nor deducted from the principal of the loan, nor paid nor received at the time the loan is made and shall not be compounded. The loan fee and the first month's finance charge shall be earned upon issuance of the loan. In the event of prepayment, subsequent months' finance charges shall be earned on a monthly pro rata basis. No attorney's fees, collection costs or other costs of any type of kind are permitted. A contract in default may bear interest at the contract rate and not the APR. If default occurs in any month but the last, cannot call in the loan until 15 days from default. If the loan is called in there is no rebate of un-earned interest.

**Prohibited Acts:** Charging a fee in excess of that permitted (renders the contract void). Loan splitting with the purpose or result of garnering more interest than would have been available on one loan. Dating the post-dated check earlier than the due date of the loan.

**Disclosures:** A receipt must be given for any payment made in cash.

**Loan Terms:** Must have a minimum term of 14 days, not to exceed 10 months.

**Security:** Post-dated check is not considered security, and no collateral can be taken to secure the loan.

**Penalties:** Should a check for an earlier date be accepted or should any post-dated check be deposited prior to the date on it, the related note shall be void and both principal and interest refunded to the borrower.

**Mont. Code Ann. §32-5-112.** Deferred deposit loan act passed in 1999. No yet codified. Until this act, the consumer loan act applied which had no interest rate limits.

**Applicability:** To a loan in which the lender accepts a check dated on the date the check is written or dated subsequent to the date on which the check is written and agrees to hold it for a period of days prior to presentment or deposit.

**Exemptions:** Any bank, or other state or federally regulated financial institution; or any retail sellers who cash checks incident to or independent of a sale and who charge no more than \$2 per check for the service.

**Licensing Requirements:** Enforced by the Department of Commerce. Applies to those who make deferred deposit loans and to persons who facilitate, enable, or act as a conduit for persons making these loans. Must pay an application fee of \$375. Department must make certain findings before issuing or renewing a license including that the applicant's financial responsibility, experience, character, and general fitness warrant the belief that the business will be operated lawfully and fairly. Applicant must have unencumbered assets of at least \$25,000 per location and post a bond of \$10,000 per location which must continue in effect for two years after the licensee ceases to operate in the state. The bond must be available to pay to consumers damages for harm caused by violations of the act. Applicant must execute a sworn statement that it will not use the criminal process to collect the payment of deferred deposit loans or use any civil process not generally available to creditors to collect on defaulted loans. The Department shall conduct annual examinations. Licensees must file annual reports and disclose in detail specific information about resources, assets, and liabilities of the licensee; income, expense, gain/loss, and balance sheets; total number of loans and number made and outstanding in the year; minimum and maximum amount of checks that were deferred; total number and dollar amount of returned checks; total number and dollar amount of checks recovered and amount charged off; verification that the lender has note used in collection efforts.

**Loan Terms:** Term cannot exceed 31 days, and amount, exclusive of allowable fees, cannot exceed \$300. Minimum loan amount is \$50. Written loan documents must be provided the consumer. The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

**Disclosures:** Must give a pamphlet prepared by or at the direction of the department that explains the consumer's rights and responsibilities, and includes a telephone number of the department that handles complaints. Must provide written loan agreement that gives identifying information about the lender, an itemization of the fees and interest charges to be paid, a clear description of the consumer's obligations, and a 14-point bold typeface statement informing the consumer that he or she cannot be prosecuted in criminal court for collection of the loan which must be located immediately preceding the consumer's signature.

**Permitted Fees:** Not more than 25 percent of the face amount. Insufficient fund fee cannot exceed \$15 and only one can be collected and is the exclusive form of late fee allowable. May obtain reasonable attorneys' fees and court costs if judgment is entered in favor of the lender.

**Prohibited Acts:** A list of 16 items is enumerated which parallel in many respects

# MONTEZUMA

the model act. Included are threatening or using the criminal process to collect the debt; engaging in unfair, deceptive, or fraudulent practices; entering into a loan where the amount exceeds 25 percent of the consumer's monthly income; making a loan to a consumer who has two or more outstanding deferred deposit loan; in combination with other outstanding loans, making a loan which puts the total over \$300; renewing, repaying, refinancing a deferred deposit loan with the proceeds of another, though a loan may be extended without additional charge; accepting any collateral; charging for insurance; including certain clauses in the loan agreement.

**Enforcement:** The Department may revoke or suspend a license for any violation of the act. A revocation or suspension does not relieve the licensee from civil or criminal liability.

**Private Right of Action:** Any violation of this act constitutes an unfair or deceptive trade practice. Consumer can sue for actual and consequential damages, and statutory damages of \$1,000 per violation plus costs and attorneys' fees. Consumer can also seek injunctive or other equitable relief and bring the case as a class action. Remedies are not intended to be exclusive.

**Criminal/Civil Penalties:** Any person who knowingly violates the act is guilty of a misdemeanor and is subject to a fine of not more than \$1,000 or imprisonment not exceeding six months or both.

