

**LEGISLATIVE REFERENCE BUREAU
RESEARCH REPORT**

Prepared for: Ald. Jim Bohl
Stuart Mukamal, Assistant City Attorney

By: Jeff Osterman, Legislative Reference Bureau

Date: June 29, 2007

Subject: INSTALLMENT LOAN BUSINESSES

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This memo is in response to your request for more information regarding installment loan businesses -- particularly information on the harmful impacts of such businesses, or information establishing the similarity between these businesses and payday loan establishments.

Installment Loans in Illinois

First of all, let me reiterate that probably the best source of information on this topic is the previously-provided report "Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies." Key points in this report include:

- Installment loans have virtually replaced "traditional" 2-week or 31-day payday loans in Illinois. (page i)
- Installment loans are being offered by lenders who seek to evade Illinois' Payday Loan Reform Act ("PLRA"), which established various consumer protection regulations for loans with interest rates exceeding 36% and terms of less than 120 days. (pages i and 1)
- The interest rates charged for installment loans in Illinois are now comparable to the interest rates for payday loans. (page i)
- The new payday installment loans are described as "look alike" loans. They are similar to short-term payday loans, but have longer terms and more "built-in" roll-overs (periodic payments). (page 4)
- Following enactment of the PLRA, the average term of an installment loan fell sharply, while the APR interest rate increased dramatically (Table 2 on page 4) - clear evidence that the installment loan product has become much more similar to, and is intended as a replacement for, traditional payday loans.

Since installment loans have been marketed in Illinois to circumvent tighter payday lending regulations, it seems plausible that these loans would also be offered in other places that have imposed additional regulations on the payday loan industry (e.g., the City of Milwaukee, where the zoning code now requires a payday loan store to be 1,500 feet from another payday loan store, currency exchange or title loan store and 150 feet from a residential zoning district).

Woodstock Institute

I contacted Tom Feltner, one of the authors of the above-cited report, to inquire about additional information on the installment loan industry or product. He referred me to the attached Woodstock Institute fact sheet titled "Comparing the Cost of Short Term Credit Before and After the Monsignor John Egan Payday Loan Reform Act". Table 2 on this sheet compares an "Unprotected 'Look Alike' Loan" (installment loan) with a "Protected Payday Loan" and shows that the cost of an installment loan (based on a \$300 loan for 14 days) is similar to the cost of a payday loan. Table 3 shows once again how the average term of an installment loan has fallen dramatically and the average APR interest rate has increased sharply since passage of the PLRA, thereby indicating that the installment loan product has taken on the short-term, high-interest-rate characteristics of payday loans and, in fact, has been modified to be a substitute for the traditional payday loan. Mr. Feltner stated that this is clearly the case in Illinois - installment loans are primarily being offered by businesses that also offer, or formerly offered, payday loans. He described today's installment loan product as "still a short-term, relatively unsecured loan that costs about the same as a payday loan." The attached letter to the editor of the Chicago Sun-Times from Marva Williams, senior vice president of the Woodstock Institute, indicates that over one-third of Illinois payday loans made shortly after passage of the PLRA were "installment" or "checkbook" loans with terms exceeding 120 days.

Also attached is another document prepared by the Woodstock Institute - a "Reinvestment Alert" from 2004 that discusses how Illinois payday lenders had changed loan terms to evade a previous wave of payday loan regulations implemented in 2001. The payday loan industry responded to the new regulations by creating a loan with a term longer than the maximum covered by the regulations (page 2). These installment loans are underwritten similarly to payday loans. There is no credit check, but borrowers must be employed. Loan payments may be deducted directly from the borrower's paycheck (page 4). Yet another article from the Woodstock Institute, "Payday Lenders Put Costly New Spin on Installment Loan Product" (copy attached), highlights the way payday lenders changed their product offerings after passage of the 2005 PLRA to concentrate on high-price installment loans.

Public Action Foundation

I also contacted Lynda De Laforgue, codirector of citizen action for the Public Action Foundation, the organization that worked with the Woodstock Institute to develop the 2006 report. She said that installment loans are very similar to payday loans and that, in fact, the payday loan industry in Illinois has now totally "morphed" into an installment loan industry. She estimates that 90% of the short-term, high-interest loans in Illinois are now installment loans not subject to the state's payday lending regulations. She noted that it is the same people running both types of businesses (she mentioned AmeriCash, the corporate parent of First Rate Financial in Milwaukee). She believes that AmeriCash now wants to make installment loans exclusively. She noted that the trend toward installment loans is evident in areas of the country without usury caps. Some states, notably Oregon and Nevada, recently took legislative

action to close loopholes that allowed installment lenders to evade payday loan regulations.

Unfortunately, according to Ms. De Laforgue, there are no empirical data on installment loans. This is because installment lenders do not have to enter their loan data in the Veritec consumer reporting system (such data entry is required for payday loans under the PLRA). However, she noted that the volume of payday loans entered into Veritec is much less than expected given the size of the state's population when compared with the number of payday loans in other states, which suggests lenders in Illinois have, indeed, made the shift to installment loans not covered by the PLRA.

In summary, Ms. De Laforgue feels that the installment lenders' product is simply a "payday loan in disguise." She suggested asking our local installment lender for copies of the contracts for the products it offers so that we can see how similar installment loans are to payday loans.

State of Nevada Legislation

Following up on Ms. De Laforgue's lead, I searched for information on installment-loan legislation in Oregon and Nevada. I was unable to find any such legislation for Oregon. However, the State of Nevada already regulates installment-loan businesses and has recently fine-tuned its regulations. Attached is a portion of ch. 604A of the Nevada Revised Statutes. You will note that payday loans ("deferred deposit loans"), installment loans ("short-term loans"), title loans and check-cashing services are all regulated and licensed pursuant to the same chapter of the statutes -- just as these 4 uses would be treated similarly by the Milwaukee Zoning Code under the ordinance proposed by Ald. Bohl (Common Council File 060537). Furthermore, a "short-term loan" is defined as a loan with an annual percentage rate of more than 40% and a term of less than one year -- similar to the type of loan described in the proposed ordinance and similar to the product offered by First Rate Financial. Nevada Revised Statutes 604A.250 states that its regulations and licensing requirements do not apply to banks, savings and loans and credit unions, just as the proposed Zoning Code definition of "short-term loan establishment" does not include a bank, savings and loan or credit union.

