

REFERENCE TITLE: regulations; payday loans

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## HB 2539

Introduced by  
Representatives Ableser, Cajero Bedford, Hershberger, Kirkpatrick, Lopez,  
Lujan, Prezelski, Saradnik, Sinema, Senators McCune Davis, O'Halleran:  
Representatives Alvarez, Anderson, Bradley, Burns J, Clark, Farley,  
Gallardo, Lopes, McClure, Meza, Pancrazi, Schapira, Tobin, Tom, Senators  
Burton Cahill, Rios, Soltero

### AN ACT

AMENDING SECTION 6-1203, ARIZONA REVISED STATUTES; REPEALING TITLE 6, CHAPTER 12.1, ARIZONA REVISED STATUTES; AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 12.1; RELATING TO PAYDAY LOANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 6-1203, Arizona Revised Statutes, is amended to  
3 read:

4 6-1203. Exemptions  
5 A. This chapter does not apply to:  
6 1. The United States or any department or agency of the United States.  
7 2. This state, including any political subdivision of this state.  
8 B. This chapter does not apply to the following if engaged in the  
9 regular course of their respective businesses, except that ~~the provisions of~~  
10 article 2 of this chapter ~~apply~~ APPLIES to:

11 1. A bank, financial institution holding company, credit union,  
12 savings and loan association or savings bank, whether organized under the  
13 laws of any state or the United States when the term "money transmitter" is  
14 used.

15 2. A person who engages in check cashing or foreign money exchange and  
16 engages in other activity regulated under this chapter only as an authorized  
17 delegate of a licensee acting within the scope of the contract between the  
18 authorized delegate and the licensee.

19 3. A person licensed pursuant to chapter 5, 6, 7 or 8 of this title,  
20 chapter 9, article 2 of this title, ~~chapter 12.1 of this title~~ or title 32,  
21 chapter 9.

22 Sec. 2. Repeal  
23 Title 6, chapter 12.1, Arizona Revised Statutes, is repealed.

24 Sec. 3. Title 6, Arizona Revised Statutes, is amended by adding a new  
25 chapter 12.1, to read:

26 CHAPTER 12.1

27 PAYDAY LOANS

28 ARTICLE 1. GENERAL PROVISIONS

29 6-1251. Definitions  
30 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

31 1. "PAYDAY LENDER" MEANS A PERSON THAT ADVANCES MONIES IN PAYDAY  
32 LENDING TRANSACTIONS.

33 2. "PAYDAY LENDING" MEANS ALL TRANSACTIONS IN WHICH MONIES ARE  
34 ADVANCED TO BE REPAYED AT A LATER DATE.

35 6-1252. Small loans prohibited; exemptions

36 A. A PERSON SHALL NOT ENGAGE IN ANY BUSINESS IN WHATEVER FORM  
37 TRANACTED, INCLUDING BY MAIL OR THE INTERNET OR ELECTRONIC OR TELEPHONIC  
38 MEANS, THAT CONSISTS IN WHOLE OR IN PART OF MAKING, OFFERING, ARRANGING OR  
39 ACTING AS AN AGENT IN THE MAKING OF LOANS OF THREE THOUSAND DOLLARS OR LESS.  
40 THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

41 1. A PERSON WHO IS ENGAGING IN FINANCIAL TRANSACTIONS OTHERWISE  
42 PERMITTED PURSUANT TO THIS TITLE.

43 2. LAWFUL LOANS PURSUANT TO TITLE 44, CHAPTER 2.1.

44 3. EXCEPT AS PROVIDED IN SUBSECTION B, PARAGRAPH 4, A BANK OR THRIFT  
45 CHARTERED UNDER THE LAWS OF THE UNITED STATES, A BANK CHARTERED UNDER THE

1 LAWS OF ANOTHER STATE AND INSURED BY THE FEDERAL DEPOSIT INSURANCE  
2 CORPORATION OR A CREDIT CARD BANK THAT IS NOT OPERATING IN VIOLATION OF THE  
3 FEDERAL AND STATE LAWS APPLICABLE TO ITS CHARTER.

