Consumer Federation of America

The Growth of Legal Loan Sharking:
A Report on the Payday Loan Industry

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Lending small sums of money at exorbitant interest rates for short periods of time was once considered a social problem requiring the solution of usury and small loan laws.[1] However, payday lenders have persuaded nineteen states to legalize triple digit interest short-term lending and are pressing the remaining states to make payday loans legitimate.

Payday loans have proved very controversial due to the high interest rates charged, collection practices by some lenders, and disputes over compliance with credit laws. These loans sanction the writing of bad checks and entice consumers into relying on very expensive debt to live beyond their means.

In 1997 CFA published a report on check cashing and payday loan practices which found that state consumer protections are inadequate to prevent rate-gouging and to promote informed decisions.[2] This report updates the status of payday lending under state laws and regulations, surveys payday loan terms in 8 states, and offers recommendations to policymakers and advice to consumers.

Payday Loans Provide Quick Easy Credit At a Steep Price

Check cashers, stand-alone companies, and banks are making small sum, short term, very high rate loans that go by a variety of names: "payday loans," "cash advance loans," "check advance loans," "post-dated check loans" or "delayed deposit check loans." Typically, a borrower writes a personal check payable to the lender for the amount he wishes to borrow plus the fee. Fees for payday loans are typically a percentage of the face value of the check or a fee per $100 loaned. Under the federal Truth in Lending Act, the cost of loans must be disclosed as both a finance charge (in this case the fee) and as an annual percentage rate (APR), the standard cost of credit to the borrower on an annual basis.

In a payday loan, both the lender and the borrower know that sufficient funds to cover the check are not available when the check is tendered. The check casher agrees to hold the check until the consumer's next payday, usually up to two weeks. At that point, the consumer can either redeem the check with cash or a money order, permit the check to be deposited, or renew

[1] Symposium Combating Loan Sharks, 8 Law and Contemporary Problems, Winter 1941.
[2] "The High Cost of 'Banking' at the Corner Check Casher: Check Cashing Outlet Fees and Payday Loans," Consumer Federation of America, August 1997.

the loan by paying another fee. Payday lenders charge the same fee to roll-over the loan although the transaction costs for a renewal are not comparable.

Although payday lenders typically do not get a credit report on borrowers, they do ask for evidence of an open bank account and current employment. Payday lenders use data base companies, such as TeleTrack, to screen out risky borrowers.

A cash advance loan secured by a personal check is very high priced credit. The National Consumer Law Center reports effective interest rates for payday loans earlier in the decade of 700 to 2000%.[3] The APR varies depending on the fee and how long the check is held before being deposited or redeemed. For a $100 loan for a seven-day period under Iowa's law, the annual percentage rate is 780%; for a five-day period, the annual rate is 1,034%. Loans which are renewed over and over because the borrower cannot afford to pay off the principle while keeping up the fees every 7 to 15 days, carry a steep finance charge. A $100 loan with a $15 fee every two weeks costs 391% APR. This loan, rolled-over three times, costs $60 to borrow $100 for 56 days for the same 391% APR.

Why Payday Lenders Use Personal Checks to Make Small Loans

When payday loans were first offered in the mid-'90s, most state usury or small loan laws made these transactions illegal. By labeling the transaction as check cashing instead of lending, companies sought to avoid credit laws. Litigation by Attorneys General and private class action lawsuits have produced court decisions and settlements confirming that payday loans are subject to usury, limits small loan caps, and other credit protection laws.

Recently enacted laws in some states to permit payday lending define this transaction as "deferred presentment" with the fee not to be considered interest for purposes of state usury laws. Other states have muddled the distinction between check cashing and payday lending by permitting loans to be made if the fee charged is the same as that for cashing a check. Regulators in Florida permit payday loans if the fee charged is the same as that allowed for check cashing (10%) but consider rollovers to be extensions of credit not permitted under Florida's money transmitter law.

Payday lenders benefit from using personal checks as the loan device although the transactions do not require that a check be written. In many cases, the "check" is never cashed, but is returned to the borrower when cash to pay the loan is exchanged for the "check." Loaning money based on personal checks sets up the advantageous comparison in fees between bank bounced check charges and the payday loan fee. A $15 per $100 payday loan fee might look like a bargain compared to a bank's $25 bounced check charge plus a merchant's fee in addition. However, the proper cost comparison for payday loans is with other sources of small loans. A 14 day payday loan with a $15 fee costs 391% APR compared to the typical state small loan interest cap of up to 36% APR. A typical rate for a secured credit card is 24%. Overdraft protection on a checking account costs in range of 18 to 24% plus a small one-time fee.

Use of a personal check makes collection easier for lenders. Consumers can be frightened into paying up to avoid prosecution for bad check charges or civil litigation for triple damages. Use of the criminal process gives payday lenders a collection advantage that no other

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[3]National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges, Boston,MA, 1995, p. 59.

creditor enjoys. The Florida Comptroller brought charges against a payday lender who used fake sheriff's office letterhead for collection purposes. Attorneys in Ohio report that lenders use the checks without supplying the contract as if they were the victims of bad checks, not a contract in dispute. Holding a borrower's check eases debt collection even when threats are not involved. There is a cost savings to the lender who can "collect" on the debt by sending the check through the bank clearing process. Some payday lenders get borrowers to sign authorization to permit the lender to electronically withdraw funds from the consumer's bank account, using the Automated Clearinghouse system.

Payday Loan Industry

Payday loans are made by check cashing outlets, pawn shops, and other entities that fill the vacuum left by the majority of mainstream lenders that have left the small loan market. Traditional small loan companies are more likely today to be offering home equity lines of credit than loans for a few hundred dollars for a short period of time. Although some banks, credit unions, and small loan companies make relatively small loans, payday lenders have targeted that market.

Payday lending has exploded in the last few years. Colorado is one of the few states with an industry-wide annual report available. For 1997, the Attorney General reported that 188 lenders made 374,477 post-dated check loans totaling $42,823,089. The average annual percentage rate charged on these loans was 485.26%. The average term for loans was 16.58 days. Over 58,000 of these loans, or 15.5%, were refinanced.[4] For the year ended 12/31/97, Washington reported 562,031 loans made by check cashers. These loans were for a total of $144,923,986. The average size loan was $255. Lenders collected $21,541,338 in fees and charged off $2,054,338.[5] Indiana reports that the number of payday lenders jumped from 11 in 1995 to 59 in 1997, with loan volume increasing from $12,688,599 in 1995 to $98 million in 1997.

Missouri licenses about 450 lenders and reports fast growth. Oklahoma estimates that 900 of 1400 licensed small lenders are in the payday loan business. Idaho, which had two payday lenders in 1993, now has 74. In two years, Iowa payday lenders increased from eight to sixty-four. Louisiana licenses 345 lenders. The number of lenders almost tripled in Wyoming in two years with over $5 million in loans made in 1997, compared to $2.3 million in 1996. Mississippi officials estimated over 350 locations made payday loans in 1998 before regulation. By late March of 1998, Indiana had 96 licensees with 225 branches for a total of 321 locations in Indiana.

