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Payday Loan - Know Your Rights and Decide If One Is Right for You

CONSUMER ALERT

BILL SCHUETTE
ATTORNEY GENERAL

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PAYDAY LOAN KNOW YOUR RIGHTS AND DECIDE IF ONE IS RIGHT FOR YOU

WHAT IS A "PAYDAY LOAN?"

Payday loan, cash advance, or check advance loan are commonly used phrases to describe what Michigan law refers to as a "deferred presentment service transaction." For the purposes of this Consumer Alert, we will refer to deferred presentment service transactions as "payday loans." One who is licensed in the State of Michigan to offer a payday loan is a licensee, but for the purposes of this Consumer Alert, we will call the licensee a "payday lender."

The payday loan transaction is a small, short-term, high-cost arrangement where the customer gives the payday lender a check to cover the payday loan amount and service fees. In return, the payday lender provides the customer with immediate cash, check, or money order, depending on the needs of the customer. Typically, payment is made from the customer's next paycheck. To qualify, the customer usually only needs personal identification, a checking account, and proof of anticipated income from a job or governmental benefits.

PAYDAY LOAN DISADVANTAGES

Very high service fees, combined with a short repayment period, may cause customers to fall into a payday loan debt trap. Instead of short-term financial relief, the customer experiences perpetual indebtedness.

HOW PAYDAY LOANS WORK IN MICHIGAN

In Michigan, the [Deferred Presentment Service Transaction Act](#) governs payday loans. Customers sign a written agreement, which must include an itemization of the fees to be paid and the equivalent annual percentage rate. The agreement must also clearly describe the payment obligations and the process a customer may take to file a complaint against the payday lender.

A payday lender can only have one outstanding payday loan per customer for a loan amount of up to \$600. A customer may take out a second loan with a different payday lender. A customer can only have two outstanding payday loans at any given time.

HOW MUCH AM I PAYING FOR A PAYDAY LOAN?

The limits on the service fees for payday loans are based on the amount of the loan. The payday lender may charge up to 15% on the first \$100, 14% on the second \$100, 13% on the third \$100, 12% on the fourth \$100, and 11% on the fifth and sixth \$100. Therefore, the following service fee limits apply:

Payday Loan Amount	Total Service Fee Limit
\$ 50	\$ 7.50
\$100	\$15
\$250	\$35.50
\$200	\$29
\$300	\$42
\$400	\$54
\$475	\$62.25
\$500	\$65
\$600	\$76

Payday loans can be very expensive. For example, a customer who borrows \$100 will be charged up to \$15 for a two-week loan (the payday lender may provide for a shorter or longer period -- up to 31 days). The customer writes a check for \$115 and receives an immediate \$100 in cash.

Because the payday loan is short term, the service fee translates into a triple-digit annual percentage rate (APR). The following illustrates the calculation of the APR on this payday loan.

- The daily interest charged (\$15/14 days) is \$1.071429.
- Convert the daily interest charged into an APR: \$1.071429 x 365 days in a year = 391%

While the actual cost of this two-week loan is \$15, the annual percentage rate of that \$15 is 391%! The payday lender may charge an additional database verification fee of 45 cents per transaction.

HOW DO PAYDAY LENDERS KNOW IF CUSTOMERS HAVE OUTSTANDING PAYDAY LOANS?

The State maintains an electronic database that payday lenders must check to see if a customer has any outstanding transactions. To process a payday loan request, the payday lender will ask for the customer's name, address, Social Security number, driver's license or other state-issued I.D. number, amount of the loan sought, the number on the check that will be used to cover the payday loan, and the date of the requested payday loan. The payday lender must then check the State database to make sure a customer does not have more than one outstanding payday loan. If the customer has more than one outstanding payday loan, the payday lender cannot issue another one.

If the electronic database is ever down, each customer will be required to sign a statement indicating that he/she does not have an outstanding payday loan with the current payday lender and also indicating that the customer does not have more than one other payday loan with another payday lender in the State.

WHAT ARE YOUR RIGHTS?

The written payday loan agreement a customer signs must include the following: (Please note that a payday lender is referred to in this notice as the "licensee" or sometimes "we" or "us").

- 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 Department of Insurance and Financial Services toll-free at 1-877-999-6442.
- If you are unable to pay your deferred presentment service transaction and have entered into eight 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 Department of Insurance and Financial Services toll-free at 1-877-999-6442.