4 B. THIS SECTION APPLIES TO ALL PAYDAY LENDING EVEN IF THE TRANSACTION  
5 ALSO INVOLVES ANY OF THE FOLLOWING:

6 1. THE CASHING OR DEFERRED PRESENTMENT OF A CHECK OR OTHER INSTRUMENT.  
7 2. THE SELLING OR PROVIDING OF AN ITEM, SERVICE OR COMMODITY  
8 INCIDENTAL TO THE ADVANCE OF MONIES.

9 3. ANY ELEMENT INTRODUCED IN ORDER TO DISGUISE THE TRUE NATURE OF THE  
10 TRANSACTION AS AN EXTENSION OF CREDIT.

11 4. ANY ARRANGEMENT BY WHICH A DE FACTO LENDER PURPORTS TO ACT AS THE  
12 AGENT FOR AN EXEMPT ENTITY. FOR THE PURPOSES OF THIS PARAGRAPH, A PURPORTED  
13 AGENT SHALL BE CONSIDERED A DE FACTO LENDER IF THE ENTIRE CIRCUMSTANCES OF  
14 THE TRANSACTION SHOW THAT THE PURPORTED AGENT HOLDS, ACQUIRES OR MAINTAINS A  
15 PREDOMINANT ECONOMIC INTEREST IN THE REVENUES GENERATED BY THE LOAN.

16 C. A PAYDAY LENDER SHALL NOT INCLUDE IN ANY LOAN CONTRACT MADE WITH A  
17 RESIDENT OF THIS STATE ANY PROVISION BY WHICH THE LAWS OF A STATE OTHER THAN  
18 THIS STATE GOVERN THE TERMS AND ENFORCEMENT OF THE CONTRACT. THE LOAN  
19 CONTRACT SHALL NOT DESIGNATE A COURT FOR THE RESOLUTION OF DISPUTES  
20 CONCERNING THE CONTRACT OTHER THAN A COURT OF COMPETENT JURISDICTION IN AND  
21 FOR THE COUNTY IN WHICH THE BORROWER RESIDES OR THE LOAN OFFICE IS LOCATED.

22 D. AN ARBITRATION CLAUSE IN A PAYDAY LOAN CONTRACT IS NOT ENFORCEABLE  
23 IF THE CONTRACT IS UNCONSCIONABLE. IN DETERMINING WHETHER THE CONTRACT IS  
24 UNCONSCIONABLE, THE COURT SHALL CONSIDER THE CIRCUMSTANCES OF THE TRANSACTION  
25 AS A WHOLE, INCLUDING:

26 1. THE RELATIVE BARGAINING POWER OF THE PARTIES.

27 2. WHETHER ARBITRATION WOULD BE PROHIBITIVELY EXPENSIVE TO THE  
28 BORROWER IN VIEW OF THE AMOUNTS IN CONTROVERSY.

29 3. WHETHER THE CONTRACT RESTRICTS OR EXCLUDES DAMAGES OR REMEDIES THAT  
30 WOULD BE AVAILABLE TO THE BORROWER IN COURT, INCLUDING THE RIGHT TO  
31 PARTICIPATE IN A CLASS ACTION.

32 4. WHETHER THE ARBITRATION WOULD TAKE PLACE OUTSIDE OF THE COUNTY IN  
33 WHICH THE LOAN OFFICE IS LOCATED OR ANY OTHER PLACE THAT WOULD BE UNDULY  
34 INCONVENIENT OR EXPENSIVE IN VIEW OF THE AMOUNTS IN CONTROVERSY.

35 5. ANY OTHER CIRCUMSTANCE THAT MIGHT RENDER THE CONTRACT OPPRESSIVE.

