



Consumer Federation of America

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States Grant Payday Lenders a Safe Harbor from Usury Laws

CFA Calls on Congress to Close the National Bank Loophole for Payday Lending

Washington, D.C. Almost half the states have granted safe harbor from credit laws for companies that provide cold cash for “hot” checks as the booming payday loan business spreads across the country, according to a report released today by Consumer Federation of America.¹ And, in states that have held the line on usurious lending, payday lenders are partnering with banks and thrifts to evade state small loan and usury laws.

“States from Hawaii to North Carolina now condone interest rates that would violate criminal laws in New York or New Jersey,” stated Jean Ann Fox, Director of Consumer Protection for Consumer Federation of America. “Consumers can be charged legal interest rates for payday loans ranging from 390% annual percentage rate to 891% for a typical two-week loan.”

Payday loans are single-payment, short-term loans based on personal checks held for future deposit or on electronic access to personal checking accounts. In a typical transaction, a consumer writes a check for \$117.65 to borrow \$100 cash, with the total amount due by next payday or in up to 14 days. The \$17.65 finance charge computes to a 459% annual percentage rate, the standard cost comparison for all forms of consumer lending required by the federal Truth in Lending Act.

Payday Lending Rakes It In

Over 6,000 payday loan outlets are operating and one trade group representative projects over \$2 billion in payday loan revenue by next year. The Tennessee Department of Financial Institutions reported to its legislature that licensed payday lenders earned over 30% return on investment in the first nine months of legal operation. Stephens Inc., a Little Rock company, forecasts a potential mature market for 24,000 stores generating \$6 billion in fees annually and reports that a typical store generates 48% unleveraged return on investment.

¹ This report updates legal developments in payday lending earlier described in “The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry,” issued by CFA in 1998, available at www.stateandlocal.org/loanshar.html

State Legislatures Grapple with Payday Lending

Twenty-three states and the District of Columbia have now enacted laws or regulations that exempt payday loan companies from small loan or usury law interest rate limits. Another seven states have no usury limits at all, while Indiana's minimum finance charge of \$33 per loan makes small payday loans lucrative. Nineteen states have kept usury and/or small loan rate cap laws that prevent triple-digit interest rate loans.

At 1999 state legislative sessions, payday lenders won legal status in Hawaii and Arkansas while industry bills failed to pass in Arizona, Texas, Georgia, Florida, Alabama, and Virginia. Utah set no limit on payday loan fees while Montana set the highest rate in the country of \$33.50 per \$100 borrowed or 871% APR. Louisiana, Mississippi, and Nevada amended existing payday loan laws to add consumer protections. Bills based on a model payday loan law drafted by the National Consumer Law Center and CFA are pending in California and Kansas. Two states, Illinois and New Mexico, are studying the high-cost short-term loan issue.

Courts Find That Payday Loans Are Credit, Not Check Cashing

State and federal court decisions consistently find that payday loan transactions are credit transactions. Most recently the Kentucky Supreme Court refused to rehear a case in which it ruled that the deferred deposit business was not "check cashing" and was not exempt from usury laws and credit disclosures. A Tennessee federal judge found that E-Z Check Cashing's "deferred check-cashing transactions" were consumer loans.

In settling one of three 1999 cases against payday lenders in Pennsylvania, the Attorney General charged that the JB's Cash Advance characterization of the transaction as check cashing constituted an unfair or deceptive act or practice. The Texas Attorney General has filed against three companies using a variety of guises to hide usurious payday lending. One company, Cash Today, claims to sell personal advertising to customers who leave personal checks in exchange for cash. Cash Today charges \$33 to borrow \$100 for two weeks.

Payday Lenders Use Bank Charters to Evade State Laws

Check cashers are partnering with banks or thrifts in the payday loan market. One industry analyst noted: "...we see a trend afoot to utilize some sort of national bank charter lending program to permit the product in states that are unwilling to act on legislation to allow the product." As states step up efforts to protect consumers from high-cost loans, lenders are turning to banks in an attempt to escape state laws.

The legal theory underlying the use of national banks to make payday loans is "exportation." As currently interpreted, a 1978 Supreme Court decision is being used to argue that banks with certain kinds of privileged charters are able to ignore the usury laws in the borrower's home state. By chartering the bank in a deregulated state, the bank claims the right to export its home state's lack of regulation all across the country irrespective of whether their practices would be illegal for payday lenders in the borrower's home state.

CFA and other consumer and community groups wrote the Comptroller of the Currency to protest the “Satisfactory” CRA rating given to Eagle National Bank which made a third of its profits last year on its “Cash Til Payday” loans marketed through the Dollar Financial Group chain of check cashers. The Eagle/DFG deal is also under challenge in a national class action lawsuit filed in California. The *Phanco* case alleges that Eagle National Bank “rented” its bank charter to allow DFG to circumvent otherwise applicable state law restrictions.

