# MEMORANDUM

## Legislative Reference Bureau

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**To:** Common Council File No. 140486

**From:** Jeff Osterman, Legislative Fiscal Analyst

**Date:** July 28, 2014

**Subject:** ADDITIONAL INFORMATION ON INSTALLMENT LOAN BUSINESSES FOR LEGISLATIVE RECORD

Attached are additional documents describing the characteristics of installment loan businesses, their similarities with payday lending businesses, and efforts by payday lending businesses to evade recently-enacted state or local regulations on payday loan businesses by altering their business practices and products to focus on installment loans, rather than payday loans.

LRB153087 legislative record

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# 'This is a wolf in sheep's clothing'

(http://www.suntimes.com/business/98042,CST-FIN-payday16.article)

October 16, 2006

BY MARY WISNIEWSKI Business Reporter

The annual percentage rate on installment loans shot up more than 300 percent since the passage of an Illinois law aimed at tempering short-term payday loans, according to a new study.

Consumer advocates complain that lenders are switching from short-term payday loans to longer-term installment loans to get around the restrictions of payday loan reform legislation, which is limited to loan durations of 120 days or less.

A joint study by the Woodstock Institute and the Public Action Foundation, the research arm of Citizen Action/ Illinois, found that since the law took effect last December, the annual interest rate on payday loans fell to 351 percent from 573 percent.

But interest on installment loans rose to 387 percent from 74 percent, the study found.

"This is a wolf in sheep's clothing," said Lynda De Laforgue, co-director of Citizen Action/Illinois, of the longer-term loans.

Payday loans are short-term loans for small amounts of money -- usually between $100 and $1,000 -- secured against a post-dated check. The industry says the loans provide a needed service to people who need quick cash for emergencies, but consumer advocates say the loans prey on the poor with triple-digit interest.

The reform law limits the interest that can be charged for payday loans to $15.50 per $100, and caps loans based on a borrower's pay. The law also shields borrowers from court costs, creates a repayment period with no extra interest, and extends special protection to members of the military.

Bob Wolfberg, president of the Illinois Small Loan Association, said the payday loan law outlawed a "consumer's choice" product, so now consumers have to choose another product.

"This is about financial freedom and financial choice," Wolfberg said. "Our customers chose which product they want after reviewing the information." He said he has not seen an increase in installment loan interest rates.

The purported growth in installment loans is the same thing that happened last time the state passed payday loan rules. A 2000 rule affected loans of 30 days or less. Within days, the lending industry extended loans to 31 days.

Amanda Gutierrez, 30, who managed an AmeriCash Loans store in Peoria until May, said the store put a new policy into place in April that customers could not receive a payday loan without permission from the district manager.

"You were supposed to talk them into an installment loan, and that they were going to be better off," Gutierrez said.

One AmeriCash document showed an installment loan amount of $150, with 12 monthly payments, and a total finance charge of $558.48, making the annual interest 469.29 percent.

AmeriCash Loans Chief Operating Officer Jill Gruchot said there is no policy to discourage payday loans. Gruchot could not comment on whether the company was making more installment loans than it did in the past.

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# Woodstock Institute and the Public Action Foundation Release Illinois Payday Lending Report

**Woodstock Institute** and the **Public Action Foundation** are pleased to release ***Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies***, a new study that examines the court records of borrowers taken to court by two companies now offering new payday installment loans.

Download the full report at:

Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies

The Payday Loan Reform Act is working. Since the passage of the Act, the fee cap and other consumer protections have reduced the cost of borrowing the average payday loan by a 39 percent decrease. Also, the Illinois Department of Financial and Professional Regulations, which regulates payday lenders, has issued dozens of enforcement actions and levied hundreds of thousands of dollars of fines against payday lenders.

Payday lenders are working hard to evade the Payday Loan Reform Act offering payday installment loans instead which are expensive and dangerous. Since the Payday Loan Reform Act regulates loans of 120 days or less, the Illinois payday loan industry increasingly marketed and offered their customers payday installment loans with terms of 121 days or more. These new "look alike" loans, called payday installment loans, have many of the same features as installment loans offered before the Act, but with a significantly higher price tag.

One out of every three Cash Store customers refinanced or "rolled over" their loan.

Women made up a large portion of payday loan borrowers taken to court. Of the Americash cases reviewed, 72 percent of the defendants were female. Of The Cash Store cases, 66 percent of the defendants were female.

Americash and The Cash Store court cases are heavily concentrated in minority communities. Nearly 70 percent of Americash borrowers with pending or complete court cases because of default were in low or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

For more information contact Woodstock Institute at (312) 427-8070 or the Public Action Foundation at (312) 427-2114.

# Hunting Down the Payday Loan Customer

## The Debt Collection Practices of Two Payday Loan Companies

October 2006

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## Acknowledgments

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The Monsignor John Egan Campaign for Payday Loan Reform also acknowledges the leading role played by Citizen Action/Illinois and Woodstock Institute in preparing this report.

Finally, this project would not have been possible without the support of the Woods Fund of Chicago.

## Executive Summary

The payday loan industry in Illinois has continued to violate short term lending laws and develop new products with slightly modified terms and conditions specifically to avoid the legislation and regulation designed to protect borrowers seeking short term emergency forms of credit. The newest iteration, the high cost installment loan, has virtually replaced the traditional two week or 31-day payday loans in Illinois and is not covered by the strong consumer protections passed by the General Assembly as part of the Payday Loan Reform Act.

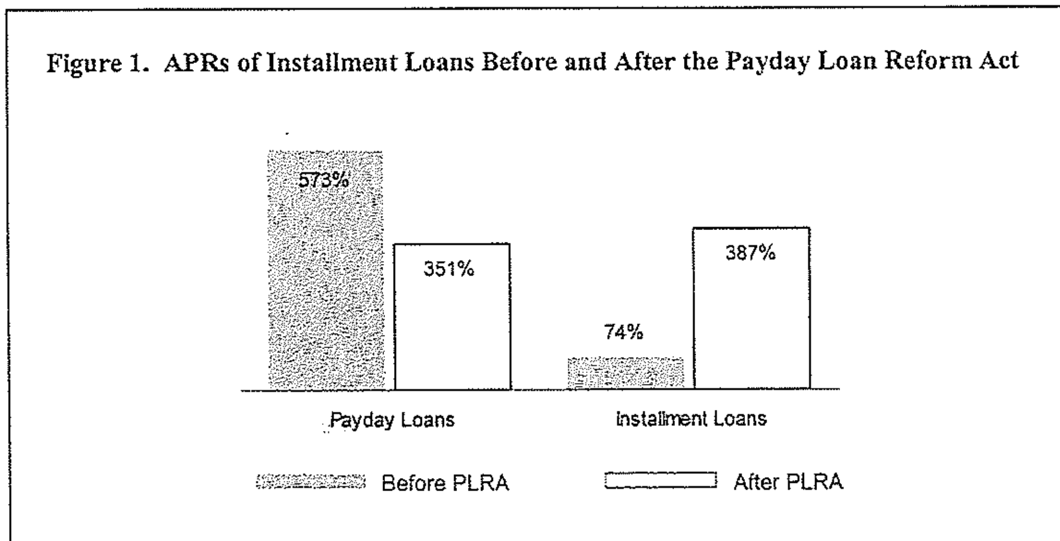
To better understand what types of abuses borrowers are facing, the Monsignor John Egan Campaign has examined the court records of borrowers taken to court by two companies now offering these new payday installment loans, Americash and Cottonwood (doing business as The Cash Store) in 2005 and 2006. These loans, which were made before the Payday Loan Reform Act (PLRA), show the types of abuses and aggressive litigation borrowers can expect from these companies currently offering loans designed to circumvent the law.