Public data on the profitability of payday lending is sketchy. An Internet posting by Aaffordable Payday Loans claims that company has "$800,000 'on the street' with an average 30% per month return on our money."[6] A cover story in the trade magazine of the check cashing industry noted that "holding a check for a fee is bringing a bundle of profits to increasing numbers of operators."[7]

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[4] State of Colorado Department of Law, "1997 Post-Dated Check Cashers Supervised Lenders' Annual Report.
[5] Washington State Department of Financial Institutions *1997 Annual Report,* p. 37.
[6] http://www.aaffordable.com/history.html "The History of Payday Loans Payday Advances"
[7] Storey, Charlene Komar, "Delayed Deposit Business Skyrockets," Cheklist, Fall 1997, p. 6.

Check cashing outlets

A seminar at the National Check Cashers Association 1998 convention drew standing room only crowds for check cashers interested in going into payday lending. As check cashers lose a portion of their traditional business to electronic delivery of state benefits and federal payments, check cashers are searching for profitable financial services to replace check cashing. The National Check Cashers Association has issued a position paper in support of payday lending and is working on a model legislative proposal for states that have not authorized payday lending. [8] Loan & Check, a vendor to the trade, claims that payday loans will grow by 600% over the next ten years.[9]

Ace Cash Express, the largest chain of check cashing outlets is based in Irving, Texas, and operates 725 Company-owned stores and 100 franchise stores in 29 states. Its small-loan product offered in 240 stores provides earnings growth.[10] Ace's 1997 payday loan revenue of $10.1 million was double the volume of business in 1996. Act is now opening stores inside Wal-Mart Supercenters. An Oregon news report noted that Ace Cash Express charges $18 to borrow $100 for 14 days, for an effective interest rate of 469%.[11].

Stand Alone Payday Lenders

Stand alone payday loan companies have experienced explosive growth in the last five years. Advance America, Cash Advance Centers, a South Carolina company, have 426 branches in 16 states. The company opened its first store in November 1997 and expects to have over 500 outlets by the end of 1998.[12]

Check Into Cash, Inc., based in Cleveland, TN, opened its first store in 1993 and now operates 340 outlets in 15 states. The company reported revenues of $21.4 million in 1997 and almost exceeded that amount ($21.2 million) for the first half of 1998. For the first six months of 1998, Check Into Cash completed 652,000 transactions attributable to 120,000 customers. Bad debt expense has ranged from 2.3% to 5.6% since 1993.[13]

Other large stand alone payday lenders include National Cash Advance and Check & Go. The company reported a volume of $9.9 million in 1996, nearly triple 1995 revenue. National Cash Advance, another Tennessee company, opened 165 stores in less than three years.[14] Another large stand-alone payday lender, Check 'N Go, started with one store in Cincinnati in 1994 and has about 400 outlets nationwide.[15] Check 'N Go charges $20 for every $100 loaned.[16]

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[8] National Check Cashers Association, "The Consumer's Choice: The Role of Deferred Deposit Services in Meeting Short Term Financial Needs." June 8, 1998.

[9] "Why Do Some Check Cashing Outlets Double Their Business Within 24 Months? Simply, They Add Payday Loans," Loan & Check flyer distributed at the National Check Cashers Association convention, Nashville, TN, October 17, 1998.

[10] Stephens Inc. p. 27.

[11] Harwood, Joe, "Checking It Out: Fast Loans Cost Consumers A Bundle," The Register-Guard (OR), 11/9/97, C1.

[12] Huntley, Helen. "Short loans, high rates, regulator questions," St. Petersburg Times, October 25, 1998, p. H-1,2.

[13] Form S-1, Securities and Exchange Commission, Check Into Cash, Inc., p. 3-4.

[14] Ho, Rodney, "Fees of Quick-Cash Chains Draw Scrutiny," The Wall Street Journal, 6/10/97, p. B 2.

[15] Sacramento Business Journal, October 26, 1998. www.amcity.com:80/sacramento/stories/102698/focus2.html.

[16] The Business Journal, Milwaukee, September 22, 1997. www.amcity.com/milwaukee/stories/092297/story3.html

National Banks

Check cashing outlets have formed partnerships with national banks to make payday loans, including in states where check cashers are prohibited from charging typical payday loan rates or extending credit. Eagle National Bank, a federally charted bank located in Upper Darby, Pennsylvania, makes "Cash Till Payday" loans of up to $500 through Dollar Financial Group's check cashers in several states.[17] Dollar Financial Group claims that Eagle National Bank is able to export Pennsylvania's deregulated bank loan fees to consumers in other states. Eagle charges up to $17.50 per $100 for 14 day payday loans (454% APR). In 1997, Eagle National Bank made 204,499 payday loans, with $31 million of the bank's loans small consumer loans (36% of loans made).[18] The Comptroller of the Currency gave a "Satisfactory" Community Reinvestment Act rating to the bank in 1998, despite complaints by consumer organizations about the bank's triple-digit interest rate loans.

The Market for Payday Loans

The market for payday loans is made up of consumers who have personal checking accounts, but who are stretched to the limit financially. These consumers are not even living paycheck to paycheck, but are borrowing against their next paycheck to meet living expenses. Ace Cash Express' Vice President says payday loan customers "tend to be people at the bottom of the middle-class structure in this country."[19] Stephens, Inc., an Arkansas investment company, estimates that the potential market for individuals utilizing store front financial service companies, such as rent to own, check cashing or small loan services, is roughly equivalent to those without an unsecured credit card, or approximately 35 million households.[20]

A Washington regulator says that payday loans are a symptom of whopping credit card debt, as people who are highly leveraged need cash to pay bills.[21] A CFA report on the burden of credit card debt reveals that 55 to 60 million households (55 – 60% of all households) carry credit card balances and that these balances average more than $7,000. [22] A CFA report shows that the typical household with debt repayment problems has a moderate income and credit card debts of more than $10,000.[23]

Lenders claim that their customers prefer to borrow from them than to hock their appliances at a pawnshop or to ask their employers for pay advances. Pawnshop loans are always for a fraction of the present value of the used pawned item, making a pawn transaction a poor comparison. The industry argues that consumers use payday loans to cover emergencies or unexpected medical bills. The West Coast Vice President for Check Into Cash claims that 30% of their customers need money to get their cars repaired.[24] If true that payday loan customers

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[17] Prospectus, Dollar Financial Group, Inc., filed with the Securities and Exchange Commission, March 11, 1997, (http://www.sec.gov/Archives/edgar/data/1028643/0000950130-97-000963.txt)

[18] OCC Community Reinvestment Act Performance Evaluation, Eagle National Bank, 4/6/98.

[19] Huntley, Helen, "Short loans, high rates, regulator questions," St. Petersburg Times, October 25, 1998, p. H-1.

[20] Stephens Inc., "Specialty Finance Industry Report," January 26, 1998, p. 16.

[21] Muhlstein, Julie, Herald, February 20, 1998. www.heraldnet.com/stories/98/2/20/julcol19.htm

[22] Brobeck, Stephen, "Recent Trends in Bank Credit Card Marketing and Indebtedness," July 1998.

[23] Brobeck, Stephen, "The Consumer Impacts of Expanding Credit Card Debt," February 1997.

[24] Myers, Jim, Sacramento Business Journal, October 26, 1998.
www.amcity.com:80/sacramento/stories/102698/focus2.html

have no savings to cover an emergency prescription or repair job, they are the classic "necessitous" borrower who perceive they have no choices but to borrow at triple-digit rates.

