



## Consumer Federation of America

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

### 2008 Payday Loan Legislative Update November 21, 2008

State legislatures were confronted with numerous bills that impacted payday lending during the 2008 state legislative session. As of June 20, 2008, the National Conference of State Legislators listed 102 bills filed in 30 states.

Major legislative developments in 2008 include a rate reduction in Ohio, a new rate cap for payday and car title loans in New Hampshire, and modest “reforms” adopted in Virginia. In addition, ballot fights were waged in Ohio and Arizona as well as enforcement action to shut down payday lending in Arkansas. Florida, Nebraska and Utah enacted legislation to revise payday lender supervision without adding significant new protections for consumers.

Bills to cap payday loan rates at traditional small loan or usury levels were introduced in California, Colorado, Iowa, Minnesota, New Hampshire, Ohio, South Dakota, Virginia, and Wisconsin. Bills were also introduced to repeal payday loan laws or to make payday lending a criminal activity in Nebraska, South Carolina, and Virginia. Other bills offered modest changes to existing laws, added extended payment plans, additional reporting and database requirements, or sought to repeal sunset provisions in existing laws.

Voters in Arizona and Ohio resoundingly rejected 391% APR payday loans and supported traditional small loan rate caps. In Arizona, voters reject Prop 200 by 60 to 40% of the vote, upholding the 2010 sunset of the payday loan law that authorizes triple digit rates for payday loans. In Ohio, voters supported Issue 5 70% to 30% to keep the new 28% APR rate cap on payday loans. This is the first opportunity for voters to express their views directly on payday lending. The industry spent over \$30 million in the losing effort in Ohio and Arizona.

#### Legislation Enacted:

**New Hampshire:** Currently there are no rate caps for licensed lenders in New Hampshire. HB 267, which passed both houses of the New Hampshire legislature and was signed into law by the Governor, caps rates for both payday and car title loans at 36% APR with no additional fees. Industry-backed legislation that failed included HB 620 and HB 799 to authorize 390% for payday loans and 268% car title loans. A second bill was enacted, SB 472, to update definitions, to close any loopholes and to create a study commission on access to credit for low-income people. The rate cap is effective January 1, 2009.

**Ohio:** Ohio legislature enacted HB 545 to cap payday loans at 28% APR with strong bipartisan support. In addition to capping loan rates, the bill closes loopholes, bans title loans, sets a 31 day minimum loan term, provides an extended payment plan, limits to one NSF fee for returned check of \$20 plus actual bank charges; limits borrowers to two loans during a ninety-day period and a total of four loans per year. The bill was signed into law. Implementation was delayed while the payday loan industry fought a losing ballot fight on Issue 5 in an effort to repeal the 28% rate cap. The new protections were upheld at the ballot box in November by a wide margin, paving the way for the tough new law to take effect.

**Virginia:** Numerous bills were filed in Virginia to cap rates at 36% or to repeal payday lending. When the dust settled on the contentious session, the payday lenders won a rate increase and a more complex authorizing law that included a few modest improvements.. Lenders must give borrowers two pay periods to repay a loan, an improvement over the current seven-day minimum loan. The Virginia law adds a database to track and enforce limits on lending. Lenders are limited to making one loan at a time to borrowers who must wait one day after repaying a loan to take out another. Borrowers who take out at least five loans in a six-month period must either wait 45 days before getting another loan OR extend the payment term on the fifth loan to two months or more. Anyone taking a two month extension option has to wait another two months before getting a new loan. An extended payment plan is available once a year, followed by a three month cooling off period. Lenders that falsely threaten criminal prosecution for failure to make good on the check used to get the loan will be fined three times the cost of the loan. Virginia lenders will be subject to the federal Fair Debt Collection Practices Act protections as a matter of state law. Most of the provisions take effect January 1, 2009.

**Florida:** SB 2158 updated enforcement provisions of the payday loan law but did not make substantive changes to loan terms for consumers.

**Nebraska:** L.B. 851 added as a basis for license revocation that the lender knowingly violated a voluntary consent or compliance agreement entered into with the regulator.

**Utah:** S/B 83 renamed the law as “Check Cashing and Deferred Deposit Lending Registration Act” and modified definitions and terminology.

### **Enforcement:**

**Arkansas:** The Arkansas Attorney General issued an order to state-licensed check cashers to halt making payday loans early in 2008. In November the Arkansas Supreme Court ruled that the Arkansas Check Cashers Act was unconstitutional. The Attorney General is systematically bringing enforcement actions to shut down all payday lending.

Notable Reform Bills Failed:

**Colorado:** As introduced, HB 08-1310 initially capped rates for payday loans at 36% APR. After House amendments, the bill subjected all payday loans to the state's usury cap of 45% APR, allowed a once-per-year origination fee up to \$60, extended the repayment period to at least 30 days, permitted borrowers to repay loans early without charge, and limited borrowers to one outstanding payday loan at any time. Sponsors withdrew the bill in the Senate after amendments to seriously weaken the bill were adopted. Those amendments would have set a 7-day minimum loan term and allowed loan fees each time a loan was renewed, raising the cost of loans from current law. No legislation was enacted in CO.

**Illinois:** Various bills to plug the Payday Loan Reform Act (PLRA) definitional loophole and/or to extend PLRA limits to Consumer Installment Lenders are under negotiation in the Illinois legislature. SB 862, backed by state regulators, extends PLRA limits to CILA loans. SB 1993, approved in the Senate, stalled in the House, amends the 2005 PLRA to close the 120 day loan term definition loophole. After several weeks of negotiations between industry and consumer groups, the deadline for SB 1993 was officially extended. Parties continue to work on legislation on payday lending.

**Kentucky:** HB 500 passed the House 56 to 35 but died in the Senate after being amended several times. Advocates managed to remove language to authorize Internet payday lending/use electronic debits as a form of security or payment. Bill was amended to permit borrowers to have two loans outstanding at the same time, permitted loans up to 30% of the borrower's gross income, capped rates at \$13 per \$100 (slight reduction from 15% of face amount of the check). The original bill's 72-hour cooling off period was amended to 24-hours. The bill made the extended payment plan available only after the borrower gets the 6<sup>th</sup> loan. Database to track lending and enforce limits was included in the bill. No legislation was enacted.

**South Carolina:** Bills to curtail payday lending died at the end of the South Carolina legislative session, leaving the status quo on the law, pending lawsuits filed by borrowers, and pledges by advocates to return to the 2009 legislative session seeking repeal, rather than a reform, bill. (H. B. 4058, H.B. 5022, S.B. 398, and S.B. 954)