

2005 SUMMARY OF STATE PAYDAY LOAN ACTS¹

by The National Consumer Law Center

ALABAMA

Ala. Code. § 5-18A-1 et seq.

Applicability: The statute applies to all persons offering deferred presentment services. Otherwise small loan act applies. Ala. Code § 5-18-15 (interest is limited to 3% per month for amounts up to \$200 and 2% per month on amounts of \$201-\$999 plus \$3 per month account maintenance fee if monthly payments exceed \$30).

Exemptions: Trust companies, life insurance companies, and federally constituted agencies, banks, credit unions, savings associations, savings banks, and thrift institutions organized pursuant to the laws of this state or any other state or the laws of the United States and any parent of any of the foregoing entities.

Licensing Requirements: \$20,000 in unencumbered cash assets for each location of the business; no record on the part of the applicant, any director, officer, or shareholder owning more than 25% of the applicant, of any court findings of fraud or any official suspension or removal by any agency or department of the U.S. or any state from participation in the conduct of any lending, deferred presentment, or related business; no record of a conviction of a felony or an offense involving breach of trust, fraud, or dishonesty in any jurisdiction or a history of acting as a beneficial owner for an individual who has been convicted of a felony or an offense involving breach of trust, fraud, or dishonesty in any jurisdiction. Applications must be written and under oath to the supervisor. A nonrefundable license fee of \$500 for each location.

Disclosures: A written explanation in clear, understandable language of the fees to be charged by the licensee and the date on which the check or debit authorization may be deposited or presented by the licensee. All fees shall be disclosed as finance charges as required by the Federal Truth-in-Lending Act. The customer, prior to entering into a deferred presentment transaction, shall receive and acknowledge an accurate and complete notification and disclosure of the itemized and total amounts of all fees and other costs that will or potentially could be imposed as a result of such agreement. A licensee shall issue a copy of the written agreement to each person for whom a licensee defers deposit of a check or debit authorization. Any agreement for a deferred presentment transaction shall be in writing and signed by the checking account holder. Every licensee shall conspicuously and continuously display a schedule of all fees, charges, and penalties for all services provided by the licensee in all capital letters and in 12-point type or larger immediately above the space for the borrower's signature: NOTICE: FEES FOR DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER THAN FOR OTHER TYPES OF LOANS. Every licensee shall conspicuously post a sign, as designed by the department, notifying the public of the pertinent provisions of this chapter and any consequences related to entering into a deferred presentment transaction pursuant to this chapter.

Permitted charges: If there are insufficient funds to pay a check on the date of presentment, the licensee may charge a fee; however, only one such fee may be collected with respect to any particular transaction. If a check is returned to the licensee from a payer financial institution due to insufficient funds or a closed account, the licensee shall have the right to all civil remedies allowed by law to collect the check and may recover court costs and a reasonable attorney's fee. The attorney's fee may not exceed 15 percent of the face amount of the check or debit authorization. No individual who issues a personal check or authorizes a debit for his or her checking account to a licensee for the purpose of a deferred presentment transaction under this chapter shall be convicted, if the check or debit authorization is returned due to insufficient funds.

Loan Terms: Presentment cannot be deferred for less than 10 days nor more than 31 calendar days after the date of the contract. There is a \$500 aggregate loan limit. The maximum amount that a lender can advance is \$500. The maximum fee on any deferred presentment transaction cannot 17.5% of the amount advanced. A licensee may renew or extend a deferred presentment transaction with the same customer no more than one additional time at this fee for a maximum of two continuous transactions and cannot thereafter enter into a new deferred presentment transaction with that same customer until the next business day after the transaction amount is repaid in full. After the initial loan period and one rollover with the same customer, the full outstanding amount of the loan shall become due. If the customer is unable to repay the outstanding balance in full, the licensee may offer the customer an extended repayment option of four equal monthly installments of the remaining balance. The licensee

¹ Also called deferred payment/deposit or cash advance loans.

shall not commence any civil action to collect on a transaction in default until written notice has been sent notifying the customer of his or her rights. If the customer fails to exercise his or her rights within 15 days of the notice, the licensee may commence action to collect on a transaction in default.

Prohibited Acts: No licensee: may alter or delete the date on any check accepted by the licensee; may accept an undated check or debit authorization or a check or debit authorization dated on a date other than the date on which the licensee accepts the check or debit authorization; shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business; shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person. A deferred presentment provider shall not redeem, extend, or otherwise consolidate a deferred deposit agreement with the proceeds of another deferred presentment transaction made by the same or affiliated deferred presentment provider except as expressly permitted. The licensee shall use a third party private sector database, where available, to ensure that the customer does not have outstanding deferred presentment transactions that exceed \$500.

Enforcement and Penalties: The supervisor may: suspend or revoke any license; issue cease and desist orders; enter into consent orders at any time with any person to resolve any matter arising under this chapter; require the refund of any fees collected by such person in violation of this chapter; order the person to pay to the supervisor a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter; seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order. Any person aggrieved by the conduct of a licensee under this chapter in connection with the regulated activities of the licensee may file a written complaint with the supervisor who may investigate the complaint. Any person who willfully makes charges in excess of those permitted or who willfully engages in the business of cashing deferred presentment checks, or both, is guilty of a Class B misdemeanor for the first offense and a Class B felony for the subsequent offense.

ALASKA

Alaska Stat. § 06.50.100 et seq.

Applicability: The statute applies to prohibit persons, including persons doing business from outside this state, from engaging in the business of making or offering to make deferred deposit advances without having a license under this chapter. Otherwise small loan act applies. Alaska Stat. § 06.20.230 *et seq.* (3% per month for amounts up to \$759; 2% per month for amounts of \$850- \$9,999).

Licensing Requirements: Applicants for a license must have cash assets of at least \$25,000 (for each location); demonstrate the financial responsibility, financial condition, business experience, character, and general fitness that reasonably warrant the department's belief that the applicant's business will be conducted lawfully and fairly; if the person has a physical business location in the state, have a physical business location that is accessible by and convenient to the public. An applicant for a license shall file a bond in the sum of \$25,000 for a business with one location and \$50,000 for a business with more than one location.

Disclosures: An advance must be documented in a written agreement signed by the advance recipient and on a form approved by the department. The agreement must clearly and conspicuously disclose the name of the licensee; the date of the advance; the principal amount of the advance; a statement of the total amount of fees that may be charged as a condition of making the advance, expressed both as a dollar amount and as an annual percentage rate; the repayment terms; the due date; an itemization of all disbursements, including disbursements to third parties; the name and title of the employee who signs the agreement on behalf of the licensee; and any other item required to be disclosed under state or federal law. A licensee shall post a conspicuous (legible and at least one inch in height) notice in each business location that discloses the fees that the licensee charges for advances. The fees in the notice must be expressed as a dollar amount, as an annual percentage rate for 14 days for each \$100, and as an annual percentage rate for 30 days for each \$100. Before disbursing funds, a licensee shall provide a clearly written statement separate from the written advance agreement required to be reviewed and signed by the advance recipient. The licensee shall keep the signed original and give a copy to the recipient. The disclosure statement must indicate the advance is intended to address short-term, not long-term, financial needs; include an explanation of all fees for advances and renewals of advances; state that the licensee may charge an advance recipient a bad check fee for costs if a payment is returned unpaid; state that, in the event of the advance recipient's default, the licensee may sue the recipient and recover up to \$700 over the amount of the payment and, give the department's address and telephone number for receiving calls regarding customer complaints and concerns; state that the licensee may not accept collateral or services for an advance; state that the check given as security for the advance may be negotiated as part of the advance; state that the advance recipient may rescind the advance without cause at any time before the close of business on the business day following the day on which the licensee makes the advance by paying the principal amount of the advance to the licensee in cash or other immediately available funds; if the advance recipient rescinds under this paragraph, the origination fee is not refundable, but the licensee may not charge the recipient another fee, except for a bad check fee for costs if the payment is returned unpaid; state that a criminal action may not be brought against the advance recipient for failure to pay the advance; and include other information reasonably required by the department to inform and protect advance recipients.

Permitted charges: The licensee may collect a bad check fee. The licensee may initiate a court action against a defaulting recipient to recover damages and costs but the total of all damages and costs, including damages recovered, may not exceed the amount of the payment by \$700. If a payment received from an advance recipient is returned unpaid to a licensee, the licensee may not collect the fees allowed by this chapter unless the fees are disclosed in the agreement for the advance.

Loan Terms: A licensee may not: make advances that exceed \$500 outstanding in advances to the recipient at one time (minimum duration: 14 days); renew an advance more than 2 consecutive times. A licensee may only charge a nonrefundable origination fee in an amount not to exceed \$5; and a fee that does not exceed \$15 for each \$100 of an advance, or 15 percent of the total amount of the advance, whichever is less. These fees are considered earned at the time of the transaction and may not be prorated. If an advance recipient defaults, before assigning the payment obligation to a third party for collection and before initiating a court action against the recipient, a licensee shall attempt in good faith to contact the advance recipient at reasonable times by telephone or mail to discuss the delinquency and to offer the recipient a payment plan under which the recipient may repay the delinquent advance over an extended period of time, which may not exceed six months. In addition to the contact required, the licensee shall send a certified letter to the recipient's last known address at least 15 days before the action that makes the payment plan offer described and that informs the recipient of the licensee's intent to proceed with a court action.

Prohibited Acts: A licensee may not: charge fees other than those allowed by this section; charge the advance

recipient an additional fee to access the proceeds of an advance; require a recipient to agree to mandatory arbitration; threaten an advance recipient with criminal action as a result of the recipient's default.

Enforcement: License suspension or revocation.

ARIZONA

Ariz. Rev. Stat. § 6-1251 et seq. (effective Sept. 1, 2000; sunsets on July 1, 2010).

Applicability: This statute applies to transactions 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. Otherwise, the consumer loan act applies. *Ariz. Rev. Stat. § 6-601 et seq.* (36% on loans up to \$1,000; on loans greater than \$1,000: 36% on the initial \$500 and 24% on the excess).

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. Any person that is principally engaged in the retail sale of goods or services and that from time to time cashes checks, drafts, or money orders for a fee or other consideration which does not exceed \$2.00.

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. Must have a minimum net worth in cash or cash equivalent of at least \$50,000. Licenses are renewed annually. Certain reasons for revocation or suspension of licenses are listed, including violating this law.

Required disclosures: Must conspicuously post a notice that states the fees charged at every location that is licensed. Must 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, a statement of the total amount of the fees charged, expressed as both a dollar amount and as an annual percentage rate and which also complies 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: 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; 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% 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: Loan can be no greater than \$500, excluding the permitted fees. Loan agreement must be in writing. The loan cannot be extended more than 3 consecutive times. For each extension, the licensee shall terminate the previous agreement and sign a separate agreement. The licensee may charged the permitted fee for each extension.