**Nebraska Rev. St. §45-901 et seq.**

**Applicability:** To anyone who, for a fee, accepts a check dated on the date it was written and holds it for a period of days prior to deposit or presentment or accepts a check dated subsequent to the date it was written. Otherwise, small loan act applies. Neb. Rev. St. §45-137. (24 percent per year interest rate cap).

**Exemptions:** To any financial institution organized under the law of the state or the U.S.

**Licensing Requirements:** Must disclose any misdemeanors involving the act or felonies, pay a \$300 fee and provide a surety bond of \$50,000; must have assets of at least \$25,000. Bond shall be renewed and refiled annually. A public hearing is held on each application. Enforced by the Department of Banking and Finance.

**Disclosures:** Must conspicuously post the license and conspicuously display a schedule of all fees, charges, and penalties for all services to be provided. At the time of any transaction, lender must provide a notice written in plain English, stating the fee to be charged, the date on which the check will be deposited, and any penalty not to exceed \$15 if the check is not negotiable on the date agreed upon.

**Permitted Fees:** \$15 per \$100 or pro rata for any part of the face amount of the check.

**Prohibited Acts:** Hold more than two checks at any one time from a single borrower; hold checks in an aggregate face amount of more than \$500; hold a check for more than 31 days; accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee.

**Enforcement:** May suspend or revoke a license; issue a cease and desist order; initiate an action in court for an injunction.

**Penalties:** Can impose a fine not to exceed \$500 per violation. Operating without a license is a class IV felony.

**NEBRASKA**

**NEBRASKA**

**Nev. Rev. Stat. §604.010 et seq.** Amended in 1999 to include certain consumer protections listed under the categories *Loan Terms, Permitted Fees, and Prohibited Acts* below. Regulations to be promulgated.

**Applicability:** To check cashers and any person engaged in the business of deferring deposits of checks for a fee, service charge, or other consideration. Otherwise, no usury cap applies. See Nev. Rev. Stat. §675.040.

**Exemptions:** Banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage companies, thrift companies, pawn-brokers, or insurance companies; a licensee to make installment loans; retailers who do not hold themselves out as a check-cashing service and who from time to time cash checks for a fee of not more than \$2, or a corporation that has been continuously and exclusively engaged in a check-cashing service in the state since 7/1/73.

**Registration Requirements:** Application must include information about the financial responsibility, background, experience of applicant; pay \$250 fee; obtain a surety bond payable to the state in the amount of \$50,000 or deposit securities in lieu of a bond. Must renew annually.

**Disclosures:** Prominently display license. Post a notice that states the fees charged for the services in a conspicuous place in every location where business is conducted. Give written notice to each customer of the fees charged to be signed by the customer before any such services are provided.

**Loan Terms:** Must provide written agreement to customer in English to include the identity of the registrant, an itemization of the fees and interest to be paid, disclosures under the Truth In Lending Act, disclosures required under any applicable state law or regulation, and a clear description of the borrower's obligations.

**Permitted Fees:** No maximum. Cannot charge more than \$25 as an insufficient funds fee and cannot charge it more than twice, regardless of the number of times the check is presented for payment. Cannot charge interest upon default that exceeds a rate equal to or less than the prime rate at the largest bank in the state.

**Prohibited Acts:** Cannot charge interest upon default that exceeds a rate equal to or less than the prime rate at the largest bank in the state. Cannot charge more than \$25 as an insufficient funds fee and cannot charge it more than twice, regardless of the number of times the check is presented for payment. Cannot use or threaten to use the criminal process to collect on a deferred deposit check. Cannot make a loan that exceeds one-third of the borrower's expected net monthly income unless justified by particular circumstances. Cannot charge to cash a check representing the proceeds of a deferred deposit. Cannot make more than one loan to the same borrower at one time unless the borrower seeks multiple loans up to not more than one-third of expected net monthly income. Cannot extend the period of repayment to the same borrower beyond 10 weeks after the expiration of the initial loan period. Cannot accept any collateral for the loan. Cannot include in the written contract any hold harmless, confession of judgment, assignment of wages, or waiver of any claim or defense arising under the contract or this act.

## **NEW HAMPSHIRE**

None. Small loan act applies. *N.H. Rev. Stat. Ann. §399-A et seq.* (24 percent per year interest rate cap). Act amended effective 1/1/2000 to allow any charge or interest rate agreed to by the parties to the loan in writing for closed-end loans of \$10,000 or less.

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## **NEW JERSEY**

*N.J. Stat. Ann. §17:15A-47.* Consumer loan act applies but rates as agreed to by contract. N.J. Stat. Ann. tit. 17, §1 et seq. However, criminal law sets the usury cap at 30 percent. N.J. Stat. Ann. §2C: 21-19.

**Prohibited Acts:** A check cashing licensee cannot cash or advance money on a postdated check.

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## **NEW MEXICO**

None. Small loan business act applies but interest rate is that agreed to by contract. *N.M. Stat. Ann. §58-15-1 et seq.*

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## **NEW YORK**

*N.Y. Banking Law §373 (McKinney).* Licensed lender law applies but interest rate is that agreed to by contract. N.Y. Banking Law §340 et seq. However, criminal law sets the usury cap at 25 percent. §190.40 of N.Y. Penal Code.

