

2009 State Legislative Guide: Predatory and Payday Lending




www.opportunityfinance.net

Payday loans are small loans provided to consumers who have urgent short term needs for cash. When lenders make these small loans, typically ranging from under \$500 to \$3,000, borrowers receive the funds and must repay in a very short time period, resulting in interest rates of close to 400 percent.¹ Research from The Center for Responsible Lending estimates that payday loans strip up to \$5 billion in wealth from communities across the country each year.² Without a federal policy in place to nationally curb payday lending practices that strip wealth from low-income communities through excessive interest rates and contracts that trap consumers, payday lending is regulated at the state level, resulting in a myriad of policies and legislative efforts to curb usurious interest rates and protect vulnerable consumers.

State governments are introducing a variety of tools to combat these lending practices: from imposing stricter licensing requirements for lenders, to limiting the annual percentage rate lenders can charge, to limiting the amount of a payday loan, payday lending regulations vary from state to state in their breadth and the severity of punishments for their violation. This section examines and analyzes the payday lending legislation tracked for the 2009 state guide.

Payday Lending³

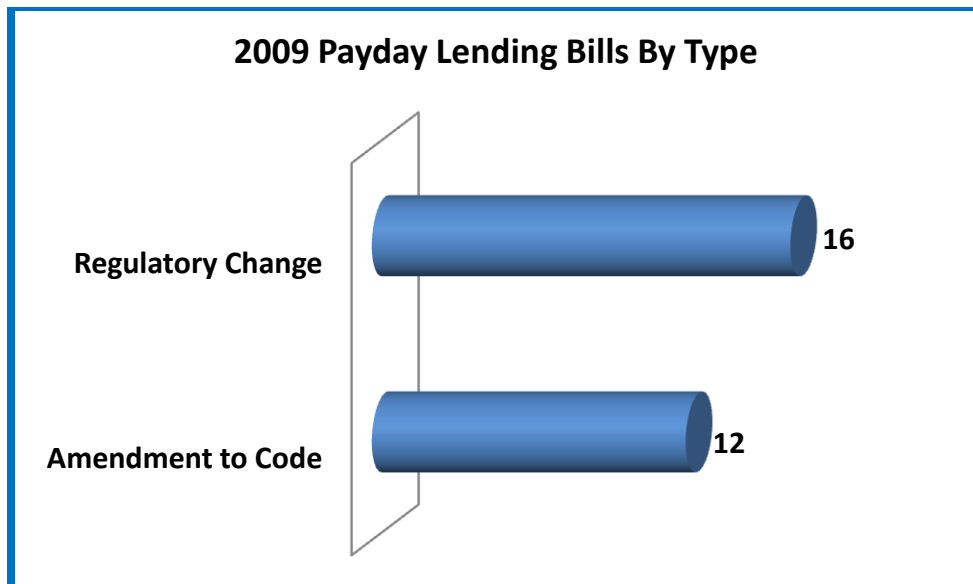
There were 28 predatory lending bills introduced in 15 states during the 2009 legislative session. The map below show the state that introduced payday lending legislation in color: states in blue introduced one bill, states in red introduced two, and states that introduced more than three bills are shown in yellow:

-  One Bill: Arizona, California, Hawaii, Minnesota, Montana, New Hampshire, New York, North Dakota, South Dakota
-  Two Bills: Idaho, Illinois, Kentucky, Nebraska, Washington
-  Three or More Bills: Mississippi, Missouri

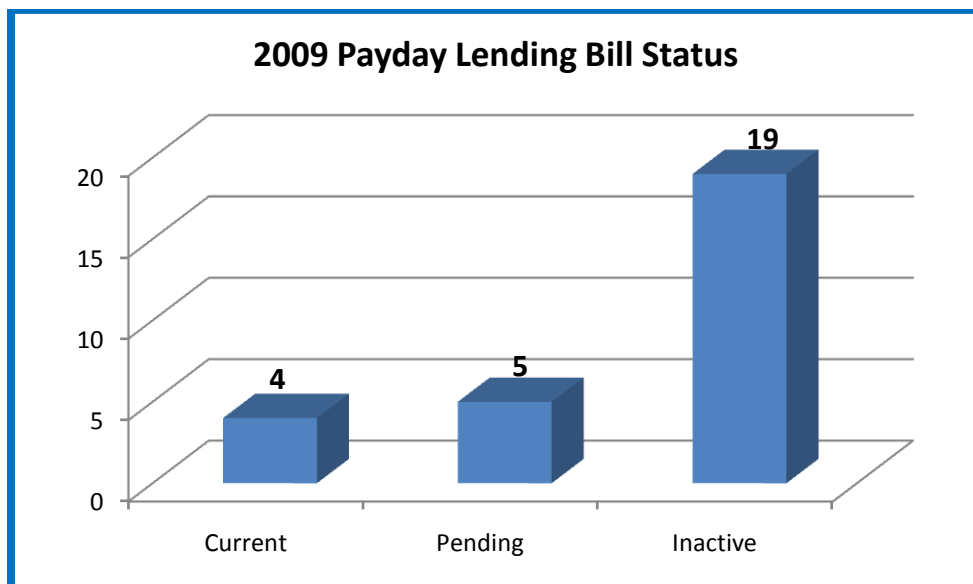
¹ "Payday Lending Overview," Center for Responsible Lending, <http://www.responsiblelending.org/payday-lending/>, accessed December 1, 2009.

² Ibid.

³ Predatory Lending section begins on page 16.



Close to 78 percent of payday lending legislation tracked in this guide did not pass the legislature in which it was introduced. Four payday lending bills passed: Kentucky H.B. 44, Minnesota S.F. 806, Nebraska L.B. 327, and Washington H.B. 1621. There are an additional five payday lending bills pending in four state legislatures: one in California, New York, and Washington, and two bills in Illinois.



