



WYOMING LEGISLATIVE SERVICE OFFICE

Issue Brief

05 IB 011

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Re: Post-Dated Check Cashing (Payday Lending) and Refund Anticipatory Loans

PURPOSE

Summarize the effective interest rates of post-dated check cashing entities and refund anticipatory loans. Identify the statutes that regulate these transactions. Provide a discussion of comparable statutes in other states.

RESULTS IN BRIEF

Post-dated check cashing is governed by the Wyoming Uniform Consumer Credit Code (W.S. 40-14-362 through W.S. 40-14-364). Statute does not limit the maximum amount for which the post-dated check may be written. However, statute provides for a maximum finance charge of \$30, or 20 percent of the principal, whichever is greater. This finance charge is the total amount that can be charged on any one transaction, regardless of whether it is designated as a fee or as interest. These finance charge limits are based on a full calendar month, so any term less than one month is also limited by the actual term of the transaction.

The regulation of refund anticipatory loans (RALs) does not fall under the same statute as post-dated check cashing. RALs are considered consumer loans and are governed by the supervised loan section of the Wyoming Uniform Consumer Credit Code. The regulated interest rate and fees charged for RALs are complicated because Wyoming only has the authority to regulate the rates of businesses that are chartered in Wyoming. Most businesses that offer RALs charter their institution in a state that has no restrictions, or few restrictions, on the rates charged for supervised consumer loans. Federal law allows these entities to export their rates from

their home state to consumers in Wyoming, and all other states.

POST-DATED CHECK CASHING/PAYDAY LENDING

Post-dated check cashing (payday loan) is a single-payment, short-term loan based on a personal check held for future deposit. Entities with a physical address in Wyoming are regulated by the Banking Commissioner under W.S. 40-14-363 and statute allows for a maximum finance charge of \$30, or 20 percent of the principal to be loaned. Again, these rates are based on a full calendar month. For example, a \$200 post-dated check with a term of one full month can be charged a maximum of \$40, which is 20 percent of the \$200 principal. If the post-dated check amount was \$100, then the most that could be charged is \$30 since \$30 is greater than \$20, which is the 20 percent fee on the \$100 principal. If a post-dated check is written for \$200 with a term of 14 days, the highest amount that could be charged is \$30 because \$30 is greater than a 20 percent fee over the actual 14 days. $[14\text{days} / 31\text{days} \times 20\% \times \$200 = \$18.06]$

Rolling over of the post-dated check amount is prohibited by W.S. 40-14-364, which states,

No post-dated check or similar arrangement shall be repaid, refinanced, or otherwise consolidated by proceeds of another post-dated check or similar arrangement accepted by the same post-dated check casher.

The consumer may be allowed to work out a repayment schedule with the post-dated check

cashing business after the term if immediate repayment is not possible, but the maximum amount that can be charged is only the original finance charge. In other words, the post-dated check cashing entity may allow the consumer to pay their original finance charges in installments, or at a later date, but may not charge them additional monies for that convenience.

A post-dated check casher license can be obtained from the Department of Audit, Division of Banking under the Wyoming Uniform Consumer Credit Code. The nine-page application summarizes the creditworthiness and general overall character of the applicant(s). Under the Wyoming Uniform Consumer Credit Code, the application fee shall not exceed \$500 (W.S. 40-14-634 (c)). For the purpose of post-dated check cashing licenses, the application fee is \$150 for each license for which an application is submitted. Each office or place of business must be licensed separately according to W.S. 40-14-634(e). If the license is approved after review, then a \$25 license fee must be paid within 20 days of approval notification, or the license will be denied. This \$25 license fee must then be paid every year, at least 30 days before the expiration date of July 1, assuming the entity desires to retain their license and continue doing business. The application requires several references - specifically it must include one banking reference, and two state regulator references or two professional references. In some cases, the potential licensee must also have authority to transact business in the state of Wyoming from the Secretary of State, pursuant to W.S. 17-16-1503 of the Wyoming Business Corporation Act.