**Prohibited Acts:** A check casher licensee cannot make loans nor cash or advance any moneys on a postdated check unless it is a payroll check.

# NORTH CAROLINA NORTH DAKOTA

## **NORTH CAROLINA**

*North Carolina Gen Stat. §53-275.*

**Applicability:** To check cashers. For other lenders, the consumer finance act applies. N.C. Gen. Stat. §53-173. (36 percent per year interest rate cap).

**Exemptions:** A bank, savings institution, credit union, or farm credit system organized under the laws of the state or U.S.; retail seller of goods or services who cashes checks from time to time as an incident or independently of a retail sale and does not charge more than \$2.00 for the service.

**Licensing Requirements:** Must file application and pay a \$250 fee and a \$500 investigation fee. Must renew annually and pay the \$250 fee plus a \$50 fee for each branch. Must have and maintain liquid assets of at least \$50,000. Enforced by the Office of Commissioner of Banks.

**Permitted Fees:** Not more than 15 percent of the face amount of the check.

**Prohibited Acts:** Cannot defer deposit for more than 31 days; face amount of check cannot exceed \$300.

**Disclosures:** Must have a written agreement that has been signed by the customer and licensee and contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an APR, and must authorize the licensee to defer deposit until a specific date not to exceed 31 days; cannot accept repayment by the proceeds of another check cashed by the same licensee or any affiliate. Cannot, for any consideration, renew or extend the postdated check beyond the due date; engage in unfair, deceptive, or fraudulent practices.

**Enforcement:** Can suspend or revoke the license; issue cease and desist order.

**Penalties:** Can impose civil penalties not to exceed \$1,000 per violation. Failure to obtain a license is a class I felony.

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## **NORTH DAKOTA**

Consumer finance companies act applies. *N.D. Cent. Code §13-03.1-5.1(1)* (30 percent for loans under \$250 and 24 percent for loans from \$250-\$500).

**Ohio Rev. Code Ann. §1315.35 et seq.**

**Applicability:** To check cashers. Otherwise, small loan law applies. Ohio Rev. Code Ann. §1321.01 *et seq.* (28 percent per year interest rate cap).

**Licensing Requirements:** Must apply and pay \$200 investigative fee and \$500 application fee. Applicant must show financial responsibility, experience, reputation, general fitness, and net worth of not less than \$100,000. Enforced by Superintendent of Financial Institutions.

**Permitted Fees:** Interest at five percent per month. Unearned interest shall not be deducted from the proceeds of the loan or paid in advance. Interest must be computed on the unpaid balance and shall not be compounded. Must refund unearned interest if loan is paid in full after the first month. May charge loan origination fees not exceeding \$5 per \$50 of the amount of the loan; check collection charges not exceeding \$20 plus any amount passed on by the financial institution.

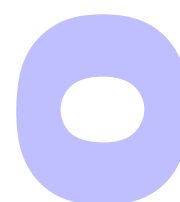
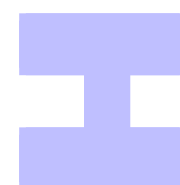
**Disclosures:** Must post license conspicuously in the place of business. Loan contract must be in writing and disclose the total amount of fees and charges; the rate of interest calculated as an APR based on the sum of the principal of the loan and the loan origination fee, check collection charge, and all other fees or charges contracted for; the total amount of each payment; when each is due and the total number of payments that the borrower will be required to make under the contract; a statement in boldface type of at least 10-point size stating: "WARNING: The rate of interest charged on this loan is higher than the average rate of interest charged by financial institutions on substantially similar loans;" and that the loan is not being made to a borrower for the purposes of retiring an existing loan between the check cashing business and that borrower made under this act.

**Loan Terms:** Total amount of loan cannot exceed \$500 and duration cannot exceed 6 months. Loan contract must be in writing and disclose in a clear and conspicuous manner the total amount of fees and charges, the APR, the payment schedule, and a warning that the rate of interest on the loan is higher than the average rate of interest charged by financial institutions on substantially similar loans.

**Prohibited Acts:** Refinancing loans made under this act with another such loan. Making loans in excess of \$500 or with a term longer than 6 months. Cannot charge check collection fee unless contracted for in the written agreement. Cannot make a loan if there exists an outstanding loan between the check cashing business and the borrower made under this act.

**Enforcement:** May suspend or revoke a license for certain reasons.

**Private Right of Actions:** A violation of this act constitutes an unfair or deceptive act or practice. A borrower injured by the violation shall have a cause of action and may obtain the same relief as under the Unfair and Deceptive Acts and Practices (UDAP) statute.



# OKLAHOMA, OREGON PENNSYLVANIA, PUERTO RICO RHODE ISLAND

## **OKLAHOMA**

*Okla. Stat. tit. 14A, §3-508B* (prohibits the making of loans with a maximum term of less than 60 days). (30 percent per year interest rate cap).