Current Legislation

Kentucky: An Act Relating to Deferred Deposit Transactions, H.B. 444

Focus: Payday Lending

Type: Regulatory Change

House Bill 444 details licensing requirements for payday lenders, including disclosures about interest rates. Under this legislation, a licensed lender may not have more than two deferred deposit transactions with a customer at any one time and the face amount of the transactions may not exceed \$500. The bill also creates a database of deferred deposit transactions, funded by adding a \$1 fee to borrowers. The bill was signed into law on March 25, 2009.

<http://www.lrc.ky.gov/record/09RS/HB444.htm>

Minnesota: An Act Relating to Regulating Payday Lending, S.F. 806

Focus: Payday Lending

Type: Regulatory Change

This legislation regulates payday lending by changing the consumer short-term loan contract law. Under this legislation, contracts are required to follow Minnesota law and cannot limit class actions against lenders who violate the provisions of the law, including making loans without the required licenses, or which have interest rates, fees, charges, and loan amounts which exceed the allowable amount in the statute. It also makes individuals and organizations that violate these provisions to be held liable for all money received in connection with the loan: specified damages, costs, disbursements, and reasonable attorney fees.

Lenders are required to disclose a copy of the written loan contract to each borrower, and to furnish the Department of Financial Institutions with information about the business activities associated with short-term loans. The bill passed both Houses and was signed into law by Minnesota Governor Tim Pawlenty.

<https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S0806.2.html&session=ls86>

Nebraska: An Act Relating to Banking and Finance, L.B. 327

Focus: Payday Lending

Type: Regulatory Change

Legislative Bill 327 changes provisions relating to a disciplinary action under the Delayed Deposit Services Licensing Act, the statute which regulates payday lenders. Under the bill, The Department of Banking and Finance can suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if:

- a licensee or any of its officers, directors, partners, or members has knowingly violated the act or any rule, regulation, or order of the director;
- a fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the director to refuse to issue such license;
- a licensee has abandoned its place of business for a period of 30 days or more;

- a licensee or any of its officers, directors, partners, or members has knowingly subscribed to, made, or caused to be made any false statement or false entry in the books and records of any licensee, has knowingly subscribed to or exhibited false papers with the intent to deceive the Department of Banking and Finance, has failed to make a true and correct entry in the books and records of such licensee of its business and transactions in the manner and form prescribed by the department, or has mutilated, altered, destroyed, secreted, or removed any of the books or records of such licensee without the written approval of the department; or
- a licensee has knowingly violated a voluntary consent.

The legislation was signed into law April 8, 2009.

<http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB327.pdf>

Washington: An Act Relating to Prohibiting Small Loans, H.B. 1709

Focus: Payday Lending

Type: Regulatory Change

This legislation amends the Check Cashers Act to allow a borrower to rescind a loan, on or before the close of business on the next business day at the location where the loan was made. The borrower must return the principal in cash or the original check of the licensee. A licensee may not charge the borrower a fee for rescinding the loan and must return any postdated check taken as security for the loan or any electronic equivalent. In addition, after four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. The bill passed the legislature and was signed into law on May 15, 2009.

The provisions go into effect January 1, 2010.

[http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session percent20Law percent202009/1709-S.SL.pdf](http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/1709-S.SL.pdf)

Pending Legislation

California: An Act Relating to Deferred Deposit Transactions, A.B. 377

Focus: Payday Lending

Type: Amendment to Code

Assembly Bill 377 makes several changes to the California Financial Code in reference to payday loans. This bill also contains provisions concerning notice and licensing-related requirements. First, the bill increases the maximum value of a payday loan from \$300 to \$500 and permits a payday loan customer to rescind the transaction no later than the end of the next business day.

The bill allows a customer to repay a loan using an extended repayment plan which includes at least four installments which would have to be scheduled for dates on or after dates that the customer receives regular income. Further, a customer may prepay an extended payment plan in full at any time without penalty and the payday lender is prohibited from charging any interest or additional fees during the term of the extended payment plan, engaging in any collection activities, or making any additional payday loans to the customer while the customer makes timely payments according to the extended payment plan.

Finally, A.B. 377 requires a lender who provides a payday loan over the Internet to give the required notices and written agreement to a customer electronically and would revise advertising requirements to specify that the restrictions apply also to advertising on the Internet. Payday loan lenders are also required to pay a five-cent fee for each payday loan transaction to the Department of Corporations to be used for financial literacy education programs. The bill passed the Assembly in May and is pending in the Senate Judiciary Committee.

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0351-0400/ab_377_bill_20090623_amended_sen_v96.html

Hawaii: A Bill for an Act Relating to Payday Lending, H.B. 447

Focus: Payday Lending

Type: Amendment to Code

House Bill 447 prohibits a check casher from charging interest to a customer who has entered into a payment plan and is not in default for a period of up to 90 days, and prohibits lenders from making another deferred deposit agreement with a customer within 30 days after the completion of any other payment plan with the same customer. The bill further requires a check casher to offer an interest-free payment plan with a minimum term of 60 days to any customer who is in default. Any collection letter written to a customer in default is to inform the customer of the option of an interest-free payment plan.