Also attached you will find a copy of recently-passed Nevada Assembly Bill 478, which provides that ch. 604A applies to all loans with APRs above 40%, including those with terms of more than one year. In conjunction with this change, it re-terms a "short-term loan" as a "high-interest loan" and explicitly provides that "installment loans" are subject to ch. 604A (i.e., subject to the same rules as payday loans, title loans and currency exchanges) as long as their interest rates exceed 40%. You will note several places in this legislation where high-interest loans are mentioned in the same sentence along with deferred deposit loans, title loans and/or check-cashing services. It should also be noted that s. 138.09, Wis. Stats. (copy attached) -- the statute under which both payday lenders and installment lenders are licensed and regulated in Wisconsin -- exempts banks, savings and loan associations and credit unions.

Also attached is a PowerPoint presentation made by Nevada Assembly Speaker Barbara Buckley to the Senate Committee on Commerce and Labor on May 3, 2007. These presentation points out the similarity between payday lenders and installment lenders (namely, high interest rates) and provides examples of loan amounts, APRs and loan periods for short-term loans made before and after July, 2005 (the date the one-year threshold was implemented). Clearly, the interest rates for the longer-term loans (installment loans) are comparable to the interest rates on the shorter-term loans (deferred deposit or payday loans). In light of the fact that some Nevada lenders sought to avoid being subject to ch. 604A by offering loans of one year or more, perhaps Ald. Bohl may wish to remove the one-year limit from the definition of "short-term loan establishment" in the proposed ordinance. The State of Illinois is also considering legislation to eliminate the one-year loan term threshold that determines the applicability of its short-term loan regulations.

In summary, Nevada legislators have determined that installment loans are similar to payday loans and have seen fit to regulate these 2 types of short-term loans in a similar fashion. I found nothing in any of the minutes or other documents linked to these legislative files suggesting that there were any doubts or concerns about the legality of treating installment loans similarly to payday loans.

Library Search Results

The Legislative Reference Bureau library staff spent approximately 2 days conducting a search for documents and articles on the installment loan industry. The attached article from *American Banker* indicates that First Bank of Delaware's third-party installment loans had terms ranging from 2 weeks to 140 days, were typically under \$2,500 and had an annual interest rate of 450%. Again, with the exception of the longer terms, these numbers are characteristic of payday loans as well. Another article, from the *San Francisco Chronicle*, describes a lawsuit against 2 licensed California payday lenders who use "bait-and-switch" advertising to get consumers to take out installment loans with interest rates exceeding 400%. Both businesses are licensed to offer payday loans but not installment loans. Yet another article, from the *Pittsburgh Tribune-Review*, reports that many short-term lenders in Pennsylvania have switched from making payday loans to offering installment loans. Their high-interest installment loan products have terms of 4-5 months with payments due every 2 weeks.

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attachments



Comparing the Cost of Short Term Credit Before and After the Monsignor John Egan Payday Loan Reform (PDLR) Act

Table 1. The Payday Loan Reform Act Protects Borrowers and Saves Them Money on Traditional Payday Loan Products

FACT: Based on the data provided in the 2006 Veritec report, and data collected by the Egan Campaign in 2004, the cost of a \$300 loan for 14 days has decreased 39 percent since the passage of the act, saving the average borrower about \$25 per loan.

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

	Pre-PDLR Act(1)	Post-PDLR Act(2)
Avg Loan Fee	\$ 144.35	\$ 46.69
Avg Loan Term	14-31 days	15.7
Avg Loan Principal	\$ 331.14	\$ 309.10

(1) source: Greed report p. 3

(2) source: Veritec Solutions February 2006 report p. 4

(3) Survey included loans with terms varying from 14-31 days, the corresponding APR is the average for all loans

Table 2. New Products Designed to Evade the Law Don't Save Consumers Money

FACT: Since the passage of the act, many Illinois lenders have begun offering "look alike" loans which evade most of the consumer protections provided in the act. Based on the Veritec data, there is little incentive to take out an installment loan—even if you pay it off early.

Type of Loan	Principal	Fee	Term	APR	Cost of a \$300 Loan for 14 days
Protected Payday Loan	\$ 309.10	\$ 46.69	15.7	351.17%	\$ 40.41
Unprotected "Look Alike" Loan	\$ 354.55	\$ 531.37	141.2	387.42%	\$ 44.58

	Payday Loan(1)	Installment(2)
Avg Loan Fee	\$ 46.69	\$ 531.37
Avg Loan Term	15.7	141.2
Avg Loan Principal	\$ 309.10	\$ 354.55

(1) source: Veritec Solutions February 2006 report p. 4

(2) source: Veritec Solutions February 2006 report p. 5

Table 3. Lenders Have Raised Prices Dramatically on Longer Term Loans Since the Passage of the Act

FACT: Lenders making "look alike" loans have increased their prices dramatically since the passage of the act. The cost of these "look alike" products have increased fourfold, costing borrowers an additional \$360 to borrow \$300 for 140 days compared to similar products just a few years ago.

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

	Pre-PDLR Act(1)	Post-PDLR Act(2)
Loan Fee	\$ 374.00	\$ 531.37
Loan Term	266	141.2
Loan Principal	\$ 690.00	\$ 354.55

(1) source: Woodstock Institute Reinvestment Alert 26 p. 4

(2) source: Veritec Solutions February 2006 report p. 4

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Safeguards needed for all payday loans

Marva E. Williams

An article on April 2 ["State shuts 4 Payday Loan Stores"] describes the abusive practices of Bob Wolfberg, the owner of 40 payday loan branches. State regulators alleged that four of Wolfberg's stores falsified signatures, made loans to dead people and discarded mandatory disclosure statements.

Unfortunately, these alleged violations do not surprise me.

After a long and challenging history of attempts to enact reforms that were often blocked by the powerful payday loan industry in Illinois, the Payday Loan Reform Act went into effect in December 2005.