In the 2005 General Session, House Bill 303, Post-dated checks, was introduced but died in Committee. This legislation would have allowed licensed check cashing operators to charge for collection fees, court awarded costs, and attorneys' fees for dishonored checks in addition to the normal finance charge. (See Attachment B for a copy of House Bill 303.)

OTHER STATES – PAY DAY LENDING

The National Conference of State Legislatures (NCSL) provided a comprehensive list of states' (including Washington D.C.) current laws on

payday lending that can be found in Attachment A. According to NCSL, twenty-nine states have a limit on the maximum amount of a loan. The most common limit is \$500 and reported limits are as low as \$300 and as high as \$1,000. As can be seen in Attachment A, states vary greatly in the total amount of finance charges that can be assessed. Some states have adopted a flat percentage fee, while others have adopted a much more elaborate finance charge and fee schedule. According to NCSL, fifteen states do not have payday lending legislation in place for maximum loan amounts or finance charges. Nevada recently passed legislation concerning payday lending and delinquent payments. Nevada allows a maximum loan amount based on the percentage of the customer's gross monthly income and limits the interest rate that can be charged on *defaulted* loans. [Notes: The Nevada revised law does not appear in the most recent NCSL summary due to timing. Also, it is possible other states have legislation pending or recently enacted regarding payday lending that has not yet been identified in the NCSL summary.]

Many Internet companies perform the same service or function as the post-dated check cashing companies. By performing a quick search on the Internet, a vast number of companies can be found that will perform similar services. The finance charges for these Internet entities vary anywhere from 14 percent to 45 percent of the principal amount received by the consumer (as identified by a quick review by LSO Research staff). The regulation of these companies is difficult because the company can broadcast its rates to any individual via the Internet and may only comply with the regulations of the state in which the company is licensed.

According to the Wyoming Department of Audit, there is on measure the Banking Commissioner can take to regulate these out-of-state businesses. W.S. 40-14-120(a)(ii) states that if there is continuous and systematic solicitation, either personally, or through direct mail (which may also include e-mail), and the goods or monies are delivered in this state with payment being made from this state, then these entities can be regulated through Wyoming's statutes (post-dated check cashing statutes). In practice, however, many of

these payday loan transactions are initiated by a consumer searching for a payday lending service, not through direct solicitation.

REFUND ANTICIPATORY LOANS (RALs)

A refund anticipatory loan is a loan whereby the creditor arranges to be repaid directly by the IRS from the anticipated proceeds of the debtor's income tax refund. In other words, these are loans arranged by tax preparation businesses in conjunction with a financial institution after the filing of a customer's income taxes for the purpose of loaning customers money before a refund is received. This allows tax preparation businesses to give individuals their tax refund immediately for a percentage of the total, a transaction fee, or both. The fee is taken directly out of the consumer's IRS tax refund. RALs are considered consumer loans and are regulated under the *supervised* loan section of the Wyoming Uniform Consumer Credit Code (W.S. 40-14-341 et seq). A supervised loan is a loan in which the rate of the loan finance charge exceeds 10 percent. The rate limits for supervised loans falls under W.S. 40-14-348 which states the rate must be below 36 percent if the unpaid balance is \$1,000 or less and 21 percent if the unpaid balance is more than \$1,000.

Since the Wyoming Banking Commissioner only has the authority to regulate the loans that are made from banks chartered in Wyoming, this makes the regulation and supervision of RALs difficult because they do not fall within the Commissioner's jurisdiction, according to the Banking Commissioner's staff. In practice, these "lenders" are allowed to export their rates from their home, chartered state to any other state, so long as they are within the regulations of the state in which they are chartered. This allows these businesses to charter their company in a state that has relatively lenient laws pertaining to supervised loans, according to the Banking Commission staff.

OTHER STATES - RALs

According to NCSL, in 2004, approximately 14 states introduced legislation that would require licensing and registration for entities that offer RALs. NCSL reports that four states adopted such legislation as of summer 2004. Often

included in this legislation is a requirement for the disclosure of all fees, finance charges, interest rates, or other expenses that will be charged to the consumer for a RAL. The depth of the licensing, registration, and disclosure requirements varies among states' legislation. Nonetheless, the basic purpose is to inform the consumer that an RAL is not the consumer's tax refund, but a loan against their anticipated tax refund. These laws are also meant to set stricter guidelines and regulations as to how these businesses present and complete an RAL transaction, as well as penalties for violations.