A check casher must also offer an extended repayment plan option to any customer who has entered into an interest-free payment plan, though the extended repayment plan becomes available only if the customer requests the option before the close of business on the last payment plan due date. Finally the bill authorizes the Director of Commerce and Consumer Affairs to adopt rules necessary to implement the provisions of the bill. The bill passed the House and is pending in the Senate, where it will be taken up in the 2010 legislative session.

http://www.capitol.hawaii.gov/session2009/Bills/HB447_HD1_.HTM

Illinois: Amending the Payday Loan Reform Act, H.B. 3901

Focus: Payday Lending

Type: Amendment to Code

House Bill 3901 amends the Payday Loan Reform Act. The bill changes the definition of payday loan to include any loan with a finance charge exceeding an annual percentage rate of 36 percent and deletes a provision that a certain fee is considered fully earned as of the date the loan is made. The bill also states that no lender may make a payday loan with installment payments unless the installment payments are substantially equal term payments, and when a consumer repays a payday loan in full before its due date, the lender is required to rebate the unearned finance charges to the consumer on a straight-line amortization basis as of the date of repayment.

The bill further requires the licensee, as part of the information that he or she must collect and maintain, to include the total number of lawsuits filed by the licensee or its agent against consumers to collect on payday loans from consumers during the preceding calendar year and prohibits a licensee or a person making payday loans from evading the requirements and prohibitions of the Act. The bill specifically prohibits disguising a payday loan as a different type of transaction, or characterizing a required fee as a purchase of a good or service in connection with a payday loan. The bill is still pending in the House Rules Committee.

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=76&GA=96&DocTypeId=HB&DocNum=3901&GAID=10&LegID=46724&SpecSess=&Session=>

Illinois: An Act to Amend the Consumer Installment Loan Act, S.B. 1376

Focus: Payday Lending

Type: Amendment to Code

Senate Bill 1376 defines the terms Class A loan, Class B loan, Class C loan, and payday loan, and specifies the charges allowed for interest-bearing and precomputed Class A loans and Class B loans. In the provisions concerning Class C loans, the bill sets forth provisions concerning:

- loan amortization;
- use of consumer reporting services in comportment with the Payday Loan Reform Act;
- lenders' prohibited acts;
- protections for members of the military in accordance with the Payday Loan Reform Act;
- allowable fees in the case of a defaulted loan;
- disclosure requirements; and

- controlling terms of the Consumer Installment Loan Act and amending the Payday Loan Reform Act.

The bill prohibits a lender from making a payday loan to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 56 consecutive days, increased from 45 consecutive days. Further, no lender may charge more than \$17 per \$100 loaned (now \$15.50 per \$100 loaned). The bill allows lenders to seek and be awarded court costs, but not attorney's fees, in the event of a customer default on the repayment plan, and when a customer is in default and refuses to enter into the repayment plan. The legislation is still pending in the Senate.

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=76&GA=96&DocTypeId=SB&DocNum=1376&GAID=10&LegID=42612&SpecSess=&Session=>

Minnesota: An Act Relating to Financial Institutions, Regulating Payday Lending, and Providing Penalties and Remedies, H.F. 1147

Focus: Payday Lending

Type: Regulatory Change

Minnesota House File 1147 prohibits loan churning and regulates consumer short-term loans, defined as a loan to a borrower which has a principal amount, or an advance on a credit limit, of \$1,000 or less and requires a minimum payment within 60 days of loan origination or credit advance of more than 25 percent of the principal balance or credit advance. Under the bill, a consumer short-term lender may not make a consumer short-term loan to a borrower who has obtained a loan from that lender within the prior six months. A consumer short-term lender must offer a conventional term loan to any such borrower who makes a loan inquiry.

The bill further states that no contract or agreement between a consumer short-term loan lender and a borrower residing in Minnesota may contain the following:

- a mandatory arbitration provision;
- a provision selecting a law other than Minnesota law under which the contract is construed or enforced;
- a provision choosing a forum for dispute resolution other than the Minnesota courts; or
- a provision limiting class actions.

The bill is pending in the House Commerce and Labor Committee.

https://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=House&f=HF1147&ssn=0&y=2009

New York: An Act to Amend the Banking Law and the General Obligations Law, In Relation to Prohibiting Foreign Banking Corporations from Engaging in High-Cost Payday Loans, A.B. 1484

Focus: Payday Lending

Type: Amendment to Code

Assembly Bill 1484 prohibits a foreign banking corporation from making any payday loan, either directly or indirectly, or making any loan to any other lender for purposes of financing a payday

loan or refinancing or extending any payday loan. The bill further states that a creditor may not make a payday loan to any person if the creditor knows or has reasonable cause to believe that the personal check or share draft the creditor receives permission from the person to debit, in exchange for the loan, is a transaction account or share draft account at an insured depository institution or an insured credit union. The bill is pending in the Assembly Banking Committee.
<http://assembly.state.ny.us/leg/?bn=A1484>

Washington: An Act Relating to Restricting and Enforcing Eligibility for Small Loans, H.B. 1685

Focus: Payday Lending

Type: Amendment to Code

House Bill 1685 restricts payday lending activities by capping the combined principal of all outstanding small loan balances at 30 percent of the gross monthly income of a borrower. The bill also authorizes the Department of Financial Institutions to develop and implement a system where a licensee can determine if a small loan can lawfully be made to a borrower. This includes:

- whether a consumer has an outstanding small loan;
- the number of small loans the consumer has outstanding;
- whether the borrower is eligible for a loan; and
- any other information necessary to comply with state law.

The bill is pending in the House Committee on Financial Institutions.