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

ARKANSAS

Ark. Code Ann. 23-52-101 et seq., effective April 7, 1999, but this may be trumped by the maximum interest rate in the state constitution. Ark. Const. art. 19, § 13 (17% per year).

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 it was 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 3% 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 charges: A reasonable administrative fee not to exceed \$10 plus 10% 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 less than 6 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.

Required 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, conducts hearings and compel the production of documents.

Penalties: The department can impose a fine of up to \$1,000 per transaction. Willfully 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 5 years of the act complained of.

CALIFORNIA

Cal Fin. Code § 23000 et seq.

Applicability: This statute applies to those persons or entities included in the definition of "licensee:" any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. Otherwise consumer loan act applies. Cal Fin. Code § 22303 (2.5% per month on amount up to \$225; 2% per month on \$226 to \$900; 1.5% per month on \$901-\$1650; 1% on \$1,651-\$2,500).

Exemptions: Persons or entities that are not "licensees."

Licensing Requirements: At the time of filing the application, the applicant shall pay to the commissioner \$100 as a fee for investigating the application, and \$200 as an application fee, and the cost of fingerprint processing. Applicants must have a net worth of at least \$25,000, regardless of the number of licensed locations. A licensee shall maintain a surety bond of \$25,000. A license shall be conspicuously posted in the place of business authorized by the licensee.

Required disclosures: Every licensee shall conspicuously post a complete, detailed, and unambiguous schedule of fees that is clear, legible and in letters not less than one-half inch in height. Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice of the customer's rights under the deferred deposit transaction law. The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height: The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction. The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a \$100 and a \$200 deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. An agreement to enter into a deferred deposit transaction shall be in writing, signed by the customer, and shall include disclosures required by the Federal Truth In Lending Act and its regulations (written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and in at least 10-point type); the name, address, and telephone number of the licensee; the customer's name and address; the date to which deposit of check has been deferred (due date); the payment plan, or extension, if applicable; an itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations; disclosure of any returned check charges; that the customer cannot be prosecuted or threatened with prosecution to collect; that the licensee cannot accept collateral in connection with the transaction; that the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service; signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

Prohibited acts: No licensee shall: advertise, print, display, publish, distribute, or broadcast, in any manner, any statement or representation with regard to the business subject to the provisions of this division that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive; place an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses in the printed text of the advertisement, or the oral text in the case of a radio or television advertisement, that the licensee is licensed by the department pursuant to this division; accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another; accept any collateral for a deferred deposit transaction; make any deferred deposit transaction contingent on the purchase of insurance or any other goods or services; enter into a deferred deposit transaction with a person lacking the capacity to contract; alter the date or any other information on a check; engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions; accept more than one check for a single deferred deposit transaction; take any check, instrument, or form in which blanks are left to be filled in after execution; offer, arrange, act as an agent for, or assist a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations, including the provisions of this division. A customer who enters into a deferred deposit transaction and offers a personal check to a licensee pursuant to an agreement shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement. A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.

Loan Terms: A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section. The face amount of the check shall not exceed \$300. Each deferred deposit transaction

shall be made pursuant to a written agreement signed by the customer and by the licensee or an authorized representative of the licensee. A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan.

Permitted charges: A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. A licensee who enters into a deferred deposit transaction agreement shall not be entitled to recover damages for that transaction. A fee not to exceed \$15 may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee is the exclusive charge for a dishonored check. No fee may be added for late payment.

Enforcement and Penalties: The commission may revoke or suspend a license, order a person or licensee to desist and to refrain from engaging in the business or further violating this division; and bring an action in the name of the people of the State of California against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction. Civil penalty not to exceed \$2,500 for each violation. Any person who willfully violates these rules, shall, upon conviction, be punished by a fine of not more than ten thousand dollars \$10,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order.

COLORADO

Colo. Rev. Stat. § 5-3.1-101 et seq.

Applicability: 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. Otherwise UCCC applies. Colo. Rev. Stat. § 5-2-201 (the greater of: the total of 36% per year on \$1,000 or less + 21% per year on \$1,000-\$3,000 + 15% per year amounts in excess of \$3,000; or 21% per year on the unpaid balances of the amount financed).

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

Licensing requirements: Lenders must be licensed.

Permitted charges: Not more than 20% of the first \$300 plus 7.5% of the excess. Loans can be renewed once and the renewal fee can be no more than 20% of the first \$300 plus 7.5% of the excess. 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.

Required disclosures: Licensee must reduce 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."

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 ten-point type which says: "This is a deferred deposit loan instrument."

Prohibited acts: A 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. Licensee may not change its location without giving the administrator advance written notice. Licensee may not make loans at a location for which it does not have a license nor engage in business under any name other than that on the license. A loan shall not be renewed more than once. If not paid after one renewal, the lender may deposit the check. Cannot charge a fee for cashing the lender's check. Lender cannot present a check for payment unless it is endorsed with the actual business name of the lender. 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 and loan term cannot exceed 40 days.

CONNECTICUT

None. Usury act applies or small loan act applies. Conn. Gen. Stat. § 36a-563 (\$17 per \$100 up to \$600; \$11 per \$100 up to \$1,800; add-on interest).

DELAWARE

Del. Code. Ann. Tit. 5 § 2227 et seq.

Applicability: This statute applies to persons making more than 5 loans within any 12-month period, including those making short-term consumer loans. Check cashers are prohibited from advancing any monies on a post-dated check.

Exemptions: Banking organizations, federal credit unions or insurance companies; and any other person, if and to the extent that such person is lending money in accordance with and as authorized by any other applicable law of this State or the United States.

Licensing requirements: Applicants shall pay to the Commissioner as an investigation fee the sum of \$250. The applicant shall pay an annual license fee of \$250 which shall be payable annually thereafter. Each license issued under this chapter shall state the address at which the business is to be conducted and shall state fully the name of the licensee. A copy of such license shall be prominently posted in each place of business of the licensee. No licensee shall maintain an office at any other location than that designated in the license. Every licensee shall file a surety bond of not less than \$50,000 nor more than \$200,000. In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit of not less than \$50,000 nor more than \$200,000.

Loan terms: A short term consumer loan is a loan of \$500 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness. No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.

Prohibited acts: No licensee shall: make more than 4 rollovers of an existing short-term consumer loan; pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction; cause to be placed before the public in this State any false or misleading advertising matter pertaining to loans or the availability thereof. No order, warrant or claim of any kind, from any employee upon his or her employer, for any salary or part thereof due or to become due to such employee from such employer, shall be taken, accepted or agreed to be taken or accepted, as security for money loaned or to be loaned. No instrument evidencing a loan under this chapter shall contain any acceleration clause under which any part, or all of the unpaid balance, of the obligation not yet matured, may be declared due and payable because the holder deems himself or herself to be insecure or any power of attorney to confess judgment or any other power of attorney.

Required disclosures: All short-term consumer loan must be evidenced by a written loan application (English and Spanish) a must contains a conspicuously displayed written disclosure that: The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems; Additional fees may accrue if the loan is rolled over; and credit counseling services are available to consumers who are experiencing financial problems.

Permitted charges: In the event of a borrower's default, the licensee may charge and collect a reasonable attorney's fee. The licensee may also, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee.

Penalties: Lenders operating without a license shall be fined not less than \$50 nor more than \$200 for each offense, or imprisoned not more than 3 months, or both. Licensees who violate the prohibitions against salary assignment and acceleration clauses shall be fined not less than \$100 nor more than \$500, or imprisoned not more than 6 months, or both. For every violation of this chapter by any association, firm, partnership, trustee system or combination of persons not incorporated, or by any corporation, any member of the association, firm, partnership, trustee system or combination of persons not incorporated, and the president, secretary or treasurer, or any person acting as agent of the association, firm, partnership, trustee system or combination of persons not incorporated, or corporation, may be proceeded against as a principal.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 26-301 et seq.

Applicability: To check cashers. Otherwise, consumer loan act applies. D.C. Code Ann. § 28-3301 *et seq.* (24% 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 & 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% 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.

Required disclosures: 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 \$1000. 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

Fl. Stat. Ann. § 560.401 et seq.; Fla. Admin. Code Ann. r.3C-560.901 et seq.

Applicability: To persons who are registered to provide currency or payment instruments in exchange for a person's check and who agree to hold that person's check for a period of time prior to presentment, deposit, or redemption. Otherwise consumer finance act applies. Fla. Stat. Ann. § 516.031 (30% per year on the first \$2,000; 24% per year on \$2,000 - \$3,000; 18% per on \$3,000 - \$25,000).

Exemptions: Financial institutions (a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union) are exempt.

Registrations requirements: Deferred presentment providers ("providers") must register and must file a sworn declaration of intent to engage in deferred presentment transactions along with a filing fee of \$1,000. Registrations must be renewed by submitting a nonrefundable deferred presentment provider renewal fee of \$1,000. Any person engaging in a registered activity shall have a net worth of at least \$100,000 and an additional net worth of \$50,000 per additional location up to a maximum of \$500,000. Applicant must also provide a corporate surety bond in such amount as determined by commission rule, but not to exceed \$250,000. The commission and office may require an additional amount up to \$500,000 for extraordinary circumstances.

Required disclosures: Every deferred presentment transaction shall be documented in a written agreement signed by both the provider and the drawer that contains: The name or trade name, address, and telephone number of the provider and the name and title of the person who signs the agreement on behalf of the provider; the date the deferred presentment transaction was made; the amount of the drawer's check; the length of deferral period; the last day of the deferral period; the address and telephone number of the office and the Division of Consumer Services of the Department of Financial Services; a clear description of the drawer's payment obligations under the deferred presentment transaction; the transaction number assigned by the office's database. Every provider shall furnish to the drawer a copy of the deferred presentment transaction agreement. The provider must comply with the disclosure requirements of the federal Truth-in-Lending Act. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated and the following notice must be placed in a prominent location on each agreement in at least 14-point type in substantially the following form and must obtain the signature of the drawer where indicated. NOTICE: 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED PRESENTMENT AGREEMENT WITHIN 24 HOURS OF TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY. YOU MUST SIGN THE FOLLOWING STATEMENT: I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT THIS TIME. I HAVE NOT TERMINATED A DEFERRED PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS. (Signature of Drawer) 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU. 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER SHALL REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

Loan terms: The face amount of a check taken for deferred presentment may not exceed \$500 exclusive of the fees allowed by this part. No deferred presentment agreement shall be for a term in excess of 31 days or less than 7 days. The deferred presentment agreement and drawer's check shall bear the same date, and the number of days of the deferral period shall be calculated from this date. The provider shall maintain a common database and shall verify whether that provider or an affiliate has an outstanding transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. The provider shall access the office's

database established and shall verify whether any other deferred presentment provider has an outstanding transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. If the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the provider, the provider shall provide a grace period extending the term of the agreement for an additional 60 days after the original termination date, without any additional charge. The provider shall require that as a condition of providing this grace period, that within the first 7 days of the grace period the drawer make an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period and complete the counseling by the end of the grace period. The drawer may agree to, comply with, and adhere to a repayment plan approved by the counseling agency. If the drawer agrees to comply with and adhere to a repayment plan approved by the counseling agency, the provider is also required to comply with and adhere to that repayment plan. The provider may not deposit or present the drawer's check for payment before the end of the 60-day grace period unless the drawer fails to comply with such conditions or the drawer fails to notify the provider of such compliance. The statute contains specific disclosure requirements regarding the repayment options. If a drawer completes an approved payment plan, the provider shall pay one-half of the drawer's fee for the agreement to the consumer credit counseling agency.