36 E. ANY PERSON WHO VIOLATES SUBSECTION A OR B IS GUILTY OF A CLASS 1  
37 MISDEMEANOR. EACH LOAN TRANSACTION IS A SEPARATE VIOLATION OF THIS SECTION.  
38 ANY PERSON WHO AIDS OR ABETS A VIOLATION, INCLUDING ANY ARBITER OR  
39 ARBITRATION COMPANY, IS GUILTY OF A CLASS 1 MISDEMEANOR. IF A PERSON HAS BEEN  
40 CONVICTED OF VIOLATING SUBSECTION A OR B ON THREE PRIOR OCCASIONS, ALL  
41 SUBSEQUENT VIOLATIONS ARE CLASS 6 FELONIES.

42 6-1253. Violation; civil action; costs and attorney fees

43 ANY PERSON WHO VIOLATES SECTION 6-1252, SUBSECTION A OR B SHALL NOT  
44 COLLECT ANY INDEBTEDNESS CREATED BY THE LOAN TRANSACTION AND THE LOAN  
45 TRANSACTION IS VOID. ANY PERSON VIOLATING SECTION 6-1252, SUBSECTION A OR B

1 IS LIABLE TO THE BORROWER IN EACH UNLAWFUL TRANSACTION FOR THREE TIMES THE  
2 AMOUNT OF ANY INTEREST OR OTHER CHARGES TO THE BORROWER. A CIVIL ACTION FOR  
3 A VIOLATION OF SECTION 6-1252 MAY BE BROUGHT ON BEHALF OF AN INDIVIDUAL  
4 BORROWER OR ON BEHALF OF AN ASCERTAINABLE CLASS OF BORROWERS. IN A SUCCESSFUL  
5 ACTION TO ENFORCE THIS CHAPTER, A COURT SHALL AWARD A BORROWER OR CLASS OF  
6 BORROWERS COSTS, INCLUDING REASONABLE ATTORNEY FEES.

7 6-1254. Violation; civil penalty; civil action

8 A. ANY PERSON WHO VIOLATES SECTION 6-1252, SUBSECTION A OR B IS LIABLE  
9 TO THIS STATE FOR A CIVIL PENALTY EQUAL TO THREE TIMES THE AMOUNT OF ANY  
10 INTEREST OR CHARGES TO THE BORROWERS IN THE UNLAWFUL TRANSACTION.

11 B. A CIVIL ACTION FOR A VIOLATION OF SECTION 6-1252 MAY BE BROUGHT BY  
12 THE ATTORNEY GENERAL, A COUNTY ATTORNEY IN THE COUNTY IN WHICH THE BORROWER  
13 RESIDES OR THE LOAN OFFICE IS LOCATED OR A PRIVATE PARTY. IF A SUCCESSFUL  
14 CIVIL ACTION IS BROUGHT BY A COUNTY ATTORNEY, ONE-HALF OF THE DAMAGES  
15 RECOVERED ON BEHALF OF THIS STATE SHALL BE DISTRIBUTED TO THE OFFICE OF THE  
16 COUNTY ATTORNEY IN ORDER TO FUND THE BUDGET OF THAT OFFICE.

17 6-1255. Violation; certificate of authority prohibited

18 ALL CORPORATIONS, LIMITED LIABILITY COMPANIES OR OTHER BUSINESS  
19 ENTITIES THAT ARE ENGAGED IN PAYDAY LENDING IN THIS STATE SHALL NOT OBTAIN  
20 ANY CERTIFICATE OF AUTHORITY FROM THE ARIZONA CORPORATION COMMISSION.  
21 ENGAGING IN PAYDAY LENDING ACTIVITY IN THIS STATE SHALL RESULT IN THE  
22 REVOCATION OF ANY EXISTING CERTIFICATE OF AUTHORITY.

23 6-1256. Public nuisance

24 THE SITE OR LOCATION OF A PLACE OF BUSINESS WHERE PAYDAY LENDING TAKES  
25 PLACE IN THIS STATE IS DECLARED A PUBLIC NUISANCE.