Before a customer signs a payday loan agreement, the payday lender must also advise the following:

- After signing this agreement, if you believe that we have violated the law, you may do one of the following:
 - Before the close of business on the day you sign the agreement, notify us in person of the violation. You must provide supporting documents or other evidence of the violation.
 - At any time before signing a new deferred presentment service agreement with us, notify us in writing of the violation. Your written notice must state the violation and provide supporting documents or other evidence of the violation.
- We have three business days to determine if we agree that we have violated the law and to let you know of that determination.
- If we agree that we have violated the law, we must return your check; you must return the cash received under the agreement. Additionally, for each violation, we must pay you restitution equal to five times the amount of the fee we charged you under the agreement, but not less than \$15 or more than the face amount of your check. You may also pursue an action for your actual damages against us.
- If we do not agree that we have violated the law, we may present your check for payment or enter your check into the check-clearing process on or after the maturity date. If your check is returned to us unpaid, we may take other legal steps to collect our money.
- If you still believe we violated the law, you may file a written complaint, including supporting documents or other evidence with the Department of Insurance and Financial Services. The Office is required to investigate your complaint and has the authority to order us to pay you restitution, if they agree that we violated the law. The Office can also order us to pay civil fines or take away our right to do business. To do so, contact the Department of Insurance and Financial Services toll-free at 1-877-999-6442.

HOW DO I PAY BACK THE LOAN?

A customer has only up to the end of the contract period to repay the loan amount and any applicable fees. A contract period may never last more than 31 days. If the payday loan and applicable fees are not paid on time, the payday lender can deposit the customer's check. If there are insufficient funds to cover the check, the customer will be responsible for paying the face amount of the check, fees to their financial institution associated with a non-sufficient funds check, and the payday lender's returned check fee of up to \$25. The payday lender may also take collection action against the customer.

CAN I EXTEND THE TIME I HAVE TO PAY BACK THE LOAN?

It is completely up to the payday lender whether to permit an extension of time to repay the payday loan. If the payday lender grants additional time to repay the payday loan, it may not charge a fee for the extension and may not increase the balance owed above that provided in the original payday loan agreement. However, the payday lender can only defer cashing a customer's check for up to 31 days from the date of the transaction even if granting an extension.

However, if a customer has entered into at least eight payday loans with any payday lender in any 12-month period, and the customer is unable to timely pay the current payday loan, after notifying the payday lender, the customer may enter into a written repayment plan with the payday lender. Under such a plan, the customer would repay the transaction in three equal installments, with one installment due on each of the next three dates that the customer receives regular wages. In this case, the payday lender may charge \$15 for entering into the plan.

WHAT IF I BELIEVE THE PAYDAY LENDER HAS VIOLATED THE LAW?

Any customer who believes a payday lender has violated the law should contact the payday lender in writing detailing the nature of the violation and providing all the evidence to substantiate the complaint.

The payday lender must determine if it violated the law within three business days of receiving the complaint. If the payday lender determines that it did violate the law, it must return the check received from the customer and any service fees paid. The customer must still pay back the amount received. The payday lender, however, will be required to pay the customer an amount equal to five times the amount of the fee charged in the transaction, but not less than \$15 or more than the face amount of the customer's check.

If the payday lender does not believe it has violated the law, it must notify the Commissioner of the Department of Insurance and Financial Services (DIFS) and the customer of its conclusion. If the customer still believes that the payday lender has violated the law, the customer should file a complaint with DIFS (see address below). DIFS will investigate complaints promptly.

The law provides that a person injured by a payday lender's violation of the Deferred Presentment Transactions Act may file suit to recover actual damages and reasonable attorney fees.

ARE THERE ALTERNATIVES TO A PAYDAY LOAN?

More affordable alternatives to a payday loan may include:

- a small loan from a friend or family member;
- a small loan from a bank or credit union;
- asking for advance pay from your employer; and
- asking the creditor for more time to pay your bills.

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES - COMPLAINTS AND FREQUENTLY ASKED QUESTIONS (FAQs).

In Michigan, any business offering payday loans must be licensed. To find out if a company is licensed, you may contact DIFS at 1-877-999-6442 or <http://www.michigan.gov/difs>. Any complaints regarding a business offering payday loans should be sent to:

Department of Insurance and Financial Services
 P.O. Box 30020
 Lansing, MI 48909
http://www.michigan.gov/documents/cis_ofis_fis_pub_1003_24966_7.pdf
 (online complaint form)

DIFS also has a Deferred Presentment Service Transactions Act FAQs.
http://www.michigan.gov/lara/0,4601,7-154-10555_13648-169856--,00.html