



VIRGINIA  
LEGAL AID  
SOCIETY

## PAYDAY LOANS

### **What is a payday loan?**

A payday loan is a small loan that has to be paid back in a very short amount of time, within two pay periods. It has a definite due date for full repayment, unlike an open-ended account (such as a credit card.) Payday loans have an extremely high interest rate, plus fees that the lender will charge you just for taking out the loan. The annual percentage rate of interest may be as high as 200% to 400%. That is a huge burden that you should not carry. For this reason alone, these are loans to be avoided.

Payday loans are sometimes called cash advance loans or check advance loans. The names of companies that make such loans often contain words such as “fast” or “quick.” It may be fast or quick, but it’s almost always a very bad idea.

Here’s how it works: Let’s say you believe you’re in immediate need of \$500. You decide to borrow it from a payday lender. The lender will ask you to write a personal check to them in an amount large enough to cover the principal amount borrowed (\$500), plus a loan fee, plus a verification fee, plus the amount of interest you’d owe if you didn’t pay it back until the due date. The amount of the check you write to the lender could be about \$620. The payday lender then gives you \$500 in cash. When the loan comes due, you either pay the lender the \$620, or you just allow the lender to cash the \$620 check you wrote to them. So, you just paid \$120 for the use of \$500 for that very short time. That’s a terribly high price to pay, and an unwise use of your money.

### **Are payday loans legal?**

The business of payday lending is legal in Virginia. However, there are laws that put restrictions and limits on who can conduct business as a payday lender, what they have to do in order to be

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licensed, and what happens if they don't meet those requirements. Even after they're properly licensed, lenders must follow laws on how they operate and what terms and conditions they can include in their loans to customers. So, in short, yes, payday loans are legal, but they are regulated and subject to limits and restrictions. These will be explained below.

### **Why is it a bad idea to take out a payday loan? Why should you avoid them?**

Even though payday lending is a legal business, taking out a payday loan is almost always a very bad idea. You should avoid them because they tend to put you in a worse position (or at least not a better position) than you were before.

There are a few **things to consider** before you go take out a payday loan:

- First, it is very important to ask yourself: “do I **NEED** the money for something that I or my family absolutely cannot do without, or do I **WANT** the money for something that I or my family would like to have (or maybe have already bought and now need to pay for)?” Be honest with yourself when answering such questions. This is about being a good and wise consumer.
- Second, if you can honestly answer with “yes, I **NEED** the money,” then look first for alternatives to a payday loan. (*see below for suggestions*) These should be alternatives that don't put you in a deeper hole, and that make it easier for you to repay, if necessary.
- Third, payday lenders make it look and sound easy and attractive to take out a loan and repay it without difficulty. Do not be lured in by such offers and advertisements. Looks can be deceiving. Do your own research and questioning.

Here are some **reasons to avoid** taking out a payday loan:

- It is an extremely expensive way to borrow money.
- The interest rates are extremely high for a very short time period.
- You will need to have the money to repay the loan in a very short time. If you don't have the money now, it's not likely you'll have it in two or four weeks when it's time to repay.
- Even if you have to make an agreement to repay it over time, the high interest rate will mean that most or all of your payment is going toward payment of the interest. The unpaid balance will never go down, and usually keeps going up.
- That means you're just digging yourself a deeper hole, and you will become caught in a downward spiral of mounting debt that you can't pay off.
- In short, you are set up to fail and to fall further behind, while the company makes money off of your troubles.
- If you don't pay it when due, the company will cash the check you wrote to them at the beginning of the loan. That may cause your checking account to be overdrawn, and any other checks you write will bounce. And once again, you're even deeper in the hole.

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## **What alternatives do I have to taking out a payday loan?**

Almost everyone reaches a point where they're in need of cash in a hurry. There's no shame in that. If you find yourself in that position, here are some **alternatives** to consider, rather than getting yourself in a deeper hole by taking on debt with outrageously high costs:

- A small loan from a loan company, or a credit union if you are a member of one.
- A personal loan from your family or friends.
- An advance on your paycheck from your employer.
- Help from a church or a non-profit community service organization.
- Ask your creditors for an extension of time to pay your bills, or to lower the amount of your payments. Be aware, however, that they will likely charge more for that, such as a late fee or similar charge. Also, this will usually increase the amount of interest you'll be paying them.
- Look for a free consumer credit counseling service. They won't give you money to pay your debts, but they will be able to suggest ways to deal with your expenses, including how to make a budget and perhaps build some savings.