National Cash Advance is using Crusader Savings Bank to make payday loans in Pennsylvania, an arrangement condoned by the Attorney General in a voluntary settlement of charges that payday loans made directly by National Cash Advance violated the Pennsylvania Consumer Finance Act. A new bank has applied for a Delaware charter to offer electronic bank accounts, including payday loans at 200% APR based on anticipated deposit of Social Security benefits.

“Congress should put a stop to using national bank charters to evade state consumer protection laws,” Ms. Fox stated. “Banks should not be in the business, directly or indirectly, of inducing bank customers to write bad checks to borrow money at loan-shark rates.”

CFA Recommendations

- States should retain and enforce small loan rate cap and usury laws to protect consumers from exorbitant small loan rates.
- States that have already legalized payday lending, at a minimum, should lower permissible rates and strengthen consumer protections based on the CFA/NCLC Model Act.
- Congress should stop the use of bank charters to evade state credit laws, by prohibiting bank loans based on personal checks or by enacting H.R. 1684 which requires banks to comply with the payday loan laws of the consumer’s home state.

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Printed copies of the CFA report are available, free to the press, \$10 to others who write to CFA Safe Harbor for Usury Report, 1424 16th Street, NW, Washington, DC 20036. The report is available on-line at www.consumerfed.org.

CFA is a non-profit association of some 260 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

Status of State/Territory Payday Loan Law

States with specific payday loan laws or regulations that permit payday loans

Arkansas	California	Colorado
Florida ²	Hawaii	Iowa
Kansas	Kentucky	Louisiana(amendment effective 1/1/0)
Minnesota	Mississippi	Missouri
Montana	Nebraska	Nevada
North Carolina	Ohio	Oklahoma ³
South Carolina	Tennessee	Utah
Washington	Wyoming	
District of Columbia		

States that prohibit payday loans due to small loan interest rate caps, usury law, and/or specific prohibitions for check cashers

Alabama ⁴	Alaska	Arizona
Connecticut	Georgia	Maine
Maryland	Massachusetts	Michigan ⁵
New Hampshire ⁶	New Jersey	New York
North Dakota	Pennsylvania	Puerto Rico
Rhode Island	Texas	Vermont
Virginia	Virgin Islands	West Virginia

States that permit payday loans: no small loan rate cap or usury limit / min. finance charge

Delaware	Idaho	Indiana ⁷
Illinois	New Mexico	Oregon
South Dakota	Wisconsin	

² Florida money transmitter regulations permit cashing post-dated checks at same fee as cashing personal checks. Roll-overs or extensions of loans violate Florida usury and/or consumer finance act.

³ Oklahoma permits loans of under \$101.97 as single-pay one-month loans. Any loans for \$102 or more have a minimum term of 60 days.

⁴ Loans currently permitted under terms of court injunction in case pending between Alabama Banking Department and the Alabama Check Cashers Association. Legislation to authorize payday lending failed at the 1999 session of the Alabama legislature.

⁵ Michigan Financial Institutions Bureau has stated that companies are not required to be licensed under the Regulatory Loan Act if they charge no more than 5% per annum interest plus the check casher's fee for cashing personal checks. Check cashing rates are not regulated in Michigan.

⁶ Effective 1/1/0, New Hampshire interest rate cap is repealed, making New Hampshire a state permitting payday loans by licensed lenders.

⁷ Indiana has minimum \$33 finance charge in uniform consumer credit code.

Source: Consumer Federation of America September, 1999

Appendix A

Maximum Cost and Terms in States That Authorize Payday Loans

State	Min./Max Term	Min/Max Loan	Maximum Fee %/\$	Cost/ \$100	Effective APR ⁸ 14 day	Max \$
AR Check Cashers Act of 1999 (not yet codified)	6/31 days	- /\$400 ck	10% + \$10	\$21	546%	\$54
CA Cal. Civ. Code § 1789.30 <i>et seq.</i>	-/30 days	- /\$300 ck	15% of ck	\$17.65	459%	\$52.95
CO Colo. Rev. Stat. § 5-3-501 <i>et seq.</i> And 4 Colo. Code Regs. § 902-1 (Rule 7)	NA	-\$500 ck	\$25	\$25	650%	\$25
FL ⁹ Fla. Stat. Ann. § 560.201 <i>et seq.</i> ; Fla. Admin. Code Ann. R. 3C-560.101 <i>et. seq.</i>	NA	NA	10% + \$5	\$16.10	419%	NA
HI Check Casher Act, H. B. 460 (not yet codified)	-/31 days	- /\$300 ck	15% of ck	\$17.65	459%	\$52.95
IO Iowa Code § 13-533D	-/31 days	- /\$500 ck	\$15 1 st \$100 \$10/\$100 additional	\$17.65	459%	\$73.15
KS Kan. Stat. Ann. § 16a-2-404	-/30 days	-\$860	Scale of fees ¹⁰	\$15	390%	\$56.60
KY Ky. Rev. Stat. Ann. § 368.010 <i>et seq.</i>	14/60 days	-\$500 ck	\$15/\$100 ck	\$17.65	459%	\$75
LA La. Rev. Stat. Ann. § 9:3577.1 <i>et seq.</i> as amended 1999. Amendments effective 1/1/2000. ¹¹	-/30 days	-\$350 loan	16.75% ck	\$20	520%	\$45
MN Minn. Stat. Ann. § 47.60 <i>et seq.</i>	-/30 days	-\$350 loan	Scale of fees ¹²	\$15	390%	\$26
MS Miss. Code Ann. § 75-67-501 <i>et seq. as amended 1999</i>	-/30 days	-\$400 ck	18% ck	\$22	572%	\$88