Connecticut offers one example of a state with recent legislation regulating RALs. The Connecticut Legislature enacted Senate Bill 476 in June 2004. It requires a disclosure that a loan given by a tax preparation business to a client in anticipation of an income tax refund is subject to fees, including interest. Included are relevant definitions and other similar provisions such as fee schedules and estimated total cost to the borrower. If violated, there is a penalty of \$500. The lender shall also be liable to any aggrieved borrower in a civil action in an amount equal to three times the amount of the RAL fee plus reasonable attorney's fees. (A copy of Connecticut's 2004 Senate Bill No. 476 is included as Attachment C.)

CONTACTS FOR FURTHER INFORMATION

Joe Mulberry, UCCC Supervisor, Department of Audit, (307) 777-7797.

ATTACHMENT A

State:	Statutory Citation:	Maximum Loan Amount:	Finance Charges:
Alabama	2003 H.B. 178 5-18A-1 <i>et seq.</i>	\$500	May not to exceed 17.5 percent of the amount advanced.
Alaska	06.50.010 <i>et seq.</i>	\$500	
Arizona	6-1251 <i>et seq.</i>	May accept a check with a face amount of at least \$50 but not more than \$500.	A licensee shall not directly or indirectly charge any fee or other consideration for accepting a check for deferred presentment or deposit that is more than 15 per cent of the face amount of the check for any initial transaction or any extension.
Arkansas	23-52-101 <i>et seq.</i>	\$400	A fee not in excess of 10 percent of the face amount of any personal check or money order and, an additional fee not to exceed \$10.
California	Civil Code 1789.30 <i>et seq.</i> Financial Code 23000 <i>et seq.</i> Operative 12/31/04	\$300	A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.
Colorado	5-3.1-101 <i>et seq.</i>	A lender shall not lend an amount greater than \$500 nor shall the amount financed exceed \$500 at any time to a consumer.	No instrument held as a result of a deferred deposit loan shall exceed \$575. May not exceed 20 percent of the first \$300 loaned plus seven and one-half percent of any amount loaned in excess of \$300.
District of Columbia	26-301 <i>et seq.</i>	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.	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.
Florida	560.401 <i>et seq.</i>	\$500 exclusive of the fees	No deferred presentment provider or its affiliate shall charge fees in excess of 10 percent of the currency or payment instrument provided. However, a verification fee may be charged.
Georgia	16-7-1 <i>et seq.</i>		
Hawaii	480F-1 <i>et seq.</i>	\$600	A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed 15 percent of the face amount of the check.
Idaho	28-46-401 <i>et seq.</i>	\$1,000	None
Indiana	25-4.5-7-101 <i>et seq.</i>	More than \$50 and less than \$401	Finance charges on the first \$100 of a small loan are limited to 15 percent of the principal. Finance charges on the amount of a small loan greater than \$100 are limited to 10 percent of the amount over \$100. The total amount of finance charges may not exceed \$35.
Iowa	533D.1 <i>et seq.</i>	A licensee shall not hold from any one maker a check or checks in an aggregate face amount of more than \$500 at any one time.	A licensee shall not charge a fee in excess of \$15 on the first \$100 on the face amount of a check or more than \$10 on subsequent \$100 increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of \$100 face value.
Kansas	16a-2-404	Cash advance is equal to or less than \$500	(i) On any amount up to and including \$50, a charge of \$5.50 may be added; (ii) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to 10 percent of the loan proceeds plus a \$5 administrative fee; (iii) on amounts in excess of \$100, but not more than \$250 a charge may be added equal to seven percent of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee; (iv) for amounts in excess of \$250 and not greater than the maximum defined in this section, a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee. The contract rate of any loan made under this section shall not be more than three percent per month of the loan proceeds after the maturity date.