Permitted charges: No provider or its affiliate shall charge fees in excess of 10 percent of the currency or payment instrument provided. However, a verification fee may be charged. The 10-percent fee may not be applied to the verification fee. If a check is returned to a provider due to insufficient funds, a closed account, or a stop-payment order, the provider may pursue all legally available civil remedies to collect the check, including, but not limited to, the imposition of all charges imposed on the provider by any financial institution. In its collection practices, a provider shall comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices which are contained A violation of this act constitutes a violation of the Deceptive and Unfair Trade Practices Act.

Prohibited acts: The fees authorized by this section may not be collected before the drawer's check is presented or redeemed. No provider shall require a person to provide any additional security for the transaction or any extension or require a person to provide any additional guaranty from another person. A provider shall not include any of the following provisions in any written agreement: a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the drawer agrees not to assert any claim or defense arising out of the agreement; or a waiver of any provision of this part. No provider or person may alter or delete the date on any written agreement or check it holds. No additional fee may be charged by a provider or its affiliate for issuing or cashing the provider's payment instrument. No provider may rollover a deferred presentment agreement or redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another transaction made by the same or an affiliated provider. A provider may not enter into a transaction with a person who has an outstanding transaction with that provider or with any other provider, or with a person whose previous transaction with that provider or with any other provider has been terminated for less than 24 hours. The provider may not deposit or present the drawer's check if the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the provider. No additional fees or penalties may be imposed on the drawer by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer's account. In no event shall any additional fees be added to the amounts due and owing to the provider.

GEORGIA

Enhanced protections against payday lending and additional penalties enacted in 2004. Ga. Code Ann. §§ 16-17-1 to 16-17-10. Also, the Industrial loan Act applies (Ga. Code Ann. § 7-3-14)(10% per year; interest may be discounted in advance on loan contracts repayable in 18 months or less and, on contracts repayable over a greater period; interest shall be added to the principal amount of the loan. A licensee may also charge a fee of 8% of the first \$600 plus 4% of the excess).

Check cashers are required to send checks for deposit to their accounts at the depository institutions 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).

HAWAII

Check Casher Act - Hawaii Rev. Stat. Ann. § 480F-1 et seq.

Otherwise, the small loan act applies. Haw. Rev. Stat. § 412:9-302 (14% precomputed interest per year for the first eighteen months; or 24% per year).

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 2% 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.

Required 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 charges: Not to exceed 15% 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 willful 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 attorney's fees and costs.

Criminal/civil penalties: A willful 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

Idaho Code Ann. § 28-46-401

Applicability: This statute governs lenders making payday loans.

Licensing requirements: Payday lenders must be licensed. Separate licenses are required for each location. Applicants must have liquid assets of at least \$30,000. Applicants seeking to engage in the business of payday loans at more than one (1) location in the state shall have liquid assets of at least an additional \$5,000 for each additional location in the state up to a maximum of seventy-five thousand dollars \$75,000 for all locations in the state. Otherwise, Idaho credit code applies. Idaho Code § 28-42-201 (allows interest at any contract rate).

Loan terms: A licensee may renew a payday loan no more than three (3) consecutive times, after which the payday loan shall be repaid in full by the borrower. A borrower may enter into a new loan transaction with the licensee at any time after a prior loan to the borrower is completed. A loan secured by a borrower's check is completed when the check is presented or deposited by the licensee or redeemed by the borrower.

Prohibited acts: No licensee or person related to a licensee by common control may have outstanding at any time to a single borrower a loan or loans with an aggregate principal balance exceeding \$1,000, plus allowable fees. No payday loan shall be repaid by the proceeds of another payday loan made by the same licensee or a person related to the licensee by common control. A licensee shall not threaten a borrower with criminal action as a result of any payment deficit. No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of a payday loan business. Other than a check, a licensee shall not accept any property, title to property, or other evidence of ownership as collateral for a payday loan.

Permitted charges: If the borrower's check is returned unpaid to the licensee from a payor financial institution, the licensee has the right to collect charges authorized by this code provided such charges are disclosed in the loan agreement. A licensee may not charge treble damages. If the borrower's obligation is assigned to any third party for collection, the provisions of this section shall apply to such third party collector.

Enforcement and Penalties: License revocation or suspension. Administrator may bring civil actions. Administrator may also seek injunctions against violations of the act and against unconscionable agreements and fraudulent or unconscionable conduct including debt collection bring civil enforcement actions. Administrator can bring action for failure to file notification or to pay fees for 3 times the amount of fees the defendant has failed to pay or \$1000 (whichever is greater) plus administrator's costs and attorney's fees.

Private right of action: Debtors can recover actual damages and civil penalties of no more than \$5,000 for repeated and intentional violations of this act. Debtor's remedies are not affected by actions brought by the administrator.

ILLINOIS

815 Ill. Comp. Stat. Ann. § 122/1-.1 - Payday Loan Reform Act (effective 12/6/05)

Applicability: Any lender that offers or makes a payday loan to a consumer in Illinois and to any person or entity that seeks to evade its applicability by any device, subterfuge, or pretense whatsoever. A lender that is an agent for a bank, savings bank, savings and loan association, credit union, or insurance company for the purpose of brokering, selling, or otherwise offering payday loans made by the bank, savings bank, savings and loan association, credit union, or insurance company shall be subject to all of the provisions of this Act, except those provisions related to finance charge. Otherwise Consumer Installment Loan Act applies. 205 Ill. Comp. Stat § 670/15 (allows interest at any contract rate).

Exemptions: Retail sellers who cash checks incidental to a retail sale and who charge no more than the fees as provided by the Check Cashing Act per check for the service. Banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States.

Licensing requirements: Written application; \$1,000 annual fee; \$50,000 bond for each location (max: \$500,000) A license shall be issued for no longer than one year, and no renewal of a license may be provided if a licensee has substantially violated this Act and has not cured the violation to the satisfaction of the Department. A licensee shall appoint, in writing, the Secretary as attorney-in-fact upon whom all lawful process against the licensee may be served with the same legal force and validity as if served on

Required disclosures: Before a payday loan is made, a lender shall deliver to the consumer a pamphlet prepared by the Secretary that: explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a payday loan transaction includes a toll-free number to the Secretary's office to handle concerns or provide information about whether a lender is licensed, whether complaints have been filed with the Secretary, and the resolution of those complaints; and provides information regarding the availability of debt management services. Lenders shall provide consumers with a written agreement that includes the following information in English and in the language in which the loan was negotiated: the name and address of the lender making the payday loan, and the name and title of the individual employee who signs the agreement on behalf of the lender; disclosures required by the federal Truth in Lending Act; a clear description of the consumer's payment obligations under the loan; a notice stating: "You cannot be prosecuted in criminal court to collect this loan." This information must be conspicuously disclosed in the loan document and shall be located immediately preceding the signature of the consumer; and the following statement, in at least 14-point bold type face: "WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation." The following notices in English and Spanish must be conspicuously posted by a lender in each location of a business providing payday loans: A notice that informs consumers that the lender cannot use the criminal process against a consumer to collect any payday loan; the schedule of all finance charges to be charged on loans with an example of the amounts that would be charged on a \$100 loan payable in 13 days and a \$400 loan payable in 30 days, giving the corresponding annual percentage rate; In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement: "WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation." In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement: "INTEREST-FREE REPAYMENT PLAN: If you still owe on one or more payday loans after 35 days, you are entitled to enter into a repayment plan. The repayment plan will give you at least 55 days to repay your loan in installments with no additional finance charges, interest, fees, or other charges of any kind."

Loan terms: Loans cannot be less than 13 days nor more than 45 days. If a consumer has or has had loans outstanding for a period in excess of 45 consecutive days, no payday lender may offer or make a loan to the consumer for at least 7 calendar days after the date on which the outstanding balance of all payday loans made during the 45 consecutive day period is paid in full. Total principal amount of all of the consumer's outstanding payday loans cannot exceed the lesser of \$1,000 or 25% of the consumer's gross monthly income. No payday loan may be made to a consumer who has an outstanding balance on 2 payday loans. Before entering into a loan agreement with a consumer, a lender must use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under this Act. If the consumer has or has had one or more payday loans

outstanding for 35 consecutive days, any payday loan outstanding on the 35th consecutive day shall be payable under the terms of a repayment plan at the consumer's request. The consumer has until 28 days after the default date of the loan to request a repayment plan. Within 48 hours after the request, the lender must prepare the repayment plan agreement and both parties must execute the agreement. Execution of the repayment plan agreement shall be made in the same manner in which the loan was made and shall be evidenced in writing. Once the loan becomes subject to a repayment plan, the loan shall not be construed to be in default until the default date provided under the terms of the repayment plan.

Permitted charges: No lender may charge more than \$15.50 per \$100 loaned on any payday loan over the term of the loan. This charge is considered fully earned as of the date on which the loan is made. If there are insufficient funds to pay a check, Automatic Clearing House debit on the day of presentment and only after the lender has incurred an expense, a lender may charge a fee not to exceed \$25. Only one such fee may be collected by the lender with respect to a particular check, ACH debit, or item even if it has been deposited and returned more than once. A lender shall present the check, ACH debit for payment not more than twice. A fee charged under this subsection (a) is a lender's exclusive charge for late payment. Insufficient fund fee.