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## **OREGON**

None. Consumer finance act applies but interest rate is that agreed upon in contract. *Or. Rev. Stat. §725.340*.

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## **PENNSYLVANIA**

None. Check cashers are specifically prohibited from making payday loans under *Check Cashing Licensing Act of 1998, §505(a)*. Otherwise, consumer discount company act applies. 7 Pa. Cons Stat. Ann. §6201 *et seq.* (\$9.50 per \$100 per year).

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## **PUERTO RICO**

None. Small loan act applies. *P.R. Laws Ann. §10-942 et seq.* (25 percent interest rate cap but can be set by Finance Board).

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## **RHODE ISLAND**

None. Small loan act applies. *R.I. Gen. Laws §19-14.2-1 et seq.* (36 percent per year interest rate cap).

## **SOUTH CAROLINA**

*S.C. Code Ann. §34-39-110 et seq.*

**Applicability:** To a transaction pursuant to a written agreement which in exchange for a fee involves accepting a check dated on the date it was written and holding it for a period of time before presentment for payment/deposit. Otherwise, consumer finance law applies. S.C. Code Ann. §34-29-140. (\$25/\$100/year).

**Exemptions:** Bank, savings institution, credit union, or farm credit system organized under the laws of the U.S. or any state; a person engaged in the retail sale of goods or services who from time to time cashes checks, drafts, or money orders without a fee.

**Licensing Requirements:** State Board of Financial Institutions enforces. Must submit application, pay an application fee of \$250 and an investigative fee of \$500. Must be renewed annually. Must show a minimum net worth of at least \$25,000 for the operation of each location and must show financial responsibility, character, experience, and general fitness.

**Permitted Fees:** Not more than 15 percent of face amount of the check and can be imposed only once. Returned check charge not to exceed the lesser of \$10 or the fee imposed by the financial institution.

**Loan Terms:** May defer presentment of the check for no more than 31 days. Face amount of a check may not exceed \$300 exclusive fee allowable fees.

**Prohibited Acts:** A check accepted for deferred presentment may not be repaid from the proceeds of another check accepted for deferred presentment by the same licensee or an affiliate. Also cannot renew or otherwise extend presentment for a period beyond the time set forth in the written agreement. Cannot pursue criminal charges for bad checks, only civil remedies. Cannot engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct. Cannot accept an undated or postdated check.

**Disclosures:** Must conspicuously post the license and a notice stating the fee charged for services, and shall file the statement of fees with the board. Must have a written agreement signed by both the customer and licensee which includes a statement of the total amount of fees charged, expressed both as a dollar amount and as an APR, and must expressly authorize deferment of the check until a specific date. Must also give state and federal truth-in-lending disclosure form before consummation.

**Enforcement Actions:** Can suspend or revoke the license or issue a cease or desist order.

**Penalties:** Can impose a fine of up to \$2,000 per violation. Failure to obtain a license is a misdemeanor.

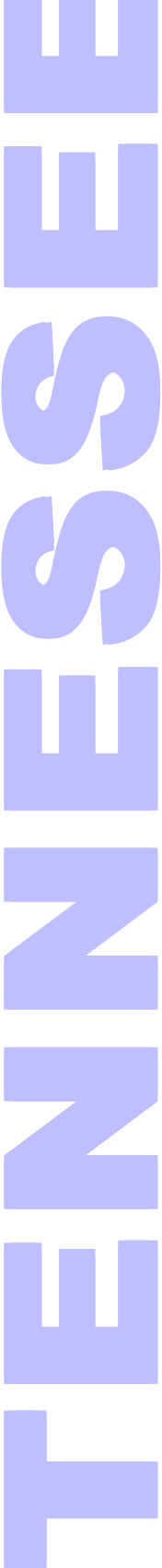
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## **SOUTH DAKOTA**

None. Small loan act repealed in 1998 (but it did not have an interest cap).

SOUTH CAROLINA,  
SOUTH DAKOTA,

## TENNESSEE



*Tenn. Code Ann. §45-17-101 et seq.*

**Applicability:** To a person who holds a check for a period of time prior to presentment for deposit. Otherwise, industrial loan and thrift companies act applies. Tenn. Code Ann. §45-5-302. (24 percent per year interest rate cap).

**Licensing Requirements:** Department of Financial Institutions enforces. Must show net worth of at least \$25,000 and record of any person owning more than five percent of the company regarding any criminal activity or other act of dishonesty, or other act which constitutes a breach of fiduciary duty. Must pay a filing fee of \$500 per location and produce a financial statement. Must renew annually.

**Permitted Fees:** Not more than 15 percent of face amount of check or \$30 which shall not be deemed interest for any purpose.