Payday Loans Place Borrowers on a Debt Treadmill

It is not unusual for borrowers to become mired in debt and renew cash advance loans every week or two. Payday loans are structured to make it difficult for consumers to pay in full at the end of the loan period without needing to borrow again before the next payday. A consumer paying off a loan of $100 to $300 plus the $15 to $45 fee within a few days often finds it difficult to make it to the next payday without having to borrow again.

A class action lawsuit filed in Tennessee described borrowers who renewed cash advance loans 20 to 29 times, paying fees of $19 to $24 per $100 loaned. One plaintiff "rolled over" loans 24 times in 15 months, borrowing a total of $400 and paying $1,364 while still owing $248.[25] Bank Rate Monitor Online described a Kentucky consumer who borrowed $150 and had paid over $1,000 in fees over a six-month period without paying down the principal. Her solution was to declare bankruptcy.[26] A Wisconsin news article described a consumer who borrowed more than $1200 from all five payday lenders in her town and was paying $200 every two weeks just to cover the fees without reducing principal.[27]

State Payday Loan Laws

In the last few years, nineteen states and the District of Columbia have adopted legislation or regulations that authorize and regulate payday loans. The District of Columbia, Mississippi, Kentucky, Nevada, and South Carolina legislatures enacted bills in their 1998 session to permit and regulate payday loans.

Alabama's legislature considered a bill but adjourned without adopting pending legislation. Pennsylvania's 1998 legislature adopted a check cashing law that prohibits cashing or advancing money on post-dated checks. A bill to raise the loan amount ceiling in California was withdrawn after consumer advocates objected and proposed amendments to establish reporting requirements for lenders. The Georgia legislature did not adopt bills filed to permit payday lending.

Typical payday loan laws exempt these transactions from usury or interest rate caps, set a maximum fee and term for loans, restrict roll-overs or multiple loans, and require licensing by state regulators. Six state payday loan laws or regulations require lenders to disclose their fees as an Annual Percentage Rate.[28] The maximum fees result in APRs for a $100 14-day loan range from 261% in Florida to 625% in Colorado. Thirteen of the 20 jurisdictions set the maximum fee at $15 per $100 loaned, a 391% APR on a 14 day loan. Sixteen states set a maximum loan term, but only Oklahoma sets a minimum term of 30 days to repay payday loans of $101 or less.

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[25] Amended Complaint, Bill Goins, et. al, vs CREDITCORP, et al., Circuit Court of Bradley County, Tennessee, par. 20. March 5, 1996.

[26] Rothman, Steven, "Officials Call Payday Financing 'Loan Sharking'," Bank Rate Monitor Online, 2/18/98.

[27] Horst, David, "Hard Lesson Learned in Borrowing on Paycheck; Woman found herself fast in debt to 'payday lenders.'" The Post-Crescent, Wisconsin, January 4, 1998.

[28] Annual Percentage Rate is the cost of credit to the borrower on an annual basis. It is the standard comparison cost of credit required by the federal Truth In Lending Act.

Most states create some type of criminal or administrative penalties. However, only seven states provide for some type of limited private right of action allowing the consumer to obtain relief against the lender. Only a small number prohibit the lender from threatening to file or filing criminal charges against a consumer as a mechanism to collect on the debt. These payday loan laws apply on to check cashers in seven of the nineteen states.

Table One

States With Specific Payday Loan Law/Regulations

State	Maximum Term/Amt.	Maximum Fee %*/$	Effective APR 7 day	14 day	TILA Disclosure Req.	Rollover/ Refi Prohibited	Max. Loan At 1 time # / $
CA.	30/$300	15%	782%	391%	N	N	1
CO	/$500	<25% or $25	1250%	625%	Y	Y	2
DC	31/$1000	10% +fee Up to $20	782%	391%	N	N	No Limit
FL[cc]		≥10% or $5	521%	261%	N	N	No Limit
IO	/$500	$15 per $100 $10 per $100 next	782%	391%	N	Y	2
KS	30/$780	scale of fees[$]	782%	391%	Y	Y	No Limit
KY	60/$500	$15 per $100 For 14 days	782%	391%	Y	N	2
LA	30/$500	scale of fees[$$]	521%	261%	N	Y	No Limit
MN	30/$350	scale of fees[$$$]	782%	391%	N	Y	No Limit
MS	30/$400	18%	938%	469%	N	N	No Limit
MO	10 mon/$500	$15/$100	782%	391%	N	N	No Limit
NE	31/$500	$15/$100	782%	391%	N	N	2
NV		To be set by regulation			N	N	No Limit
NC	31/$300	15%	782%	391%	N	Y	No Limit
OH	6 mon/$500	5%/mon. +	782%	391%	N	Y	No Limit
OK	30/$101	20%	1042%	521%	Y	N	$100

* % of face amount of check

[cc] Applies to check cashers only

[$] $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.

[$$] $5 for loans $0 to $99, $10 for loans $100 - $200, $15 for loans $201-$500.

[$$$] $5.50 for loans $0 - $50, 10% + $5 loans $50 - $100, 7% + $5 loans $100 - $250, 6% + $5 for loans $250 - $350.

State	Maximum Term/Amt.	Maximum Fee %*/$	Effective APR 7 day	14 day	TILA Disclosure Req.	Rollover/ Refi Prohibited	Max. Loan At 1 time # / $
SC	31/$300	15%	782%	391%	Y	Y	No Limit
TN	31/$500	15% or $30	782%	391%	Y	Y	3
WA	31/$500	15% +	782%	391%	N	Y	No Limit
WY	30/	$30 or 20%	1042%	521%	Y	Y	No Limit

Nineteen states and the United States Virgin Islands do not permit payday loans due to small loan interest rate caps and by specific prohibitions against payday lending by check cashers. States have enforced this ban with varying degrees of enthusiasm. The Attorneys General in Virginia, West Virginia, Pennsylvania, Michigan, and Maryland have brought cases against payday lenders as unlicensed small loan companies. Georgia's Industrial Loan Commissioner ruled in 1998 that payday lending violated the Georgia Industrial Loan Act. Alabama's Department of Banking issued 150 cease and desist orders in mid-1998, charging payday lenders with violating interest rate caps. A consent agreement negotiated between the Alabama Check Cashers Association and the Department of Banking, however, permits payday lending to continue in Alabama under restrictions until the case is heard or the legislature adopts legislation. (See Appendix B).

* % of face amount of check

Table Two

States That Prohibit Payday Loans Through Small Loan Law and Check Casher Law

State	Cap Small Loan Rate	Check Casher Law Prohibits
Alabama	36%	
Alaska	36%	
Arizona	36%	
Arkansas	17%	
Connecticut	28.52%	Yes
Georgia	57.68%	Yes
Hawaii	24%	
Maine	30%	Yes
Maryland	33%	
Massachusetts	39.86%	Yes
Michigan	25%	
New Hampshire	24%	
Pennsylvania	23.57%	Yes
Puerto Rico	25%	
Rhode Island	36%	
Texas	31.65%	
Vermont	24%	
Virginia	36%	Yes
Virgin Islands	26%	
West Virginia	31%	Yes

Other states permit payday lending due to weaknesses in state laws that govern small loan companies or due to the lack of a usury cap. Twelve states do not cap interest rates for small loan companies, permitting payday lenders to get licenses and charge any rate they choose. Indiana permits payday lending due to its minimum $33 finance charge for consumer loans. Three of these states (Delaware, New Jersey, and New York) only prohibit check cashers from making payday loans.