Prohibited acts: Loan rollovers; threatening to use or using the criminal process in this or any other state to collect on the loan; using any device or agreement that would have the effect of charging or collecting more fees or charges than allowed by this Act, including, but not limited to, entering into a different type of transaction with the consumer; engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a payday loan; using or attempting to use the check provided by the consumer in a payday loan as collateral for a transaction not related to a payday loan; knowingly accepting payment in whole or in part of a payday loan through the proceeds of another payday loan provided by any licensee; knowingly accepting any security for a payday loan; charging any fees or charges other than those specifically authorized by this Act; threatening to take any action against a consumer that is prohibited by this Act or making any misleading or deceptive statements regarding the payday loan or any consequences thereof; Making a misrepresentation of a material fact by an applicant for licensure in obtaining or attempting to obtain a license. Including any of the following provisions in loan documents: a confession of judgment clause; a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer, unless the waiver is included in an allowed arbitration clause; a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers; or a provision in which the consumer agrees not to assert any claim or defense arising out of the contract. Selling any insurance of any kind whether or not sold in connection with the; collecting a delinquency or collection charge on any installment regardless of the period in which it remains in default; collecting treble damages on an amount owing from a payday loan; Refusing, or intentionally delaying or inhibiting, the consumer's right to enter into a repayment plan pursuant to this Act; charging for, or attempting to collect, attorney's fees, court costs, or arbitration costs incurred in connection with the collection of a payday loan; making a loan in violation of this Act; garnishing the wages or salaries of a consumer who is a member of the military; failing to suspend or defer collection activity against a consumer who is a member of the military and who has been deployed to a combat or combat-support posting; contacting the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan; advertising for loans transacted under this Act may not be false, misleading, or deceptive. Payday loan advertising, if it states a rate or amount of charge for a loan, must state the rate as an annual percentage rate. 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 the other business is licensed by the Department or, in the opinion of the Secretary, the other business would not be contrary to the best interests of consumers and is authorized by the Secretary in writing.

Penalties: Material violations of this Act constitute a violation of the Consumer Fraud and Deceptive Business Practices Act and are unenforceable against the consumer. The Secretary may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have the power to issue fines of up to \$10,000 per violation, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act.

INDIANA

Ind. Code Ann. § 24-4-4.5-7-101 (UCCC governing small loans). Otherwise Ind. Code Ann. § 24-4.5-3-501, governing regulated and supervised loans, applies (36% per year or \$30).

Applicability: This Chapter governs small loans defined as deferred deposit transactions and applies to: all persons licensed to make loans; to any person who facilitates, enables, or acts as a conduit for any lender who is or may be exempt from licensing; a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or a person, if the department determines that a transaction is: in substance a disguised loan; or the application of subterfuge for the purpose of avoiding this chapter.

Licensing requirements: A person engaged in making small loans under this chapter shall post a bond the amount of \$50,000 for each location where small loans will be made, up to a maximum bond of \$500,000.

Loan terms: A small loan must have a principal of at least \$50 and not more than \$500 and must have a term of at least 14 days. The total payable amount of the small loan cannot exceed 15% of the borrower's monthly gross income. After the borrower's fifth consecutive small loan, another small loan may not be made to that borrower within 7 days after the due date of the fifth consecutive small loan. After the borrower's fifth consecutive small loan, the balance must be paid in full. However, the borrower and lender may agree to enter into a simple interest loan, payable in installments, within 7 days after the due date of the fifth consecutive small loan.

Permitted fees: Finance charges on the first two hundred fifty dollars (\$250) of a small loan are limited to fifteen percent (15%) of the principal. Finance charges on the amount of a small loan greater than two hundred fifty dollars (\$250) and less than or equal to four hundred dollars (\$400) are limited to thirteen percent (13%) of the amount over two hundred fifty dollars (\$250) and less than or equal to four hundred dollars (\$400). Finance charges on the amount of the small loan greater than four hundred dollars (\$400) and less than or equal to five hundred dollars (\$500) are limited to ten percent (10%) of the amount over four hundred dollars (\$400) and less than or equal to five hundred dollars (\$500). The only fee that may be contracted for and received by the lender on a small loan is an NSF charge, not to exceed \$20, for each return by a bank or other depository institution. This additional charge may be assessed once regardless of how many times a check or an authorization to debit the borrower's account may be submitted by the lender and dishonored.

Disclosure requirements: The lender shall disclose to the borrower to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act and must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement: "WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions. A borrower may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a borrower must inform the lender that the borrower wants to rescind the small loan, and the borrower must return the cash amount of the principal of the small loan to the lender." When a borrower enters into a small loan, the lender shall provide the borrower with a pamphlet approved by the department that describes the availability of debt management and credit counseling services; and the borrower's rights and responsibilities in the transaction. The lender shall provide to each borrower a copy of the required loan documents before disbursement of loan proceeds.

Prohibited acts: A small loan may not be secured by personal property other than a check or electronic debit. No lender may permit a person to become obligated under more than 1 loan agreement with the lender at any time. A lender shall not make a small loan that, when combined with another outstanding small loan owed to another lender, exceeds a total of \$500 when the face amounts of the checks written or debits authorized in connection with each loan are combined into a single sum. A lender shall not make a small loan to a borrower who has 2 or more small loans outstanding, regardless of the total value of the small loans. Other prohibited acts: threatening to use or using the criminal process in any state to collect on a small loan; threatening to take action against a borrower that is prohibited by this chapter; making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan; contracting for and collecting attorney's fees on small loans made under this chapter; altering the date or any other information on a check or an authorization to debit the borrower's account held as security; using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to: entering a different type of transaction with the borrower; entering into a sales/leaseback arrangement; catalog sales; entering into transactions in which a customer receives a purported cash rebate that is advanced by someone

offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or entering any other transaction with the borrower that is designed to evade the applicability of this chapter; engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan; charging to cash a check representing the proceeds of a small loan; accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender. Including any of the following provisions in a loan document: A hold harmless clause; a confession of judgment clause; a mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department; an assignment of or order for payment of wages or other compensation for services; a provision in which the borrower agrees not to assert a claim or defense arising out of contract; a waiver of any provision of this chapter; selling insurance of any kind in connection with the making or collecting of a small loan; entering into a renewal with a borrower.

Penalties and Enforcement: A person who violates this chapter is subject to a civil penalty up to \$2,000 imposed by the department; is subject to the remedies provided in IC 24-4.5-5-202; commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5; has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and is liable to the borrower for actual damages, statutory damages of \$2,000 per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation. The department may sue: to enjoin any conduct that constitutes or will constitute a violation of this chapter; and for other equitable relief. The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

IOWA

Iowa Code § 533D.1 et seq.

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 holds the check for a period of time prior to deposit. Otherwise, UCCC applies. Iowa Code § 537.2401 (21% per year on supervised 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: Department of Commerce, division of banking enforces. 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, has unencumbered assets of at least \$25,000.

Permitted charges: \$15 on first \$100 of the face amount of 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 2 checks at a time; 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 NSF charge on one check no matter how long the check remains unpaid.

Required disclosures: Licensee shall give the maker notice written in clear, understandable language; state 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 which cannot exceed two cannot exceed \$500.

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 orders. If a pattern and practice of violating the act is occurring, the attorney general can initiate an action to enjoin the wrongdoer.

KANSAS

Kan. Stat. Ann. § 16a-2-404 as amended by 2005 Kansas Legis. 144 (eff. April, 2005)

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 \$500 (which amount is adjustable based upon an index). Otherwise, UCCC applies, Kan. Stat. Ann. § 16a-2-401 (36% per year on \$860 or less; 21% per year on the excess).

Licensing requirements: Same as under UCCC. Consumer credit commissioner enforces.

Permitted charges: 15% of the amount loaned. On a consumer loan transaction in which cash is advanced in exchange for a personal check, a return check charge may be charged 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 3% 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 the original request of the borrower for amount and term of the loan are within the limitations under this section.

Loan terms: Amount of loan limited to \$500. The maximum term of any loan must be 30 days.

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. Otherwise, consumer loan law applies. Ky. Rev. Stat. Ann. § 288.530 (36% per year on \$0-\$1000; 24% per year on \$1,001-\$3000; precomputed).

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 which cash checks or issue money orders as a service that is incidental to or independent of a retail sale.

Licensing: Department of Financial Institutions enforces. Must apply and deposit an irrevocable letter of credit in an amount ranging from \$50,000 to \$200,000, depending on the 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 comp. and unemployment laws of the state; pay fee of \$500. License to be renewed annually.

Permitted charges: Not to exceed \$15 per \$100 on the face amount of the check for a period of 14 days. Can prorate any fee, based upon the maximum fee of \$15. Fee constitutes a service charge, not interest. Cannot engage in unfair or deceptive acts, practices or advertising in the conduct of its business; 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 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 loan and the total cannot exceed \$500. Must file annual reports but information is confidential.

Required disclosures: 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 disclosures. Must conspicuously display the schedule of all fees and charges for services.

Loan terms: Must make TILA disclosures. Must contract for check collection charges for a returned or dishonored check in order to collect any.

Enforcement: Commissioner may suspend or revoke a license for specific reasons. Customer may make a written complaint to the commissioner who may investigate.

LOUISIANA

La. Stat. Ann. § 9:3578.1 et seq.

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% per year on amounts up to \$1400).

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

Permitted charges: Fee permitted of 16.75% of the face amount of the check but no more than \$45. If unpaid at maturity, can charge an annual interest rate of 36% for the first year and 18% 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 5 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% 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.

Required disclosures: 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

Me. Rev. Stat. Ann. tit. 9-A § 2-401; tit. 32 § 6138(4)(D) prohibits a check casher from cashing or advancing any money on a postdated check; 30% per year on amounts up to \$2,000 or a fee of \$5 for amounts financed up to \$75; \$15 for amounts financed \$75.01 - \$249; or \$25 for amounts financed of \$250 or more).

MARYLAND

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

MASSACHUSETTS

None. Small loan act applies. Mass. Gen. Laws Ann. ch. 140 § 96 *et seq.*; 209 Mass. Code Regs. § 26.01 (23% plus \$20 administrative fee upon the granting of a loan)

Check cashers are specifically prohibited from making loans unless licensed under the small loan act. 209 Mass. Code Regs. § 45:14(8).

MICHIGAN

Michigan's deferred presentment service transactions act – Mich. Comp. Laws § 487.2121 et seq., enacted 11/28/2005.

Applicability: This statute applies to businesses engaging in deferred presentment service transactions. Otherwise, regulatory loan act applies. Mich. Comp. Laws § 493.1 *et seq.* (25% per year plus a loan processing fee of up to 5% of the loan amount up to \$250).

Exemptions: This act does not apply to a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits or member accounts are insured by an agency of the U.S. government.

By January 1, 2006, the commissioner by administrative bulletin, order, or rule shall establish an application process and an application timeline for license applications under this act. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted. Licensees must: have and maintain net worth of at least \$50,000 for each licensed location, subject to a maximum of \$250,000 in required net worth for any 1 licensee; obtain a surety bond of \$50k; demonstrate to the commissioner that the applicant has the financial responsibility, financial condition, business experience, character, and general fitness to reasonably warrant a belief that the applicant will conduct its business lawfully and fairly. A licensee shall post a copy of its license in a conspicuous location at the place of business of the licensee.