The reforms, which were carefully crafted by the Woodstock Institute and the Monsignor John Egan Campaign for Payday Loan Reform, were established in response to consumer, industry and regulatory trends in Illinois.

The act provides key consumer protections for payday loans with terms of 120 days or less, including mechanisms to prevent overborrowing, a fee cap, a cooling off period between loans and a repayment plan. At the time the act was crafted, most payday loans in Illinois had terms of 31 days or less.

Consumer and community organizations as well as state officials were concerned that because the Payday Loan Reform Act applies to loans with terms of 120 or less, the payday loan industry would circumvent the law by making loans with terms over 120 days. Therefore, the state, with the support of the Egan Campaign, developed directives that extended the consumer protections to all payday loans, including those with terms over 120 days. These directives are awaiting approval by state legislators.

It turns out that the Egan Campaign and state regulators were correct to suspect that the payday loan industry would attempt to sabotage the law.

Recent research shows that one-third of payday loans made to Illinois consumers in early February have terms over 120 days. And these lenders not only are subverting the law, they are charging higher prices than ever before for these "look alike" loans, often called "installment" or "checkbook" loans. Just two years ago, a borrower taking out a \$300 installment loan for five months would pay just \$86 in fees. Now, this same product will cost a borrower \$446 in fees.

Illinois consumers deserve the common-sense protections provided by the Payday Loan Reform Act. While the recent enforcement action sends a clear message to payday lenders that the State of Illinois is no place for abusive lending, it is critical that the directives protecting consumers regardless of the type of payday loan they choose be approved.

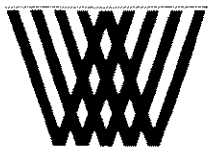
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REINVESTMENT ALERT

Woodstock Institute

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New Terms for Payday Loans: High Cost Lenders Change Loan Terms to Evade Illinois Consumer Protections

Payday lending in Illinois continues to prosper despite administrative rules adopted by the state in 2001 to curb the industry's most abusive practices. New products designed to evade these state regulations remain attractive to many customers because they offer a quick solution to temporary cash flow problems. These new high cost loans, however, continue to allow many of the abusive features that the state's rules intended to eliminate. Since the passage of these regulations, payday lending has evolved its product line and increased the scope of its lending. Virtually unheard of in the early 1990s, there are currently over 22,000 payday loan stores nationwide with loan volume of \$40 billion. In 2003 alone, the industry generated about \$6 billion in loan fees.¹ In Illinois, the number of stores offering payday loans has increased by nearly 12 percent since 2002.

Borrowers can use a payday loan to pay for car repairs, medical expenses, or other emergencies and then repay it when they receive their next paycheck. Consider M., a borrower whose emergency made a payday loan his only option. "I needed to have my brakes fixed right away, right away. They were like, grinding really, really bad. I could not wait until next week until I got paid," says M. For borrowers like M., a short-term loan from a local storefront payday lender offers a quick solution to a temporary cash flow problem.²

Despite this lure of quick cash, the costs of payday lending are significant. In Illinois, where no usury laws exist, the cost of a payday loan can be as high as 45 percent of the amount borrowed for a 31 day loan. Each loan can be renewed or rolled over with the payment of an additional fee. However as the number of rollovers grows, the cost of the loan increases. For instance, for a 31-day loan if a consumer borrows a \$100, the total loan cost is \$145 for an APR of 529 percent. A \$100 loan that is rolled over for an additional 31 days, for a total of 62 days, will cost a total of \$190 and a second 31 day rollover costs of \$235, with APRs of 1,059 percent and 1,589 percent respectively.

Even with these high costs, payday loans are made without regard to a borrower's ability to pay because there is minimal underwriting required. Borrowers only need to prove current employment and have a valid checking account. There are no credit checks. Lenders typically will hold a postdated check until the loan is paid or until the check is cashed. In some cases, borrowers will allow lenders to directly debit a bank account.

¹(Lewis. 2004).

²(Monsignor John Egan Campaign for Payday Loan Reform. 2004).

In an attempt to limit some of the industry's worst practices, new Illinois payday loan reforms were established in August 2001. The regulations were advocated by Woodstock Institute and the Egan Campaign for Payday Loan Reform, a statewide coalition that advocates for new Illinois payday loan policies with strong consumer protections. The 2001 regulations corrected some of the worse abuses of the payday loan industry at that time. These regulations were established, according to the Illinois Department of Financial Institutions (DFI)³, to "prevent consumers from over-borrowing, borrowing more than their income would allow them to repay, and being captive to the lender through perpetual refinancing."⁴ The reforms cover loans with a term of 30-days or less:

- Borrowers are only allowed one payday loan at a time.
- The maximum payday loan is the lesser of \$400 or 50 percent of the borrower's gross income.
- A payday loan can be rolled over a maximum of two times, but only when the outstanding balance of the loan has been reduced by at least 20 percent.
- Borrowers must observe a cooling off period of 15 days between each new loan.

Although the new regulation was a major step forward in efforts to curb abusive payday loan practices, it has several shortcomings. First, the regulation does not address the fees or APR of payday loans in Illinois. Currently, the APR of payday loans is still over 520 percent.

Second, the regulation has not been fully implemented. DFI has not established a database of payday loans that would be used to enforce the new regulations. As a result, DFI regulators have no way to determine the number of loans taken out by a borrower at one time or if the cooling off period has been observed. Payday lenders currently rely on a statement from borrowers asserting that they do not have multiple payday loans or have not had a loan within the preceding 15-days.

Third, and most importantly, the impact of the new regulations on payday lending has been more limited than expected. The payday loan industry responded by developing a product that circumvents the new regulations by creating a loan with a term greater than 30 days.

This report describes changes in the Illinois payday loan industry since the new regulations were enacted. It is partly based on data collected by DFI on the Illinois payday loan industry in 2002. However, that data was not released until March 2004. The report includes:

- A description of the new payday products developed by industry
- An analysis of payday loan lenders
- A breakdown of borrower demographics
- Recommendations to improve current Illinois payday loan policies

³DFI is the state agency authorized to regulate payday lenders.

