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Payday Lending (including the new 2009 Payday Loan Act)

What is payday lending?

A payday loan is a small, short term, high interest rate loan. These loans go by many names: payday loans, cash advance loans, check advance loans, post dated check loans, or deferred deposit check loans. Payday lenders loan $100 to $500 for very short time periods. Usually, the loan is for two or four weeks, twice the time between pay periods.

How does a payday loan work?

You write a personal check to the lender for the amount you want to borrow plus fees. As of January 1, 2009, these fees are: (1) a loan fee of no more than $20 for each $100 you borrow, plus (2) an additional 36% interest, plus (3) a verification fee of $5. The lender gives you the amount of your check minus these fees. The lender holds your check until your next payday.

For example, you want to borrow $500. You write a check for $618.85 and give it to the lender. The lender gives you $500 in cash. The lender holds your check until your next payday. On your next payday, you either pay the $618.85, or allow the lender to cash your check.

Why is payday lending a bad idea?

Payday lending is a very expensive way to borrow money. The loan fee is no more than $20 for each $100 you borrow plus 36% plus a verification fee of $5. For a four week loan, the rate of interest is **362%** per year. For a two week loan, the rate of interest is **724%** per year. This is forty to eighty times higher than rates charged by credit cards, banks, and other lenders.

Payday lending is a bad idea because you are set up to fail. If you need and do not have $500 today, you are not very likely to have and be able to repay $618.85 in two or four weeks. Because the payday lender holds your check, the lender usually will be paid first. You know that if you don't pay, your check may be cashed and other checks you wrote may bounce.

What can I do instead of a payday loan?

You have options other than payday loans. You should consider all other possibilities before you choose a payday loan. Here are some other choices.

• A small loan from your credit union or a small loan company.
• An advance on pay from your employer.
• A personal loan from family or friends.
• A cash advance on a credit card.
• A loan or gift from a church, private charity, or local community-based organization.
• Ask your creditors for more time to pay your bills, and ask what they will charge for that service, such as a late charge, extra finance charge, or higher interest rate.
• Make a realistic budget and figure your monthly and daily expenses. Avoid unneeded purchases, even small daily items. Their costs add up.
• Build some savings to avoid borrowing for emergencies. Even small deposits can help. If you put just $35 a week into savings, you will have $1,000 in only 28 weeks.
• Get overdraft protection on your checking account.
• Look into a no cost consumer credit counseling service.

Are there limits on payday loans?

Under Virginia law, a payday loan can't be more than $500. You **cannot** borrow more than $500 at any time. You **cannot** have more than one payday loan at any time. The fees are limited to: (1) a loan fee of no more than $20 for each $100 you borrow, plus (2) an additional 36% interest, plus (3) a verification fee of $5. A payday loan **must** be for at least fourteen days.

Before you take out a payday loan, the lender must give you warning notice. This must be a separate printed notice on 8½ x 11 inch paper. The notice must be in big, 24 point type. (This type is 24 point type.) This warning notice must be signed and dated by each borrower. The warning notice must say these things.

> "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs."
>
> "I acknowledge that I have received a copy of this notice and the pamphlet entitled Payday Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

What must a payday loan agreement say?

If you take out a payday loan, the lender also must give you a written loan agreement. This agreement must be signed and dated by each borrower. This must be done the same day the loan is made and paid to you. The agreement must say these things.

• The amount you are borrowing.
• The fee charged.
• The annual percentage rate (using that term), which is the rate of interest per year.
• Evidence of receipt of your check, dated the same as the loan date, stating the amount of your check.

• That your check will not be deposited until your loan is due, which must be at least seven days after the loan is made.

• That if your loan is not paid when due, the interest rate after the due date is 6% per year.

• That you may cancel the loan at any time before the close of business on the next business day, by paying the amount you borrowed (that is, the amount of your check minus the lender's fee).

• That you may pay back the loan before the due date by paying the amount you borrowed plus the lender's fee for each day of the loan.

If you take out a payday loan, the lender also must give you a pamphlet titled Payday Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities. This pamphlet must contain exact language. You can read this exact language by going to the web site: http://www.state.va.us/scc/caseinfo/banking/case/b020012apay.pdf. The Virginia State Corporation Commission's Bureau of Financial Institutions also has a pamphlet titled Consumer Guide to Payday Lending. However, this pamphlet is not a substitute for the pamphlet about borrower rights and responsibilities.

Is there a waiting period between payday loans?

Yes. After paying one payday loan, you must wait until the next day to take out another payday loan. If you take out five payday loans within a 180 day period, you must wait 45 days after paying back the fifth payday loan before you can take out another payday loan. If you enter into an extended payment plan, as explained below, you must wait 90 days after paying back the payday loan before you can take out another payday loan.

What if I can't pay back my payday loan on time?

If you can't pay the loan back on time, the payday lender must offer an extended payment plan, if you ask for one on or before the loan's due date. The extended payment plan must allow you to repay the loan in four equal installments over at least 60 days. There is no additional interest or charges during the term of the extended payment plan. You can't have more than one extended payment plan in any 12 month period. If you enter into an extended payment plan, you must wait 90 days after paying back the payday loan before you can take out another payday loan.

Are there rules that govern payday lenders?

A payday lender must give you the loan in cash, or by a check that you can cash without any additional fee. A payday lender can't do any of the following things.

• Get a Power of Attorney from you, or any authority that says you agree to a judgment against you.

• Get your agreement that you will be sued outside of Virginia.

• Get your agreement to give up any of your legal rights under Virginia law.

• Refinance, renew, extend, or roll over any payday loan. You must pay off the old loan, and wait one day, before the payday lender is allowed to make you a new loan.

• Ask for or hold a post-dated check.
• Hold anything to stand good for the loan other than your check.
• Sell or turn over your check to anyone else.
• Sell you any other product or service.
• Charge a fee for cashing a check the payday lender gives you as the loan proceeds.

Can a payday lender bring criminal charges?

A payday lender **can't** threaten, or start, criminal proceedings against you if your check bounces or if you do not pay back the loan.

A payday lender also **can't** ask for or collect the penalty allowed under the "bad check law," (which is $250, or three times the amount of the check, whichever is less).

If the loan isn't paid, what can a payday lender do?

If you don't pay back a payday loan, the lender may ask for and collect only these things.

• The amount you borrowed and did not pay back.
• The loan fee ($20 for each $100 you borrowed), plus the 36% interest plus the verification fee of $5.
• A bad check fee of no more than $25 if your check bounced or you stopped payment on your check or you closed the account.
• Court costs, and attorney's fees of no more than $250, if you are sued in court and lose.

If the loan isn't paid, what can a borrower do?

As with any loan, it is the borrower's choice when and how to repay a payday loan. If you are unable to repay a payday loan on time, you have choices other than letting your check to the payday lender be cashed. You also can do one or both of these things.

● Stop payment on your check to the payday lender. Your bank usually charges a fee of about $30 for this. A stop payment is good for six months.

● Make sure all of the other checks written on the account are paid, and then close the account on the check which you gave to the Virginia payday lender.

It is not a crime to do either of these things. You can't be arrested for either of these things.

You don't have to pay the "bad check charge" of $250, or three times the check amount, whichever is greater. All the Virginia payday lender can do file a lawsuit against you and get a judgment for the amount of your check, a bad check fee of $25, court costs, and attorney's fees of no more than $250.