## **What kinds of businesses are allowed to make payday loans?**

Virginia law says that any company or any person wanting to make payday loans to anyone living in the state must be licensed by the State Corporation Commission. This is true even if the payday lender doesn't have an office in the state of Virginia.

As a condition of getting and keeping its license, the payday loan company is required to be bonded. If the company fails to follow the rules and laws, or if they don't live up to their agreement with you as a borrower, then you can go after that bond to recover your losses.

If you want to find out if a particular company is properly licensed and bonded, you can contact the Bureau of Financial Institutions, which is a division of the State Corporation Commission. You can go to their website (<http://www.scc.virginia.gov/bfi>), or call toll-free 1-800-552-7945. Their website includes a list of names and addresses of those who are currently licensed. You can also find more information about your rights on that site, including how to file a complaint about a payday lender.

## **What about getting a payday loan through the internet? Is that legal?**

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It is legal, so long as the company is licensed by the Virginia State Corporation Commission, even if they don't have a physical office or address in Virginia. If they want to make payday loans to residents of Virginia, they have to be licensed in Virginia.

But if taking out a payday loan from a local office is a bad idea, getting one through the internet is an even worse idea. Here are some reasons to seriously avoid internet payday loans, or at least to use extreme caution:

- You don't know who you're dealing with. It's much better to have face-to-face dealings, and a location where you can actually go to transact business and deal with follow-up problems.
- You don't always know where the lender is. You don't know if they have an actual business office space, or if they're just working from a call center site, like a telemarketing company. Thus, you're not able to see and judge for yourself whether it appears to be a reputable and trustworthy business.
- If legal problems develop that would require a lawsuit, there are difficult issues of court jurisdiction over the company. That means the Virginia courts where you live may not have authority to make a ruling that binds that out-of-state company. There are many complicated factors that need to be considered. The point is, this is just another obstacle for you to overcome if problems arise.

**What does the law say about what payday lenders *must* do, what they *can* do, and what they *cannot* do?**

- A payday lender cannot make a payday loan to someone who already has a payday loan outstanding, even if it's with another company. There is a statewide database that tracks this, and payday lenders must check it before making a loan.
- The maximum loan amount allowed is \$500.
- A payday lender can't give you another payday loan on the same day you paid off another one in full, or if you paid off another payday loan in the past 90 days on an extended payment plan, even if it's with another company.
- The time for repayment must be at least two times your pay cycle. Thus, if you get paid every two weeks, you must be given four weeks to repay the loan; if you get paid once per month, you must be given two months to repay; and so on.
- The lender may agree to an extended payment plan for you. You can do this once in a 12-month period, even if you obtain payday loans from more than one lender. Under an extended payment plan, you are allowed to repay the amount you owe in at least four equal installments over a term of at least 60 days. The lender is not allowed to charge you any additional interest or fees, and interest will not accrue during the term of the extended payment plan. Remember, though, that you won't be able to get another payday loan from any payday lender for at least 90 days after you finish the extended payment plan.

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- The lender cannot require any security (collateral) for the loan other than one personal check dated as of the date the loan is due (not the date you take out the loan).
- The lender is prohibited from taking any payments from your account by automatic electronic withdrawals. Do not agree to let them do so if they ask you to. It's bad for you, and it's against the law for them to do so.
- The **simple** interest rate cannot exceed 36%. But this is deceiving. Keep in mind that you can still be looking at interest rates that are up to 400% on an annualized basis.
- You can be charged a loan fee of up to 20% of the amount of the loan. For example, if you take out a loan of \$500, you will pay a \$100 fee. This is in addition to the interest.
- You can be charged \$5 for a "verification fee." This is to cover the lender's use of the database mentioned above.
- The lender is required to give you a pamphlet that explains your rights and responsibilities for payday loans in Virginia. The language of this pamphlet is set by law. The pamphlet is very detailed. You should read it very carefully before signing for the payday loan.
- And, of course, read the loan agreement itself very carefully before signing. The loan agreement is required to be in writing.
- The lender will not give you a payday loan unless you have a valid driver's license or other identification card from the Department of Motor Vehicles.
- Lenders are prohibited from making payday loans to members of the military or their spouses and dependents. This is also true for members of the Reserve or National Guard who are serving on active duty for at least 30 days.
- A payday lender is not allowed to operate any other business from that same location, unless they get special permission from the State Corporation Commission.

### **What happens if a payday lender breaks the laws that govern how they can operate?**

The State Corporation Commission licenses certain companies to make payday loans in Virginia. The SCC sets the rules and regulations under which they operate. The SCC can also take away their license if they show a pattern of violating those rules.