**Prohibited Acts:** Cannot prosecute a customer for a returned check. Cannot alter or delete the date on any check or accept an undated or postdated check. Cannot engage in unfair or deceptive acts, practices or advertising. Cannot make a deferred presentment loan to any customer who, upon inquiry by the licensee (and customer must state in writing), has no more than two checks outstanding to any licensee that equal or exceed \$500. If the two checks do not equal \$500, can make a loan which, when combined with the others, does not exceed the total of \$500. In no event can a licensee make a loan to a customer who has three or more such loans outstanding. Cannot renew or otherwise consolidate one such transaction into another and, if so, the transaction is void and unenforceable.

**Disclosure:** Must conspicuously post the license. Must give the customer a written explanation in clear, understandable language, of the fees to be charged and the date on which the check will be deposited prior to consummation. Must give Truth in Lending Act (TILA) disclosures before consummation. Must ensure that customer receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all fees and other costs.

**Loan Terms:** Must be in writing and signed by borrower. Deferred date can be no longer than 31 days. Must provide a written explanation in clear, understandable language, of the fees to be charged and the date on which the check will be deposited prior to consummation and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all fees and other costs.

**Civil/Criminal Penalties:** Specifically exempts businesses regulated under this act from the applicability of other acts.

**Enforcement:** May revoke or suspend the license for particular reasons. Can issue cease and desist orders and fine up to \$1,000 for each transaction in violation of this act.

**7 Tex. Admin. Code §1.605 et seq.** (effective June 16, 2000)

**TEXAS**

**Applicability:** To payday loan or deferred presentment transaction defined to be a cash advance made in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account in the amount of the advance plus a fee and where the parties agree that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited until a designated future date.

**Exemptions:** None listed.

**Licensing Requirements:** Same as other lenders under Tex. Finance Code Ann. §342.

**Permitted Charges:** On a cash advance of less than \$30, an acquisition charge that is not more than \$1 for each \$5 of the cash advance.

On a cash advance equal to or more than \$30 but not more than \$100, an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance and an installment account handling charge that is not more than \$3 per month if the cash advance is not more than \$35, \$3.50 a month if the cash advance is more than \$35 but not more than \$70, or \$4 a month if the cash advance is more than \$70.

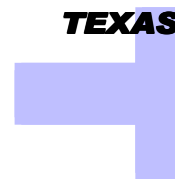
On a cash advance of more than \$100, an acquisition charge that is not more than \$10; and an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

**Disclosures:** Must post a notice of the fee schedule; must reduce agreement to writing containing the name of the licensee, the transaction date, the amount of the check, a statement of the total amount charged (expressed as both a dollar amount and as an annual percentage rate, and the earliest date on which the check may be deposited. The agreement must also contain the name and address of the Office of the Consumer Credit Commissioner and the telephone of the consumer helpline and a notice that states:

*This cash advance is not intended to meet long-term financial needs. This loan should only be used to meet immediate short-term cash needs. Renewing the loan rather than paying the debt in full when due will require the payment of additional charges.*

**Prohibited Acts:** The lender cannot make more than one loan to a consumer or to a husband and wife for the purpose of obtaining an amount of interest greater than the amount of interest otherwise allowed. Lender cannot pursue criminal charges to collect on the debt. Lender cannot renew a loan and collect an acquisition charge more than once per month.

**Loan Terms:** Term of payday loan cannot be for less than seven days nor for more than 31 days.



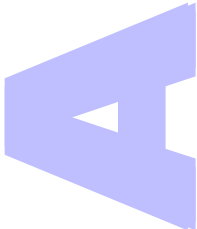


## UTAH

**Check Cashing Registration Act, S.B. 57**, to be codified as *Utah Code Ann. §7-23-101 et seq.*

**Applicability:** To a check casher who provides the maker of a check an amount of money equal to the face value of the check minus any fee or interest charged for the loan and agrees not to cash the check until a specified date.

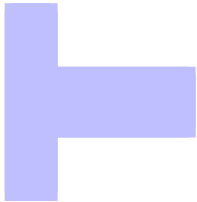
**Exemptions:** Any depository or depository holding institution or any institution controlled by a depository or depository holding institution or a person who cashes a check in a transaction that is incidental to the retail sale of goods and charges no more than one percent of the amount of the check or \$1.



**Registration Requirements:** A department enforces but the act itself does not name the agency. It is given the authority to make rules and regulations. Must register by July 1, 1999, pay a registration fee (unspecified in the act), provide certain identifying information about the registrant, and disclose whether the registrant has been convicted of or been subject to any injunction, administrative order, or judgment regarding any crime involving moral turpitude. Must renew annually.

**Permitted Fees:** No caps specified.

**Prohibited Acts:** Cannot make a deferred deposit loan unless registered and must be a check casher to make such loans under this act. Cannot operate a mobile operation. Cannot roll over (defined as the extension or renewal of the term of the loan) a loan for terms totaling more than 12 weeks.



**Disclosure:** Must conspicuously post a complete schedule of interest or fees in dollar amounts, and the number a person can call to make complaints. Must give the customer a written contract and orally review the terms of the contract which must contain Truth In Lending disclosures, the amount of any interest and fee, and the date on which the full amount is due. Must also comply with Title 70C of the Utah Consumer Credit Code.

