

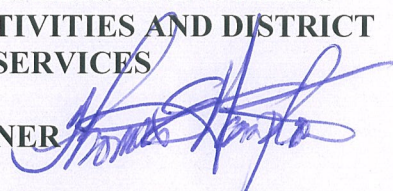
Government of the District of Columbia
Department of Insurance, Securities and Banking

Thomas E. Hampton
Commissioner



BULLETIN
07-BB-02-11/15

**TO: ALL DISTRICT LICENSED CHECK CASHERS AND OTHERS
ENGAGED IN PAYDAY LENDING ACTIVITIES AND DISTRICT
CONSUMERS WHO UTILIZE THESE SERVICES**

FROM: THOMAS E. HAMPTON, COMMISSIONER 

SUBJECT: DEFERRED DEPOSIT CHECK CASHING (PAYDAY LENDING)

DATE: NOVEMBER 15, 2007

This bulletin applies to all check cashers licensed by the District of Columbia Department of Insurance, Securities and Banking engaged in deferred deposit lending, otherwise known as "Payday Lending", as well as to firms engaged in Payday Lending in the District of Columbia via the internet and other means, and District consumers who use Payday Lending services. The purpose of the bulletin is to inform all such parties of recent changes in District law with respect to Payday Lending activities.

On October 3, 2007, the "Payday Loan Consumer Protection Amendment Act of 2007"¹ (the Act") was signed into law to take effect immediately following the Congressional review period, which is anticipated to end January 8, 2008, as provided in the District of Columbia Home Rule Act², and publication in the District of Columbia Register. According to the Act, Payday Lending is no longer authorized as a permissible activity under the District's Check Cashers Act of 1998³. Therefore, any party currently or prospectively engaged in Payday Lending in the District may no longer rely on the Check Cashers Act for authority to engage in the activity and should plan to cease the activity effective January 9, 2008. Licensed parties may continue to service existing loans but may not take applications for new Payday Loans, and may not roll over or convert existing loans into new Payday Loans.

¹ "Payday Loan Consumer Protection Amendment Act of 2007" D.C. Act 17-115.

² District of Columbia Home Rule Act, D.C. Official Code § 1-206.02 (c)(1).

³ D.C. Official Code § 26-301 *et seq.*

Any firm intending to engage in the business of Payday Lending subject to the District's Money Lenders Act⁴ will be required to apply for a District Money Lender's license and will be subject to the District's maximum allowable annual interest rate of 24 percent applicable to all consumer lending.⁵

Further, the Act expanded the definition of "consumer credit transactions" in the District's Interest Rate Ceiling Amendment Act of 1983⁶ to include all Payday Lending credit transactions conducted between a consumer and a creditor who has solicited or advertised in the District of Columbia by any means, including mail, brochure, telephone, print, radio, television, internet, or any other electronic means. Accordingly, all Payday Lending activities in the District of Columbia that are solicited or completed via any of these means shall require a money lenders license issued by this agency.

The Act also makes a violation of any provision of the District's Interest and Usury law⁷ an unlawful trade practice, in violation of the District's Consumer Protection Procedures Act.⁸ Such violations may be subject to prosecution by the District of Columbia's Office of the Attorney General. Additionally, failure to comply with the law could lead to civil liability and various disciplinary actions, including, but not limited to, civil penalties.

The Act is available on line at: http://app.disb.dc.gov/news/current_legislations.asp together with a conversion of the provisions of the Act as they affect the other statutes referenced above. For your convenience, a copy of the conversion is attached.

Please contact us at BankingBureau@disb.dc.gov, if you should have any questions.

⁴ District of Columbia Loan Shark Act of 1913, D.C. Official Code § 28-3301 *et seq.*

⁵ The Interest Rate Ceiling Amendment Act of 1983, D.C. Official Code § 28-3301(a). See also the DISB website for an application and instructions to apply for a money lender's license: http://disb.dc.gov/disr/cwp/view,a,1299,Q,634434,disrNav,32821,_.asp.