26 6-1257. Loans to members of the military

27 A. IN ADDITION TO THE OTHER OBLIGATIONS AND DUTIES REQUIRED UNDER THIS  
28 CHAPTER, IF THE CUSTOMER IS A MEMBER OF THE MILITARY SERVICES OF THE UNITED  
29 STATES OR A SPOUSE OF A MEMBER OF THE MILITARY SERVICES OF THE UNITED STATES,  
30 THE FOLLOWING APPLY:

31 1. THE PAYDAY LENDER SHALL NOT DO ANY OF THE FOLLOWING:

32 (a) GARNISH ANY MILITARY WAGES OR SALARIES.

33 (b) CONDUCT ANY COLLECTION ACTIVITY AGAINST A MILITARY MEMBER OR THE  
34 SPOUSE OF A MILITARY MEMBER IF THE MILITARY MEMBER HAS BEEN DEPLOYED TO A  
35 COMBAT OR COMBAT SUPPORT POSTING FOR THE DURATION OF THE DEPLOYMENT.

36 (c) CONTACT THE COMMANDING OFFICER OF A MILITARY MEMBER IN AN EFFORT  
37 TO COLLECT ON A LOAN TO THE MILITARY MEMBER OR THE MEMBER'S SPOUSE.

38 2. THE PAYDAY LENDER AGREES TO BOTH OF THE FOLLOWING:

39 (a) TO BE BOUND BY THE TERMS OF ANY REPAYMENT AGREEMENT THAT IT  
40 NEGOTIATES THROUGH MILITARY COUNSELORS OR THIRD-PARTY CREDIT COUNSELORS.

41 (b) TO HONOR ANY STATEMENT OR PROCLAMATION BY A MILITARY BASE  
42 COMMANDER THAT A SPECIFIC PAYDAY LENDER BRANCH LOCATION HAS BEEN DECLARED  
43 OFF-LIMITS TO MILITARY PERSONNEL AND THEIR SPOUSES.

1           B. IF THE CUSTOMER IS A MEMBER OF THE MILITARY SERVICES OF THE UNITED  
2 STATES OR A SPOUSE OF A MEMBER OF THE MILITARY SERVICES OF THE UNITED STATES,  
3 THE FOLLOWING DISCLOSURES SHALL BE MADE IN WRITING BY THE PAYDAY LENDER:  
4           1. A NOTICE THAT THE PAYDAY LENDER IS PROHIBITED FROM GARNISHMENT OF  
5 ANY MILITARY WAGES OR SALARIES.  
6           2. A NOTICE THAT THE PAYDAY LENDER IS PROHIBITED FROM CONDUCTING ANY  
7 COLLECTION ACTIVITY AGAINST A MILITARY MEMBER OR THE MEMBER'S SPOUSE IF THE  
8 MILITARY MEMBER HAS BEEN DEPLOYED TO A COMBAT OR COMBAT SUPPORT POSTING FOR  
9 THE DURATION OF THE DEPLOYMENT.  
10          3. A NOTICE THAT THE PAYDAY LENDER IS PROHIBITED FROM CONTACTING THE  
11 COMMANDING OFFICER OF A MILITARY MEMBER IN AN EFFORT TO COLLECT ON A LOAN TO  
12 THE MILITARY MEMBER OR THE MEMBER'S SPOUSE.  
13          4. A NOTICE THAT THE PAYDAY LENDER AGREES TO BE BOUND BY THE TERMS OF  
14 ANY REPAYMENT AGREEMENT THAT IT NEGOTIATES THROUGH MILITARY COUNSELORS OR  
15 THIRD-PARTY CREDIT COUNSELORS.  
16          5. A NOTICE THAT THE PAYDAY LENDER AGREES TO HONOR ANY STATEMENT OR  
17 PROCLAMATION BY A MILITARY BASE COMMANDER THAT A SPECIFIC PAYDAY LENDING  
18 BRANCH LOCATION HAS BEEN DECLARED OFF-LIMITS TO MILITARY PERSONNEL AND THEIR  
19 SPOUSES.