**Loan Terms:** Must be in writing; customer must be given a copy.

**Civil/Criminal Penalties:** Violation of the act is a class B misdemeanor. Act does not limit any civil liability that may exist against a check casher.

**Enforcement:** May revoke the registration. Can issue cease and desist orders.



## **VERMONT**

None. Small loan act applies. *Vt. Stat. Ann. tit. 8 §2230*. (18 percent per year interest rate cap).

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## **VIRGIN ISLANDS**

None. Small loan act applies. *V.I. Code Ann. tit. 9 §182 et seq.* (26 percent per year interest rate cap).

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## **VIRGINIA**

None. Consumer finance act applies. *Va. Code Ann. §6.1-272.1*. (36 percent per year interest rate cap). *Va. Code Ann. §6.1-432 et seq.* Check cashers are specifically prohibited from cashing post dated items, other than government or payroll checks.

VERMONT, VIRGIN ISLANDS,  
VIRGINIA

## WASHINGTON

*Wash. Rev. Code §31.45.010 et seq.*

**Applicability:** To check cashers who make small loans of up to \$500 for a period of 31 days or less. Otherwise, the consumer loan act applies. Wash. Rev. Code §31.04.101 *et seq.* (25 percent per year interest rate cap plus four percent loan fee).

**Exemptions:** Any bank, trust company, savings bank, savings and loan association, or credit union and others who cash checks as a convenience and as a minor part of its customary business and not for profit.

**Licensing Requirements:** Must pay a fee set by regulation; post a surety bond payable to the state, and bond shall be liable for damages suffered by the borrower as a result of a licensee's violation. Check cashers must specially apply for a small loan endorsement to make these loans. Must pay annual assessment fee. Enforced by the Department of Financial Institutions.

**Permitted Charges:** May charge interest and fees that in the aggregate do not exceed 15 percent of the principal amount borrowed. The Director may adopt rules that exempt certain fees from this cap.

**Disclosures:** Must conspicuously post license in business. Must also conspicuously post a schedule of fees and charges for fees and charges.

**Prohibited Acts:** A person cannot cash or advance any moneys on a postdated check in excess of the amount of services purchased, without first obtaining a small loan endorsement.

**Loan Terms:** A licensee may advance moneys on the security of a postdated check, provided that the time period between the date the loan is granted and the date of the postdated check does not exceed 31 days.

**Enforcement:** Director may serve charges upon a licensee in a civil action if the licensee is engaging in unsound practice. Any violation of the law is a misdemeanor.

**Private Right of Action:** Any violation of the act is an unfair and deceptive act or practice and remedies that are available under the Unfair Deceptive Acts and Practices statute apply.

## **WEST VIRGINIA**

None. Small loan act applies. *W.Va. Code §46A-4-107*. (31 percent per year interest rate cap). *W. Va. Code §32A-3-1 et seq.* Check cashers are specifically prohibited from making payday loans. If a person has violated these provisions, the maker has a cause of action to recover from that person the amount of the check, plus a civil penalty of between \$100 and \$1,000.

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## **WISCONSIN**

None. Small loan act applies but interest rate cap was removed. *Wis. Stat. §138.09(7)(bp)*.

WEST VIRGINIA,  
WISCONSIN

## WYOMING

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*Wyo. Stat. Ann. §40-14-362 et seq.*

**Applicability:** To a postdated check casher, who is a person engaged in the business of lending money by means of postdated check transactions or similar arrangements. Otherwise, UCCC applies. (36 percent per year interest rate cap).

**Licensing Requirements:** Must get a license and pay fee of \$500.

**Permitted Fees:** No greater than \$30 or 20 percent per month interest on the principal balance of the check. Finance charges are fully earned on the day the arrangement is made.

**Prohibited Acts:** A person cannot engage in business as a postdated check casher unless he is licensed. A postdated check cannot be repaid, refinanced, or otherwise consolidated by proceeds of another postdated check accepted by the same postdated check casher.