Kentucky	368.010 <i>et seq.</i>	\$500	A licensee shall not charge a service fee in excess of \$15 per \$100 on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of \$15.
Louisiana	RS 9:3578:1 <i>et seq.</i>	\$350	A licensee may charge a fee not to exceed 16 and 75/100 percent of the face amount of the check issued.
Minnesota	47.6	\$350	(i) On any amount up to and including \$50, a charge of \$5.50 may be added; (ii) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to ten percent of the loan proceeds plus a \$5 administrative fee; (iii) on amounts in excess of \$100, but not more than \$250, a charge may be added equal to seven percent of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee; (iv) for amounts in excess of \$250 and not greater than \$350, a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee. After maturity, the contract rate must not exceed 2.75 percent per month of the remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly rate in the contract for each calendar day the balance is outstanding.
Mississippi	75-67-507 <i>et seq.</i>	\$400	A licensee shall not directly or indirectly charge any fee or other consideration for cashing a delayed deposit check in excess of 18 percent of the face amount of the check.
Missouri	408.500 to 408.506	\$500 or less	Any person, firm, or corporation may charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties. No borrower shall be required to pay a total amount of accumulated interest and fees in excess of 75 percent of the initial loan amount on any single loan.
Montana	31-1-701 <i>et seq.</i>	The minimum amount of a deferred deposit loan is \$50 and the amount, exclusive of fees allowed, may not exceed \$300.	A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25 percent of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25 percent of the principal amount of the deferred deposit loan.
Nebraska	45-901 <i>et seq.</i>	No licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than \$500.	No licensee shall charge as a fee a total amount in excess of \$15 per \$100 or pro rata for any part thereof on the face amount of a check for services provided by licensee.
Nevada	604.010 <i>et seq.</i>	None	None
New Hampshire	399A:1 <i>et seq.</i>	\$500	Payday loans shall incur interest only. No other charges or fees shall apply to or be collected on payday loans.
New Mexico	58-15-1 <i>et seq.</i>	None	None
North Dakota	13-08-01 <i>et seq.</i>	\$500	A licensee may charge a fee for the deferred presentment service, not to exceed 20 percent of the amount paid to the maker of the check by the licensee. This fee may not be deemed interest for any purpose of law.
Ohio	1315.35 <i>et seq.</i>	\$500	A check-cashing business may contract for and receive interest at a rate of five percent per month or fraction of a month on the unpaid principal. Loan origination fees not exceeding an amount equal to five dollars per \$50 of the amount of the loan.
Oklahoma	59-3101 <i>et seq.</i>	\$500 exclusive of the finance charge	A deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed \$15 for every \$100 advanced up to the first 300 of the amount advanced; for the advance amounts in excess of \$300, the lender may charge an additional finance charge of \$10 for every \$100 advanced in excess of \$300.
Rhode Island	19-14.1-1 <i>et seq.</i> 19-14.4-1 <i>et seq.</i>	\$300	A licensee may charge in excess of 10 percent of the face amount of the personal check or \$5, whichever is greater.

South Carolina	34-39-110 <i>et seq.</i>	\$300 exclusive of fees	A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of 15 percent of the face amount of the check.
South Dakota	54-4-36 <i>et seq.</i>	\$500	None
Tennessee	45-17-101 <i>et seq.</i>	None	None
Utah	7-23-101 <i>et seq.</i>	None	None
Virginia	6.1-444 <i>et seq.</i>	\$500	A licensee may charge, as a fee for each loan, an amount not to exceed 15 percent of the amount of the loan proceeds advanced to the borrower.
Washington	31.45.010 <i>et seq.</i>	None	A licensee may charge interest or fees for small loans not to exceed in the aggregate 15 percent of the first \$500 of principal. If the principal exceeds \$500, a licensee may charge interest or fees not to exceed in the aggregate 10 percent of that portion of the principal in excess of \$500.
Wisconsin	138.09	None	None
Wyoming	40-14-362 <i>et seq.</i>	None	No post-dated check finance charge shall exceed the greater of \$30 or 20 percent per month on the principal balance of the post-dated check or similar arrangement.

The following states do not have specific payday lending legislation or require lenders to comply with interest rate caps: Connecticut, Delaware, Illinois,

Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Texas, Vermont and West Virginia

Source: National Conference of State Legislators (NCSL); May 6, 2005

Note: The accuracy of this information has not been verified by LSO staff

ATTACHMENT B

2005

STATE OF WYOMING

05LSO-0626

HOUSE BILL NO. HB0303

Post-dated checks.