Table Three

States that Permit Payday Loans Through Small Loan Act Provisions

State	Small Loan Act APR on $200 Loan	Permitted for Check Cashers
Delaware	No Cap	No
Idaho	No Cap	Yes
Illinois	No Cap	Yes
Indiana	$33 min. finance charge/36% cap	Yes
Montana	No Cap	Yes
New Jersey	No Cap	No
New Mexico	No Cap	Yes
New York	No Cap	No
North Dakota	No Cap	Yes
Oregon	No Cap	Yes
South Dakota	No Cap	Yes
Utah	No Cap	Yes
Wisconsin	No Cap	Yes

CFA Payday Loan Survey

CFA member organizations surveyed payday lenders in eight states to learn the terms of payday loans and whether key disclosures are being made to consumers. Groups in Florida, California, South Carolina, Tennessee, Oregon, Illinois, Virginia, and Pennsylvania called 85 payday lenders during mid-1998 to ask the maximum loan and term, the fee, whether roll-over of loans is allowed, if a written agreement is required, and what the Annual Percentage Rate is the quoted loan. (See Appendix A for state surveys.)

Payday loans are permitted by state law in all of the states surveyed except in Pennsylvania and Virginia. Virginia prohibits payday lending through its check casher law and the small loan act with its 36% interest rate cap. Callers found that payday loans are being made in both Pennsylvania and Virginia. National chain payday loan companies in Western Pennsylvania charge 391% APR for 14-day loans ($15/$100 loaned). In Virginia payday loans are being made at Dollar Financial Group check cashers in Tidewater by Eagle National Bank out of Pennsylvania. Eagle charges $17.50 per $100 for 14 days or 456% APR.

Fees for payday loans in Florida, South Carolina, California, and Tennessee are capped at rates from 10% in Florida to 15% of the face value of the check. Surveyors were quoted higher

than legal fees in at least one entity in Florida, South Carolina, Tennessee, and California. There is no state fee cap in Oregon and Illinois where payday lenders with small loan licenses can set their own rates. Rates quoted in Oregon ranged from $15/$100 to $20/$100. Illinois surveyors found the highest rates quoted, ranging from $18 to $22/$100 loaned. Pennsylvania lenders quoted $15 per $100 for loans of up to $300, although there is no legal authority for payday lending in the state. The range of Annual Percentage Rates for $100 loan for 14 days ranged from 261% to 782% APR.

The size of loans offered by payday lenders ranged from $100 to $1,000, with some lenders loaning amounts based on the consumer's take-home pay. Although state payday loan laws typically set 30 or 31-day maximum terms, loan terms quoted to surveyors were most often 14 or 15 days, with some terms as short as "your next payday" and 7 days.

Callers asked payday lenders what the annual percentage rate was for the loans described in the surveys. Only Tennessee lenders quoted triple digit interest rates consistently. Annual percentage rates were also quoted by some lenders in California, Illinois, and Oregon. Other lenders responded with "I don't know," "it's not a loan," or simply quoted the fee.

Policy Recommendations

- States should enforce current usury and small loan laws that outlaw payday or cash advance loans. Those states without interest rate or usury caps should impose maximum interest limits on loans of $1,000 or less to prevent rate-gouging with payday loans and other small loans. States that already outlaw cash advance loans made by check cashers should close any loopholes that permit state licensed check cashers to offer cash advance loans provided by banks if those banks are not subject to usury caps.

- Failing an outright ban on cash advance loans, this type of loan should be explicitly regulated through state small loan laws requiring licensing or registration with state banking officials. Disclosures must comply with the federal Truth in Lending Act. There should be an absolute cap on effective annual interest rates. States should limit the size of these loans, set a minimum term that realistically permits the loan to be repaid, require written contracts, forbid multiple loans and roll-over of cash advances into new loans, and prohibit lenders from threatening borrowers with bad check laws if they fall behind on payments. Lenders should not be permitted to bring criminal prosecution for failure to pay cash advance loans on checks and these loans should be treated as unsecured debt for purposes of bankruptcy. States should collect industry-wide data to monitor the business. (See Appendix C.)

- The federal government should close any loopholes that permit national banks to make payday loans in any state that prohibits state check cashers or state chartered financial institutions from making this type of loan. The Comptroller should require banks to comply with the consumer protections in the states where they do business.

- Treasury should adopt consumer protection rules for accounts opened voluntarily by consumers to comply with the federal law requiring electronic deposit of federal checks staring in 1999. Check cashers and other financial service companies are

negotiating agreements with banks to provide access to EFT99 accounts.[29] Check cashers can be expected to offer payday loans based on anticipated delivery of federal benefits through EFT'99 accounts accessible at their stores.

Advice to Consumers

- Make a realistic budget and build up a nest egg of savings to avoid the need to borrow small sums to meet emergencies and unexpected expenses. Just $300 in a savings account would save payday loan borrowers the steep fees. Saving the fee on a typical $300 payday loan for six months will provide a $300 buffer against financial emergencies.

- Shop for the lowest cost credit available from cash advances on credit cards, small loans from your credit union or a small loan company, an advance on your pay from your employer, and loans from friends or family. Some local community based organizations may make small business loans to individuals. Ask for more time to pay utility bills. Compare both the Annual Percentage Rate (APR) and the finance charge (loan fee stated in dollars) to get the lowest cost credit. Do not simply compare the payday loan fee with a bank bounced check charge. Consider overdraft protection on your checking account.

- If you do use payday loans, borrow only as much as you can afford to pay with your next paycheck and still have enough to make it to the next payday..

[29] Hybrid bank/check casher accounts are being offered by Benefits Express, DBC Financial, Dollar$$$Direct, NaCCA Preferred card with Citibank, SecureCheck, and QuickAccess. Cheklist, Fall, 1998, p. 6, 10.

Appendix A

CFA Payday Loan State Surveys

Florida

Florida's check cashing law was enacted before payday lending was offered. The 10% cap on check cashing fees has been applied to payday lending as long as the loan is not renewed. The Florida Public Interest Research Group was quoted rates that exceed the 10% fee cap in ten of nineteen instances, with effective APRs ranging from 261% to 573%. The longest loan term was 15 days, with five lenders demanding repayment on the next payday. None of the companies quoted an APR when asked.