**Loan Terms:** Maximum term is one calendar month.

**APPENDIX B:  
SURVEY OF STATE PAYDAY LOAN LAWS**

### Survey of Deferred Deposit or "Payday" Loan State Laws

States and Jurisdictions	Legal Status of Payday Lending in the State			
	Authorized under payday loan law	Permitted <sup>2</sup> under small loan act	Check Cashers prohibited from accepting postdated checks	Prohibited <sup>3</sup>
Alabama				X
Alaska				X
Arizona	X			
Arkansas	X <sup>1</sup>			
California	X <sup>1</sup>			
Colorado	X			
Connecticut				X
Delaware		X	X	
District of Columbia	X <sup>1</sup>			
Florida	X <sup>1</sup>			
Georgia				X
Hawaii	X <sup>1</sup>			
Idaho		X		
Illinois		X		
Indiana		X		
Iowa	X			
Kansas	X			
Kentucky	X			
Louisiana	X			
Maine			X	X
Maryland				X
Massachusetts				X
Michigan				X
Minnesota	X			
Mississippi	X <sup>1</sup>			
Missouri	X			
Montana	X			
Nebraska	X			
Nevada	X			
New Hampshire				X
New Jersey			X	X
New Mexico		X		
New York			X	X
North Carolina	X <sup>1</sup>			
North Dakota				X
Ohio	X <sup>1</sup>			
Oklahoma				X <sup>4</sup>
Oregon		X		
Pennsylvania			X	X
Puerto Rico				X
Rhode Island				X
South Carolina	X			
South Dakota		X		
Tennessee	X			
Texas	X			
Utah	X <sup>1</sup>			
Vermont				X
Virgin Islands				X
Virginia			X	X
Washington	X			
West Virginia			X	X
Wisconsin		X		
Wyoming	X			

## Survey of Deferred Deposit or "Payday" Loan State Laws

States and Jurisdictions	Qualifications for Lender		
	Licensing(L)/ Registration(R)	Bond	Net Assets/Worth
Alabama			
Alaska			
Arizona	L		\$50,000
Arkansas	R	\$20,000	\$20,000
California	R		
Colorado	L		
Connecticut			
Delaware			
District of Columbia	L	\$5,000	\$25,000
Florida	R	up to \$250,000	
Georgia			
Hawaii			
Idaho			
Illinois			
Indiana			
Iowa	L	\$25,000	\$25,000
Kansas	L		
Kentucky	L	\$50,000 - \$200,000	
Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota	L		\$50,000
Mississippi	L	\$10,000	\$20,000
Missouri	R		
Montana	L	\$10,000	\$25,000
Nebraska	L	\$50,000	\$25,000
Nevada	R	\$50,000	
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina	L		\$50,000
North Dakota			
Ohio	L		\$100,000
Oklahoma			
Oregon			
Pennsylvania			
Puerto Rico			
Rhode Island			
South Carolina	L		\$25,000
South Dakota			
Tennessee	L		\$25,000
Texas	L		
Utah	R		
Vermont			
Virgin Islands			
Virginia			
Washington	L		
West Virginia			
Wisconsin			
Wyoming	L		

## Survey of Deferred Deposit or "Payday" Loan State Laws

States and Jurisdictions	Loan Terms and Conditions		
	Maximum Term <sup>5</sup> Days/Amt	Maximum Interest Rate/Fees	Small Loan or Criminal Law APR on \$200 Loan
Alabama			36%
Alaska			36%
Arizona	/ \$500	15% <sup>6</sup>	36%
Arkansas	31/ \$400	up to \$15 + 10% <sup>6</sup>	17%
California	30/ \$300	15% <sup>6</sup>	30%
Colorado	40/ \$500	20% up to \$300 + 7.5% of excess	36%
Connecticut			28.52% <sup>10</sup>
Delaware			No Cap
District of Columbia	31/ \$1,000	10% <sup>7</sup>	24%
Florida		10% or \$5 <sup>7</sup>	30%
Georgia			57.68% <sup>10</sup>
Hawaii	31/ \$300	15% <sup>6</sup>	24%
Idaho			No Cap
Illinois			No Cap
Indiana			36% or \$33
Iowa	/ \$500	\$15/ \$100 <sup>8</sup>	36%
Kansas	30/ \$780	scale of fees	36%
Kentucky	60/ \$500	\$15/ \$100/ 14 days	42.45% <sup>10</sup>
Louisiana	30/ \$300	16.75% up to \$45	36%
Maine			30%
Maryland			33%
Massachusetts			39.86% <sup>10</sup>
Michigan			25%
Minnesota	30/ \$350	scale of fees	33%
Mississippi	30/ \$400	18% <sup>6</sup>	36%
Missouri	10 mos/ \$500	\$15/ \$100	No Cap
Montana	31/ \$300+	25% <sup>6</sup>	No Cap
Nebraska	31/ \$500	15/ \$100	24%
Nevada		see footnote 9	No Cap
New Hampshire			24%
New Jersey			30%
New Mexico			No Cap
New York			25%
North Carolina	31/ \$300	15%	36%
North Dakota			30%
Ohio	6 mos/ \$500	5% per month <sup>7</sup>	28%
Oklahoma			30%
Oregon			No Cap
Pennsylvania			23.57% <sup>10</sup>
Puerto Rico			25%
Rhode Island			36%
South Carolina	31/ \$300	15% <sup>6</sup>	54.67% <sup>10</sup>
South Dakota			No Cap
Tennessee	31/ \$500	15% or \$30	67.34% <sup>10</sup>
Texas	31/	\$10 + \$4/ \$100	31.65% <sup>10</sup>
Utah	No Limit	No Cap	No Cap
Vermont			24%
Virgin Islands			26%
Virginia			36%
Washington	31/ \$500	15% <sup>7</sup>	32.66% <sup>10</sup>
West Virginia			31%
Wisconsin			No Cap
Wyoming	30	\$30 or 20%/month	36%