Required disclosures: A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction the following notice in at least 36-point type: *"A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days. You should use this service only to meet short-term cash needs. State law prohibits us from entering into a transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service. If you enter into a transaction with us, we must immediately give you a copy of your signed agreement. We will pay the proceeds of a transaction to you by check, by money order, or in cash, as you request. State law entitles you to the right to cancel an agreement and receive a refund of the fee. To do this, if you enter into a transaction today, you must notify us and return the money you receive by the time this office closes tomorrow or on our next business day if we are not open tomorrow. State law prohibits us from renewing an agreement for a fee. You have to pay any other agreement in full before obtaining additional money from us. State law prohibits us from using any criminal process to collect on an agreement. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."*

A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction a schedule of all fees and charges imposed for deferred presentment service transactions in at least 36-point type. A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee that must include: the name, street address, facsimile number, and telephone number of the licensee; the signature and printed or typed name of the individual who enters into; the transaction number assigned by the database provider, if any; the amount of the check presented to the licensee by the customer; an itemization of the fees to be paid by the customer; a calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year; a clear description of the customer's payment obligation under the agreement; a schedule of all fees associated with the deferred presentment service transaction and an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction; the maturity date; a provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date; a description of the process a drawer may use to file a complaint against the licensee; the following notice in at least 12-point type: *"A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days. You should use this service only to meet short-term cash needs. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one*

deferred presentment service agreement in effect with any other person who provides this service. We must immediately give you a copy of your signed agreement. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today by the time this office closes tomorrow or on our next business day if we are not open tomorrow. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us. State law prohibits us from using any criminal process to collect on this agreement. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

Each licensee shall post a sign, printed in bold faced, 36-point type, in a conspicuous location at each customer service window, station, or desk at each place of business, that states the following: *"Under Michigan law, you are entitled to receive the proceeds of this transaction in cash. If you request the proceeds in a check or money order, you may be charged additional check cashing or other processing fees by others for cashing the check or money order."*

If a drawer enters into 8 deferred presentment service transactions with any licensee in any 12-month period, the licensee shall provide the drawer an option to repay that eighth transaction and each additional transaction in that 12-month period pursuant to a written repayment plan subject to the terms set forth by the statute.

Loan Terms: A licensee may enter into 1 deferred presentment service transaction with a customer for any amount up to \$600.00. Maximum deferral period of 31 days. See stat. for arbitration provision requirements.

Permitted Fees: A licensee may charge both of the following as part of the service fee: 15% of the first \$100.00 of the deferred presentment service transaction; 14% of the second \$100.00 of the deferred presentment service transaction; 13% of the third \$100.00 of the deferred presentment service transaction; 12% of the fourth \$100.00 of the deferred presentment service transaction; 11% of the fifth \$100.00 of the deferred presentment service transaction; 11% of the sixth \$100.00 of the deferred presentment service transaction; a database verification fee. A licensee may contract for and collect a returned check charge of \$25 (to be adjusted every 5 years by Commissioner) that does not exceed the maximum returned check charge if the drawer's check is returned by the drawee due to insufficient funds, a closed account, or a stop payment order. The licensee may only contract for and collect 1 returned check charge under this subsection in a transaction with a customer. A licensee may also exercise any other remedy available under any law applicable to the return of a check because of a closed account or a stop payment order.

Prohibited acts: A licensee shall not: enter into a deferred presentment service transaction with a customer if the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee, and shall verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee. At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following: charge interest under the agreement; include a maturity date that is more than 31 days after the date of the transaction; charge an additional fee for cashing the licensee's business check or money order if the licensee pays the proceeds to the drawer by business check or money order; include a confession of judgment in the agreement; charge or collect any other fees for a deferred presentment service transaction; a licensee shall not refuse to provide a deferred presentment service transaction to a customer solely because the customer has exercised his or her rights under this act. A licensee shall not present a check for payment before the maturity date or during the term of the repayment plan. In addition to the remedies and penalties under this act, a licensee that presents a check for payment before the maturity date or during the term of the repayment plan is liable for all expenses and damages caused to the drawer and the drawee as a result of the violation.

A licensee shall not renew a deferred presentment service agreement but may extend a deferred presentment service agreement at no charge.

Enforcement: Commissioner may issue: cease and desist orders; consent orders; and may suspend or revoke a license

Penalties: Commissioner may order violators of these sections to pay a civil fine of not less than \$1,000.00 or more than \$10,000.00 for each violation. However, if the commissioner finds that a person has violated this act and that the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the person to pay a civil fine of not less than \$5,000.00 or more than \$50,000.00 for each violation. The commissioner may also order the person to pay the costs of the investigation. Any current or former executive officer or agent who violates a final order from the Commissioner issued is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Private right of action: A person injured by a licensee's violation of this act may maintain a civil cause of action against the licensee and may recover actual damages and an amount equal to the service fee paid in connection with each deferred presentment service transaction that is found to violate this act, plus reasonable attorney fees. At any time before signing a new deferred presentment service agreement with a licensee, a drawer who believes that the licensee has violated this act in connection with a deferred presentment service transaction may deliver to the licensee a notice in writing that the licensee has violated the act. The drawer shall identify the nature of the violation and include documentary or other evidence of the violation in the notice. No later than the close of the third business day after receipt of such a notice, the licensee shall determine if it has violated the law as alleged in the notice. If the licensee determines that it has, it shall return to the drawer the check it received in the deferred presentment service transaction and any service fee paid by the drawer to the licensee. The drawer shall deliver to the licensee cash or a cash equivalent in an amount equal to the amount of cash the drawer received in the transaction. In addition, the licensee shall make restitution to the drawer for each violation in an amount equal to 5 times the amount of the fee charged in the deferred presentment service transaction, but not less than \$15.00 or more than the face amount of the drawer's check. A licensee that makes restitution for a violation under this subsection may be subject to a civil action under section 53 with respect to that violation. A licensee that makes restitution for a violation under this subsection shall immediately notify the commissioner of that action. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner.

MINNESOTA

Minn. Stat. Ann. § 47.60 et seq.

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, Regulated Loan Act applies. Minn. Stat. Ann. § 47.59 (33% per year on loans up to \$750).

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 form must contain information dealing with liquid assets of at least \$50,000. Revocation of the filing and the right to engage in the business of making these loans is the same as in the case of a regulated lender under § 56.09.

Permitted charges: In lieu of the interest, finance charges, or fees, a consumer small loan lender may charge the following:

- 1) \$0-\$50 - \$5.50
- 2) \$50-\$100 - 10% of loan proceeds and \$5 administrative fee
- 3) \$100-\$250 - 7% of loan proceeds with a minimum of \$10, plus a \$5 administrative fee.
- 4) \$250-\$350 - 6% of the loan proceeds with a minimum of \$17.50, plus a \$5 administrative fee.

On a loan transaction in which cash is advanced in exchange for a personal check, a return check may be charged. After maturity, the contract rate can not exceed 2.75% per month of the remaining loan proceeds. After the maturity date, 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 made can not be repaid by the proceeds of another loan made by the same lender. The proceeds from a loan can not be applied to another loan from the same lender. A loan to a single borrower can not be split or divided and a borrower can not have more than one loan outstanding with the result of collecting a higher charge than permitted or in an aggregate amount of principal can not ever exceed \$350.

Required disclosures: In addition to disclosures required by TILA, the lender must furnish a copy of the contract of loan to a person obligated on 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 "cancelled" 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 lender's accounts and records. Revocation of a license will not affect existing lawful contract between the licensee and any borrower. Violation is also a gross misdemeanor.

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.

MISSISSIPPI

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

Applicability: To check cashers. Otherwise, small loan regulatory law applies. Miss. Code Ann. § 75-17-21 (36% per year on loans up to \$1000).

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. 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% of face amount of check or \$10 whichever is greater.

Permitted charges: 18% 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.

Required 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 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 willful 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.

MISSOURI

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

Applicability: Lenders, other than banks, trust companies, credit unions, savings banks and savings and loan companies, in the business of making unsecured loans of five hundred dollars or less. Otherwise, consumer loan act applies. Mo. Rev. Stat. § 408.100 (rate set by agreement among parties).

Licensing requirements: Must obtain a license from the director of the division of finance. An annual license fee of three hundred dollars per location. A licensee who ceases business pursuant to this section must notify the director to request an examination of all records within ten business days prior to cessation. All records must be retained at least two years.

Required disclosures: TILA disclosures required on any loan, renewal or extension made pursuant to this section and the loan, renewal or extension documents shall be signed by the borrower. Lenders licensed pursuant to this section shall conspicuously post in the lobby of the office, in at least fourteen-point bold type, the maximum annual percentage rates such licensee is currently charging and the statement: *NOTICE: This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.* The lender shall provide the borrower with a notice in substantially the following form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by signature of the borrower: (1) This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing. (2) You may cancel this loan without costs by returning the full principal balance to the lender by the close of the lender's next full business day.

Loan terms: 14-31 days. The lender shall renew the loan upon the borrower's written request and the payment of any interest and fees due at the time of such renewal; however, upon the first renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal amount of the loan by not less than 5% of the original loan amount until such loan is paid in full. However, no loan may be renewed more than six times. When making or negotiating loans, a licensee shall consider the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract. A lender shall not have more than \$500 in loans outstanding to the same borrower at any one time. A person does not commit the crime of passing a bad check if, at the time the payee accepted it, he or she does so with the understanding that the payee will not present it for payment until later and the payee knows or has reason to believe that there are insufficient funds on deposit with the drawee at the time of acceptance. This section shall not apply if the person's account on which the instrument was written was closed by the consumer before the agreed-upon presentment date or the consumer has stopped payment on the check.

Permitted fees: Entities making loans pursuant to this section shall contract for and receive simple interest and fees in accordance with provisions of the small loan act. Cost of collection expenses, which include court costs and reasonable attorneys' fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be considered as a fee or charge for purposes of this section. No borrower shall be required to pay a total amount of accumulated interest and fees in excess of 75% of the initial loan amount on any single authorized loan for the entire loan term and all authorized renewals.

Prohibited acts: A lender shall not use a device or agreement that would have the effect of charging or collecting more fees, charges or interest than allowed by this section.

Penalties: Any contract evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in violation of this section shall be void. Any person, firm or corporation who receives or imposes a fee or charge in violation of this section shall be guilty of a class A misdemeanor.

Enforcement: Director may suspend or revoke license; issue cease and desist orders. License suspension or revocation license; issue cease and desist orders enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

MONTANA

Mont. Code Ann. § 31-1-701 et seq. Until this act, the consumer loan act applied which had no interest rate limits. Mont. Code Ann. § 31-1-101 et seq.

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 2 years after the licensee ceases to operate in the state. The bond must be available to pay to the consumer 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.

Required disclosures: Must give a pamphlet prepared by or at the direction of the department that explains the consumer's rights and responsibilities, 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 it cannot be prosecuted in criminal court for collection of the loan which must be located immediately preceding the consumer's signature.

Permitted charges: Not more than 25% 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 attorney's fees and court costs if judgment is entered in favor of the lender.