Florida Payday Loan Survey **Florida Public Interest Research Group**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-Over Allowed?
Check Express Inc. Orlando	$200	14 days	$12.91	336%	No
CCS Payment Store Sunrise	10 – 15% paycheck	14 days	$10	261%	Yes
Check Cashing Store Davie	10% of paycheck	14 days/ nxt pay	$10	261%	No
Cash Cow Ft. Lauderdale	$100	15 days	$10/3 days $22/15 days	573%	Yes
Broward Tags & Cks Ft. Lauderdale	50% of paycheck	Next payday	$10	261%	No
Ace America's Cash Express Hialeah	$500	14 days	$10	261%	Yes $3.25 late fee
Check Cashing Store Miami	Based on paycheck	Next payday	$10	261%	Yes
Check Cashers of Fl. Miami	50% of paycheck	Next payday	$13	338%	Yes
Check Cashers of Sarasota	50% of paycheck	14 days	$15	391%	No
Sun Check Cashers Sarasota	$100	Next payday	$11	286%	No
Pawn Depot Inc. St. Petersburg	$300	15 days	$15	391%	Yes

Cash Cow Tallahassee	$100	15 days	$22	573%	Yes
Express Title Loans Tallahassee	$200	7 days	$10	261%	Yes
Check-N-Go St. Petersburg	$100	14 days	$16	417%	No
EZ Cash Tallahassee	$100	15 days	$22	573%	Yes
Check-N-Go Tampa	50% of paycheck	14 days	$16	417%	No
Cash Your Check Tampa	up to 12% monthly income	14 days	$10	261%	No
24-Hour Checks Cashed, Tampa	$100	Next payday	$10	261%	Yes
Ace America's Cash Express Tampa	25% of income	14 days	$10	261%	No
Fla. Stat. Ann. § 560.201	NA	NA	$10	261%	NA

Pennsylvania

Payday lending is not legal in Pennsylvania. The small loan interest rate cap is $9.50 per $100 loaned per year, or an APR of 23.57%. Pennsylvania's Attorney General has brought cases against payday lending in Philadelphia. The check cashing law adopted in 1998 prohibits check cashers from making payday loans. The Mercer County Community Action Agency surveyors found payday lending thriving in Western Pennsylvania. All of the six lenders surveyed charged $15 per $100, or 391% APR for 14 day loans. One lender set a 7 day maximum term, producing a 782% APR. Only one lender permitted rollovers on loans, while two would lend again the next day. None of those surveyed quoted an APR when asked.

Pennsylvania Payday Loan Survey **Mercer Co. Community Action Agency**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-Over Allowed?
American Cash Advance Hermitage, PA	$300, up to 50% payck	Next payday Up to 14 days	$15	391%	No, next day advance
Local Cash Advance Hermitage	$300	Next payday Up to 14 days	$15	391%	Yes
National Cash Advance Hermitage	$300, up to 80% payck	Next payday	$15	391%	No
United Cash Advance Sharon	$300, up to 70% payck	Next payday Up to 14 days	$15	391%	No

PayDay Cash Advance Sharon	$300, up to 50% payck	Next payday Up to 14 days	$15	391%	No, next day advance
Arctic Cash Advance Sharpsville, PA	$300	Next payday Up to 14 days	$15/ 7 days $22/14 days	573%	No," not a loan"

PA Check Cashing Licensing Act of 1998, § 505 (a) prohibits check cashers from making payday loans.
7 Pa. Cons Stat. Ann. § 6201 *et seq.* Caps small loan fees at $9.50/$100/year or 23.57% APR.

South Carolina

The Columbia Consumer Education Council called twelve companies advertising payday loans in South Carolina. Legislation adopted in 1998 sets a maximum $15/$100 fee and limits loans to $300 for a maximum term of 31 days. Fees quoted by lenders ranged from $15 per $100 to $30 per $100 loaned. Although South Carolina law prohibits rollovers, two companies stated that loans could be renewed. None of those surveyed quoted an APR when asked.

South Carolina Payday Loan Survey **Columbia Consumer Education Council**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-Over Allowed?
Check World Columbia	$125	14 days	$18.75 Deducted	460%	No
Money Lines Columbia	$200	Next payday	$30	782%	No
Payday Chex Ctr Columbia	$100	Next payday	$15 Deducted	460%	No
E-Z Check Cashing Columbia	$500	Next payday Up to 14 days	$18.75 Deducted	460%	No
Cash Advance Columbia	$100	Next payday Up to 14 days	$15 Deducted	460%	No
Fast Check Cashing Columbia	$200	Next payday Up to 14 days	$15	391%	Yes
Quick Cash Check Cashing Columbia	$125	Next payday	$18.75 Deducted	460%	No
Greenview Check Cashers Columbia	$100	Next payday	$15	391%	No
B-n-A Check Cashing Columbia	$125	14 days	$18.75	460%	No
Cash-O-Matic Lexington	$150	14 days	$22.50 Deducted	585%	No
Instant Check Cashing Columbia	$125	14 days	$18.75	460%	Yes
Ace America's Cash Express Orangeburg	$200	14 days	$30	782%	No
S. C. Code Ann. § 34-39-110 *et seq.*	$300	31 days	$15	391%	No

Oregon

The Oregon Public Interest Research Group called five payday lenders in Portland to check on fees. Oregon has no limits on payday loan rates charged by licensed loan companies. OsPIRG found fees ranging from $15 to $20 per $100, with APRs for 14-day loans of 391% to 521%. Three lenders agreed to rollover loans for an additional fee. Two lenders accurately quoted an APR for loans when asked.

Oregon Payday Loan Survey **Oregon Public Interest Research Group**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-Over Allowed?
Check-X-Change Portland	$100	14 days	$18	469%	Yes
Check Mart Portland	$500 25% payck	14 days	$15	391%	Yes
Cash Connection Portland	$500 25% payck	14 days	$15	391%	NA
Payroll Advance Systems Portland	$200	10 days	$20	521%	No
Check Cash Portland	$300	14 days	$15	391%	Yes

Or. Rev. Stat. § 725.340 Consumer Finance Act applies to payday loans. No cap on fees or limits on loan terms.

Illinois

The Champaign County Predatory Lending Task Force surveyed five payday lenders in Champaign, Illinois and found interest rates ranging from 469% to 573% APR. Illinois Public Interest Research Group surveyed 13 payday lenders in the Chicago area. Illinois does not cap interest rates. The maximum loan quoted was $1,000 or one week's pay. Five lenders correctly quoted an APR when asked.

Illinois Payday Loan Survey

Champaign County Predatory Lending Task Force
Illinois Public Interest Research Group

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-over Allowed?
Campus Cash Champaign	$300	14 days	$18	469%	Yes
Advance America Champaign	$300	14 days	$20	521%	Yes 3 times
Check and Go Champaign	$1,000 1 wk payck	14 days	$20	521%	Yes 3 times
Check Into Cash Champaign	$300	Next payday up to 16 days	$22	573%	Yes 2 times
Check Advance Champaign	$300 up to $500	14 days	$20	521%	Yes
Azteca-26th St. Currency Chicago	$500	"Depends"	$14	365%	Doesn't know
Campus Cash Elmhurst	$300	14 days	$18	469%	Yes, one time
Check 'N Go Chicago	Half one week's pay	14 days	$20	521%	Yes, three times
Insta Cash Advance Chicago	Half one week's pay	Next payday	$20	521%	Yes
Payday Loans Chicago	$300	Depends on loan amount	$20	521%	Yes, three times
Insta Cash Chicago	$150	Next payday	$21	547%	No
Pay Day Loan Corp IL Chicago	$300	14 days	$20	521%	Yes
Milennium Title, Inc. Des Plains	Half of pay check	14 days	$10	261%	Yes
Checks-N-Advance Chicago	$600	14 days	$15	391%	Yes
Clark Lunt Currency Exchange Corp. Chicago	Half of net pay	Next payday			Yes
79th & Jefferson Exchange, Inc. Chicago	$150	21 days	$14	365%	Yes

Colonial Currency Exchange Chicago	$150	Next payday	$14	365%	NA
Currency Exchange Chicago	$100	14 days	$14	365%	Yes

205 Ill. Comp. Stat. 670/15 Ill. Consumer Installments Loan Act applies to payday lenders. No cap on fees or limits on loan terms.