## Survey of Deferred Deposit or "Payday" Loan State Laws

States and Jurisdictions	Disclosure Requirements		
	Posting of Fees Required	Truth in Lending Act (TILA) Disclosure Required By State Law	Written Agreement/Notice Required
Alabama			
Alaska			
Arizona	Yes	Yes	Yes
Arkansas	Yes	No	Yes
California	No	No	Yes
Colorado	Yes	Yes	Yes
Connecticut			
Delaware			
District of Columbia	Yes	No	No
Florida	Yes	No	No
Georgia			
Hawaii	Yes	No	Yes
Idaho			
Illinois			
Indiana			Yes
Iowa	Yes	No	No
Kansas	No	No	Yes
Kentucky	Yes	Yes	No
Louisiana	Yes	No	
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota	Yes	No	Yes
Mississippi	Yes	No	Yes
Missouri	No	No	No
Montana	No		Yes
Nebraska	Yes	No	Yes
Nevada	Yes	Yes	Yes
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina	No	No	Yes
North Dakota			
Ohio	Yes	No	Yes
Oklahoma			
Oregon			
Pennsylvania			
Puerto Rico			
Rhode Island			
South Carolina	Yes	Yes	Yes
South Dakota			
Tennessee	No	Yes	Yes
Texas	Yes	No	Yes
Utah	Yes	Yes	Yes
Vermont			
Virgin Islands			
Virginia			
Washington	Yes	No	No
West Virginia			
Wisconsin			
Wyoming	No	Yes	Yes

## Survey of Deferred Deposit or "Payday" Loan State Laws

### Endnotes

States and Jurisdictions	Loan Terms and Conditions		Penalties		
	Rollover/ Refinancing Prohibited	Maximum Number of Outstanding Loans at One Time	Penalties <sup>11</sup> Included	Private Right of Action <sup>12</sup>	
Alabama					<sup>1</sup> Applies to check cashers only  <sup>2</sup> Payday loans permitted in the state because the Small Loan Act does not cap interest rates on fees. However, other provisions of the small loan law apply.
Alaska					
Arizona	No	One	CR	NS	<sup>3</sup> Prohibited except under restricted conditions and usury caps apply. See "Small Loan APR column."
Arkansas	Yes	One	CR/CV	Yes	
California	No	One	CR/CV	Yes	<sup>4</sup> Authorized under Small Loan Act only for loans of \$100 or less. Loans greater than \$100 have a minimum term of 60 days which effectively prohibits short-term lending.
Colorado	No <sup>13</sup>	Up to \$500/license	Yes	Yes	
Connecticut					<sup>5</sup> Term is in days unless otherwise specified.
Delaware					
District of Columbia	No	No Limit	Yes	NS	<sup>6</sup> Percentage of face amount of the check.
Florida	No	No Limit	No	NS	
Georgia					<sup>7</sup> Percentage of face amount of the check. Other fees are permitted.
Hawaii	No	One	CR	Yes	
Idaho					<sup>8</sup> Maximum fee of \$15 on first \$100 borrowed. \$10 or pro rata amount on remaining increments of \$100
Illinois					
Indiana					<sup>9</sup> Maximum interest and fees to be set by regulation.
Iowa	Yes	Two	CR/CV	NS	
Kansas	Yes	No Limit	CR/CV	Yes	<sup>10</sup> Effective Annual Percentage Rate (APR) on a small loan of \$200 for a term of 1 year (APR includes allowable fees)
Kentucky	No	Two	CV	NS	
Louisiana	Yes	No Limit	CR/CV	NS	<sup>11</sup> CR means criminal. CV means civil fines, suspension or revocation of license; or cease and desist order.
Maine					
Maryland					<sup>12</sup> NS means "none specified".
Massachusetts					
Michigan					<sup>13</sup> Allowed once.
Minnesota	Yes	No Limit	CR/CV	Yes	
Mississippi	No	No Limit	CR/CV	NS	<sup>14</sup> Allowed but under limited circumstances.
Missouri	No	No Limit	CV	NS	
Montana	Yes	Two	CR/CV	Yes	
Nebraska	No	Two	CR/CV	NS	
Nevada	No	No Limit	No	NS	
New Hampshire					
New Jersey					
New Mexico					
New York					
North Carolina	Yes	No Limit	CR/CV	NS	
North Dakota					
Ohio	Yes		CR/CV	Yes	
Oklahoma					
Oregon					
Pennsylvania					
Puerto Rico					
Rhode Island					
South Carolina	Yes	No Limit	CR/CV	NS	
South Dakota		Three	CV	NS	
Tennessee	Yes				
Texas	No <sup>14</sup>	No Limit		NS	
Utah	No	No Limit	CR/CV	NS	
Vermont					
Virgin Islands					
Virginia					
Washington	Yes	No Limit	CR/CV	Yes	
West Virginia					
Wisconsin					
Wyoming	Yes	No Limit	CR/CV	Yes	

## Notes