### Key Findings Since 2004

- **The Payday Loan Reform Act is working, but lenders are working hard to evade the law, offering payday installment loans that are expensive and dangerous.**

  The consumer protections provided by the PLRA have helped to reduce to the cost of using payday loans in Illinois by 39 percent, saving borrowers about $25 per $300 loan. However, in an effort to evade these protections, lenders have adapted longer term payday installment loans that are not covered by the act (Figure 1).

**Figure 1. APRs of Installment Loans Before and After the Payday Loan Reform Act**



- **One in three borrowers taken to court by The Cash Store had at least one renewal or "roll over."** These renewals provide strong evidence that borrowers who take out these types of loans often enter into a cycles of debt and cannot pay off old loans without resorting to new ones. Since the passage of the PLRA, in a phone survey of a dozen Cash Stores across Illinois conducted in the Summer of 2006, the Egan Campaign identified that Cash Stores were now offering a renewal-driven 140-day loan with nine interest-only payments (similar to nine automatic renewals) and an insurmountable balloon payment of the entire principal. Roll over information was not indicated on Americash contracts reviewed.

- **Women made up a large portion of payday loan borrowers taken to court.** Of the Americash cases reviewed, 72 percent of the defendants were female, with 23 percent male, and 5 percent gender unknown. Of The Cash Store cases, 66 percent are female, 21 percent are male, and 13 percent are unknown.

- **Americash and The Cash Store court cases are heavily concentrated in minority communities.** This provides further evidence that these communities are more likely to be impacted by high levels of non-productive debt. Nearly 70 percent of Americash borrowers with pending or complete court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

- **Borrowers often fail to appear in court, resulting in a default judgment in favor of the lender.** In the event that a defendant does not appear in court, a default judgment is granted and the lender wins the case by default. Default judgments were granted in 51 percent of Cash Store cases and 22 percent of Americash cases.

- **The average court award is almost twice the average loan amount.** Court awards greatly exceed the loan principal, even if the borrower has already made interest payments that exceed the amount they originally borrowed. Americash was awarded $1,894 for the average loan of $930, almost twice the amount of the loan. The Cash Store was awarded $1,287 for the average loan of $824.

- **The length of time between the loan date and the complaint date drastically increases the cost to borrowers in default.** The average time between loan origination and the complaint date was 1.81 years for The Cash Store and 1.36 years for Americash.

- **The average attorney's fee for Americash cases was $343 and the average Cash Store case was $173.** Almost all Americash cases had an attorney's fee of $350, regardless of the amount of the loan or the work that the attorney actually accomplished. The Cash Store fees ranged from $100 to $325.

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## Introduction

This report conducts a comprehensive analysis of the high cost installment loan products offered out by Americash and The Cash Store before the adoption of the Payday Loan Reform Act (PLRA) to better understand the default conditions borrowers are now facing as this type of product becomes the predominant loan product in the industry. Americash and The Cash store were selected because they are the two lenders most actively pursuing customers in default through the court system in Cook County, Illinois. This report examines 2004 and 2005 debt collection cases filed by Americash and the Cash Store for loans originated between March 2001 and February 2006. It demonstrates the predatory nature of payday lending—documenting the big game hunt mentality of lenders who stalk payday loan customers for excessive finance charges in an environment with few consumer protections, aggressive debt collection practices and high collection judgments. Further, payday lenders are effectively dragging out the chase of borrowers with the intention of prolonging their indebtedness.

This report begins with a description of changes in the Illinois payday loan industry before and after the approval of the Payday Loan Reform Act (PLRA) demonstrating the ability of the PLRA to reduce the cost of borrowing and provide consumer protections that keep borrowers entering into a short term loan agreement from acquiring long-term non-productive debt. The second section describes the terms and conditions, as well as the default provisions and court outcomes, of installment loans offered by Americash and The Cash Store before the PLRA went into effect. The outcomes make it clear that the companies offering unregulated payday installment loans are offering an expensive and dangerous product and that these new loans should be subject to the same strong consumer protections passed by the General Assembly for traditional short-term payday loans.

## The Payday Loan Industry Since the Passage of the PLRA

The payday loan industry in Illinois also has a long history of adapting its short term loan products to ensure that they are not subject to the short term loan restrictions adopted by the General Assembly and state regulators. By offering an unregulated product, the industry is able to continue charging exorbitant interest rates, offer endless cycles of expensive "roll overs" and aggressively pursue borrowers in the court system.

In March of 2004, the Egan Campaign published *Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender*, which provided concrete evidence of the aggressive and often litigious payday loan debt collection practices in Chicago. That report was a study of 444 debt collection cases filed against payday loan customers by Americash Loans, LLC between 2002 and 2003.

Since the Monsignor John Egan Campaign last examined the loans offered by Americash in 2004, there have been significant changes in the regulation of payday loans in Illinois. Based on the recommendations in the 2004 report, the Egan Campaign developed the protections included in the Illinois Payday Loan Reform Act that went into effect in December 2005. The PLRA requires that all short-term lenders in Illinois offering loans with annual percentage rates (APRs) exceeding 36 percent and terms less than 120 days provide additional consumer protections to help keep borrowers out of long-term, unproductive debt. The protections include:

1. A fee cap of $15.50 per $100 to reduce the cost of using payday loans for every borrower
2. An industry wide loan cap limiting payday loan principals to 25 percent of a borrower's income or $1,000, which ever is less
3. Limits borrowers to 45 days of continuous indebtedness before a mandatory debt-free recovery period or repayment plan
4. A 7-day recovery period to break the cycle of debt created by back-to-back loans
5. A repayment plan that gives any borrower who takes out a payday loan the opportunity to enter into a fee-free repayment plan
6. Special protections for military personnel, including a limit on wage garnishments
7. A statewide consumer reporting service to aid enforcement of the new protections

Table 1 shows the effect of the PLRA on the cost of borrowing a short-term payday loan in Illinois. Before the PLRA went into effect, lenders charged borrowers an average APR in excess of 573 percent. Since the passage of the Act, the fee cap and other consumer protections have reduced the cost of borrowing the average payday loan to about 351 percent—a 39 percent decrease that saves borrowers about $25 on the average loan.