Tennessee

A telephone survey of payday lenders was conducted in central Tennessee by CFA staff. Eight companies quoted fees per $100 ranging from $14 to $17.50. Tennessee's Deferred Presentment law caps fees at 15% of the total check. None of the lenders made loans for the maximum 31 day period, while one company set a 7-day loan limit. Almost all of the surveyed lenders quoted a triple-digit interest rate when asked the APR, while five were accurate.

Tennessee Payday Loan Survey **Consumer Federation of America**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-overs Allowed?
National Cash Advance Shelbyville	$200	Next payday	$15	391%	No
Cash Advance Shelbyville	$200	14 days	$14	365%	No
America's Cash Advance Tullahoma	$200	7 days	$15	391%	No, write loan
Check Into Cash Tullahoma	$200	14 days	$15	391%	No, write new loan
Check Exchange Winchester	$150	14 days	$17.50	456%	No, write new loan
Cash Express Winchester	$200	14 days	$17.50	456%	No, write new loan
National Check Cash Winchester	$200	14 days	$17.50	456%	No, write new loan
Quick Cash Winchester	$100 1st time	14 days	$17.50	456%	No
Tenn. Code Ann. § 45-17-101 *et seq.*	$300	31 days	$15	391%	No

California

California Public Interest Research Group surveyed fifteen payday lenders in Sacramento and Los Angeles. None of the companies quoted an accurate APR for loans.

California Payday Loan Survey **California Public Interest Research Group**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-over Allowed?
Community Check Cash Los Angeles	$300	14 days	$15	391%	Yes
AnyKind Check Cash Los Angeles	$200	14 days	$15	391%	Yes
Continental Currency Los Angeles	$300	14 days	$15 + $10 1st time	391%	Yes
Check Cashing Ctr Los Angeles	$300	Next payday	$15	391%	Yes
Check Into Cash Sacramento	Based on pay	Next payday	$15 + $10 1st time	391%	No
Check-x-Change Sacramento	$250	14 days	$15	391%	Yes
Cash Check Sacramento	$150	Next payday	$15	391%	No
AnyKind Check Cash Sacramento	$200	14 days	$15	391%	Yes
Gold Star Check Cash Sacramento	$100	14 days	$15	391%	Yes
Madison Ave. Ck Csh Sacramento	$250	14-30 days	$15	391%	Yes
California Ck Cash Sacramento	$250	15 days	$15	391%	No
Check & Go Sacramento	Based on paycheck	14 days	$17.50	456%	No
Cash & Go Sacramento	$255	14 days	$15	391%	No
Cash Connection Sacramento	$300	14 days	$15	391%	Yes
C&C Check Cashing Sacramento	$200	14 days	$15	391%	Yes
Cal. Civ. Code § 1789.30 *et. seq.*	$300 incl. Fee	30 days	$15	391%	Yes

Virginia

Virginia enforces its small loan and check casher laws to prevent payday lending. The Virginia Citizens Consumer Council conducted a telephone survey of 11 check cashers in Northern Virginia to verify that payday loans were not being offered. The Dollar Financial Group's Almost A Banc locations in Tidewater make 'Cash 'Til Payday' loans through Eagle National Bank, a Pennsylvania institution.

Virginia Payday Loan Survey **Virginia Citizens Consumer Council**

Company City	Max. Loan	Max. Term	Fee/ $100	APR/$100 14 days	Roll-overs Allowed?
Almost-A-Banc Newport News Chesapeake Hampton Norfolk Portsmouth Virginia Beach	$500	14 days	$17.50	456%	No, New loan

Va. Code Ann. § 6.1-432 *et. seq.* Check cashers are prohibited from making loans or cashing post-dated checks. Consumer Finance Act, Va. Code Ann. § 6.1-272.1 caps interest rates for loans of $2500 or less at 36% APR.

Appendix B

State Actions Involving Payday Lenders

Several states have challenged payday loans as violating state usury laws, as unauthorized small loan lending, or as violations of consumer protection laws. The following state reports illustrate efforts to curb payday lending across the country.

Alabama

The Alabama Attorney General issued an opinion July 7, 1994 that payday loans are loans covered by the Alabama Small Loan Act, the Mini-Code and are subject to Truth in Lending disclosure requirements. No action to enforce the 1994 opinion was taken until July 1, 1998 when the Alabama State Banking Department filed cease and desist orders against 150 check cashing companies making payday loans in violation of Alabama's small loan act which prohibits making loans for $749 or less without a license. The Alabama Check Cashers Association counter sued the state, seeking a declaratory judgment on whether the Alabama Small Loan Act applies to "Payday Loans" and "Catalog Sales." The trade association complaint sought injunctive relief to stop enforcement of the cease and desist orders. The case was assigned to a retired judge for mediation pending trial.[30] The consent agreement issued by Judge Reese October 9, 1998 permits payday lending to continue with restrictions pending a final court ruling or the adoption of legislation in Alabama. Parties to the injunction can make payday loans with fees up to 16.67% of the check including the fee. (This computes to 521% APR if the loan is repaid in 14 days or 1042% APR if repaid in 7 days.) Lenders may not renew or consolidate one payday loan with another, must provide written agreements, and may not file criminal charges for NSF returned checks.[31] Other payday lenders may sign the consent agreement to remain in business pending the final resolution of the case.

Three private class action lawsuits are pending in Huntsville, Alabama involving seven lenders in Huntsville as well as Greenstreet and Dollar Express. Two smaller class actions are in settlement.[32]

Florida

The Florida Comptroller, Department of Banking and Finance, sought an emergency cease and desist order June 8, 1998 against Treasure Coast Cash, Inc, an unlicensed Stuart, Florida payday lender. The Comptroller cited Treasure and its principals for unlicensed lending under Chapters 516 and 687, Florida Statutes. Typical loans cost consumers 520% APR, with some payday loans up to 1560%. The Order also cited Treasure for collection practices that used, without authority, letterhead from the Martin County Sheriff's Office. The Comptroller listed violations including unlicensed consumer finance loans, interest in excess of 18% usury limit, and deceptive debt collection practices.

The Florida Department of Banking and Finance also filed an Administrative Complaint for Imposition of Sanctions and Notice of Rights August 28, 1998 against A Tropical Title Loan, Inc, located in Port St. Lucie, FL for unlicensed lending. At least 350 small loans were made at finance charges of 520% APR.

Private class action litigation is underway in Florida against Cash-2-U and Treasure Coast Cash Co, accusing the companies of charging illegal interest and attempting to collect illegal debts.

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[30] Alabama Attorney General Opinion No. 94-00210, issued July 7, 1994.
[31] State of Alabama State Banking Department Summary of Consent Order Regarding "Payday Loans," October 14, 1998.
[32] Telephone interview with Lange Clark, Esq., Birmingham, Alabama attorney, 11/2/98.

Georgia

Georgia's Industrial Loan Commissioner John Oxendine found that EZ Cash, Inc., formerly known as Cash Cow, Inc., a Florida payday lender with branches in Georgia, was making small loans in violation of the Georgia Industrial Loan Act. Investigators testified at hearings in January that Cash Cow loaned money at rates of $25 per $100 payable in 15 days, resulting in annual simple interest rates of 600%. In Georgia, it is criminal usury to charge more than 60% interest on loans of less than $3,000. Although the Company used a variety of devices to obscure the loan, such as discount car title vouchers or check-cashing fees, Georgia officials found that these transactions are loans in violation of state law.