Prohibited acts: A list of 16 items are enumerated which parallel in many respects 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% of the consumer's monthly income; making a loan to a consumer who has 2 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 this act constitutes an unfair or deceptive trade practice. Consumer can sue for actual and consequential damages, and statutory damages of \$1000 per violation plus costs and attorney's 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 6 months or both.

NEBRASKA

Neb. Stat. Ann. § 45-901 et seq.

Applicability: To anyone who, for a fee, accepts a check dated on the date it was written and hold 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. Stat. § 45-1024 (24% per year on loans up to \$1000).

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

Licensing requirements: Department of Banking & Finance enforces. 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.

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 give in plain English a written notice 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 charges: \$15 per \$100 or pro rata for any part thereof on the face amount of the check.

Prohibited acts: Hold more than 2 checks at any one time; 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.

NEVADA

Nev. Rev. State. § 604A.010 et seq., enacted in 2005.

Applicability: To check cashers and any person engage 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: Persons doing business pursuant to the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers or insurance companies; a person licensed to make installment loans; a person who is primarily engaged in the retail sale of goods or services who as an incident to or independently of a retail sale or service from time to time cashes checks for a fee or other consideration of not more than \$2; and does not hold himself out as a check-casher; a person who holds a non-restricted gaming license while performing any act in the course of that licensed operation; a person who is exclusively engaged in a check-cashing service relating to out-of-state checks; a corporation organized pursuant to the laws of this state that has been continuously and exclusively engaged in a check-cashing service in this state since July 1, 1973.

Registration Requirements: Deferred deposit service must be registered with the Commissioner and must pay a nonrefundable registration fee of \$250. Registrants must obtain a surety bond in the amount of \$50,000. In lieu of any surety bond, a registrant may deposit: interest-bearing stocks; bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or any obligation of this state or any city, county, town, township, school district or other instrumentality of this state or guaranteed by this state, in an aggregate amount of, based upon principal amount or market value, whichever is lower, of not less than the amount of the required surety bond or portion thereof.

Disclosure Requirements: Each registrant must prominently display his certificate of registration at the location where he does business; post a notice that states the fees charged for cashing checks or entering into a deferred deposit transaction; provide written notice to each customer of the fees charged for cashing checks signed by the customer prior to loan. A registrant shall provide each borrower with a written agreement, approved by the commissioner, which the borrower may keep. This agreement must comply with the TILA.

Permitted charges: A registrant may collect a \$25 fee for checks not paid because of insufficient funds. Only two such fees may be charged regardless of the number of times the check is presented for payment. The registrant may immediately pursue any available collection proceedings on the amount of the loan made in the form of a deferred deposit and all accrued charges and interest that are then due upon default. The court may award collection costs, costs of service of process and reasonable attorney's fees.

Loan terms: Licensee shall offer written repayment plan at no additional charge; offer must be available for at least 30 days after default; not later than 15 days after default must give written notice of opportunity in language in which initial transaction conducted (English/Spanish); plan must have a term of at least 90 days after default. Licensees must defer all collection activity against customers called to active duty in the military and honor the terms of any repayment plan between the licensee and customer.

Prohibited acts: A licensee shall not make a deferred deposit loan that exceeds 25% of the expected gross monthly income of the customer when the loan is made. A licensee may not make more than one deferred deposit loan to the same customer at one time unless: the total amount loaned does not exceed the loan limit; and the licensee charges the same or a lower APR for any additional loans as he charged for the initial one. If the customer provides one or more additional checks (for the additional loans) and those checks are not paid upon presentment, the licensee may only charge an NSF fee for the first check that is not paid upon presentment. It is unlawful for a licensee to use or threaten to use the criminal process to collect on a deferred deposit or to include in the written agreement a promise by the borrower to hold the lender harmless; a confession of judgment by the borrower; an assignment or order for payment of wages or other compensation due the borrower; or a waiver of any claim or defense arising out of the agreement or a waiver of any provision of this chapter. A licensee may not accept: collateral or an assignment of wages as security for a loan; a check or written authorization for an electronic transfer of money in an amount exceeding that disclosed pursuant to TILA. When collecting any defaulted loan, a licensee shall not garnish or threaten to garnish the wages already paid to a borrower for active service or contact or threaten to contact the military chain of command.

Enforcement: License revocation; cease and desist orders; injunctions.

Penalties: Civil penalties available.

Private right of action: Yes.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 399-A:1 et seq.

Applicability: Regulation of small loans, title loans and payday loans.

Exemptions: This chapter shall not apply to any person lawfully engaged in business as permitted by the laws of this state or of the U.S. relative to banks, trust companies, insurance companies, savings or building and loan associations, or credit unions, or to loans made by them, nor shall this chapter apply to any person engaged solely in the business of making loans for educational purposes or to the loans made by such persons.

Loan terms: Loan duration must be 7-30 days and loan must not exceed \$500. No maximum interest rate specified for the term of the loan. After due date, loan shall not accrue interest at rate greater than 6% per year.

Licensing Requirements: Applicants shall pay a \$450 license application fee of \$450 plus \$450 for each branch maintained in this state. The department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location or has posted a continuous surety bond in the amount of \$25,000 in the form and under the terms determined by the commissioner.

Required Disclosures: Persons subject to or licensed under this chapter shall abide by applicable federal laws including the TILA. A lender in the business of making small loans, payday loans, or title loans shall include in every loan contract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the consumer's attorney may file a complaint with the commissioner. Each lender shall conspicuously post in its licensed location a schedule of interest charges, with examples using a \$300 loan payable in 14 days and 30 days. Payday loans shall incur interest only. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the lender to sign such agreements and dated the same day the loan is made and disbursed. The lender shall give a duplicate original of the loan agreement to the borrower at the time of the transaction. Before entering into a payday loan, the lender shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the commissioner, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number in the banking department for assistance with complaints. Before disbursing funds pursuant to a payday loan, a lender shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

Prohibited Practices: No payday lender shall issue misleading, or deceptive statements or representations with regard to the rates, terms, or conditions. No interest shall be paid, deducted, or received in advance. No person shall take any confession of judgment or any power of attorney running to himself, herself, or any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note, agreement, or promise to pay which does not disclose the date and amount or maximum credit line of the note or agreement, a schedule or description of the payments to be made thereon, and the agreed charges or rates of charge; nor take any instrument in which blanks are left to be filled in after the loan is made. No person shall include any of the following provisions in a small loan, payday loan, or title loan contract: a hold-harmless clause; a confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action; an agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course; an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held by, owned by, or due to the consumer, unless the waiver or limitation applies only to property subject to a security interest executed in connection with the loan; or a clause permitting the continuation of interest after repossession of the consumer's motor vehicle. No person shall be permitted to accept real estate or household furniture presently in use on loans of \$2,000 or less as collateral on a loan. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for on payday loans except the lawful fees, which may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment. A lender shall not obtain any agreement from the borrower: giving the lender or any third person power of attorney or authority to confess judgment for the borrower; authorizing the lender or any third party to bring suit against

the borrower in a court outside the state; or waiving any right the borrower has under this chapter. A lender shall not require, or accept, more than one check from the borrower as security for any loan at any one time. A lender shall not: cause any person to be obligated to the lender in any capacity at any time in the principal amount of more than \$500. A lender shall not refinance, renew, or extend any loan; cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower; require or accept a post-dated check as security for, or in payment of, a loan. A lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored; take an interest in any property other than a check payable to the lender as security for a loan; make a loan to a borrower to enable the borrower to pay for any other product or service sold at the lender's business location.

Enforcement: The department can issue cease and desist orders and suspend/revoke licenses for violations.

Penalties: Criminal and civil penalties available.

Private right of action: Yes.

NEW JERSEY

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%. N.J. Stat. Ann. § 2C: 21-19. A check cashing licensee cannot cash or advance money on a postdated check. N.J. Stat. Ann. § 17:15A-47.

NEW MEXICO

Regulations essentially prohibiting payday and auto title lending enacted in 2005 but are being challenged in court. Regulations are on hold until the court makes a decision. In the meantime, the small loan business act applies but interest rate is that agreed to by contract. N.M. Stat. Ann. § 58-15-1 *et seq.*

NEW YORK

Licensed lender law applies but interest rate is that agreed to by contract. N.Y. Banking Law § 340 *et seq.* A check casher licensee cannot make loans nor cash or advance any moneys on a post dated check unless it is a payroll check. N.Y. Banking Law § 373. Criminal law sets the usury cap at 25%. N.Y. Penal Code § 190.40.

NORTH CAROLINA

The consumer finance act applies. N.C. Gen. Stat. § 53-173 (36% per year).

NORTH DAKOTA

N.D. Cent. Code § 13-08-01 as amended by 2005 N.D. Laws Ch. 127 (H.B. 1321)

Applicability: Applies to deferred presentment service providers. Otherwise, consumer finance act applies. N.D. Cent. Code § 13-03.1-15.1 (2.5% per month on unpaid balance of principal up to \$250; 2% per month on unpaid principal \$250-\$500; 1.75% on unpaid balance of \$500-\$750; and 1.5% on unpaid principal of \$750-\$1000).

Licensing Requirements: Persons engaging in deferred deposit presentment transactions must obtain a license. Licensees must obtain a surety bond in the amount \$20k and have unencumbered assets of at least \$25k per licensed location.

Required Disclosures: A licensee must conspicuously post the license in the place of business of the licensee and provide notice to its customers of its license number as well as a notice of the fees imposed for the deferred presentment service. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the customer a clear and conspicuous printed notice indicating: that a deferred presentment service transaction is not intended to meet long-term financial needs; that a customer should use a deferred presentment service transaction only to meet short-term cash needs; that the customer will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due (if the transaction is renewed, any amount paid in excess of the fee applies to the payoff); any information required under federal law; no property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed by the customer which contains agreement the name of the licensee; the transaction date; the amount of the obligation; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate.

Loan terms: The total period of deferral, including the initial deferral and one renewal, may not exceed 60 days. An individual renewal period may not be less than 15 days. After 60 days the renewed deferred presentment transaction must be paid off.

Permitted charges: A licensee may charge a fee of 20% of the amount paid to the customer. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, except that fee not to exceed the cost to the licensee, may be charged for registering a transaction on a database authorized by the commissioner.

Prohibited acts: No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process. A licensee may not disburse more than \$500 hundred dollars to the customer in a deferred presentment service transaction. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate value of all outstanding obligations from any one customer exceeding \$600 which is payable to the same or any other licensee. A licensee may not enter a new deferred presentment service transaction with a customer within 3 business days of that customer's completion of a previous one. A customer who enters a deferred presentment service agreement is not subject to a criminal penalty (or threat of one) unless the customer's account was closed on the original date of the transaction. At the time of entering a transaction, a licensee shall verify that the account on which the check is written is open. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business. A licensee may not renew a deferred presentment service transaction more than once.