⁴(State of Illinois Department of Financial Institutions. 2003).

Description of New Illinois Payday Loan Products

Thirty-One Day Loans

As mentioned above, the Illinois payday loan industry developed a new payday loan product in order to evade the 2001 regulations that applied to loans with terms of 30 days or less. As a result, these lenders are no longer subject to short-term loan rules and are essentially an unregulated industry. According to a 2003 study by DFI, only about 3 percent of loans are subject to the 2001 regulations.⁵ As noted in Table 1, there are currently no limits to what Illinois payday lenders can charge in fees and interest rates for 31 day loans. A borrower typically pays \$45 per every \$100 borrowed for a 31 day loan at an APR of 529.83 percent.⁶ Although borrowers have the option of prepaying the loan and reducing the finance charge, this is rarely the case.

Table 1
Comparison of Illinois 30 Day Payday Loan Regulations
and 31 Day Payday Loan Offered by Industry

	Fee Restrictions	Fees	APR	Loan Limit	Debt/Income Ratio	Rollover/Renewal Limits	Rollover/Renewal Restrictions	Cooling Off Period
Illinois 30 Day Payday Loan Regulations	N.A.	\$40/\$100 for 28 days	521.4%	\$400	50%	2	Reduce Principal by 20%	15 days
Illinois 31 Day Payday Loan Product	N.A.	\$45/\$100 for 31 days	529.8%	None	None	3	None	None

In addition to costs, other principals of the regulations are being violated. First, borrowers are not paying off their loans within the term of the loan and therefore the loans continue to roll over. DFI has enacted a number of conditions limiting a licensee's authorization to conduct business under the Consumer Installment Loan Act, such as limiting roll-overs to 3 or less.⁷

However, in 2002, almost 70 percent of all loans were rollovers, most of which did not include a reduction in the principal amount of the loan. The average number of rollovers for a 31 day loan is 2.5 for 78 days. Further, the amount of loans outstanding has increased and there is no cooling off period between loans. DFI reports that it is "quite common for borrowers to have multiple payday loans outstanding with several different payday loan companies."⁸ The major reason for this is that the database, which would have enabled payday loan lenders to determine how many loans a borrower has outstanding at one time, was never established by DFI.

⁵(State of Illinois Department of Financial Institutions. 2003).

⁶(State of Illinois Department of Financial Institutions. 2003).

⁷State of Illinois Department of Financial Institutions Other Business Authorization Conditions pursuant to §205 ILCS 670/12.

⁸(State of Illinois Department of Financial Institutions. 2003).

Installment Loans

The Illinois payday loan industry began marketing short-term installment loans in 2001 after the new regulations were established. Unlike payday loans, installment loans amortize both principal and interest payments. The loans range from \$690-\$1,500 and have terms up to nine months. The payment for a \$1,000 loan is \$81 per paycheck (every 14 days) for nine months. A \$690 loan requires a payment of \$56 per paycheck for nine months. The APR is 112 percent.

Installment loans are underwritten similarly to 31 day payday loans. There is no credit check. However, borrowers are required to have a minimum net income of \$300/week and must be employed for at least three months. In addition, borrowers must present past pay stubs, phone bills, and two other utility or department store bills, and a valid Illinois Driver's license or state identification.

Payment terms of installment loans are dependent on how the borrower's salary is paid. For borrowers enrolled in direct deposit programs with their employers, loan payments are automatically deducted from the borrower's paycheck. Borrowers without direct deposit are also eligible for installment loans. However the terms are less flexible. Their employer must be willing to issue two checks as a condition of the loan: one check is made payable to lender for payment of loan and interest and a second check is made out to borrower for their net salary (less loan payment).

DFI licenses and regulates installment loan providers under the Consumer Installment Loan Act (CILA). CILA addresses loans with a maximum principal of \$25,000 and loan terms of no more than 181 months. Its primary purpose is to limit delinquent and collection charges. Unfortunately, CILA provides very few other consumer protections and therefore imposes very few limitations on installment loans. DFI does not provide any public information on the Illinois installment loan industry.

Analysis of Payday Lenders

There were 908 short-term loan stores in the State of Illinois in 2004. Of these locations, 185 offered both payday and auto title loans.⁹

There is a significant concentration of ownership of payday loan and auto title stores. Five companies (out of 118) own almost 37 percent of the branches. Further, the top 20 companies own 77 percent of all branches.¹⁰

Despite arguments to the contrary, the payday loan industry targets lower-income and minority communities and consumers. DFI found that the lower-income counties are more likely to have the highest density of payday lenders than higher-income counties.¹¹

⁹Auto title loans: allows a car-owner to use a title to their car to secure a loan. The amount of the loan is usually a percentage of the value of the vehicle. If the consumer falls behind on the monthly payments, the car is at risk of repossession.

¹⁰(State of Illinois Department of Financial Institutions. 2003)

¹¹(State of Illinois Department of Financial Institutions. 2003)

Table 2
Illinois Payday, Title, and Limited Purpose Branches 2002-2004¹²

Type of Licensee	Number of Licensees		Percent Increase 2002 to 2004	Percent of 2004 Market
	2002	2004		
Payday	423	442	4.5%	48.7%
Title	31	43	38.7%	4.7%
Payday and Title	165	185	12.1%	20.4%
Limited Purpose Branch	194	238	22.7%	26.2%
Total	813	908	11.7%	100.0%

Woodstock Institute also conducted an analysis of payday loan stores in the 6-county Chicago region. The analysis, which is summarized in Figure 2, found that low- or moderate-income communities or communities with a majority minority population have a higher rate of payday loan stores.¹³

Figure 2 shows the number of payday loan stores per 10,000 in population by income and race of community. Middle- and upper-income minority census tracts have the highest rate of stores at 1.6 per 10,000 population. This is followed by white low- or moderate-income and minority low- and moderate-income census tracts, with rates of 1.2 and 0.8 respectively. The lowest number of stores per population is in non-minority, higher income census tracts with a rate of only 0.5 stores per 10,000 in population.