⁶ D.C. Official Code §§ 28-3301 (h)(i).

⁷ D.C. Official Code § 28-3301 *et seq.*

⁸ D.C. Official Code § 28-3904.

**PAYDAY LOAN CONSUMER PROTECTION
AMENDMENT ACT OF 2007**

Signed into law October 3, 2007

This is a reference tool that provides a listing of the sections of the Payday Loan Consumer Protection Amendment Act of 2007 and the respective resulting changes it made to other District of Columbia laws.

To Amend the Check Cashers Act of 1998 and Title 28 of the District of Columbia Official Code to restrict certain lending practices conducted by payday loan businesses.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Payday Loan Consumer Protection Amendment Act of 2007".

Sec. 2. Modification of payday loan definition (amends the Check Cashers Act of 1998):

§ 26-301. Definitions

For the purposes of this chapter, the term:

3. "Deferred Deposit Lending", more commonly known as Payday Lending, allows the borrower to write a personal check as security and receive a loan that is disbursed in cash immediately upon presentment and qualification, while delaying the deposit of the borrower's check by the lender, pursuant to an agreement with the lender for a mutually agreed upon number of days following the issue date of the check. Post-dating of personal checks used to secure a Deferred Deposit Loan is prohibited.- **Repealed**

Modification of payday loan restrictions (amends the Check Cashers Act of 1998):

§26-317- Limitations on fees for cashing checks.

- (a) No licensee under this chapter shall directly or indirectly charge or collect in fees or charges for cashing a check a sum to exceed 5% of the face value of a government or payroll check, 7% of the face value of an insurance check, 10% of the face value of a personal check or money order, or \$4, whichever is greater. **An additional verification, handling, and documentation processing fee may be charged, pursuant to § 26-319, for a personal check held for deferred deposit.** Each licensee shall conspicuously post, in both English and Spanish, and at all times display in every location and upon every mobile unit licensed under this chapter, a schedule of fees and charges permitted hereunder, which schedule shall be approved by the Superintendent prior to posting.

§ 26-319 (c). Limitations on business- Repealed (amends the Check Cashers Act of 1998):

c)(1) **Repealed** No licensee shall at any time cash or advance any monies on a personal check for a fee in excess of 10% of the face amount of the check as set out in § 26-317; provided, however, that where the licensee enters into an agreement with a customer to hold his or her personal check for deferred deposit, the licensee may charge an additional fee for verification, handling, and documentation processing totaling no more than \$5 on a personal check with a face amount of up to \$250; no more than \$10 on a personal check with a face amount of \$250.01 to \$500; no more than \$15 on a personal check with a face amount of \$500.01 to \$750; and no more than \$20 on a personal check with a face amount of \$750.01 to \$1,000.

(2) **Repealed** A personal check for deferred deposit must bear an issue date of not later than the date the check is cashed and the deferred deposit agreement is originated.

(3) **Repealed** The deposit date of a check held for deferred deposit shall not exceed 31 days following the issue date of the check as agreed to in the Deferred Deposit Disclosure Agreement, Addendum I; provided, however, that when the deposit date occurs on a weekend or bank holiday, the check may be deposited on the next business day.

(4) **Repealed** The minimum face amount of a check held for deferred deposit must amount to no less than \$50. The aggregate face amount of checks being held for deferred deposit must not exceed \$1,000 per customer.

(5) **Repealed** The licensee shall retain all rights and privileges of a holder in due course on checks presented for deferred deposit.

(6) **Repealed** The license to offer deferred deposit services shall be limited to only those businesses whose dominant business activity is financial services. The licensee may offer deferred deposit services only when the Superintendent has determined that the licensee's dominant business activity is financial services.

(7) **Repealed** Fees charged for deferred deposit transactions shall be evidenced by a receipt. Such receipt shall be presented to the purchaser upon completion of the transaction.

