



# Arizona State Senate *Issue Brief*

November 6, 2008

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **PAYDAY LOANS**

### **INTRODUCTION**

Deferred presentment, also known as payday lending, is a service that offers short-term, small loans in exchange for a person's personal check under an agreement that the person's personal check will be held for deposit on a future date certain. Typically, a person will write a check, dated a week or two in the future, for the loan amount and a finance charge. At the end of the loan period, the person redeems the check with cash or the deferred presentment company deposits the check for the face amount. If the person cannot afford to pay the check, the person may roll-over or renew the loan by paying an additional fee.

Payday lending and check cashing services are distinct. Although many payday lenders also offer check cashing services, where a customer is charged a fee to cash the customer's payroll, government or personal check, deferred presentment transactions result in the issuance of a loan to a customer under specified terms and conditions.

According to the National Conference of State Legislatures, at least 40 states and the District of Columbia allow payday lending and place certain restrictions on the practice. Most states require licensing to ensure that lenders are complying with applicable laws, including restrictions on fee, roll-over and loan amounts.

### **ARIZONA PAYDAY LOAN REGULATION**

In 2000, Arizona passed legislation requiring the licensure of deferred presentment companies by the Department of Financial Institutions. Personal checks accepted by a payday lending establishment for deferred presentment or deposit must be at least \$50 and no more than \$500, excluding permitted fees. The licensee and customer are required to sign an agreement specifying the terms of the loan. The fee for an initial transaction or any extension cannot be more than 15 percent of the face amount of the check. A customer may extend the presentment or deposit of a check not more than three consecutive times and may have only one outstanding payday loan at a time. For each extension, the customer and the licensee are required to terminate the previous agreement and sign a separate, new agreement. If a customer has completed a deferred presentment transaction with the licensee, the customer may enter into a new agreement for deferred presentment services with the licensee.

In 2006, the Legislature established requirements for payday loans to members of the United States military and their spouses. Licensees are prohibited from garnishing any military wages or the salary of a member of the military or the member's spouse. A licensee is prohibited from performing collection activities against the member or the member's spouse during deployment to a combat or combat support posting or during active duty service by a member of the National Guard or any military reserve unit of a branch of the Armed Forces of the United States. Additionally, military members or their spouses cannot roll-over a payday loan, and the licensees are bound to the terms of any repayment agreement that the licensee negotiates through military counselors or third party credit counselors. Licensees must provide a written disclosure of the prohibited practices to a military member or the member's spouse prior to engaging in a payday lending transaction.

The Deferred Presentment Licensing Program (Program) within the Department of Financial Institutions terminates on July 1, 2010; the Program is not subject to sunset review.

The 2008 Proposition 200 ballot initiative, titled the "Payday Loan Reform Act," would have removed the Program termination date and made various changes to payday lending regulations, including requiring greater cash reserves for lenders and limiting the fee lenders can charge for services. The proposition was not approved by voters.

If the termination date is not extended or repealed by July 1, 2010, the license for and ability of payday lenders to operate in this state will be revoked. Current payday lenders would be required to receive licensing as a consumer lender under Article 6, Chapter 5 of Arizona Revised Statutes.

## **ADDITIONAL RESOURCES**

- Arizona Department of Financial Institutions  
2910 N. 44th St., Suite 310  
Phoenix, AZ 85018  
602-255-4421  
800-544-0708  
[www.azdfi.gov](http://www.azdfi.gov)
- Deferred Presentment Statutes: Arizona Revised Statutes, Title 6, Chapter 12.1
- Community Financial Services Association of America (payday loan trade association)  
[www.cfsa.net](http://www.cfsa.net)
- National Conference of State Legislatures  
303-364-7700  
[www.ncsl.org](http://www.ncsl.org)
- Arizona Secretary of State  
[www.azsos.gov](http://www.azsos.gov)