Demographics of Payday Loan Borrowers

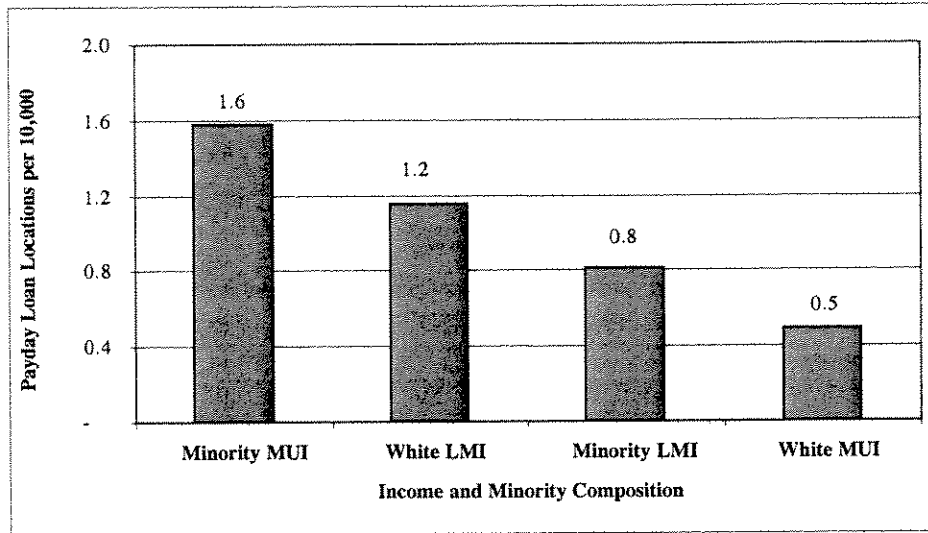
Unfortunately, there is very little publicly available data on payday loan borrowers. A previous Woodstock Institute analysis, published in March 2000, was based on a study conducted by the Illinois DFI at the request of the General Assembly.¹⁴ That study provided extensive data on the income and other characteristics of payday loan borrowers as well as the zip code of the store where they obtained their loan. The 2000 report found that most payday loan borrowers had low- to moderate-incomes. The average income of the borrowers in 2000 was \$23,690 and 19 percent of the borrowers earned less than \$15,000. Only 12 percent of the borrowers earned \$40,000 or more annually. In addition, borrowers from lenders located in zip code areas with higher minority populations had more loans than borrowers in mostly white areas.

¹²Analysis of State of Illinois Department of Financial Institutions Consumer Installment Loan data.

¹³Substantially minority census tract: census tracts where the total minority population is more than 50 percent of the total population.

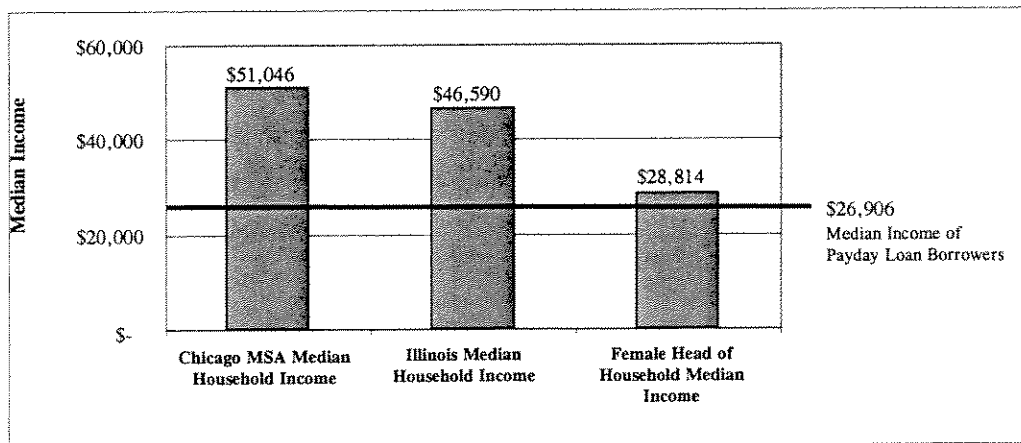
¹⁴(Wiles and Immergluck. 2000).

Figure 2
Payday Loan Stores per 10,000 Population 2004



The 2002 DFI analysis reports similar income statistics. From 2000 to 2002, the average income of payday loan borrowers increased less than \$3,000 to \$26,906. Figure 3 shows the median-income of Chicago area consumer households as compared to the average income of payday loan borrowers. The average income of payday loan borrowers is significantly lower than the Chicago and Illinois median household incomes as well as the income of female heads of household in Illinois.

Figure 3
Median Incomes of Consumers Compared to Payday Loan Borrower Incomes



There is evidence that payday loan borrowers are habitual, multi loan borrowers. The 2000 Woodstock Institute report noted that, for many borrowers, payday loans are not occasional short-term loans. In fact, the average number of contracts per borrower was 12.6. More than half (52 percent) of the borrowers had more than 10 contracts, and more than one-third of the borrowers had more than 15 contracts.¹⁵ This is further supported by the 2002 DFI analysis. From 1999 to 2002, the average age of payday loan borrowers aged by 2-3 years. DFI acknowledged that this “could indicate that many of the borrowers from 1999 are the same borrowers in 2002.”¹⁶ Some consumer protections advocates note that the aging of payday loan borrowers may indicate that the market has become saturated, and point to new products, such as the installment loan, as a way to continue industry expansion.

Recommendations

The Illinois payday loan industry remains effectively unregulated. There are currently no limits on fees and interest rates, terms, or other loan characteristics. At APRs of over 500 percent and onerous features, it is no wonder that payday loan borrowers become mired in an endless spiral of debt.

Reforms are crucial to safeguard Illinois consumers from these predatory loans. These products are offered as a simple solution to a short-term financial crisis, when in reality they leave workers with hundreds, and even thousands of dollars of unpaid debt and sometimes financial ruin.