<http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House %20Bills/1685.pdf>

Inactive Legislation

Arizona: An Act Relating to Payday Loans, H.B. 2225

Focus: Payday Lending

Type: Regulatory Change

House Bill 2225 prohibits small loans of less than \$3,000 from being issued except by a bank or thrift chartered under the laws of the United States, a bank chartered under the laws of another state and insured by the federal deposit insurance corporation or a credit card bank that is not operating in violation of the federal and state laws applicable to its charter. Any person who violates the bill is guilty of a Class One misdemeanor for each loan transaction in violation of the statute. Further, anyone who aids a violation, including any arbiter or arbitration company, is also guilty of a Class One misdemeanor. A person convicted of three or more violations and who commits a subsequent violation is guilty of a Class Six felony. Finally, the bill imposes strict regulations on payday lending, including locations. It also imposes regulations on small loans to military personnel. The bill died in the House Rules Committee.

<http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/49leg/1r/bills/hb2225p.htm>

Idaho: An Act Relating to Payday Loans, H.B. 227

Focus: Payday Lending

Type: Amendment to Code

House Bill 227 makes a payday loan made in the state in violation of the licensing requirement void, uncollectible and unenforceable, and the debtor is not obligated to pay the principal or any fee associated with the loan. Borrowers who pay a part of the principal or fees for a bill in violation of the law have the right to recover the payments from the violator.

The bill also allows a licensee and borrower to agree to a payment plan for a payday loan at any time. A borrower who is unable to repay a payday loan may elect once in any 12-month period to repay the payday loan. To request an extended payment plan, the borrower, before the due date of the outstanding payday loan, must request the plan and sign an amendment to the payday loan agreement that memorializes the plan's terms. The extended payment plan's terms must allow the borrower to repay the outstanding payday loan, including any fee due, in at least four substantially equal installments. Each plan installment must be due on or after a date on which the borrower receives regular income. The borrower may prepay an extended payment plan in full at any time without penalty.

The licensed lender is further prohibited from charging a borrower any other interest or additional fees during the term of the extended payment plan but may charge a borrower an additional fee not to exceed the amount of the original contract fee for the right to enter into an extended payment plan. The payment plan fee may be charged only once per extended payment plan. House Bill 227 died in the House Business Committee.

<http://www.legislature.idaho.gov/legislation/2009/H0227Bookmark.htm>

Kentucky: An Act Relating to Short-Term Loans, H.B. 516

Focus: Payday lending

Type: Regulatory Change

This bill requires payday lenders to be licensed by the state and requires written disclosure of all interest and fees to be charged to the borrower prior to making the short-term loan. House Bill 516 also limits the annual percentage rate to 36 percent for a short-term loan and eliminates the maximum \$15 dollar service fee per \$100 for deferred deposit transactions. A borrower is also limited to one outstanding short-term loan at one time with a face value not to exceed \$500 for a term of no more than 30 days. The bill prohibits renewing, rolling over, refinancing, or consolidating a short-term loan for a fee and requires a licensee to inquire whether a person seeking a short-term loan has obtained a short-term loan within the previous 90 days. The bill died in the Banking and Insurance Committee.

<http://www.lrc.ky.gov/record/09RS/HB516.htm>

Mississippi: Mississippi Alternative Loan Act, H.B. 1544

Focus: Payday Lending

Type: Regulatory Change

House Bill 1544 prohibits any person who advertises for, solicits, or makes loan transactions of less than \$1,000 without holding a valid and subsisting license. Every person engaged in the business of lending money must also have a physical office located in Mississippi. The bill authorizes licensee to charge an acquisition charge for making the loan in an amount up to ten percent of the amount of the principal, and an installment account handling charge in an amount that increases proportionally to the amount of the loan, to a maximum of \$20 on a \$1,000 loan. The bill's provisions do not apply to:

- any person doing business under the authority of, and as permitted by, any law of this state or of the United States relating to banks, trust companies, savings or building and loan associations, credit unions as defined by law;
- any Mississippi licensed small loan, pawnbroker or check-cashing business;
- any person making loans to their tenants engaged in agriculture;
- loans by agricultural suppliers to persons whose principal business is farming;
- agricultural credit corporations or associations organized under an act of the Congress of the United States;
- any business financing the purchase of motor vehicles, refrigerators or other personal property; or
- loans insured or guaranteed by the United States or any of its agencies.

Violations of the act are misdemeanor offenses punishable by a fine of up \$1,000 or imprisonment in the county jail for up to six months, or both a fine and imprisonment. The bill died in the House Banking and Financial Services Committee in February.

<http://billstatus.ls.state.ms.us/2009/pdf/history/HB/HB1544.xml>

Mississippi: Short-Term Lender Law, S.B. 2018

Focus: Payday Lending

Type: Regulatory Change

The Mississippi Short-Term Lender Law requires short-term lenders to be licensed in the state and details the application procedure and bond requirements. The bill also limits the interest rate and fees on short-term loans. The bill authorizes the Commissioner of Banking and Consumer Finance to adopt rules and issue specific orders to enforce and carry out the provisions of the law, as well as provide criminal penalties. Finally, Senate Bill 2018 requires the Commissioner to develop and maintain a statewide database of short-term loans and create a Consumer Finance Education Board. The bill died in the Committee on Business and Financial Institutions.

<http://billstatus.ls.state.ms.us/2009/pdf/history/SB/SB2018.xml>

Mississippi: Credit Enhancement Loan Act, S.B. 2509

Focus: Payday Lending

Type: Regulatory Change

House Bill 2509 creates the Credit Enhancement Loan Act of 2009, a bill that requires licensing of lenders by the Department of Banking and Consumer Finance. This legislation provides a vehicle for banking services and mainstream credit products to build and rebuild credit histories to enable customers in all segments of the financial spectrum, especially the financially underserved and unbanked populations, to improve their credit ratings and qualify for mainstream financial services. It sets forth a minimum set of parameters to establish a credit enhancement loan that other financial institutions may offer to qualified customers and permits a higher interest rate to cover the increased risk associated with offering certain financial products to these underserved populations. The bill died in the Committee on Business and Financial Institutions.