Permitted charges: If a check or electronic debit is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect. The licensee may contract for and collect a returned check charge not to exceed \$20. No other fee or charge may be collected as a result of a returned check or as a result of default. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. A licensee may not conduct another business, other than a bona fide pawn-broking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers. Customers may not deferred presentment service transactions totaling more than \$600 outstanding at any one time.

Penalties: Criminal and civil penalties available.

Enforcement: The commissioner may issue cease and desist orders and suspend/revoke license for violations.

OHIO

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% per year on loans up to \$1000).

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

Permitted charges: Interest at 5% 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. No rebate formula listed. 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 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 UDAP statute.

OKLAHOMA

Okla. Stat. Tit. 59 § 3101 et seq.

Applicability: The provisions of this act shall apply to all deferred deposit loans made. The provisions of this act shall apply to transactions if the lender, wherever located, enters into the transaction with the debtor by mail, brochure, telephone, print, radio, television, Internet, or any other means. Otherwise Consumer Credit Code applies. Okla. Stat. tit. 14A, § 3-508A (30% interest per year on unpaid balances of \$300 or less; 21% per year on unpaid principal of \$300-\$1000; and 15% per year on unpaid principal of more than \$1,000).

Exemptions: This act shall not apply to a supervised lender licensed under the Uniform Consumer Credit Code. The following lenders shall not be subject to the licensing requirements of this act: A bank, savings institution, credit union or farm credit system organized under and regulated by the laws of the United States or any state; government or governmental agencies or instrumentalities; or pawnbrokers engaged in pawn transactions as defined in the Oklahoma Pawnshop Act.

Licensing requirements: Deferred deposit lenders must obtain a license. The licensee shall post its license to engage in the business of making deferred deposit loans at each licensed location. An applicant must have a minimum net worth of at least \$25k available for operation of each licensed location up to a maximum net worth of \$250,000.

Required disclosures: A written agreement executed by both the lender and the debtor that expressly authorizes the lender to defer presentment or deposit of the instrument until a specific date not later than forty-five (45) days from the date the instrument is accepted by the lender. The disclosure of the credit terms of a deferred deposit loan shall be according to and governed by the requirements of Regulation Z. A lender shall provide the following notices in a prominent place on each deferred deposit loan agreement in at least twelve-point type: "A deferred deposit loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. You have the right to rescind this deferred deposit loan no later than 5 p.m. of the next business day following this loan transaction. If you enter into a deferred deposit loan and three consecutive deferred deposit loans, you have the right to pay off the fourth loan pursuant to an installment payment plan, subject to certain conditions." A lender shall post at the licensed location a notice of the charges, terms, and effective annual percentage rate for deferred deposit loans made by the lender. Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least twelve-point type to read: "This is a deferred deposit loan instrument regulated by the Oklahoma Department of Consumer Credit and any holder of this check takes it subject to all claims and defenses of the originator" and shall include the address and toll-free telephone number of the Department of Consumer Credit. At the time a debtor enters into a deferred deposit loan transaction, the lender shall provide the debtor with a pamphlet, approved by the Administrator of Consumer Credit, describing the availability of debt management and credit counseling services, the debtor's right to an installment payment plan and the debtor's rights and responsibilities in the transaction. The pamphlet shall indicate a toll-free telephone number for the Administrator that the debtor may contact to receive information relating to debt management and credit counseling services.

Prohibited acts: A deferred deposit lender shall not charge fees other than, or in excess of those authorized by the Deferred Deposit Lending Act; make deferred deposit loans at unlicensed locations; alter or delete the date on an instrument after it has been accepted by the lender pursuant to a deferred deposit loan; accept an undated instrument or an instrument dated on a date other than the date of the deferred deposit loan; accept an instrument unless the account on which the instrument is drawn is a legitimate, open and active account; require a debtor to provide security for the deferred deposit loan or require a debtor to provide a guaranty from another person; advance a loan amount greater than \$500 to a borrower in one deferred deposit loan transaction; engage in a deferred deposit loan with a term of less than 12 days or more than 45 days; negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender; negotiate any instrument presented by a borrower if the borrower has redeemed the instrument by paying the full amount due under the deferred deposit loan; make any charge for insurance in connection with a deferred deposit loan transaction; refuse the borrower's right to rescind the deferred deposit loan at any time between the time of the deferred deposit loan transaction and 5 p.m. of the next business day; charge the borrower an additional finance charge for cashing a lender's business instrument, if the lender pays the proceeds from the loan transaction in the form of a business instrument; require or accept more than one dated instrument per deferred deposit loan; or refuse the borrower's right to enter into an installment payment plan. A lender shall not threaten or pursue criminal action against a debtor as a result of the debtor's instrument being returned unpaid or the debtor's deferred deposit loan account not being paid. A debtor shall not be subject to any criminal penalty if an instrument is dishonored. A lender may not enter into a renewal of a deferred deposit loan transaction. A new loan made within 13 days of a

previous one shall be considered a renewal. After the debtor has entered into a fifth consecutive deferred deposit loan, a lender shall not make a deferred deposit loan to a debtor until 8:00 a.m. on the second business day after the fifth consecutive deferred deposit load has been paid in full. No lender shall engage in false or misleading advertising concerning the terms or conditions of credit with respect to a deferred deposit loan.

Permitted charges: A lender may charge a finance charge for each loan that does not exceed \$15 for every \$100 advanced up to the first \$300 of the amount advanced; for the advance amounts in excess of \$300, the lender may charge an additional finance charge of \$10 for every \$100 advanced in excess of \$300. If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a pay or financial institution due to insufficient funds, a closed account or a stop payment order, the lender shall have the right to exercise all civil means authorized by law to collect the amount of the instrument. In addition, the lender may contract for and collect a dishonored instrument charge, not to exceed \$25; however, a dishonored instrument charge shall not be allowed if the instrument is dishonored by a financial institution, or the debtor places a stop payment order, due to forgery or theft of the instrument.

Payment plan: If a debtor enters into a third consecutive loan, the lender shall provide the consumer an option to repay such loan and each consecutive loan pursuant to a written repayment plan subject to the following terms: the debtor shall request the repayment plan, either orally or in writing, prior to the due date of the loan; the debtor shall repay the loan in four equal installments with one installment due on each of the next four dates on which the customer receives regular wages or compensation from an employer, pursuant to a written repayment plan agreement; the consumer shall pay a processing fee of 10% of the principal amount of the loan per loan not to exceed \$15 for administration of the payment plan; the consumer shall agree not to enter into any additional deferred presentment loans during the repayment plan term and for a period of 15 days after termination of the repayment plan term; and upon positive completion of the repayment plan, the lender shall report the debtor's positive payment history to at least one national consumer credit reporting agency.

Enforcement: The Administrator of Consumer Credit may suspend, revoke or refuse to renew licenses, issue orders compelling compliance, give censure, probation, or issue injunctions or cease and desist orders for violations.

Penalties: Civil penalties for violations of this act in an amount not to exceed \$1,000 per violation; Repayment of unlawful or excessive fees charged to debtors.

OREGON

Or. Rev. Stat. Ann. § 725.010 et seq.

Applicability: The consumer finance act applies to lenders in the business of making payday loans if at least 10% of all loans made by the lender are payday loans. Otherwise Or. Rev. Stat. § 725.340 applies (rate set by contract).

Exemptions: Financial institutions and trust companies.

Licensing requirements: Payday lenders must obtain a license. The license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

Required disclosures: Licensees must deliver to the borrower at the time any loan is made a statement in the English language showing in clear and distinct terms: the name and address of the borrower and of the licensee; the amount and the date of the loan and of its maturity or terms of payment; the rate of interest agreed upon or consideration to be charged thereof; the nature of the security for the loan, if a lien on personal property has been taken by chattel mortgage, bill of sale, collateral agreement or otherwise; make available to the borrower upon request a plain and complete receipt for all payments made on account of any such loan at the time such payments are received by the licensee, specifying the amount applied to interest, if any, the date to which the interest is paid, the amount applied to principal, if any, and the unpaid principal balance of such loan, if any remains; permit payment to be made in advance in any amount on any loan at any time; upon repayment of the loan in full or upon renewal thereof, mark indelibly such obligation signed by the borrower with the word "Paid" or "Renewed."

Loan terms: Paydays loans made primarily for personal, family or household purposes; made for a period of 60 days or less or for which the lender may demand repayment within 60 days.

Permitted charges: The lender may charge one fee per loan transaction for dishonored checks as well as any fee charged to the lender by an unaffiliated financial institution for each dishonored check.

Prohibited acts: No licensee shall take any power of attorney from any borrower, except a power of attorney to effectuate the transfer of the ownership of any motor vehicle at the time of making a loan on a motor vehicle; any note or promise to pay which does not accurately disclose the actual amount of the loan, the time for which it is made, the rate of interest charged or the schedule of payments agreed upon, or any instrument in which blanks are left to be filled in after execution. No licensee or other person shall advertise, print, display, publish, distribute or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms or conditions for loans which is false, misleading or deceptive. A lender in the business of making payday loans may not include in a payday loan contract a hold-harmless clause; a confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action; an agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course; or an executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to a security interest executed in connection with the loan; conduct a payday loan business where liquor or lottery tickets are sold or where gambling devices are located; renew a payday loan more than 3 times; or make a new payday loan to a consumer on the same day that a previous payday loan expires if the lender has renewed the previous payday loan 3 times. The lender shall wait at least until the next day after the expiration date of the previous loan before making the new loan to the consumer.

Enforcement: The Director of the Department of Consumer and Business Services can issue cease and desist orders, suspend and revoke licenses and issue written orders removing or suspending an officer or director of a licensee who is dishonest, reckless or incompetent. Aggrieved customers may file a written complaint with the Director of the Department of Consumer and Business Services who may investigate.

Penalties: The Director of the Department of Consumer and Business Services may assess against any person who violates any provision of this chapter a civil penalty in an amount determined by the director of not more than \$2,500. In addition to any other penalty provided by law, the director may assess against any person who lends money without the license required under this chapter a civil penalty in an amount equal to the interest received

that exceeds 9% per annum.

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).

PUERTO RICO

None. Small loan act applies. P.R. Laws Ann. tit. 10 § 10-998n(f) *et seq.* (15% per year). P.R. Laws Ann. tit. 10 § 10-2511 (prohibits check cashers from advancing cash in exchange for post-dated checks)

RHODE ISLAND

R.I. Stat. Ann. §§ 19-14.4-1 and 19-14.4-4 et seq. as amended by 2005 RI Laws 05-230 (05-H 6—3A)

Otherwise, R.I. Stat. Ann. § 19-14.2-8 applies (3% per month on loans up to \$300; 2.5% on loans of \$300-\$800; 2% on loans of \$800-\$5000).