You also have the right to sue the payday loan company if they violate the Payday Loan Act. If you are successful, the court may order the company to reimburse you for your attorney's fees, expert witness fees, and court costs.

If you have a complaint against a payday lender, contact the Bureau of Financial Institutions, toll free at (800)552-7945, or at <http://www.scc.virginia.gov/bfi>.

You can also file a complaint with the Consumer Financial Protection Bureau in Washington, D.C., by calling 855-411-2372. For more information, see <http://www.consumerfinance.gov/contact-us/>

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### **What are your rights when taking out a payday loan?**

- Much of this is answered **above**, in the section that talks about what payday lenders can and cannot do. Here are some **more of your rights**:
- You have the right to cancel your payday loan any time before the close of business on the next day the business is open following the date your loan was made. If you cancel, you will of course have to pay back the amount that was advanced to you. The lender must immediately give you back the personal check you gave them to secure the loan when you took out the loan.
- You have the right to pay the loan back in installments, of at least \$5.00 each, before it's due. If you do so, the interest and loan fee must be reduced.
- You have the right to signed, dated receipts for each payment you make, along with a statement of the remaining balance.
- You have the right to pay the loan off in full before the due date without penalty.

### **Can I stop payment on the check I give to the lender at the time I take out the loan?**

Yes, but your bank will charge you a fee to do that. Ask your bank for more information before you make the final decision to stop payment. In addition to fees that your bank will charge you, the payday lender is allowed to charge you a fee of up to \$25 if you stop payment on the check.

### **What can the payday lender do to me if I can't pay off my loan?**

The lender can try to collect from you in much the same way as other debts are collected, including suing you, but here are some special rules that payday lenders must follow when trying to get money from you if you don't pay:

- The lender can't bring a lawsuit against you until 60 days after you fail to pay as required by the terms of the loan agreement. But the lender may try to arrange a voluntary repayment plan with you even within those first 60 days.
- The lender cannot threaten or actually bring criminal charges against you, even if the check you gave to them bounces. If the lender violates this, you can get a penalty from them in the amount of three times the amount of the check you gave.
- The lender is allowed to charge you up to \$25 if your check is returned because you closed the account it was drawn on, you have insufficient funds in the account, or you stopped payment on the check.
- If your check is returned for any of the above reasons, and the lender sues you, then the court may order you to pay court costs and attorney fees to the lender, but only up to a maximum of \$250. That would be in addition to the amount you still owe the lender by the terms of the loan agreement.

### **What should I do if the payday lender sues me?**

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First, pay very careful attention to any hearing dates or deadlines to respond to the lawsuit. If you do not properly answer on time, or if you miss a hearing, you will most likely lose and the judge will order you to pay.

Second, you are strongly encouraged to call legal aid or a private attorney as soon as you are served with papers.

Third, if the payday lender gets a court judgment against you, and if you do not pay the judgment, then the lender may try to garnish your wages or bank accounts. Or the lender may try to take some of your property to satisfy the judgment. If that happens, you may be able to claim part or all of your wages, bank accounts, or property as exempt under the law. Again, you should contact legal aid or a private attorney if you receive notice of garnishment or other attempts to collect on the judgment.

### **When trying to collect the debt from me, how are payday lenders limited by the federal Fair Debt Collection Practices Act?**

The federal Fair Debt Collection Practices Act (FDCPA) puts limits on what debt collectors are allowed to do. The Act usually applies only to companies or individuals who are trying to collect a debt on behalf of another lender or creditor. The easiest example is when a debt you owe is turned over to a collection agency to try to get payment from you.

But the Virginia laws regarding payday loans say that payday lenders must follow the restrictions and prohibitions contained in the FDCPA regarding harassment or abuse, false or misleading misrepresentations, and unfair practices, even though they're trying to collect on their own and have not turned it over to a collection agency.

Some of the prohibited acts include: (these are examples and are not intended as a complete list)

- Using obscene or profane language.
- Threatening harm to you or someone else.
- Threatening to harm your property or your reputation.
- Threatening to have you arrested or saying you've committed a crime by not paying your debt. (You can't be arrested or charged with a crime for failure to pay a debt.)
- Contacting you at your workplace, unless you've agreed to allow this.
- Calling you before 8:00 a.m. or after 9:00 p.m.
- Giving false information about you to anyone.
- Misrepresenting themselves as an attorney or a law enforcement official.
- Talking to other people about your debt without your permission, except that they can contact others to try to find out your address or phone number.

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1-866-LegalAid (534-5243)

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