<http://billstatus.ls.state.ms.us/documents/2009/html/SB/2500-2599/SB2509IN.htm>

Mississippi: An Act to Prohibit Payday Lending, S.B. 2890

Focus: Payday Lending

Type: Regulatory Change

Senate Bill 2890 prohibits payday lending, deferred presentment services, advance cash services and other similar activities and details the penalties for a violation of the statute. The bill also declares the site or location of a place of business where payday lending takes place in the state of Mississippi as a public nuisance. The bill died in the Committee on Business and Financial Institutions.

<http://billstatus.ls.state.ms.us/documents/2009/html/SB/2800-2899/SB2890IN.htm>

Missouri: An Act Relating to Payday Loans with Penalty Provisions, H.B. 150

Focus: Payday Lending

Type: Regulatory Change

This bill changes the laws regarding unsecured loans of \$500 or less. In its main provisions, the bill limits the interest and other fees that may be charged on the loans to \$15 per \$100 of principal for the first 30 days of the loan and not more than three percent per month thereafter, which is an annual percentage rate of approximately 36 percent, prohibits repeated renewals of

loans to circumvent interest rate restrictions, and grants jurisdiction to the Attorney General to issue cease and desist orders against violators.

The bill allows the Attorney General to sue requesting a circuit court to issue an injunction, restraining order, or declaratory judgment, to impose a civil penalty, or to impose an order of rescission, restitution, or disgorgement against a person or entity who has violated any laws relating to consumer loans. It also specifies that the lending limitations apply to all lenders, whether or not they are properly licensed, and requires the Division of Finance in the Department of Insurance, Financial Institutions and Professional Registration to report annually to the General Assembly various information relating to loans issued by lenders. The legislation died in committee.

<http://www.house.mo.gov/billtracking/bills091/biltxt/intro/HB0150I.htm>

Missouri: An Act Relating to Lenders of Unsecured Loans of Five Hundred Dollars or Less, With a Penalty Provision, H.B. 505

Focus: Payday Lending

Type: Regulatory Change

Beginning August 28, 2009, this bill prohibits any new lenders of unsecured loans of \$500 or less from operating a business within one mile of the main entrance to a military base. The bill died in the Committee on Financial Institutions.

<http://www.house.mo.gov/billtracking/bills091/biltxt/intro/HB0505I.htm>

Missouri: An Act Relating To Unsecured Loans of Five Hundred Dollars or Less, With Penalty Provisions, S.B. 20

Focus: Payday Lending

Type: Regulatory Change

Senate Bill 20 amends the Missouri law relating to unsecured loans of \$500 or less. Under current law, lenders may renew such loans upon the borrower's request. This act prohibits lenders from renewing payday loans and allows the Attorney General to issue a cease and desist order when lenders fail to make a good faith effort to comply with laws relating to consumer loans. The Attorney General may also file an action in any circuit court to enjoin the practice, impose a civil penalty, or to obtain an order of rescission, restitution, or disgorgement.

The bill authorizes a lender to charge interest and fees up to the amount of \$15 per \$100 of principal for the first 30 days of the loan, and not more than three percent per month thereafter, which is an annual percentage rate of approximately 36 percent. The bill also requires the Division of Finance to report to the General Assembly the number of licenses issued each year. The bill died in the Committee on Financial and Governmental Organizations and Elections.

<http://www.senate.mo.gov/09info/pdf-bill/intro/SB20.pdf>

Montana: An Act Revising the Montana Deferred Deposit Loan Act and the Montana Title Loan Act, H.B. 396

Focus: Payday Lending

Type: Amendment to Code

This legislation maximizes the annual percentage rate on title loans and deferred deposit loans to at 36 percent, not including insufficient funds fees, recording costs, and service charges. The bill died when the legislative session ended.

<http://data.opi.mt.gov/bills/2009/billhtml/HB0396.htm>

Nebraska: The Short-Term Lender Act, L.B. 293

Focus: Payday Lending

Type: Regulatory Change

Legislative Bill 293 repeals the Delayed Deposit Act and creates the Short-Term Lender Act which would be administered by the Department of Banking, and allows the Department to establish rules and regulations for short-term lenders, including qualifications for employees of such establishments, including setting licensing fees for short-term lenders.⁴ The bill establishes conditions for borrowers of short-term loans, including a \$500 maximum loan amount, not to exceed 35 days, with a 36 percent annual percentage rate. It also limits check collection charges and prohibits redepositing checks that have not cleared without the borrower's written permission.

It allows borrowers an optional extended payment plan up to 60 days with no increase in interest, and prohibits disallows loans to borrowers that have had two loans in last 90 days without completion of an approved financial literacy class. Lenders are also prohibited from making more than three loans to the same borrower each year. Finally, the bill states that violations of the bill carries the penalties of Class I misdemeanor. The bill did not pass the legislature this session.

<http://nebraskalegislature.gov/FloorDocs/Current/PDF/Intro/LB293.pdf>

New Hampshire: An Act Relative to the Interest Rate on Small Loans and Relative to the Definition of Lender for Purposes of Regulating Such Loans, S.B. 193

Focus: Payday Lending

Type: Amendment to Code

Senate Bill 193 establishes a maximum interest rate on small loans of \$10,000 or less. For any closed-end loan in the amount of \$10,000 or less, a lender may not charge more than 36 percent per annum on the entire principal of the loan for interest, compensation, brokerage, endorsement fees, consideration, expense or any other fees in connection with the loan. The bill passed the Senate but died in the House Commerce and Consumer Affairs committee.