**Table 1. Traditional Payday Loans Before and After the Payday Loan Reform Act[1]**

| | Principal | Fee | Term(3) | APR | Cost of a $300 Loan for 14 days | Percent Change |
|---|---|---|---|---|---|---|
| Pre-PLRA | $ 331.14 | $ 144.35 | 14-31 days | 573.18% | $ 65.95 | |
| Post-PLRA | $ 309.10 | $ 46.69 | 15.7 | 351.17% | $ 40.41 | |
| Savings | | | | | $ 25.55 | 39% |

[1] See Monsignor John Egan Campaign for Payday Loan Reform (2004). *Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender*. Public Action Foundation: Chicago. p. 3 and Veritec Solutions (2006). *Illinois Trends in Payday Lending – Initial Report*. Veritec Solutions: Jacksonville. p. 4. Pre-PLRA figures include loans with terms varying from 14-31 days, the corresponding APR is the average for all loans.

## Payday Lenders are Violating the PLRA and Other Laws

Since the PLRA went into effect in December 6, 2005, the Illinois Department of Financial and Professional Regulations (DFPR), which regulates payday and payday installment lenders, has issued dozens of enforcement actions and levied hundreds of thousand of dollars of fines against payday lenders. Americash and the Cash Store, two companies whose lending practices are highlighted in this report, have received some of the highest fines for violating the PLRA.

Americash Loans and another large lender, Advance America, have committed several violations of the PLRA and been fined hundreds of thousands of dollars. In July 2006, Americash was fined $190,000 by DFPR for failing to comply with the PLRA, ignoring consumer protections, and charging finance charges higher than those allowed by law.[2] Advance America was fined over $75,000 by DFPR for multiple violations in May 2006.[3] Advance America made loans in excess of the maximum term of indebtedness stipulated by the PLRA and over the maximum loan amount. In addition, Advance America violated the PLRA by making more than two payday loans to one borrower.

In April 2006, DFPR shut down four payday installment loan stores operated by the Payday Loan Store of Illinois.[4] The charges against the stores included knowingly making a loan to consumer with a Social Security number belonging to a dead person, forging documents, and falsifying signatures. In addition, the company discarded the consumer disclosure statements they were required by PLRA to give payday loan borrowers.

Payday lenders have repeatedly engaged in deceptive and misleading advertising to discourage borrowers from taking out loans with consumer protections afforded by PLRA. The Cash Store was fined $10,000 for displaying advertising that inflated the finance charges of PLRA loans, falsely stating that they are a more expensive option than installment loans.[5] Other payday lenders, including Illinois Lending Corporation and Advance America, have been fined for similar violations.[6]

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[2] Illinois Department of Financial and Professional Regulation. Official Press Release (July 9, 2006) *Blagojevich Administration and Attorney General Madigan File Simultaneous Enforcement Actions against Payday Lender.* Retrieved September 26, 2006 from http://www.idfpr.com/newsrls

[3] ibid. Order No. 06CC127 in the Matter of Advance America (May 4, 2006). *Order of Fine.*

[4] ibid. Official Press Release (April 2, 2006) *Blagojevich Administration Moves to Shut Down Unscrupulous Short-term Lenders.* Retrieved September 26, 2006 from http://www.idfpr.com/newsrls

[5] ibid. Order No. 05CC140 in the Matter of Cottonwood Financial (December 19, 2005) *Order Assessing Fine and Suspension of Licenses.*

[6] See Illinois Department of Financial and Professional Regulation. *Order Assessing Fine in the Matter of Illinois Lending Corporation* (December 20, 2005) and *Order Assessing Fine in the Matter of Advance America* (December 21, 2005).

## Some Lenders Evading the Law with "Look Alike" Loans

In addition to flagrant violations of the Act, many Illinois lenders have begun offering "look alike" loans which evade most of the mandated consumer protections. Since the PLRA regulates loans of 120 days or less, the Illinois payday loan industry increasingly marketed and offered their customers payday installment loans with terms of 121 days or more. These new "look alike" loans, called payday installment loans, have many of the same features as installment loans offered before the act, but with a significantly higher price tag. Payday installment lenders have also developed increasingly sophisticated methods of securing their loans, such as directly debiting payments from a borrower's checking account, or requiring wage assignments through the borrower's employer.

Table 2 shows the cost of the typical payday installment loans made after the passage of the PLRA compared to the typical installment loan offered as a low cost alternative to 14- or 31-day payday days before the passage of the PLRA. These same loans now have APRs of almost 400 percent, over five times the cost of installment loans before PLRA.

Payday installment lenders now offer two distinct, but equally dangerous, products designed to evade the PLRA. Some products, like the payday installment loans offered by Americash require the borrower to pay off the loan in equal installments, much like a mortgage or car payment. Unlike these types of loans, however, Americash payday installment loans carry interest rates of nearly 300 percent. Many of these new payday installment loans are little more than traditional short-term payday loans with several "built in" roll-overs. The Cash Store in particular offers this type of product—a 140 day "look alike" loan requiring nine biweekly interest payments, with a final balloon payment of the entire principal amount. For the borrower, this "look alike" loan is essentially a 14-day payday loan with 10 built in rollovers. Like 14-day payday loans, the final balloon payment is extremely difficult to pay in full, necessitating the additional refinancing and cyclical debt common with the 14-day payday loan product. This spiral of prolonged payday loan debt is precisely what the General Assembly attempted to correct with the PLRA by limiting indebtedness of no more than 45 days.

**Table 2. Installment Loans Before and After the Payday Loan Reform Act[7]**

| Type of Installment Loan | Principal | Fee | Term | APR | Cost of a $300 Loan for 140 days | Percent Change |
|---|---|---|---|---|---|---|
| Post-PLRA | $ 354.55 | $ 531.37 | 141.2 | 387.42% | $ 445.79 | |
| Pre-PLRA | $ 690.00 | $ 374.00 | 266 | 74.38% | $ 85.58 | |
| Increase in Average Installment Loan Cost | | | | | $ 360.21 | 421% |

[7] See Williams, Marva and Tom Feltner (2004). *Reinvestment Alert 25: New Terms for Payday Loans - High Cost Lenders Change Loan Terms to Evade Illinois Consumer Protections.* Woodstock Institute: Chicago. p. 4 and Veritec Solutions (2006). *Illinois Trends in Payday Lending: Initial Report.* p. 4