Kansas

The Kansas Attorney General obtained a 1992 consent judgment against Greenbacks, Inc. d/b/a Advance Checking and Check-Time in a case alleging that consumers were charged $25 per $100 loaned, resulting in annual percentage rate of 1,300% for a one-week loan.

Kentucky

A payday loan complaint brought by Addison Parker, a legal aid attorney with the Appalachian Research and Defense Fund of Kentucky, Inc., resulted in the first published Federal court decision involving payday lending. Judge Joseph M. Hood of the Eastern District of Kentucky issued an order December 11, 1997, refusing to dismiss a complaint against Larry York d/b/a HLT Check Exchange. The Court found the transactions to be interest bearing loans, not check cashing. Judge Hood held that HLT's payday loans were subject to Kentucky's Usury statute, the Kentucky Consumer Loan Act, the Civil RICO statute (18 U.S.C. _ 1964(c)), the federal Truth In Lending Act, and the Kentucky Consumer Protection Act. The Acting General Counsel for the Kentucky Department of Financial Institutions, which licenses check cashers, filed an affidavit in support of the lender but failed to persuade the judge that payday lending is permitted under Kentucky's check casher law.[33] The case was settled.

At least eight cases are pending in state and federal courts in Kentucky. Judge Hood, of the United States District Court for the Eastern District of Kentucky granted class status in October 1998 in Lucille Riley, et al v. Larry K. York D/B/A Hazard Check Exchange, No. 98-268. Action has been stayed in federal court on other cases while the Kentucky Supreme Court considers issues raised by litigation.

Maryland

Maryland's Attorney General brought a case against Cash-2-You Leasing, a Maryland company that loaned $200 at interest rates of 780% APR. The suit alleges that the company attempted to avoid Maryland's usury law that caps rates at 33% APR by having the consumer "sell" a household item which Cash-2-U then "leased" back. For a $200 loan, the borrower was required to write a check for $260 payable to the company. If the borrower failed to repay the $200 loan and $60 fee after 15 days, the company deposited the check. The Attorney General has charged that the sham "sale-leaseback" transaction is an unfair and deceptive practice used to obfuscate a usurious loan. The case has not been decided.

Michigan

In 1997, the Michigan Attorney General issued Notices of Intended Action to five check cashers for operating an illegal consumer loan service. Payday loan companies were charging in excess of 1000%

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[33]Memorandum Opinion and Order, Gregory Hamilton and Dana Hamilton v. Larry York d/b/a HLT Check Exchange, LLP, filed December 11, 1997, Eastern District of Kentucky U. S. District Court.

APR. Michigan investigators found that five check-cashing companies charged annual rates of interest ranging from 416 to 1,095 percent while Michigan law allows a 25 percent rate for consumer loans. Michigan's Financial Institutions Bureau issued a ruling in 1995 that cash advances on checks held for future deposit is lending under Michigan's Regulatory Loan Act of 1963.[34] Three of the entities signed assurances of discontinuance to settle the complaints brought by the Attorney General, agreeing to comply with the Michigan Consumer Protection Act and with applicable usury and licensing statutes. The Michigan Financial Institutions Bureau has determined that check cashers who charge their regular check cashing fee plus a 5% interest rate are in compliance with Michigan's general usury law and do not have to be licensed under the Regulatory Loan Act. Since Michigan does not regulate check cashers or set maximum check cashing fees, this decision permits payday loans at unlimited rates without APR disclosure.

Oregon

Within the last year Oregon's Division of Finance and Corporate Securities took regulatory action against three payday loan operations for unlicensed consumer finance activity. The companies were required to return all interest on the loans made prior to licensing, pay a civil penalty to the state, and cease and desist future violations. All three submitted license applications which were approved.

Pennsylvania

The Pennsylvania Bureau of Consumer Protection in Philadelphia settled a case with Universal Financial Enterprises, formerly Instant Check Co., that charged over 700% interest to first make payday loans, then a variation in which they "bought" a household item from the consumer, then "leased" it back under similar terms to the payday loan.

South Carolina

The South Carolina Department of Consumer Affairs closed a 1992 complaint against Speedy Cash, Inc. for making loans without a license from the South Carolina Board of Financial Institutions for making payday loans. Speedy Cash was accused of charging $60 to lend $200 for 14-day periods on personal checks held for deposit. Without admitting violations of law, the company ceased operations in South Carolina. The Department got a preliminary injunction against GSC Enterprises in 1994 for illegal and unconscionable collection practices and unlicensed lending. One complaint against GSC involved a $68 charge to borrow $100 for two weeks for an effective interest rate of 1632%. The Department filed a third case in 1997 against check cashing outlets, alleging illegal loans, excess charges, violation of Truth in Lending, unconscionable debt collection, and violation of South Carolina's Unfair Trade Practices Act.

Tennessee

James Logan and Richard Fischer, Cleveland, Tennessee attorneys, sued Creditcorp, Inc. d/b/a Check Into Cash, alleging illegal practices and violation of the federal Truth in Lending Act and Fair Debt Collection Act. Check Into Cash settled the case, paying $2.2 million to the class and $500,000 in attorneys' fees.[35] A second class action case was settled for an undisclosed sum involving National Check Advance. Seven other payday loan cases are pending in Circuit Court of Bradley County and one case in United States District Court, Eastern Division of Tennessee at Chattanooga is pending decision on plaintiff's motion for class certification.

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[34] Press Release, issued by Attorney General Frank J. Kelley, Michigan, May 8, 1997.

[35] Securities and Exchange Commission, S-1 filing, July 31, 1998, Check Into Cash, p. 6.

Virginia

Virginia's Attorney General brought a series of cases in 1992 and 1993 against check cashers making payday loans, charging unauthorized small loan lending in violation of the Virginia Consumer Finance Act. In 1994, Virginia's Attorney General reached a $2.5 million settlement with an Alexandria-based "cash advance" firm, Cash Now Three, which advanced funds against personal checks, held them for 14 days, and charged a service fee of 28 percent of the amount financed, or an effective annual rate of 730%. Cash Now should have been a licensed small loan company in which case they would have been limited by a 36% APR usury cap on loans of $2500 or less. A Virginia court ruled that the practice of advancing cash against a customer's check dated for sometime in the future constituted the making of loans and that the fees charged greatly exceeded the limits imposed by the Consumer Finance Act.

Allstate Express Check Cashing, Inc., charged a 30% fee that amounted to an effective annual percentage rate of 730 percent when the check was held 15 days. The Circuit Court of the City of Richmond ruled that the owner of Allstate was personally liable for the $237,254 restitution judgment entered against the company in March 1995. Greenberg was ordered to pay $30,000 for attorney's fees to the Commonwealth, but the order was overturned by the Virginia Supreme Court. Claims for restitution were filed by 642 former customers.

West Virginia

In a 1996 case, Cash-N-Go of West Virginia signed a Consent Order with the Attorney General's office. The complaint alleged that Cash-N-Go made loans through its check cashing business without being licensed as a financial company. A permanent injunction was entered to halt the business and to pay refunds. (Circuit Court of Kanawha County, West VA. Civil Action No. 96-C-2291.) Check cashing legislation adopted in 1998 continued the prohibition against payday lending.

