



Consumer Federation of America

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States Have Jurisdiction over Online Payday Lenders

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State credit laws, rate caps and licensing requirements apply to payday lenders that arrange loans via the Internet. Regardless of where the online payday lender is located, it must comply with the credit laws of the state where the consumer resides. Online payday lenders are not banks and may not export deregulation from their home state or preempt consumers' home state protections.

The principle that a state may constitutionally exercise personal jurisdiction over a company based on its commercial activities on the Internet was established in Zippo Manufacturing v. Zippo Dot Com, Inc., 952 F. Supp 1110, 1124 (W.D. Pa. 1997). The Zippo decision set a sliding scale for analyzing whether a state has jurisdiction.

“At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.”

That describes the typical Internet payday loan transaction where consumers completed detailed applications online, lenders send contracts, loan proceeds are deposited into the borrower's bank account, and payment is withdrawn.

Courts Rule in Favor of State Jurisdiction

The 10th Circuit Court of Appeals upheld the district court in rejecting the contention by Quik Payday, Inc., a Utah-based online lender, that the State of Kansas was barred from regulating its usurious lending activities by the dormant Commerce Clause and the Due Process Clause. Quik Payday, Inc. v. Stork, 549 F. 3d 1302(10th Cir. 2008). The Court held that: “Traditionally, when an entity intentionally reaches beyond its boundaries to conduct business with foreign residents, the exercise of specific jurisdiction (by the foreign jurisdiction over the entity) is proper. Different results should not be reached simply because business is conducted over the Internet.” (Quik Payday, 549 F. 3d at 1312.). The United States Supreme Court denied cert in that case.

The PA Commonwealth Court ruled in July 2009 that the Pennsylvania Consumer Discount Company Act applies to loans made to Pennsylvania residents, even if the lender is not physically present in the state.¹ Cash America Net of Nevada, LLC had challenged a Notice by the Pennsylvania Banking Department that making loans online constituted “engaging in such

¹ *Cash America Net of Nevada, LLC v. PA Dept. of Banking, et al*, 978 A.2d. 1028 (Pa.Cmwltth.2009).

business ‘in this Commonwealth.’” This decision was upheld by the Pennsylvania Supreme Court.

The Colorado Court of Appeals in the Cash Advance v. Colorado ex rel. Suthers, Case No. 08SC639, held that Internet payday lenders are subject to Colorado’s regulatory regime. On July 10, 2008, the Court of Appeals modified its earlier decision and denied the online lenders’ petition for rehearing the case. (2008 WL 1745824.) The case is currently on appeal to the Colorado Supreme Court.

State Legislatures Enact Laws on Internet Payday Loans

Some states have amended their small loan laws or payday loan laws to clarify that out-of-state online lenders are subject to the borrower’s home state protections or that state law applies to online payday lenders, including Colorado², Idaho³, Indiana, Kentucky⁴, Maine, Minnesota⁵, Ohio⁶, Oregon, South Carolina⁷, Virginia⁸ and Washington. In other states, regulators have jurisdiction under existing credit laws.

State Payday Loan Laws Restrict Use of Electronic Fund Transfer (ACH)

States define payday loans as based on the lender holding the borrower’s unfunded paper check for deposit on the next payday or on authorization to electronically access the borrower’s bank account or on both. States that solely define authorized loans as based on paper checks held for deposit arguably prohibit electronic debit loans under the state laws that carve payday lending out of usury or small loan rate caps. For example, the Arizona payday loan law defines the product as solely based on the lender holding a check. To make payday loans via the Internet, a few online lenders licensed in Arizona require borrowers to send a paper check to be held although the loan proceeds are delivered electronically into the borrower’s account.

States that only permit paper checks as the basis for payday loans⁹ include: Arizona, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Michigan, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Virginia and Wyoming. California regulators hold that “check” is defined elsewhere in the law and that payday lenders are permitted to hold either checks or debit authorization.

State Attorneys General and Credit Regulators Enforce State Laws

In 2005, Colorado Attorney General won a \$2 million settlement with Quik Payday, Inc. of Logan, Utah, an online payday lender that did not comply with Colorado’s payday loan law and licensing requirement. The company agreed to stop making loans without a license. Colorado

² Section 5-1-201(1)(b), C.R.S. See also, 5-3.1-102(5)(a) & 5-3.1-116, C.R.S. CK CITE

³ Idaho Code. Ann. § 28-46-402(3)

⁴ Ky. Rev. Stat. Ann. § 286,9-035(1) (West)

⁵ Minn. Stat. § 47.601, subdivid. 5.

⁶ Ohio Rev. Code Ann. § 1321.36 (West)

⁷ S.C. Code Ann. § 34-39-130(A)

⁸ Va. Code Ann. § 6.1-469.1

⁹ “Small Dollar Loan Products Scorecard 2010: Statutory Backup,” National Consumer Law Center, Consumer Federation of America, Consumers Union, published May, 2010.

also settled a 2007 case with Sonic Cash, LLC, an internet lender based in Boise, Idaho, which agreed to stop making loans in Colorado.

The West Virginia Attorney General has signed Assurances of Discontinuance with 68 out-of-state online payday lenders that violated the state's small loan rate cap and licensing law as well as two dozen debt collectors or debt purchasers who tried to collect illegal payday loans from West Virginia residents. Lenders agreed to stop making loans and to make refunds to borrowers.

The Arkansas Attorney General, North Carolina Attorney General, and Massachusetts Banking Division have sent dozens of letters to unlicensed online lenders, requiring that they stop making online payday loans to state residents that violate state rate caps.

Other states that have issued cease and desist orders or brought charges against out-of-state online lenders for failure to comply with that laws include Indiana, Nebraska, New York, New Hampshire, Oklahoma, Maryland, California, the District of Columbia, Illinois, Maine, Nevada, Montana, and North Dakota.

The Federal Trade Commission Sued Off-Shore Online Payday Lender

The FTC and the Nevada Attorney General filed charges against a daisy-chain of off-shore and Nevada-based companies making payday loans via the Internet without complying with Nevada and federal consumer protection laws. Among other charges, the Cash Today companies were charged with violation of Nevada's Deceptive Trade Practices law by violating the federal FTC Act and by conducting business without a Nevada license.

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