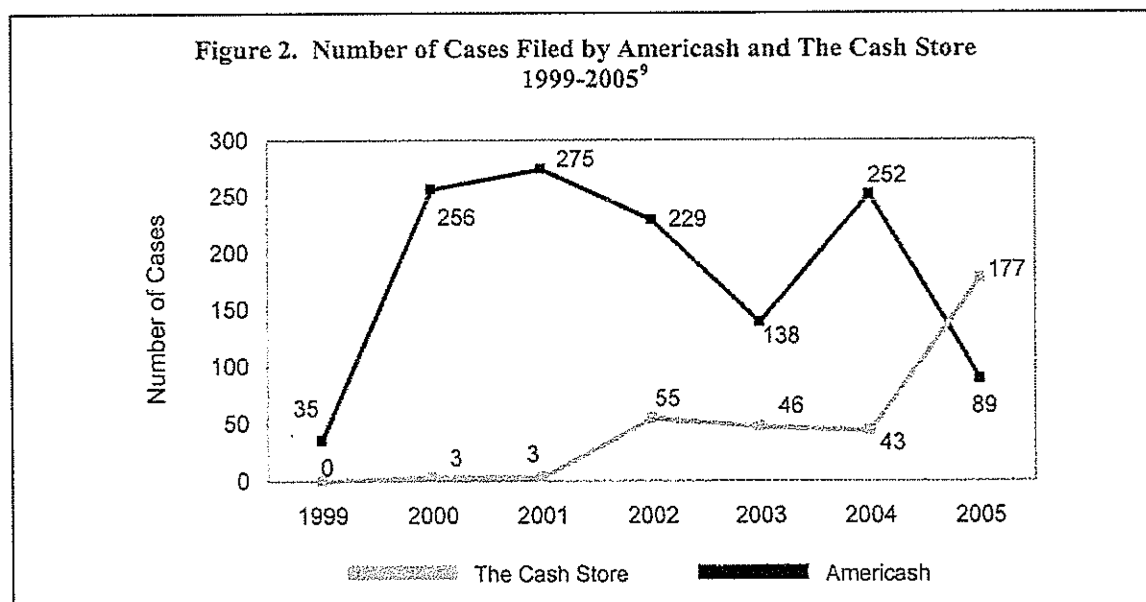
## Debt Collection Practices of Two Payday Installment Lenders

The PLRA was designed to ensure that borrowers in default would not be liable for legal fees or additional interest, and would be able to use a fee-free repayment plan to help break the cycle of debt. In order to understand the risk to borrowers of unregulated payday installment loans, which are made without any of these protections, this report examined the court cases of 194 borrowers who had defaulted on pre-PRLA installment loans offered by Americash and filed in 2005 and 2006.[8] In addition, short-term payday loans offered by The Cash Store, which previously only offered payday loans but has completely switched to the payday installment model since the passage of the PLRA were also analyzed.

All post-PLRA installment loans were designed to evade the consumer protections provided in the act. As a result, there is very little information on the terms and conditions of these loans since none of these loans have been entered into the statewide consumer reporting database. However, by examining the loans made by these two companies, and the court records of the loans in default, this report attempts to illustrate the hazards borrowers face when taking out a longer-term loan without the consumer protections offered by the PLRA.

Chart 2 shows that the frequency of debt collection court cases filed in Cook County, Illinois by Americash and the Cash Store from 1999 to July 2006. All of these cases are for loans originated before PLRA went into effect.

**Figure 2. Number of Cases Filed by Americash and The Cash Store 1999-2005[9]**



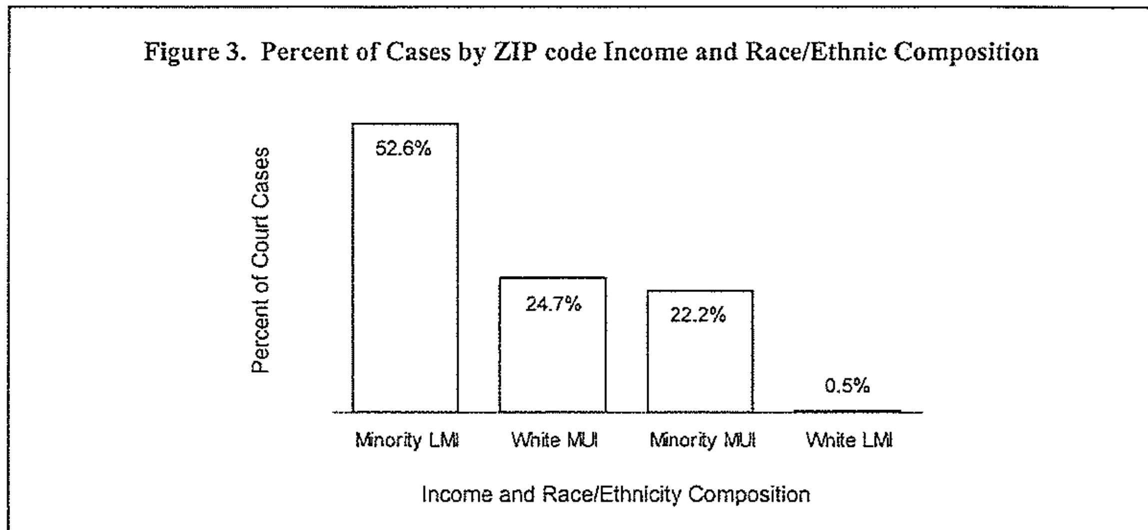

[8] These court cases were collected and analyzed by the Monsignor John Egan Campaign for Payday Loan Reform and are on file at the offices of the Public Action Foundation, 28 E. Jackson, Suite #605, Chicago, Illinois 60604.

[9] Cases filed between 1999 and 2005 were collected from a search of the database of the Cook County Clerk of Courts available at http://www.cookcountyclerkofcourt.org [viewed on June 2006].

The court cases filed by Americash and The Cash Store are heavily concentrated in minority ZIP codes, providing further evidence that these communities are more likely to be impacted by high levels of non-productive debt. Nearly 70 percent of Americash borrowers with pending or completed court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

Figure 3 shows a summary of the distribution of payday and payday installment loan court cases filed by Americash and The Cash Store across the Chicago region, as mapped in Figure 4.[10]

**Figure 3. Percent of Cases by ZIP code Income and Race/Ethnic Composition**




[10] Minority is determined using the percentage of population that is not "Non-Hispanic White." Hispanics are considered minority but can be of any race. Minority is than 50 percent minority. White is less than 50 percent minority. LMI indicates low- or moderate-income based on 80 percent or less of the 2000 U.S. Census Median Family Income (MFI) of $61,182 for the Chicago PMSA. MUI indicates middle- and upper-income or greater than 80 percent of the MFI.