Appendix C

CFA/NCLC Model State Payday Loan Legislation

In states that chose to permit payday lending, model legislation should be adopted to protect consumers and curb abuses from excessive fees, roll-overs of loans, and punitive collection practices. Key points in a model payday loan law:

A. Purpose: To regulate delayed deposit loans as a credit transaction and to protect consumers.

B. Definitions: Broadly define "deferred deposit loan" to cover post-dated and present-dated check loans. Define "licensee" to include direct lenders and other lenders who make deferred deposit loans indirectly, including banks. Define "check" as a negotiable instrument.

C. Applicability: Act applies to lenders and those who facilitate or act as a conduit for another who may be exempt from state licensing but who makes deferred deposit loans, such as out-of-state national bank making deferred deposit loans through a check casher.

D. Exemptions: Exempt retail sellers who only incidentally cash checks. Financial institutions would not have to obtain a state license but must otherwise comply with the act.

E. Licensing: Sets up a state licensing regime with qualifications, bonding, minimum assets, and a public hearing to ascertain whether applicant has a clean record. Gives Commissioner powers to investigate, handle complaints, revoke or suspend a license, and issue regulations. Gives public access to complaint records.

F. Information and Annual Reports: Requires licensees to keep certain records, file an annual report, and to verify that licensees have not used the criminal process to collect deferred deposit loans. Licensees must file a copy of loan documents and fee schedules with Commissioner.

G. Required Acts: Sets term of loan to be no less than two weeks per $50 loaned. Sets maximum loan at $300 and the minimum at $50. Require licensee to stamp the back of the check with endorsement that check is being negotiated as a deferred deposit loan and that any holder of the check takes it subject to all claims and defenses of the maker.

H. Required Disclosures: Requires extensive disclosures including a written agreement describing the loan, an information brochure explaining consumer rights, Truth in Lending disclosures, and clear notice that borrower cannot be criminally or civilly prosecuted under bad check laws. Licensees required to post information at point of sale.

I. Prohibited Charges: Set maximum annual interest rate for deferred deposit loans at maximum small loan interest rate cap at a rate comparable to small loan laws. Limits charges for NSF fees to the lesser of $15 or the charge imposed by the financial institution as sole late fee. Unearned interest for prepaid loans must be rebated by actuarial method.

J. Prohibited Acts: Prohibits licensees from engaging in unfair and deceptive practices, from entering into unconscionable loans, from repaying or refinancing a deferred deposit loan with

the proceeds of another, threatening to use or using the criminal process to collect loans, making repeat loans within 30 days, and selling extras such as insurance with loans.

K. Enforcement: Civil and criminal remedies, including a private right of action for borrowers to sue for actual, consequential, and punitive damages with $1,000 minimum penalty per violation. Class actions permitted. Knowing violation of act a misdemeanor, subject to $1,000 fine or imprisonment not to exceed six months or both.

For a copy of the CFA/NCLC Model State Deferred Deposit Loan Act, send $10 to Consumer Federation of America, 1424 16th Street NW, Suite 604, Washington, DC 20036.

The National Check Cashers Association policy position on payday lending supports state regulation of payday lending, state fee caps and disclosures, maximum loan size of up to $1,000 with inflation adjustment, and a maximum loan term of 31 days. NaCCA's position on "extensions and rollovers" would limit them to avoid an undue spiraling of obligations. NaCCA also supports limits on multiple deferred deposit transactions by setting a cap on the total amount of all transactions with the same provider. NaCCA supports a Code of Ethical Standards for the deferred deposit industry. ("The Consumer's Choice: The Role of Deferred Deposit Services in Meeting Short Term Financial Needs," National Check Cashers Association, June 8, 1998.)

Table One
States With Specific Payday Loan Law/Regulations

State	Maximum Term/Amt.	Maximum Fee %*/$	Effective APR 7 day	14 day	TILA Disclosure Req.	Rollover/ Refi Prohibited	Max. Loan At 1 time # / $
CA.	30/$300	15%	782%	391%	N	N	1
CO	/$500	≤25% or $25	1250%	625%	Y	Y	2
DC	31/$1000	10% +fee Up to $20	782%	391%	N	N	No Limit
FL[cc]		≥10% or $5	521%	261%	N	N	No Limit
IO	/$500	$15 per $100 $10 per $100 next	782%	391%	N	Y	2
KS	30/$780	scale of fees[$]	782%	391%	N	Y	No Limit
KY	60/$500	$15 per $100 For 14 days	782%	391%	Y	N	2
LA	30/$500	scale of fees[$$]	521%	261%	N	Y	No Limit
MN	30/$350	scale of fees[$$$]	782%	391%	N	Y	No Limit
MS	30/$400	18%	938%	469%	N	N	No Limit
MO	10 mon/$500	$15/$100	782%	391%	N	N	No Limit
NE	31/$500	$15/$100	782%	391%	N	N	2
NV		To be set by regulation			N	N	No Limit
NC	31/$300	15%	782%	391%	N	Y	No Limit
OH	6 mon/$500	5%/mon. +	782%	391%	N	Y	No Limit
OK	30/$101	20%	1042%	521%	Y	N	$100
SC	31/$300	15%	782%	391%	Y	Y	No Limit
TN	31/$500	15% or $30	782%	391%	Y	Y	3
WA	31/$500	15% +	782%	391%	N	Y	No Limit
WY	30/	$30 or 20%	1042%	521%	Y	Y	No Limit

* % of face amount of check

[cc] Applies to check cashers only

[$] $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.

[$$] $5 for loans $0 to $99, $10 for loans $100 - $200, $15 for loans $201-$500.

[$$$] $5.50 for loans $0 - $50, 10% + $5 loans $50 - $100, 7% + $5 loans $100 - $250, 6% + $5 for loans $250 - $350.

Table Two

States That Prohibit Payday Loans Through Small Loan Law and Check Casher Law

State	Cap Small Loan Rate	Check Casher Law Prohibits
Alabama	36%	
Alaska	36%	
Arizona	36%	
Arkansas	17%	
Connecticut	28.52%	Yes
Georgia	57.68%	Yes
Hawaii	24%	
Maine	30%	Yes
Maryland	33%	
Massachusetts	39.86%	Yes
Michigan	25%	
New Hampshire	24%	
Pennsylvania	23.57%	Yes
Puerto Rico	25%	
Rhode Island	36%	
Texas	31.65%	
Vermont	24%	
Virginia	36%	Yes
Virgin Islands	26%	
West Virginia	31%	Yes

Table Three

States that Permit Payday Loans Through Small Loan Act Provisions

State	Small Loan Act APR on $200 Loan	Permitted for Check Cashers
Delaware	No Cap	No
Idaho	No Cap	Yes
Illinois	No Cap	Yes
Indiana	$33 min. finance charge/36% cap	Yes
Montana	No Cap	Yes
New Jersey	No Cap	No
New Mexico	No Cap	Yes
New York	No Cap	No
North Dakota	No Cap	Yes
Oregon	No Cap	Yes
South Dakota	No Cap	Yes
Utah	No Cap	Yes
Wisconsin	No Cap	Yes

From "The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry," Consumer Federation of America, November 1998.