Woodstock Institute and the Egan Campaign for Payday Loan Reform have developed the following principles for a new payday loan policy:

Loan Definition: The definition of the loan needs to be sufficiently broad to encompass current or future products that may be offered by the Illinois payday loan industry. It may include short-term loans that are secured by a postdated check, a wage assignment, or pledge against a consumer’s bank account.

Loan Amount: The amount of payday loans should be indexed to the borrower’s income.

Limits on Rollovers: Rollovers are a prime reason for spiraling consumer debt and must be limited to two with a reduction of loan principal at each renewal.

Cooling Off Period: To allow a consumer time to stabilize their finances between loans, a cooling off period of at least 15 days should be established.

Fees: Payday loans are high cost. Borrowers should not be subject to usurious fees because they need a short-term loan. Therefore, a flat fee per \$100 borrowed should be instituted. It is also important to limit any hidden fees, such as high costs for returned checks.

Payment Plan: Payday loan debts are often difficult to repay without forgoing rent, groceries, or other basic necessities. Consumers that are unable to pay the entire principal of a payday loan at one time should be given the option of arranging a payment plan.

¹⁵(Wiles and Immergluck. 2000).

¹⁶(State of Illinois Department of Financial Institutions. 2003).

Consumers Protections: A database that can be used to verify rollover limits and cooling off periods is mandatory. Other consumer protections include the distribution of information on credit counseling and debt management services as well as how to file a complaint.

Public Data: The Illinois DFI does not regularly report information on the payday loan industry. It should be required to issue an annual report that describes the number of loans made, loan terms, and information on borrowers.

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Lewis, Peter. 2, April 2004. Payday-loan Customers Risk Big Debt for Fast Cash. *Seattle Times*.

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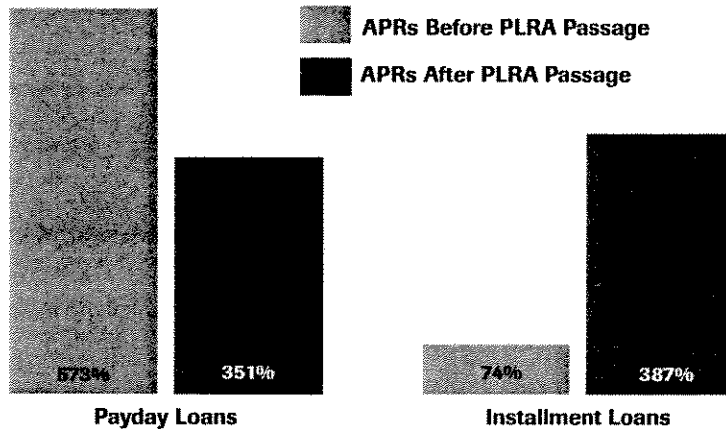
Payday Lenders Put Costly New Spin on Installment Loan Product

After the passage of the Illinois Payday Loan Reform Act in 2005, the short-term loan industry has once again subverted consumer protection laws to take advantage of consumers—this time by offering a similar, longer-termed, but unregulated loan. The new product was clearly designed to escape the provisions of the law because these “look-alike” loans are actually several shorter payday loans issued back-to-back, giving them terms longer than those covered by the act.

Nationwide, payday lenders have been extremely successful at morphing their products to escape regulation, and Illinois is no different. When similar consumer protections were established in 2001 for loans with terms under 30 days, the industry immediately adopted 31 day loans.

Woodstock Institute has long documented the payday lending industry's
—Continued on page 4

Comparing the Cost of Credit Before and After the Monsignor John Egan Payday Loan Reform Act



Source: Woodstock Institute analysis of 2006 Illinois Trends in Payday Lending – Initial Report and data collected by the Monsignor John Egan Campaign for Payday Loan Reform

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New Illinois Fact Books Bring Foreclosure and High-Cost Loan Analysis to Illinois Communities

Woodstock Institute has launched the first *Illinois Community Lending Fact Book*, a companion to the long running Chicago guide released annually. With the help of Housing Action Illinois, Beyond Housing, and the

Central Illinois Organizing Project, this valuable resource was launched in May, 2006 as part of Woodstock Institute's Tools for Fair Finance workshops held in St. Louis and Peoria.

The *Community Lending Fact Book*
—Continued on page 2

Payday Lenders

Continued from page 1

attempts to subvert state laws designed to protect consumers. These new "look alike" loans, often called "installment" or "checkbook" loans are strikingly similar to the longer term, and less expensive, installment loans offered by several Chicago-area payday lenders before the passage of the Payday Loan Reform Act. Now they are being heavily marketed as an alternative to regulated payday loans with some stores dropping the traditional two-week payday loan option entirely. Unfortunately for consumers, these loans are now much more expensive and lack any of the consumer protections adopted by the Illinois General Assembly.

Recent research shows that in early 2005, one-third of the loans made to Illinois consumers were "look-alike" designed to evade the Payday Loan Reform Act. Just two years ago, a borrower taking out a \$300 installment loan for five months would pay just \$86 in fees. Now, this same product will cost a borrower \$446 in fees.

Consumer protection groups continue to work on ways to protect families from these devastating predatory loans.

Woodstock Welcomes Ada Skyles As New Board Chair

Woodstock Institute welcomes incoming Board Chair Ada Skyles, Associate Director of the Chapin Hall Center for Children at the University of Chicago. Ms. Skyles brings considerable experience and creativity to the challenges facing low-income and minority communities. Ms. Skyles' research has focused on child welfare systems and the experiences of children of color in those systems, and the challenges of capacity building in public and community-based agencies.

She is also a board member of the Appleseed Fund for Justice, where she utilizes her legal expertise towards promoting child support reform and social justice issues.

Woodstock Institute's immediate past board chair, Charles M. Hill Sr. has stepped down after serving as board



Ada Skyles

chair since 1998. Chuck has been at the forefront of innovations in housing finance all his career. In the 1970s, he was Secretary of Wisconsin's Department of Development where he created the division of housing, and the state housing authority on whose board he served as chairperson. He then came to Chicago where he was for many years the Executive Vice-President of the Federal Home Loan Bank of Chicago and responsible for a number of innovations to increase homeownership. Chuck also serves on the boards of the National Association of Affordable Housing Lenders and Guarantee Bank in Milwaukee. He has brought all that experience and much more to his stellar performance as Woodstock Institute board chair and we look forward to his continued contributions to Woodstock Institute's board.