**Figure 4. Distribution of Payday and Payday Installment Loan Court Case**

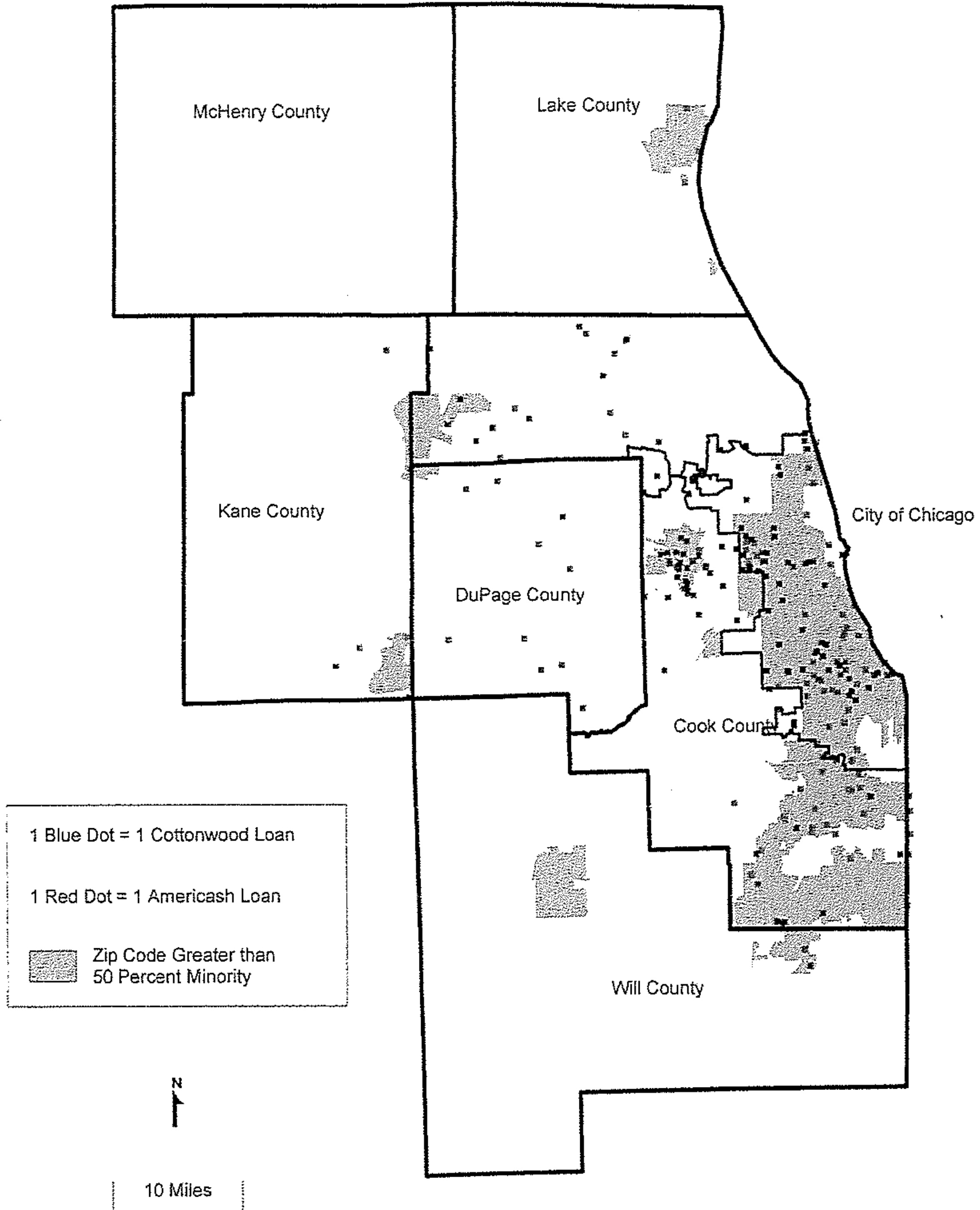


Table 3 contains the court case summary statistics including the average principal, information on refinancing, the use of wage assignments, average amount awarded by the court, attorney's fees, occurrence of default judgments, cases filed against woman, and the geographic distribution of borrowers by community income and minority composition.

Table 3. Summary of Court Cases

| Lender Characteristic | Americash 2004 | Americash 2006 | The Cash Store 2006 |
|---|---|---|---|
| Average Loan Principal Amount | $ 784 | $ 930 | $ 824 |
| Number of Rollovers | No data | No data | 35.1% |
| Percent of Contracts with Wage Assignments | 98% | 100% | no data |
| Average Court Award to Lenders | $ 955 | $ 1,894.00 | $ 1,287.00 |
| Ratio of Award to Loan Amount | 2.8 to 1 | 2 to 1 | 1.5 to 1 |
| Attorneys Fees | $ 303 | $ 343 | $ 173 |
| Percent of Default Judgments Granted | N.A. | 41% | 61% |
| Percent of Cases Filed Against Women | 63.0% | 72.3% | 65.7% |
| Percent of Borrowers Residing in Lower-Income Communities | 67.4% | 69.9% | 40.5% |
| Percent of Borrowers Residing in Predominantly Minority Communities | 76.5% | 90.4% | 63.0% |

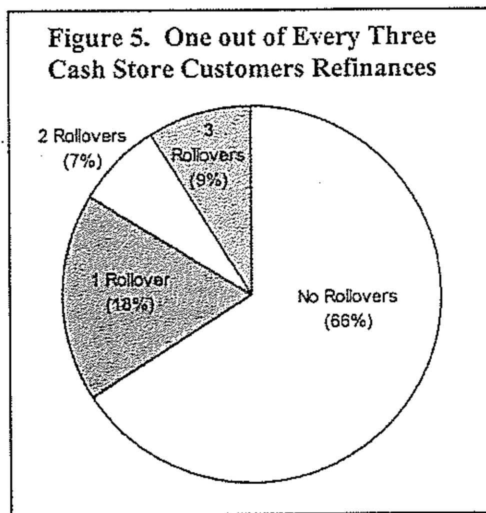
## Findings from the Debt Collection Cases

A discussion of the findings is provided below:

1. **The principals for payday installment loans are larger.** The average Americash installment loan increased from $784 in the 2004 *Greed* report to $930, an increase of about 20 percent. The average payday loan from The Cash Store is $824.

2. **Multiple rollovers are common.**

**Figure 5. One out of Every Three Cash Store Customers Refinances**




Borrowers using payday and payday installment loans have reported to the members of Egan Campaign describing the endless cycle of debt created by "rolling over" a short term loan. For the first time, the Egan Campaign has evidence that this cycle of debt is pervasive and harmful to a borrower's financial health.

Based on refinancing information collected from 44 Cash Store cases in default, **one out of every three cases had at least one "roll over** (Figure 5)."

3. **Wage assignments put payday lenders first in line for borrowers' income.** By taking an interest in a borrower's wages, the debt incurred by payday loans is placed in a position ahead of other secured debt, such as home and auto payments. All of the Americash contracts include a standard provision securing the loan with the borrower's wage assignment. The Cash Store contracts did not include this provision and secured their loans with a post-dated check. Few customers realize that these wage assignments are revocable at will; customers simply have to contact their payroll department. When borrowers pay payday lenders first, they are more likely to default on their home mortgage or car loan.

4. **Wage deductions.** Borrowers in default are also likely to have the payments for their payday loan garnished. Both companies are often granted wage garnishments in court judgments—taking income directly from the borrower's employer. Where the outcome of the cases is known, wage deductions were granted in 20 percent of Americash cases and 32 percent of Cash Store cases.

5. **The average court award is almost twice the average loan amount.** Loan judgments on the average Americash loan of $911 were $1,765, almost twice the amount of the loan. Loan judgments on the average The Cash Store loan of $826 were $1,290.

6. **The average attorney's fees for The Cash Store cases were $174, and for Americash cases were $343.** The PLRA forbids lenders from charging attorney's fees. Before the act, both lenders charged borrowers in default attorney's fees as part of the judgment against them, dramatically increasing the borrower's total debt as a percent of the principal. Without the protections afforded by the PLRA, borrowers in default will continue to be charged attorney's fees.