Sec. 3. (a) Modification of §28-3301 The Interest Rate Ceiling Amendment Act of 1983, effective March 14, 1984, DC Law 5-62:

§28-3301 The Interest Rate Ceiling Amendment Act of 1983, effective March 14, 1984, DC Law 5-62; is amended as follows:

(d) Notwithstanding any other provision of this chapter:

(1) any loan, except a loan which is secured directly or indirectly by a mortgage or deed of trust on residential real property, or by a security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization, or by the assignment by the way of a security of

the borrower's interest in the proprietary lease or right of tenancy in property covered by a cooperative housing organization and the residential real property or cooperative is the place of residence of the borrower, where the borrower receives the use of **an amount in excess of \$1,000 an amount in excess of \$2,500** shall not be subject to the provisions of this chapter and it shall be lawful to contract for, or receive, any rate of interest thereon if any of the following conditions are satisfied:

- (A) the borrower is a not for profit corporation, whether organized under the laws of the United States, the District of Columbia, or any other jurisdiction; or
- (B) the borrower is an individual, group of individuals, corporation, unincorporated association, partnership, or other entity, and the loan is made for the purpose of acquiring or carrying on a business, professional, or commercial activity; or
- (C) the borrower is an individual, a group of individuals, corporation, unincorporated association, partnership, or any other entity, and the loan is made for the purpose of acquiring any real or personal property as an investment or for carrying on an investment activity; or
- (D) the borrower is a religious society, as referred to in sections 29-901 through 29-916, and the loan is made for the purpose of acquiring or making an improvement on any real or personal property for purposes other than commercial or investment activities.

§28-3301 The Interest Rate Ceiling Amendment Act of 1983, effective March 14, 1984, DC Law 5-62; (Adds New subsections (h) and (i)):

(h) Except as otherwise provided in this section, the provisions of this chapter shall apply to consumer credit transactions, including modifications (including refinancing, consolidations and deferrals), occurring in the District of Columbia. For the purposes of this chapter, a consumer credit transaction occurs in the District of Columbia if:

(1) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in the District of Columbia; or

(2) A consumer who is a resident of the District of Columbia enters into the transaction with a creditor who has solicited or advertised in the District of Columbia by any means, including mail, brochure, telephone, print, radio, television, internet, or any other electronic means.

(i) For the purposes of this chapter, the term "consumer" shall have the same meaning as in §28-3901 (a)(2).

§28-3901 (a) As used in this chapter, the term-

(1) "person" means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized;

(2) "consumer" means a person who does or would purchase, lease (from), or receive consumer goods or services, including a co-obligor or surety, or a person

who does or would provide the economic demand for a trade practice; as an adjective, "consumer" describes anything, without exception, which is primarily for personal, household, or family use;

Sec. 3. (b) Modification of §28-3904 - Consumer Protection Procedures - Unlawful Trade Practices (Adds subsection "ff" which makes a violation of Title 28, Chapter 33 - Interest and Usury a violation of Title 28-3904 –Unlawful trade practices of the Consumer Protection Procedures Act):

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

- (aa) violate any provision of sections 32-404, 32-405, 32-406, and 32-407;
- (bb) refuse to provide the repairs, refunds, or replacement motor vehicles or fails to provide the disclosures of defects or damages required by the Automobile Consumer Protection Act of 1984;
- (cc) violate any provision of the Real Property Credit Line Deed of Trust Act of 1987; ~~or~~
- (dd) violate any provision of title 16 of the District of Columbia Municipal Regulations~~;~~
- (ee) violate any provision of the Public Insurance Adjuster Act of 2002, passed on 2nd reading on December 3, 2002 (Enrolled version of Bill 14-476)~~;~~ **“or”**
- (ff) violate any provision of Chapter 33 of this title.**

Sec. 6 Effective date.

This Act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 [87 Stat. 813; D.C. Official Code §1-206.02 (c)(1)], and publication in the District of Columbia Register.

Key: Insertion, Deletion or Strike-over