Sponsored by: Representative(s) Lubnau

A BILL

for

1 AN ACT relating to the uniform consumer credit code;
2 providing for charges for dishonored post-dated checks; and
3 providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 40-14-363(a) is amended to read:

8

9 **40-14-363. License required; post-dated check finance**
10 **charge; limits on amount financed and terms; minimum**
11 **finance charge.**

12

13 (a) No person shall engage in business as a post-
14 dated check casher in this state unless licensed in
15 accordance with W.S. 40-14-634. No post-dated check casher
16 may contract for, charge or receive any amount as a charge
17 in connection with a post-dated check or similar

1 arrangement other than a post-dated check finance charge as
2 stated in this subsection and collection fees, court
3 awarded costs and attorneys fees for dishonored checks
4 provided pursuant to W.S. 1-1-115. No post-dated check
5 finance charge shall exceed the greater of thirty dollars
6 (\$30.00) or twenty percent (20%) per month on the principal
7 balance of the post-dated check or similar arrangement.

8

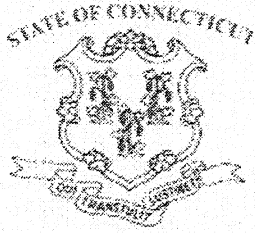
9 **Section 2.** This act is effective July 1, 2005.

10

11

(END)

ATTACHMENT C



Substitute Senate Bill No. 476

Public Act No. 04-170

AN ACT CONCERNING INCOME TAX REFUND ANTICIPATION LOAN DISCLOSURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2004*) (a) As used in this section:

- (1) "Borrower" means a person who receives the proceeds of a refund anticipation loan;
- (2) "Facilitator" means a person who, individually, or in conjunction or cooperation with another person, makes a refund anticipation loan, processes, receives or accepts for delivery an application for a refund anticipation loan, issues a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. The term does not include a bank, savings and loan association, credit union or person issued a license under the provisions of sections 36a-555 to 36a-573, inclusive, of the general statutes, operating under the laws of the United States or this state, or any person who acts solely as an intermediary and does not deal with the public in the making of a refund anticipation loan;
- (3) "Refund anticipation loan" means a loan arranged to be paid directly from the proceeds of a borrower's income tax refund; and
- (4) "Refund anticipation loan fee" means any charges, fees or other consideration charged or imposed for the making of a refund anticipation loan. The term does not include any charges, fees or other consideration charged or imposed in the ordinary course of business by a facilitator for services that do not result in the making of a loan including, but not limited to, fees for tax return preparation services or for the electronic filing of income tax returns.

(b) At the time a borrower applies for a refund anticipation loan, a facilitator shall disclose to such borrower on a document that is separate from the loan application:

- (1) The estimated fee for preparing and electronically filing an income tax return;
- (2) The refund anticipation loan fee schedule;
- (3) The annual percentage rate utilizing the guidelines established by the official staff interpretations of federal Regulation Z to the Truth in Lending Act, 12 CFR, Part 226;

- (4) The estimated total cost to the borrower for utilizing a refund anticipation loan;
 - (5) The estimated number of days within which the loan proceeds shall be paid to the borrower if the loan is approved;
 - (6) The borrower is responsible for repayment of the loan and related fees in the event the income tax refund is not paid or not paid in full; and
 - (7) The availability of electronic filing of the income tax return of the borrower and the average time announced by the Internal Revenue Service within which the borrower can expect to receive a refund if the borrower's return is electronically filed and the borrower does not obtain a refund anticipation loan.
- (c) Any facilitator who violates any provision of subsection (b) of this section shall be fined five hundred dollars for each such violation. Any facilitator who violates any provision of said subsection shall be liable to any aggrieved borrower in an amount equal to three times the amount of the refund anticipation loan fee, plus reasonable attorney's fees, in a civil action brought by the aggrieved borrower or by the Attorney General on behalf of the aggrieved borrower.

Approved June 1, 2004