7. **Judgment-related costs increase the total debt burden for payday loan borrowers.** Judgment expenses increase the cost of paying off a payday loan dramatically and often include loan principal, accrued interest, attorney fees, court costs, and damages.

8. **Mandatory arbitration** – Most payday loan contracts require borrowers to agree to mandatory arbitration, which is a final and binding dispute resolution process that does not provide many protections for borrowers. Arbitration clauses do not allow trial by jury and may involve prohibitive expenses for the borrower. Further, most arbitral procedures are not public and there is often no provision for an individual to be represented by counsel giving the lender a significant legal advantage.

9. **Filing delays increase costs for Cash Store customers in default.** Although The Cash Store loans reviewed had terms of 30 days, the complaints were filed, on average, 1.36 years after the loan was made. The Americash cases reviewed had an average delay 1.8 years. This delay substantially increases the post-default cost of the loan in cases where interest continues to accrue on the outstanding principal.

10. **Borrowers often fail to appear in court, resulting in a judgment in favor of the lender.** In the event that a defendant does not appear in court, an default judgment is granted and the lender wins the case by default. Default judgments were granted in 61 percent of Cash Store cases and 41 percent of Americash cases.

11. **Women made up a large portion of borrowers in court because of payday loans.** Of the Americash cases reviewed, 72 pecent of the defendants were female, with 23 percent male and 5 percent gender unknown. Of The Cash Store cases, 66 percent are female, 21 percent are male and 13 percent are unknown.

12. **Americash and The Cash Store court cases are heavily concentrated in minority ZIP codes,** providing further evidence that these communities are more likely to be impacted by high levels of non-productive debt. Nearly 70 percent of Americash borrowers with pending or complete court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

## Recommended Consumer Protections for Payday Installment Loans

Based on characteristics of high cost installment loans that have been settled in the court system described in this report, the Monsignor John Egan Campaign for Payday Loan Reform recommends the following principals to protect borrowers. Like the PLRA, these principals are based on nationally recognized standards for safe borrowing and accommodate the unique terms and conditions of Illinois high cost installment loan. Taken together, they will help protect the interest of consumers and military personnel, limit over borrowing, prevent the cycle of debt caused by multiple rollovers and refinancing, and make high cost installment loans more affordable.

1. **Loan limit:** the amount of the loan should be indexed to the borrower's income.
2. **Multiple loans:** there should be limits on the number of payday and payday installment loans.
3. **Fee Cap:** total fees, including interest, fees, and other costs should be limited.
4. **Loan Payments:** installment loans should be fully amortizing loans with regular and equal term payments. Balloon payments are prohibited.
5. **Consumer Reporting Service:** All loans must be entered into the consumer reporting service, authorized under the Payday Loan Reform Act, to verify and ensure compliance with these consumer protections.
6. **Military Protections:** provisions should be made to protect the interests of military personnel.
7. **No post default interest:** No interest may be permitted to accrue after default.
8. **No attorney's fees:** Legal fees upon default should be barred.
9. **Mandatory arbitration:** No mandatory arbitration clauses that are oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers

A News

# Payday lenders escape limits | Industry operates with new tactics, loosened laws

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Madison - Payday lenders have wriggled out of state regulations that lawmakers put in place 21/3 years ago, in part because Republicans last year loosened some of those restrictions. Many of the lenders have shifted from payday loans that were good for as little as two weeks to what they call installment loans - high-interest loans that don't fall under payday lending regulations. Installment loans can have annual interest rates of 500% or more. "This is an industry that just kind of morphs depending on the law to regulate them," said Stacia Conneely, a lawyer with Legal Action of Wisconsin who helps people who get behind on highinterest loans.

In 2009 and 2010, Democrats who controlled the Legislature at the time had a fierce debate over payday loans, which were unregulated at the time. Some lawmakers wanted to cap interest rates at 36%, but others said that would put lenders out of business and advocated for regulations that didn't go as far.

They ultimately reached a compromise in the spring of 2010 that Democrats praised as a way to keep low-income consumers from get- ting caught in endless debt. Then-Gov. Jim Doyle, a Democrat, made the bill tougher by using his partial veto powers to ban auto-title loans and broaden the definition of payday loans. Republicans took control of the statehouse less than a year later and softened the regulations so they were friendlier to lenders.

Even before the original law passed, lenders began changing the types of loans they made, according to Conneely.

"It's definitely a classic example of how interest groups counter to the public interest can distort and ultimately get something more amenable to them," said Rep. Gordon Hintz (D-Oshkosh).

Hintz spearheaded the effort to rein in payday loans in the Assembly in 2009 and 2010. He wanted to pass tougher measures, but was stymied by Senate Democrats.

Rather than giving out payday loans, many lenders are now offering installment loans. There are no limits on how much they can lend people or how many installment loans they can make to each customer. They do not have to check whether borrowers have the ability to repay the installment loans or enter them into a state database, as they do with payday loans, noted Peter Koneazny, a lawyer with the Legal Aid Society of Milwaukee, another group that assists people when they get behind on loans.

Barb Wolf, a vice president with Chicago-based PLS Financial Services, said her firm has offered installment loans for years in Wisconsin. She said some consumers prefer them because they require consistent payments. That contrasts with payday loans, which have balloon payments when they mature. Some borrowers repeatedly renew payday loans, causing them to pay large fees without ever reducing the principal.

"You know what you're going to pay" with installment loans, Wolf said. "When it's done, it's done."

She maintained those who take out loans from her company are "very wise consumers" who do not borrow more than they can afford.

Wolf said the ratio of installment loans to payday loans her firm offers had not changed with the new state regulations, but was unable to provide figures.

Conneely, the attorney who works with borrowers, said she had seen a steady increase in installment loans since lawmakers began debating loan regulations in 2009.

State records suggest many lenders are offering something other than payday loans. As of October, there were 389 outlets in Wisconsin licensed to make payday loans. But only about half of them - 198 - made loans that qualified as payday loans and had to be reported to the state, according to records maintained by the state Department of Financial Institutions.

Those outlets issued about 14, 000 payday loans in October worth about $3.9 million. They charged borrowers about $862,000 in interest. On average, the loans were $285 and had interest of $63.

One of Conneely's clients from Reedsburg first took out a **payday loan** several years ago, when he needed car repairs. He thought he would be able to pay off the loan in six to eight months, but kept falling behind.

He spoke to the Journal Sentinel on the condition that his name not be used because he is embarrassed about his financial situation. With Legal Action's help, he sued the lender last year, arguing that the loan didn't comply with the state regulations in effect at the time. The two sides disputed whether the loan - with an annual interest rate of more than 400% - was a **payday loan** or an **installment loan**. The man, 58, lost the case and is appealing.

He owes about $1,950, with interest rapidly accruing. That's been impossible to pay off because he makes less than $1,100 a month in Social Security disability income, the man said.

"What it is now is basically legalized loan sharking," he said. "When you can charge rates as high as they do, that's criminal."