Licensing requirements: Check cashers must be licensed. Check cashing licensees who accept checks for collection with deferred payment, must obtain a surety bond in the sum of \$50,000 subject to a maximum of \$150,000 when aggregated with agent locations. Licensees must also maintain liquid assets of at least \$10,000 for each location.

Required disclosures: In every licensed location, there shall be at all times posted in a conspicuous place within the licensed premises a complete and unambiguous schedule of all fees for cashing checks, deferred deposit transactions expressed as both a dollar amount and an annual percentage rate, and the initial issuance of any identification card. Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and by the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate (APR), as required by federal regulations. The check casher shall give a duplicate original of the agreement to the customer at the time of the transaction.

Loan terms: A check casher may defer the deposit of a personal check written by a customer for no less than 13 days. The face amount of the check shall not exceed \$500. The maximum aggregate amount of concurrently outstanding checks held by the licensee or its affiliate from the same customer is \$500. The maximum number of concurrently outstanding checks held by the licensee or its affiliates from the same customer is 3. The maximum number of rollovers permitted is 1.

Permitted charges: 15% of the amount of funds advanced.

Prohibited acts: The written agreement shall not permit the check casher to accept collateral.

Penalties: Any person and the several members, officers, directors, agents, and employees of any person who violate or participate in the violation of any of the applicable provisions of this title is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both. Each violation constitutes a separate offense. Complaints under the provisions of this chapter may be made by the director or the director's designee and shall not be required to give surety for costs. The attorney general shall prosecute all complaints under this chapter. Any person who makes or brokers a loan not invalid for any other reason who knowingly violates the licensing requirements shall, in the discretion of the court, forfeit and have no right to collect or receive any interest, fees, or charges whatsoever. In the case of any unlicensed transaction involving lending or loan brokering activities, the amount of interest, fees, or charges previously collected shall be credited to the principal balance of the loan then due and owing or paid to the debtor, at the option of the holder of the loan. In the case of any unlicensed check cashing, sale of check, or electronic money transfer transaction, the amount of any fees or charges previously collected shall be paid to the person from whom the fee or charge was collected. In the event that the person who collected the fee or charge is unable to identify the person from whom the fee or charge was collected, the fee or charge shall be paid to the director to and for the use of the state.

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 (\$2.50 per month on loans of up to \$150; \$25 per \$100 on loans of \$100- \$600; \$18 per \$100 on loans of \$600-\$1,000; \$12 per \$100 on loans of \$1,000-\$2,000; add-on)

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 charges: Not more than 15% 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.

Required 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: 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.

SOUTH DAKOTA

S.D. Codified Laws § 54-4-36 et seq.

Applicability: To lenders engaging in payday loans: any small, short-maturity loan on the security of a check, any assignment of an interest in the account of a person at a depository institution, any authorization to debit the person's deposit account, or any assignment of salary or wages payable to a person. A short-maturity loan made in anticipation of an income tax refund is not a payday loan for purposes of this chapter.

Exemptions: Any state bank and its subsidiary; any national bank and its subsidiary; any bank holding company and its subsidiary; any other federally insured financial institution, its holding company and subsidiary; and any South Dakota chartered trust company.

Licensing requirements: Payday lenders must obtain licenses and obtain a \$10k surety bond.

Loan terms: No payday loan disbursed by a licensee may exceed \$500. A licensee may renew, rollover, or flip a payday loan no more than four times. No renewal, rollover, or flip is valid unless the debtor pays the outstanding fee at the time of the renewal.

Required disclosures: Loan contracts must disclose the amount and date of the loan; the amount of the down payment, if any; the dates any payments are due and the amount of payments; a list of any property used to secure the loan; any liens or title filings required; the method used to compute the charges; an explanation of the charges; any charge that may be applied for delinquency; the conditions for an extension of payment or maturity of the loan; and refinancing requirements.

Prohibited acts: No licensee may advertise any statement or representation, including rates, terms, or conditions for making or negotiating loans that is false, misleading, or deceptive, or that refers to the supervision of business by the state.

Enforcement: Director may issue cease and desist order, suspend or revoke a licensee's license, enjoin a licensee for violations of these provisions.

Penalties: Violation of disclosure requirements is a class 2 misdemeanor. A violation of the limit on the amount a licensee may disburse is a Class 1 misdemeanor.

TENNESSEE

Tenn. Code Ann. § 45-17-101 et seq. Tenn. Comp. R. & Regs. § 0180-28-.01 (relating to federal disclosures)

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. § 45-5-401 (18% on loans up to \$100; 24% on loans of \$100 or more).

Licensing requirements: Department of Financial Institutions enforces. Must show net worth of at least \$25,000 and record of any person owning more than 5% 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 charges: Not more than 15% 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 2 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.

Required disclosures: 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 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 s 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.

TEXAS

7 Tex. Admin. Code § 1.605 et seq. (effective June 16, 2000); Tex. Fin. Code Ann. § 342.601 et seq.
(special protections for military borrowers eff. 9/1/05)

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. Otherwise, the consumer loan law applies. Tex. Fin. Code Ann. § 342.201 (\$18 per \$100 per year on the loans of up to \$300; \$8 per \$100 per year on loans of \$300-\$2,500; add-on)

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 a 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.

Required 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 7 days nor for more than 31 days.

UTAH

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 that cashes a check in a transaction that is incidental to the retail sale of goods and charges no more than 1% 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 charges: No caps specified.

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

Required disclosures: Must conspicuously post a complete schedule of interest or fees in dollar amounts, 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 and must give customer 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. 9 § 41a. (18% per year).

VIRGINIA

Va. Code Ann. § 6.1-444 et seq.

Applicability: Payday lenders. Otherwise Consumer Finance Act applies. Va. Code Ann. § 6.1-272.1 (36% per year for loans of up to \$2,500). Va Code Ann. § 6.1-432 *et seq.* (prohibiting check cashers from cashing post-dated items, other than government or payroll checks).

Exemptions: Banks, savings institutions or credit unions that do not become licensed under this chapter.

Licensing requirements: Payday lenders must apply for licenses and pay an application fee of \$500. Lenders must also file a bond file with the Commissioner in the sum of \$10,000 per location, not to exceed a total of \$50,000. Applicants must have unencumbered liquid assets per location available for the operation of the business of at least \$25,000. Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable.

Required disclosures: Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the fee charged; (iii) the annual percentage rate in accordance with Federal Reserve Board Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least seven days after the date the loan is made and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction and provide each borrower with a pamphlet, in form consistent with regulations promulgated by the Commission, explaining in plain language the borrower's rights and responsibilities and providing a toll-free number at the Commission for assistance with complaints. A licensee shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest charges.

Loan terms: Payday loans with any one licensee cannot exceed the principal amount of more than \$500. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

Special protections for members of the military: If the borrower is a member of the military services of the United States or the spouse of a member of the military services of the United States, the licensee shall not: garnish any military wages or salary; not conduct any collection activity against a borrower who is a member of the military services of the United States or the spouse of such a member, when the member has been deployed to a combat or combat support posting or is a member of the Reserves or National Guard and has been called to active duty, for the duration of the deployment or active duty service; contact the commanding officer of a borrower who is a member of the military services of the United States or anyone in the borrower's chain of command in an effort to collect on a loan made to the member or the member's spouse; make a loan to a member of the military services of the United States if a military base commander has declared that a specific location of the licensee's business is off limits to military personnel. Such licensees shall be bound by the terms of any repayment agreement that the licensee negotiates with respect to such borrower through military counselors or third-party credit counselors.

Permitted charges: A licensee may charge an amount not to exceed 15% of the amount of the loan proceeds advanced to the borrower; any deposit item return fee incurred by the licensee, not to exceed \$25, if the check given by the borrower as security is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check; and, if judgment is obtained against the borrower, court costs and reasonable attorneys' fees if awarded by the court, incurred as a result of the returned check in an amount not to exceed \$250.

Prohibited Acts: A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any

third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter. A licensee shall not require, or accept, more than one check from the borrower as security for any loan at any one time. A licensee shall not refinance, renew or extend any loan. A licensee shall not cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower. A licensee shall not require or accept a post-dated check as security for, or in payment of, a loan. A licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored. A licensee shall not take an interest in any property other than a check payable to the licensee as security for a loan. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's business location. A check given as security for a loan shall not be negotiated to a third party.

Enforcement: License suspension and revocation; cease and desist orders. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. The Attorney General may also seek damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable attorney's fees and costs. Any violation of the provisions of this chapter shall be subject to the enforcement provisions of the Virginia Consumer Protection Act.

Penalties: The Commission may impose a fine or penalty not exceeding \$1,000 for violations of these provisions. Criminal penalties are also available.

Private right of action: Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision and, if successful, recover reasonable attorney's fees, expert witness fees and court costs incurred by bringing such action.

VIRGIN ISLANDS

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

WASHINGTON

Wash. Rev. Code § 31.45.010 et seq.

Applicability: To check cashers who make small loans on the security of a post-dated check. Otherwise, the consumer loan act applies. Wash. Rev. Code § 31.04.105 *et seq.* (25% per year plus a 4% loan origination fee for the first twenty thousand dollars of the principal amount of the loan advanced to or for the direct benefit of the borrower, which may be included in the principal balance of the loan).

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: Department of Financial Institutions enforces. Must pay a fee set by regulation; post a surety bond running 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.

Permitted charges: May charge interest and fees that in the aggregate do not exceed 15% of \$0-\$500 and 10% of \$501-\$700. The director may adopt rules that exempt certain fees from this cap.

Required disclosures: Must conspicuously post license in business. Must also conspicuously post a schedule of fees and charges for fees and charges. Disclosures must conform with Truth in Lending Act requirements.

Prohibited Acts: A person can not cash or advance any moneys on a postdated check in excess of the amount of services purchased, without first obtaining a small loan endorsement to a check casher. A licensee can not hold a check for later deposit.

Loan terms: A licensee may advance \$700 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 45 days. Borrower may convert small loan to a payment plan after 4 successive loans and prior to default upon the last one. Plan must be in writing.

Enforcement: Director may serve charges upon a licensee if the licensee is engaging in unsound practice in a civil action. Any violation of the act is an unfair and deceptive act or practice and remedies available under that act apply.

WEST VIRGINIA

None. Small loan act applies. W. Va. Code § 46A-4-107 (31% per year on a loan of \$2,000 or less). 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. W. Va. Code § 32A-3-1 *et seq.*

WISCONSIN

None. Small loan act applies but interest rate cap was removed. Wis. Stat. § 138.09.

WYOMING

Wy. Stat. 40-14-362 et seq.

Applicability: To a post dated check casher, who is a person engaged in the business of lending money by means of post-dated check transactions or similar arrangements. Otherwise, UCCC applies. Wyo. Stat. Ann. § 40-14-348 *et seq.* (36% per year on loans of \$1,000 or less).

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

Permitted charges: No greater than \$30 or 20% per month 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 post-dated 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 shall be one calendar month.