

# Deferred Deposit (Payday) Loan Legislation

*Deferred Deposit or "Payday Loan" legislation varies from state to state. For legislators seeking to draft or amend legislation in their state, NBCSI is providing model language typically included in payday lending bills. The following language includes important consumer protections and industry controls that ensure fair lending practices in the payday advance industry.*

## Model Language for Deferred Deposit (Payday) Loans

### Bill Summary

This Act creates a "Deferred Deposit Loan Act" which imposes statutory regulations on deferred deposit lenders, also known as "payday lenders." Under the Act, the following regulations would apply to deferred deposit loans:

- All deferred deposit loans require a written agreement signed by the lender and the borrower;
  - The written agreement must include the names of the parties involved, the amount of the loan, a statement of the finance charges, the date by which the loan is to be repaid, and other items required to be disclosed under federal law;
  - Lenders must notify borrowers in large-type writing of the short-term nature of deferred deposit loans, the fact that renewing a loan will require additional finance charges, the gross monthly income on such loans, and the ability of borrowers to rescind a loan by 5 p.m. the next business day;
  - Loan materials must be available in English and Spanish;
- The term of the loan must be no less than 7 days and no more than 40 days;
- Loans may not exceed 25 percent of a consumer's gross monthly income;
- Lenders could impose a finance charge not to exceed \$15 per every \$100 loaned;
- A loan may not be renewed;
- Borrowers may rescind a deferred deposit loan by 5 p.m. the next business day;
- A consumer has the right to request an extended payment plan after the period of [recession](#) has expired at least once during any 12-month period;
  - The extended payment plan option gives consumers the ability to repay a loan over a longer period of time at no additional charge;
- Loans can be made with business instruments, money orders, or cash, but no additional finance charges may be applied to a business instrument;
- Advertisements must promote only the responsible use of deferred deposit loans; advertising the product in a false, misleading or deceptive manner is prohibited;
- Civil action to be filed to collect the value if the loan obligations are not met. A lender and a consumer could contract for a returned instrument charge not to exceed \$25 plus attorney fees and court costs, unless the attorney fees exceed the value of the loan; and
- No criminal prosecution may be threatened or pursued.

### Legislation Title/Enacting Clause

Section 1. [*Short Act.*] This Act may be cited as the "Deferred Deposit Loan Act."

### Definitions

- (1) "Administrator" means the administrator of the [applicable regulatory agency];
- (2) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.
- (3) "Deferred Deposit Loan" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:
  - (a) accepts a dated instrument from the consumer;

(b) agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and

(c) pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges.

(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this Act.

(5) "Lender" means any person who offers or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Act or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

(a) lender includes, but is not limited to, a supervised financial organization as defined in Section \_\_\_\_\_ of this Act.

(b) notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this Act's interest rate, finance charges, and licensure provisions, all other applicable provisions of this Act apply to both a deferred deposit loan and a deferred deposit lender.

(6) "Loan Amount" means the amount financed as defined in regulation Z of the federal "Truth In Lending Act," 12 C.F.R. 226.18 (b), as amended, or as supplemented by [insert citation].

(7) "Rollover" means to refinance, renew, amend, or extend a loan beyond its original term.

### **Written Agreement Requirements**

(1) Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer, the transaction date, the amount of the instrument, the annual percentage rate charged, and a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate. In addition, the written agreement shall include all disclosures required by [insert citation].

(2) The written agreement shall set a date, not less than [seven (7)] days or more than [forty (40)] days after the loan transaction date, upon which the instrument may be deposited or negotiated.

(3) Prior to the consummation of a deferred deposit loan transaction, the licensee shall provide the consumer with copies of the deferred deposit loan agreement in English or Spanish. Consumers shall have the option to decide which language version of the agreement they wish to receive.

### **Posting of Charges**

Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the charges imposed for such deferred deposit loans.

### **Notice to Consumers**

A lender shall provide the following notice in a prominent place on each loan agreement in at least 10-point type:

"A deferred deposit loan is not intended to meet long-term financial needs. A deferred deposit loan should be used only to meet short-term cash needs. Renewing the deferred deposit loan rather than paying the debt in full will require additional finance charges."

### **Authorized Finance Charge**

A lender may charge a finance charge for each deferred deposit loan that may not exceed [fifteen (15)] dollars per 100 loaned. Such charge shall be deemed fully earned as of the date of

the transaction. The lender shall charge only those charges authorized in this Act in connection with a deferred deposit loan.