<http://www.gencourt.state.nh.us/legislation/2009/SB0193.html>

⁴ The fees include a \$200 investigation fee and a \$5,000 licensing fee to be deposited in the Financial Literacy Education Fund, which will be administered by the Department of Banking and will be used to support financial literacy programs for adults developed or approved by the Department of Banking.

North Dakota: An Act to Amend the North Dakota Century Code, Relating to Fees for Deferred Presentment Services; and to Provide a Penalty, H.B. 1421

Focus: Regulatory Change

Type: Payday Lending

House Bill 1421 regulates the fees deferred presentment service transaction providers, or payday lenders, can charge for service, and outlines the penalties for violating the provisions. The bill reduces the permissible fee from 20 to 15 percent of the amount of the loan, and the maximum loan amount from \$500 to \$250 dollars. Further, the allowable aggregate value of all outstanding payday loans to any one customer is reduced from \$600 to \$300. The bill states that before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the customer a clear and conspicuous printed notice indicating:

- that a deferred presentment service transaction is not intended to meet long-term financial need;
- that the customer should use a deferred presentment service transaction only to meet short-term cash needs;
- that the customer will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount;
- a schedule of fees charged for deferred presentment service; and
- any information required under federal law;

The bill also prohibits the licensee from holding property, titles to any property, or mortgages directly or indirectly as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process. Finally, a licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor. The bill died when it failed a House vote in February.

<http://www.legis.nd.gov/assembly/61-2009/bill-text/JBIH0100.pdf>

South Dakota: An Act to Prohibit Multiple Payday Loan Transactions with the Same Person or Within a Specified Time Period, and to Provide for a Database to Verify Transactions, H.B. 1168

Focus: Payday Lending

Type: Amendment to Code

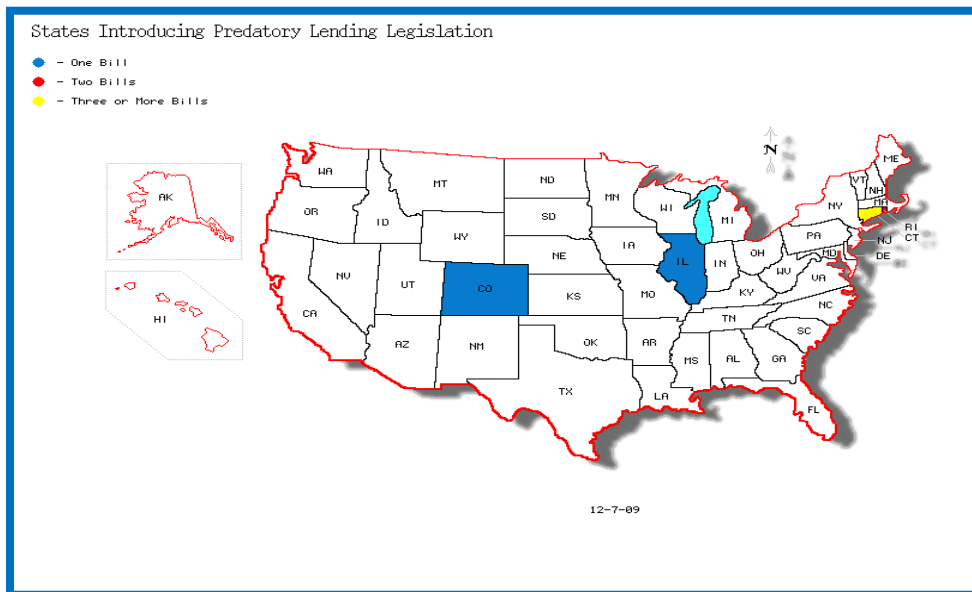
House Bill 1168 prohibits a payday loan provider from entering into any payday loan transaction with any person who has an outstanding payday loan transaction with that provider or with any other payday loan provider, nor with any person whose previous payday transaction with that provider or with any other provider has been terminated for less than 24 hours. The payday loan provider must verify the information by maintaining a common database and shall verify whether the provider has an outstanding payday loan transaction with a borrower or has terminated a transaction with that person within the previous 24 hours. The bill died in the House Commerce Committee.

<http://legis.state.sd.us/sessions/2009/Bill.aspx?File=HB1168P.htm>

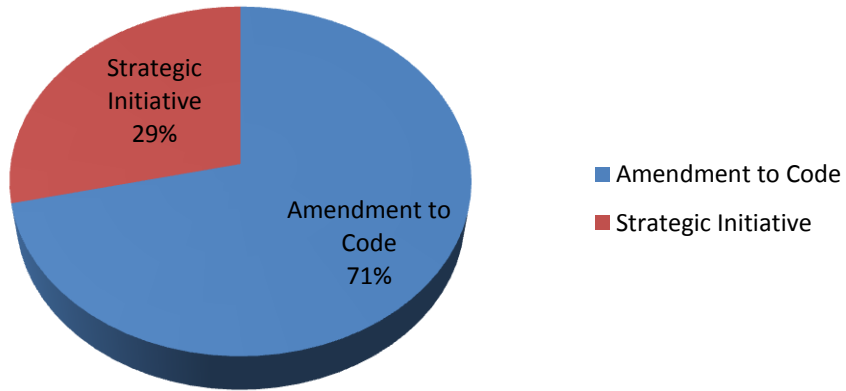
Predatory Lending

There were seven predatory lending bills introduced in four states during the 2009 legislative session. Predatory lending bills are legislation regulating lending practices that are not related to small, unsecured payday loans or mortgage loans. The map below shows the state that introduced predatory lending legislation in color: states in blue introduced one bill, states in red introduced two, and states that introduced more than three bills are shown in yellow:

- One Bill: Colorado, Illinois
- Two Bills: Rhode Island
- Three or More Bills: Connecticut

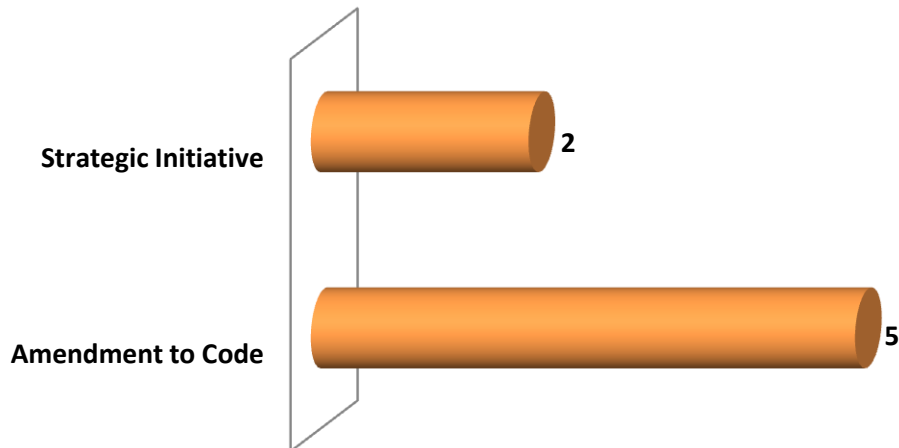


2009 Predatory Lending Bills By Type

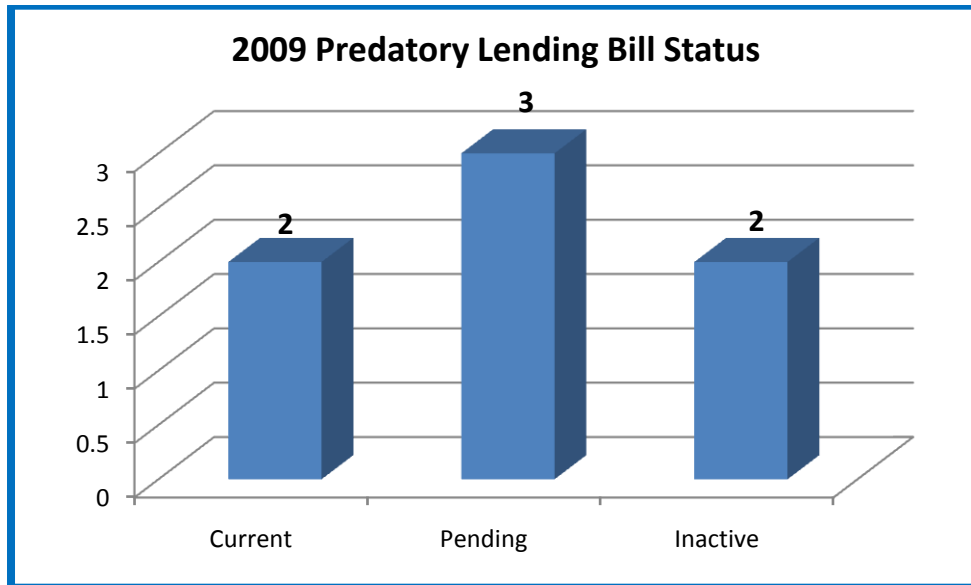


Of the predatory lending bills tracked for the state guide, five bills (71 percent) were amendments to the state code, while two bills, Illinois House Bill 705, the Residential Real Property Disclosure Act and Rhode Island Senate Bill 478, and the Fair Lender Practices Act.

2009 Predatory Lending Bills By Type



Of the seven predatory lending bills introduced during the session, two passed: Colorado H.B. 1141 and Connecticut Senate Bill 950. An additional three bills are still pending: Illinois H.B. 705 and two bills in Rhode Island: H.B. 5900 and Senate Bill 478.



Current Legislation

Colorado: Concerning Laws Enforced by the Administrator of the Uniform Consumer Credit Code, H.B. 1141

Focus: Predatory Lending

Type: Amendment to Code

The bill modifies several provisions of the Uniform Consumer Credit Code (UCCC) and the fees charged by the UCCC administrator, as follows:

- eliminates certain statutory fees;
- allows the UCCC administrator to set certain fees;
- allows the UCCC Cash Fund to retain a fund balance equal to one-third of the previous fiscal year's expenditures, instead of 16.5 percent of the prior year's expenditures;
- makes consumer leases subject to the same fee caps and procedural requirements that apply to the sale of credit insurance and other products;
- includes nonprofit organizations within the definition of a credit services organization;
- updates a disclosure regarding the availability of free credit reports; and
- exempts providers of debt-management services that are subject to the Colorado Foreclosure Protection Act from the Uniform Debt-Management Services Act.

The bill was signed into law on March 20, 2009.

http://www.leg.state.co.us/Clitics/CLICS2009A/csl.nsf/fsbillcont3/CA52969B959C2B318725753D007667C5?Open&file=1141_enr.pdf

Connecticut: An Act Concerning Consumer Credit Licensees, S.B. 950

Focus: Predatory Lending

Type: Amendment to Code

This bill makes a number of changes regarding consumer credit licensees. It specifies how licenses must be surrendered, allows the Banking Commissioner to deny an application for a period after a prior application has been withdrawn, and requires license applicants to provide a history of criminal convictions and allows the Commissioner to deny the application on that basis.