Visit Woodstock's Virtual Home

Browse the internet and you'll find lots of community development resources. Browsers can log on to <http://www.woodstockinst.org> to find out more about the Institute's activities, staff, and publications. There is also a page of useful links to other community development organizations, federal banking regulators, and sources of HMDA and other data. The site also features a form to request information.

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CHAPTER 604A - DEFERRED DEPOSIT LOANS, SHORT-TERM LOANS, TITLE LOANS AND CHECK-CASHING SERVICES

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GENERAL PROVISIONS

NRS 604A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 604A.015 to 604A.125, inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by 2005, 1683)

NRS 604A.015 “Automated loan machine” defined.

1. “Automated loan machine” means any machine or other device, regardless of the name given to it or the technology used, that:

- (a) Is automated;
 - (b) Is designed or intended to allow a customer, without any additional assistance from another person, to receive or attempt to receive a deferred deposit loan or short-term loan through the machine or other device; and
 - (c) Is set up, installed, operated or maintained by or on behalf of the person making the loan or any agent, affiliate or subsidiary of the person.
2. The term does not include any machine or other device used directly by a customer to access the Internet unless the machine or other device is made available to the customer by the person making the loan or any agent, affiliate or subsidiary of the person.

(Added to NRS by 2005, 1683)

NRS 604A.020 “Cashing” defined. “Cashing” means providing currency or a negotiable instrument in exchange for a check.

(Added to NRS by 2005, 1684)

NRS 604A.025 “Check” defined.

1. “Check” means:

- (a) A draft, other than a documentary draft, payable on demand and drawn on a bank; or
- (b) A cashier’s check or teller’s check.

2. An instrument may be a check even though it is described on its face by another term, such as “money order.”

(Added to NRS by 2005, 1684)

NRS 604A.030 “Check-cashing service” defined. “Check-cashing service” means any person engaged in the business of cashing checks for a fee, service charge or other consideration.

(Added to NRS by 2005, 1684)

NRS 604A.035 “Commissioner” defined. “Commissioner” means the Commissioner of Financial Institutions.

(Added to NRS by 2005, 1684)

NRS 604A.040 “Customer” defined. “Customer” means any person who receives or attempts to receive check-cashing services, deferred deposit loan services, short-term loan services or title loan services from another person.

(Added to NRS by 2005, 1684)

NRS 604A.045 “Default” defined.

1. “Default” means the failure of a customer to:

(a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement and any grace period that complies with the provisions of NRS 604A.210 or under the terms of any lawful extension or repayment plan relating to the loan and any grace period that complies with the provisions of NRS 604A.210; or

(b) Pay a loan in full on or before:

(1) The expiration of the initial loan period as set forth in a lawful loan agreement and any grace period that complies with the provisions of NRS 604A.210; or

(2) The due date of any lawful extension or repayment plan relating to the loan and any grace period that complies with the provisions of NRS 604A.210, provided that the due date of the extension or repayment plan does not violate the provisions of this chapter.

2. A default occurs on the day immediately following the date of the customer’s failure to perform as described in subsection 1.

(Added to NRS by 2005, 1684)

NRS 604A.050 “Deferred deposit loan” defined. “Deferred deposit loan” means a transaction in which, pursuant to a loan agreement:

1. A customer tenders to another person:

(a) A personal check drawn upon the account of the customer; or

(b) Written authorization for an electronic transfer of money for a specified amount from the account of the customer; and

2. The other person:

(a) Provides to the customer an amount of money that is equal to the face value of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction; and

(b) Agrees, for a specified period, not to cash the check or execute an electronic transfer of money for the amount specified in the written authorization.

(Added to NRS by 2005, 1684)

NRS 604A.055 “Deferred deposit loan service” defined. “Deferred deposit loan service” means any person engaged in the business of making deferred deposit loans for a fee, service charge or other consideration.

(Added to NRS by 2005, 1684)

NRS 604A.060 “Electronic transfer of money” defined. “Electronic transfer of money” means any transfer of money, other than a transaction initiated by a check or other similar instrument, that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

(Added to NRS by 2005, 1684)

NRS 604A.065 “Extension” defined.

1. "Extension" means any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover.
2. The term does not include a grace period.
(Added to NRS by 2005, 1685)

NRS 604A.070 "Grace period" defined. "Grace period" means any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.
(Added to NRS by 2005, 1685)

NRS 604A.075 "Licensee" defined. "Licensee" means any person who has been issued one or more licenses to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service pursuant to the provisions of this chapter.
(Added to NRS by 2005, 1685)

NRS 604A.080 "Loan" defined. "Loan" means any deferred deposit loan, short-term loan or title loan, or any extension or repayment plan relating to such a loan, made at any location or through any method, including, without limitation, at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means.
(Added to NRS by 2005, 1685)

NRS 604A.085 "Refund anticipation loan" defined. "Refund anticipation loan" means a loan offered or made to a taxpayer by a lender or through a facilitator based on the taxpayer's anticipated federal income tax refund.
(Added to NRS by 2005, 1685)

NRS 604A.090 "Regulation Z" defined. "Regulation Z" means the federal regulations, as amended, 12 C.F.R. Part 226, adopted pursuant to the Truth in Lending Act and commonly known as Regulation Z.
(Added to NRS by 2005, 1685)

NRS 604A.095 "Short-term loan" defined.

1. "Short-term loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:

- (a) Charges an annual percentage rate of more than 40 percent; and
- (b) Requires the loan to be paid in full in less than 1 year.

2. The term does not include:

- (a) A deferred deposit loan;
- (b) A title loan; or
- (c) A refund anticipation loan.
(Added to NRS by 2005, 1685)

NRS 604A.100 "Short-term loan service" defined. "Short-term loan service" means any person engaged in the business of providing short-term loans for a fee, service charge or other consideration.
(Added to NRS by 2005, 1685)

NRS 604A.105 "Title loan" defined.