### Maximum Loan Amount

No lender shall make a payday loan to a consumer if the total principal amount of the loan and fees, when combined with the principal amount and fees of all of the consumer's other outstanding payday loan products, exceeds twenty-five percent of the consumer's gross monthly income.

### Right to Rescind

A consumer shall have the right to rescind the deferred deposit loan on or before [5 p.m.] the next business day following the loan transaction.

### Extended Payment Plan

Each lender shall provide an Extended Payment Plan ("EPP") option at least once during every 12-month period for customers who are unable to repay a loan. The lender must adopt a plan that offers the customer at least the following provisions, and must include the following in all deferred deposit loan transaction agreements and renewals:

- (1) "You [the customer] may opt into an EPP to pay an outstanding loan if you are unable to repay your loan when due. Any outstanding fee will be included in the amount subject to EPP.
- (2) You must invoke the EPP by close of business on the last business day before the loan due date by returning to the office where you obtained the loan or by using whatever method you used to obtain the loan. You may not invoke the EPP until after the rescission period. To invoke the EPP, you must sign an amendment to your loan agreement reflecting the new payment schedule.
- (3) You may pay the transaction balance in four equal payments coinciding with your periodic pay dates.
- (4) We will not begin collection activities while you are under an EPP as long as you meet all obligations under the EPP.
- (5) There is no charge for you to enter into an EPP. However, if you default on an EPP, we may charge you an EPP fee and accelerate payment on the balance remaining, as authorized by applicable law."

### Maximum Loan Amount, Right to Rescind, and Extended Payment Plan Notices

A lender shall provide the following notice in a prominent place on each deferred deposit loan agreement in at least 10-point type: "State law prohibits deferred deposit loans exceeding twenty-five percent of your gross monthly income. Exceeding this amount may create financial hardships for you and your family. You have the right to rescind this transaction by 5 p.m. the next business day following this transaction."

### Rollovers Prohibited

Rollover of a payday loan by any lender is prohibited. This Section does not prohibit entering into an extended payment plan, as provided under Section 9 of this Act.

### Form of Loan Proceeds

A lender may pay the proceeds from a deferred deposit loan to the consumer in the form of a business instrument, money order, or cash. The consumer shall not be charged an additional finance charge or fee for cashing the lender's business instrument.

### Endorsement of Instrument

A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

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### Redemption of Instrument

Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender. If the consumer does not pay the debt, then the lender may deposit the consumer's instrument. A transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed the deferred deposit transaction, the consumer may enter into a new deferred deposit agreement with the lender.

#### **Authorized Dishonored Instrument Charge**

If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, the lender shall have the right to exercise all civil means authorized by law to collect the face value of the instrument; except that the provisions and remedies of [insert citation], are not applicable to any deferred deposit loan. In addition, the lender may contract for and collect a returned instrument charge, not to exceed [twenty-five (25)] dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default. A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop-payment order due to forgery or theft.

#### **Criminal Culpability**

A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of [insert citation].

#### **Unfair or Deceptive Practices**

No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

#### **Notice on Assignment or Sale of Instruments**

Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least 10-point type to read: "This is a deferred deposit loan instrument."

#### **Records and Annual Reports**

A lender shall maintain records and file an annual report in accordance with [insert citation].

#### **License Requirement**

In accordance with [insert citation], no person physically located in the state or operating through use of the internet, facsimile, telephone or other means shall engage in the business of deferred deposit loans without having first obtained a supervised lender's license pursuant to [insert citation]. A separate license shall be required for each location where such business is conducted.

#### **Examination and Investigation**

A lender may be examined and investigated in accordance with [insert citation].

#### **Denial of License - Discipline**

(1) The administrator may deny a license or discipline a lender in accordance with [insert citation].

(2) (a) If the administrator finds that a lender has violated this Act, the administrator shall notify the lender of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender [thirty (30)] days to cure the violations before taking

disciplinary action in accordance with subsection (1) of this Section. If the administrator determines that such lender has performed such actions contained in such notice, the lender shall not be liable for the violations that have been cured.

(b) This subsection (2) shall not apply if the lender knowingly violated this Act.

**Applicability of Other Provisions of this Article**

The provisions of this Act apply to a lender unless such provisions are inconsistent with other provisions of state law.

**Other, General Definitions**

In addition to definitions appearing in subsequent sections of state law, in this code:

“Supervised financial organization” means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account, and
- (b) Subject to supervision by an official or agency of any state or of the United States.