The bill also requires licensed money transmitters to notify the commissioner of certain events, requires contracts between them and their agents, and clarifies the commissioner's enforcement authority. The bill also expands the definition of debt adjustment to include, among other things, short sales, and broadens who can be a licensed debt adjuster. The bill passed and was signed into law on July 7, 2009.

http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=950&which_year=2009&SUBMIT1.x=0&SUBMIT1.y=0&SUBMIT1=Normal

Pending Legislation

Illinois: Residential Real Property Disclosure Act, H.B. 705

Focus: Predatory Lending

Type: Strategic Initiative

House Bill 705 creates a predatory lending database program in Kane and Will counties in the state of Illinois starting July 1, 2010. The database shall be designed to allow brokers, originators, counselors, title insurance companies, and closing agents to submit information to the database online. Broker and mortgage loan originators must submit the required information into the database within ten days of taking a mortgage application. Within seven days after receipt of the information, the Department shall compare that information to certain housing counseling standards and issue to the borrower and the broker or originator a determination of whether counseling is recommended for the borrower. The borrower may not waive counseling.

If after submitting the information into the database, the broker or originator changes the terms of the loan or issues a new loan, the new information must be input into the database system within five days of the changes. The Department may require re-counseling if the loan terms have been modified to meet another counseling standard, or if the broker has increased the interest rate by more than 200 basis points. The bill is pending in the Senate Assignments Committee.

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=705&GAID=10&DocTypeID=HB&LegId=41240&SessionID=76&GA=96>

Rhode Island: An Act Relating To Small Loan Lenders, H.B. 5900

Focus: Predatory Lending

Type: Amendment to Code

House Bill 5900 requires businesses operating as or taking part in money transfers or check cashing to provide additional information when submitting their annual license renewal. The additional information includes the net profit for each location listed under their license, whether or not they have a policy to guide their community reinvestment, and if so to provide a copy of such; and, a list of donations made, including amount and to which institutions or organizations. The bill is pending in the legislature.

<http://www.rilin.state.ri.us/BillText/BillText09/HouseText09/H5900.htm>

Rhode Island: Fair Lender Practices Act, S.B. 478

Focus: Predatory Lending

Type: Strategic Initiative

The Fair Lender Practices Act encourages lenders and credit card companies, who provide credit or loans to Rhode Island customers, to adopt fair and equitable lending practices. The director of the department of business regulation shall promulgate rules and regulations necessary and proper to carry out the goals of the bill, consistent with the legislative findings made herein applicable to all lenders and credit card companies subject to the legal authority of the state of Rhode Island. The bill is currently pending in the Senate Corporations Committee.

<http://www.rilin.state.ri.us/BillText09/SenateText09/S0478.pdf>

Inactive Legislation

Connecticut: An Act Concerning Foreclosure Rescue and Debt Reducers, H.B. 5907

Focus: Predatory Lending

Type: Amendment to Code

This bill regulates debt reduction services in the state. Under the act, each contract for a credit clinic or a debt reduction service must contain a complete, detailed list of services to be performed, the costs of such services, and the results to be achieved. A copy of the consumer's current credit report must be attached to the contract with the adverse entries to be modified clearly marked. Each debt reduction service contract must contain a statement certifying that the person offering debt reduction services has reviewed the consumer's debt, and an individualized evaluation of the likelihood that the proposed debt reduction services would reduce the consumer's debt or debt service, or prevent the consumer's residential home from being foreclosed.

The bill further authorizes a consumer to cancel or rescind such contract during the three-day period after the date on which the consumer signed the contract that contains a clear and conspicuous caption reading, Buyer's three-day right to cancel, along with the following statement: If you wish to cancel this contract, you may cancel by mailing a written notice by certified or registered mail to the address specified below. The notice shall state that you do not wish to be bound by this contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The bill died in February.

http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=5907&which_year=2009

Connecticut: An Act Concerning Debt Reduction Services, S.B. 705

Focus: Predatory Lending

Type: Amendment to Code

This bill contains many of the same provisions as H.B. 5907, but also provides enhanced protections for consumers seeking debt reduction services. The bill defines debt reduction services as the selling, providing, or performing of, or representation that a person can sell, provide, or perform, a service for the express or implied purpose of reducing or eliminating a consumer's debt or reducing the interest rate charges on that debt. The definition includes foreclosure rescue services, but it excludes services performed by any federally or state-licensed or chartered bank or credit union, an existing creditor of the consumer when the service relates solely to the debt the consumer owes that creditor, a debt adjuster licensed under Connecticut law, when performing debt adjustment services under such a license, or an attorney representing a client.

Senate Bill 705 defines foreclosure rescue services as those related to or promising assistance with avoiding or delaying actual or anticipated foreclosure proceedings of residential property or fixing a default or failure to pay a residential mortgage loan obligation on time, including the offer, arrangement, or placement of a residential mortgage loan or other loan when those goods or services are advertised, offered, or promoted in as foreclosure-related services.

Finally, the bill requires that debt reduction services be provided by 501(c)(3) nonprofit organizations and prohibits debt reduction servicers from charging or being paid in advance for their services. The bill was recommitted to the Senate Housing Committee.

http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=sb705&which_year=2009

Texas: An Act Relating To a Financial Institution's Action Regarding Certain Withdrawals and Deposits, H.B. 2946

Focus: Predatory Lending

Type: Regulatory Change

House Bill 2946 requires banks and credit unions to credit deposits to an account before withdrawals are considered made from the account if the deposit and withdrawal are made on the same business day and prohibits the bank from charging a fee for an overdraft or for insufficient funds if on the day the bank seeks to withdraw funds from the account there are sufficient funds in the account to pay a check drawn on the account, regardless of the date of the check. The bill died in the Pensions, Investments and Financial Services Committee.

<http://www.capitol.state.tx.us/tlodocs/81R/billtext/html/HB02946I.htm>