Until 2010, Wisconsin was the only state that did not regulate payday loans. After a long debate, Democrats who controlled the Legislature at the time passed a bill that limited where **payday loan stores** could locate and limited payday loans to $1,500 or 35% of monthly income, whichever is less. The legislation also said borrowers could have only one **payday loan** open at a time and could renew each one only once. Critics said borrowers got caught in an unending cycle of debt when they took out multiple loans or repeatedly rolled over a loan. The law, which took effect in December 2010, established a state database for tracking payday loans. That was necessary to ensure that lenders didn't give borrowers more than one **payday loan** at a time. It also gave state officials their first detailed information on how many payday loans were being given out.

As passed by lawmakers, the legislation defined payday loans as loans that were for 90 days or less and were secured with postdated checks or authorizations for electronic bank transfers. Doyle used his veto pen to strike the part of the definition that referred to 90 days - an action that put far more loans under the state regulations.

But Republican lawmakers and GOP Gov. Scott Walker put the 90 days back into the definition last year, and that made it easier for lenders to get around the rules, said Tom Feltner, director of financial services from the Consumer Federation of America, a consumer interest group based in Washington, D.C. Any loan that has a term of more than 90 days is not subject to the payday lending regulations.

"That's a signal to the industry that the best way to get around the restrictions is to make a loan of 91 days" or more, Feltner said.

Another one of Doyle's partial vetoes banned loans secured by vehicles, which critics have said are particularly harsh because borrowers who default on them risk losing their means of getting to work. Republicans also reversed that veto last year, re-establishing the ability of lenders to make auto title loans.

The industry fought the regulations, sending 30 lobbyists to the Capitol and spending $669,000 on lobbying in 2009 alone. Even now, at least eight lobbyists are still registered with the state. PLS was the only lender that responded to the Journal Sentinel's inquiries for this story.

Lenders have also spent heavily on Wisconsin campaigns. Officials with one title lending firm over the past year gave $24,000 to Assembly GOP candidates and nothing to Democratic candidates.

Religious groups and advocates for consumers, the poor and seniors lobbied the Legislature in 2009 and 2010 to impose a 36% cap on interest rates on all loans, but the cap couldn't get through either house.

"That's the biggest opportunity the Legislature lost," said Representative-elect Mandela Barnes (D-Milwaukee). "A lot of people were convinced to vote against the interests of the people they represent."

Koneazny said the installment loans are harmful to vulnerable people but said they have some features that are better than payday loans that were given before the legislation passed. The old payday loans could be rolled over repeatedly, locking people into paying high fees without ever making headway on the principal.

Installment loans, by contrast, amortize and thus have a firm end date.

But the loans are not a good deal compared with traditional loans. Koneazny provided a copy of one loan agreement from First Rate Financial in Milwaukee that had an annual interest rate of 398%. The $200 loan was to be paid back with 13 payments over a year of $66.28 - costing the borrower $661.64 in interest. The terms of installment loans are also clearer than payday loans because they tell borrowers the annual percentage rate and total interest cost, Koneazny said. But he added that many of the people who accept such loans are unsophisticated and unable to understand the ramifications of such loans.

He said installment loans often have interest rates of 500% or 600%. He said he had one client who acquired a loan over the Internet that had an interest rate of 1, 000%.

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"That's a signal to the industry that the best way to get around the restrictions is to make a loan of 91 days." Tom Feltner, director of financial services for the Consumer Federation of America, on state law limiting the definition of payday loans to those of 90 days or less

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| Date | In the last 2 years |
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| Author | All Authors |
| Company | All Companies |
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World

# How payday lenders bounce back when states crack down

Paul Kiel (ProPublica)

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In state after state that has tried to ban payday and similar loans, the industry has found ways to continue to peddle them

A version of this story was co-published with the St. Louis Post-Dispatch [http://www.stltoday.com/].

In 2008, payday lenders suffered a major defeat when the Ohio legislature banned high-cost loans. That same year, they lost again when they dumped more than $20 million [http://www.followthemoney.org/press/ReportView.phtml?r=400&ext=1] into an effort to roll back the law: The public voted against it by nearly two-to-one.

But five years later, hundreds of **payday loan stores** still operate in Ohio, charging annual rates that can approach 700 percent.

It's just one example of the industry's resilience. In state after state where lenders have confronted unwanted regulation, they have found ways to continue to deliver high-cost loans.

Sometimes, as in Ohio, lenders have exploited loopholes in the law. But more often, they have reacted to laws targeted at one type of high-cost loan by churning out other products that feature triple-digit annual rates.

To be sure, there are states that have successfully banned high-cost lenders. Today Arkansas is an island, surrounded by six other states where ads scream "Cash!" and high-cost lenders dot the strip malls. Arkansas' constitution caps non-bank rates at 17 percent.

But even there, the industry managed to operate for nearly a decade until the state Supreme Court finally declared those loans usurious in 2008.

The state-by-state skirmishes are crucial, because high-cost lenders operate primarily under state law. On the federal level, the recently formed Consumer Financial Protection Bureau can address "unfair, deceptive or abusive practices," said a spokeswoman. But the agency is prohibited from capping interest rates.

In Ohio, the lenders continue to offer payday loans via loopholes in laws written to regulate far different companies — mortgage lenders and credit repair organizations. The latter peddle their services to people struggling with debt, but they can charge unrestricted fees for helping consumers obtain new loans into which borrowers can consolidate their debt.

Today, Ohio lenders often charge even higher annual rates (for example, nearly 700 percent for a two-week loan) than they did before the reforms, according to a report [http://www.policymattersohio.org/auto-title-loans-

dec2012] by the nonprofit Policy Matters Ohio. In addition, other breeds of high-cost lending, such as auto-title loans, have recently moved into the state for the first time.

Earlier this year, the Ohio Supreme Court agreed to hear a case challenging the use of the mortgage law by a payday lender named Cashland. But even if the court rules the tactic illegal, the companies might simply find a new loophole. In its recent annual report, Cash America, the parent company of Cashland, addressed the consequences of losing the case: "if the Company is unable to continue making short-term loans under this law, it will have to alter its short-term loan product in Ohio."

Amy Cantu, a spokeswoman for the Community Financial Services Association, the trade group representing the major payday lenders, said members are "regulated and licensed in every state where they conduct business and have worked with state regulators for more than two decades."

"Second generation" products

When unrestrained by regulation, the typical two-week **payday loan** can be immensely profitable for lenders. The key to that profitability is for borrowers to take out loans over and over. When the CFPB studied a sample of payday loans earlier this year [http://www.consumerfinance.gov/pressreleases/the-cfpb-finds-payday-and-deposit-advance-loans-can-trap-consumers-in-debt/], it found that three-quarters of loan fees came from borrowers who had more than 10 payday loans in a 12-month period.

But because that type of loan has come under intense scrutiny, many lenders have developed what payday lender EZCorp chief executive Paul Rothamel calls "second generation" products. In early 2011, the traditional two-week **payday loan** accounted for about 90 percent of the company's loan balance, he said in a recent call with analysts. By 2013, it had dropped below 50 percent. Eventually, he said, it would likely drop to 25 percent.