⁸ Approximate APR without compounding

⁹ Florida money transmitter regulations permit cashing post-dated checks at same fee as cashing personal checks. Roll-overs or extensions of loans violate Florida usury and/or consumer finance act.

¹⁰ Kansas fees: \$5.50 for loans \$0 to \$50, 10% of loans + \$5 for \$50 to \$100, 7% + \$5 for \$100 to \$250, 6% + \$5 for \$250 - \$300

¹¹ Louisiana: Current cost is \$25 per \$100 borrowed, with a maximum fee of \$40. A \$100 14-day loan costs 650% APR.

¹² Minnesota fees: \$5.50 for loans \$0 to \$50, 10% + \$5 for loans \$50 - \$100, 7% + \$5 loans \$100 - \$250, 6% + \$5 for loans \$250 - \$350

State	Min./Max Term	Min/Max Loan	Maximum Fee %/\$	Cost/ \$100	Effective APR¹³ 14 day	Max \$
MO Mo. Rev. Stat. § 408.500; 4 Mo. Code Reg. 140-11.010 <i>et seq.</i>	14 days/10 mon.	-\$500 loan	\$15 per \$100	\$15	390%	\$45
MT Deferred Deposit Loan Act enacted 1999 (Not yet codified)	-/31 days	\$50/\$300 loan	25% ck	\$33.50	871%	\$117.25
NE Neb. Rev. St. § 45-901 <i>et seq.</i>	-/31 days	-\$500 ck	\$15 per \$100 Face amt. Ck	\$17.65	459%	\$88.25
NV Nev. Rev. Stat. § 604.010 <i>et seq.</i> as amended 1999	NA	% income ¹⁴	NA			No limit
NC N. C. Gen. Stat. § 53-275	-/31 days	-\$300 ck	15% ck	\$17.65	459%	\$52.95
OH Ohio Rev. Code Ann. § 1315.35 <i>et seq.</i>	-/6 mon.	-\$500 loan	5% + \$5/\$50	\$15	390%	\$75
OK ¹⁵ Okla. Stat. Tit.14A, § 3-508B	30 days/NA	-\$101.97	Scale of fees ¹⁶	\$14	364%	\$14
SC S.C. Code Ann. § 34-39-110 <i>et seq.</i>	-/31 days	-\$300 loan	15% ck	\$17.65	459%	\$52.95
TN Tenn. Code Ann. § 45-17-101 <i>et seq.</i> Amended 1999	-/31 days	-\$500 ck	15% ck	\$17.65	459%	\$30
Utah Check Cashing Registration Act, S. B. 57 to be codified as Utah Code Ann. § 7-23-101 <i>et seq.</i>	NA	NA	No Limits			
WA Wash Rev. Code § 31.45.010 <i>et seq.</i>	-/31 days	-\$500	15% loan	\$15	390%	\$75
WY Wyo. Stat. Ann. § 40-14-362 <i>et seq.</i>	-/30 days	NA	\$30 or 20%	\$30	780%	\$30
DC D. C. Code Ann. § 28-4701 <i>et seq.</i> (1998 Supp.) (“Check Cashers Act of 1998)	-/31 days	\$50/\$1,000	10% + fee ¹⁷	\$16.10	419%	\$131

¹³ Approximate APR without compounding

¹⁴ Nevada: 1999 amendments prohibit loans that exceed one-third of the borrower’s expected net monthly income

¹⁵ Oklahoma permits loans of under \$101.97 as single-pay one-month loans. Any loans for \$102 or more have a minimum term of 60 days.

¹⁶ Oklahoma: 20% of loans up to \$29.99, 10% + \$3 for \$29.99 - \$35, 10% + \$3.50 for loans \$35-\$70, 10% + \$4 for \$70 - \$101.97

¹⁷ DC: If included in contract, administrative fee of \$5 on checks up to \$250, \$10 on checks \$250.01 - \$500, \$15 for checks \$500.01 - \$750, \$20 on checks \$750.01 - \$1,000.