But like payday loans, which have annual rates typically ranging from 300 to 700 percent, the new products come at an extremely high cost. Cash America, for example, offers a "line of credit" in at least four states that works like a credit card — but with a 299 percent annual percentage rate. A number of payday lenders have embraced auto-title loans, which are secured by the borrower's car and typically carry annual rates around 300 percent [http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/driven-to-disaster.html].

The most popular alternative to payday loans, however, are "longer term, but still very high-cost, installment loans," said Tom Feltner, director of financial services at the Consumer Federation of America.

Last year, Delaware passed a major payday lending reform bill. For consumer advocates, it was the culmination of over a decade of effort and a badly needed measure to protect vulnerable borrowers. The bill limited the number of payday loans borrowers can take out each year to five.

"It was probably the best we could get here," said Rashmi Rangan, executive director of the nonprofit Delaware Community Reinvestment Action Council.

But Cash America declared in its annual statement this year that the bill "only affects the Company's short-term loan product in Delaware (and does not affect its **installment loan** product in that state)." The company currently offers a seven-month **installment loan** there at an annual rate of 398 percent.

Lenders can adapt their products with surprising alacrity. In Texas, where regulation is lax, lenders make more than eight times as many payday loans as installment loans, according to the most recent state data [http://www.occc.state.tx.us/pages/publications/FinSvcsActvityRpts.html#CABRpts]. Contrast that with Illinois, where the legislature passed a bill in 2005 that imposed a number of restraints on payday loans. By 2012, triple-digit-rate installment loans in the state outnumbered payday loans almost three to one

[http://www.idfpr.com/News/DFI/IL_Trends_Report%20since%20Inception%20through%209-30-12%20final.pdf].

In New Mexico, a 2007 law triggered the same rapid shift. QC Holdings' **payday loan stores** dot that state, but just a year after the law, the president of the company told analysts that installment loans had "taken the place of payday loans" in that state.

New Mexico's attorney general cracked down, filing suits against two lenders, charging in court documents that their long-term products were "unconscionable." One loan from Cash Loans Now [http://www.propublica.org/documents/item/725556-first-amended-complaint-cash-loans-now.html] in early 2008 carried an annual percentage rate of 1,147 percent [http://www.propublica.org/documents/item/737804-cash-loans-now-loan.html]; after borrowing $50, the customer owed nearly $600 in total payments to be paid over the course of a year. FastBucks [http://www.propublica.org/documents/item/725555-complaint-fastbucks.html] charged a 650 percent annual rate [http://www.propublica.org/documents/item/737803-fastbucks-loan-1.html] over two years for a $500 loan.

The products reflect a basic fact: Many low-income borrowers are desperate enough to accept any terms. In a recent Pew Charitable Trusts survey [http://www.pewstates.org/research/reports/draft-payday-lending-in-america2-85899452131], 37 percent of **payday loan** borrowers responded that they'd pay any price for a loan.

The loans were unconscionable for a reason beyond the extremely high rates, the suits alleged. Employees did everything they could to keep borrowers on the hook. As one FastBucks employee testified, "We just basically don't let anybody pay off."

"Inherent in the model is repeated lending to folks who do not have the financial means to repay the loan," said Karen Meyers, director of the New Mexico attorney general's consumer protection division. "Borrowers often end up paying off one loan by taking out another loan. The goal is keeping people in debt indefinitely."

In both [http://www.propublica.org/documents/item/725552-final-decision-cash-loans-now.html]cases [http://www.propublica.org/documents/item/725553-judge-decision-fastbucks-case.html], the judges agreed that the lenders had illegally preyed on unsophisticated borrowers. Cash Loans Now's parent company has appealed the decision. FastBucks filed for bankruptcy protection after the judge ruled that it owed restitution to its customers for illegally circumventing the state's **payday loan** law. The attorney general's office estimates that the company owes over $20 million. Both companies declined to comment.

Despite the attorney general's victories, similar types of loans are still widely available in New Mexico. The Cash Store, which has over 280 locations in seven states, offers an **installment loan** there with annual rates ranging from 520 percent to 780 percent. A 2012 QC loan in New Mexico reviewed by ProPublica carried a 425 percent annual rate.

"Playing Cat and Mouse"

When states — such as Washington, New York and New Hampshire — have laws prohibiting high-cost installment loans, the industry has tried to change them.

A bill introduced in Washington's state senate early this year proposed allowing "small consumer installment loans" that could carry an annual rate of more than 200 percent. Though touted as a lower-cost alternative to payday loans, the bill's primary backer was Moneytree, a Seattle-based payday lender. The bill passed the state senate, but stalled in the house.

In New Hampshire, which banned high-cost payday loans in 2008, the governor vetoed a bill last year that would have allowed installment loans with annual rates above 400 percent. But that wasn't the only bill that

high-cost lenders had pushed: One to allow auto-title loans, also vetoed by the governor, passed with a supermajority in the legislature. As a result, in 2012, New Hampshire joined states like Georgia and Arizona that have banned triple-digit-rate payday loans but allow similarly structured triple-digit-rate auto-title loans.

Texas has a law strictly limiting payday loans. But since it limits lenders to a fraction of what they prefer to charge, for more than a decade they have ignored it. To shirk the law, first they partnered with banks, since banks, which are regulated by the federal government, can legally offer loans exceeding state interest caps. But when federal regulators cracked down on the practice in 2005, the lenders had to find a new loophole.

Just as in Ohio, Texas lenders started defining themselves as credit repair organizations [http://www.dallasfed.org/microsites/cd/epersp/2012/2_2.cfm#n11], which, under Texas law, can charge steep fees. Texas now has nearly 3,500 of such businesses, almost all of which are, effectively, high-cost lenders. And the industry has successfully fought off all efforts to cap their rates.

Seeing the lenders' statehouse clout, a number of cities, including Dallas, San Antonio and Austin, have passed local ordinances that aim to break the cycle of payday debt by limiting the number of times a borrower can take out a loan. Speaking to analysts early this year, EZCorp'sRothamel said the ordinances had cut his company's profit in Austin and Dallas by 90 percent.

But the company had a three-pronged counterattack plan, he said. The company had tweaked the product it offered in its brick-and-mortar outlets, and it had also begun to aggressively market online loans to customers in those cities. And the industry was pushing a statewide law to pre-empt the local rules, he said, so payday companies could stop "playing cat and mouse with the cities."

Jerry Allen, the Dallas councilman who sponsored the city's payday lending ordinance in 2011, said he wasn't surprised by the industry's response. "I'm just a lil' ol' local guy in Dallas, Texas," he said. "I can only punch them the way I can punch them."

But Allen, a political independent, said he hoped to persuade still more cities to join the effort. Eventually, he hopes the cities will force the state legislature's hand, but he expects a fight: "Texas is a prime state for these folks. It's a battleground. There's a lot of money on the table."

Courtesy: ProPublica.org [http://www.propublica.org/article/how-payday-lenders-bounce-back-when-states-crack-down]

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