1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:

- (a) Charges an annual percentage rate of more than 35 percent; and
- (b) Requires the customer to secure the loan by giving possession of the title to a vehicle legally owned by the customer to the person making the loan, or to any agent, affiliate or subsidiary of the person, whether or not the person making the loan or taking possession of the title perfects a security interest in the vehicle by having the person's name noted on the title as a lienholder.

2. The term does not include:

- (a) A loan which creates a purchase-money security interest in a vehicle or the refinancing of any such loan; or
- (b) Any other loan for which a vehicle is used as security or collateral if the person making the loan, or any agent, affiliate or subsidiary of the person, does not take possession of the title.
(Added to NRS by 2005, 1685)

NRS 604A.110 "Title loan service" defined. "Title loan service" means any person engaged in the business of providing title loans for a fee, service charge or other consideration.
(Added to NRS by 2005, 1686)

NRS 604A.115 "Title to a vehicle" or "title" defined. "Title to a vehicle" or "title" means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.
(Added to NRS by 2005, 1686)

NRS 604A.120 "Truth in Lending Act" defined. "Truth in Lending Act" means the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq.
(Added to NRS by 2005, 1686)

NRS 604A.125 "Vehicle" defined.

1. "Vehicle" means any vehicle, whether or not self-propelled, that is designed or intended for land transportation if the

legal owner of the vehicle is required to have a title.

2. The term includes, without limitation:

- (a) Passenger vehicles;
- (b) Recreational vehicles; and
- (c) House trailers and travel trailers.

3. The term does not include:

- (a) Farm vehicles;
- (b) Vehicles of a common or contract carrier;
- (c) Commercial vehicles;
- (d) Construction vehicles;
- (e) Military vehicles;
- (f) Vehicles used exclusively upon stationary rails or tracks; or

(g) Any other vehicles which are similar in nature to the vehicles listed in paragraphs (a) to (f), inclusive, and which the Commissioner, by regulation, excludes from the definition of "vehicle."

(Added to NRS by 2005, 1686)

NRS 604A.150 Additional terms defined under federal law; calculation of amount financed, annual percentage rate and finance charge.

1. As used in this chapter, unless the context otherwise requires, the following terms have the meanings ascribed to them in the Truth in Lending Act and Regulation Z:

- (a) "Amount financed."
- (b) "Annual percentage rate."
- (c) "Finance charge."
- (d) "Payment schedule."
- (e) "Total of payments."

2. For the purposes of this chapter, proper calculation of the amount financed, annual percentage rate and finance charge for a loan must be made in accordance with the Truth in Lending Act and Regulation Z.

(Added to NRS by 2005, 1686)

SCOPE AND APPLICABILITY

NRS 604A.200 Application of chapter to persons who seek to evade its provisions. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation, calling a loan by any other name or using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter.

(Added to NRS by 2005, 1686)

NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

- 1. Any fees for granting such a grace period; or
- 2. Any additional fees or additional interest on the outstanding loan during such a grace period.

(Added to NRS by 2005, 1686)

NRS 604A.220 Uniformity of application and construction; resolution of conflicts.

1. The provisions of this chapter must be interpreted so as to effectuate their general purpose to provide for, to the extent practicable, uniform regulation of the loans and transactions that are subject to the provisions of this chapter.

2. If there is a conflict between the provisions of this chapter and the provisions of any other general law regulating loans and similar transactions, the provisions of this chapter control.

(Added to NRS by 2005, 1686)

NRS 604A.230 Effect of amendment or repeal of chapter on preexisting lawful contracts. This chapter or any part thereof may be modified, amended or repealed by the Legislature so as to effect a cancellation or alteration of any license or right of a licensee under this chapter, provided that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful loan agreement between any licensee and any customer.

(Added to NRS by 2005, 1687)

NRS 604A.240 Collection of loans made outside State. Any loan lawfully made outside this State as permitted by the laws of the state in which the loan was made may be collected or otherwise enforced in this State in accordance with its terms.

(Added to NRS by 2005, 1687)

NRS 604A.250 Exemptions from chapter. The provisions of this chapter do not apply to:

1. A person doing business pursuant to the authority of any law of this State or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies or insurance companies.

2. A person who is primarily engaged in the retail sale of goods or services who:

- (a) As an incident to or independently of a retail sale or service, from time to time cashes checks for a fee or other consideration of not more than \$2; and
- (b) Does not hold himself out as a check-cashing service.

3. A person while performing any act authorized by a license issued pursuant to chapter 671 of NRS.
 4. A person who holds a nonrestricted gaming license issued pursuant to chapter 463 of NRS while performing any act in the course of that licensed operation.
 5. A person who is exclusively engaged in a check-cashing service relating to out-of-state checks.
 6. A corporation organized pursuant to the laws of this State that has been continuously and exclusively engaged in a check-cashing service in this State since July 1, 1973.
 7. A pawnbroker, unless the pawnbroker operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service.
 8. A real estate investment trust, as defined in 26 U.S.C. § 856.
 9. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.
 10. An attorney at law rendering services in the performance of his duties as an attorney at law if the loan is secured by real property.
 11. A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.
 12. Any firm or corporation:
 - (a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;
 - (b) Approved by the Federal National Mortgage Association as a seller or servicer; and
 - (c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.
 13. A person who provides money for investment in loans secured by a lien on real property, on his own account.
 14. A seller of real property who offers credit secured by a mortgage of the property sold.
 15. A person who makes a refund anticipation loan, unless the person operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service.
- (Added to NRS by 2005, 1687)

ADMINISTRATION

NRS 604A.300 Regulations.

1. The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks.
 2. The Commissioner shall adopt any other regulations as are necessary to carry out the provisions of this chapter.
- (Added to NRS by 2005, 1688)

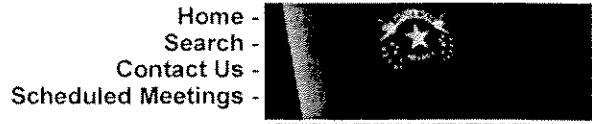
NRS 604A.310 Certain relationships between employees of Division of Financial Institutions and licensees prohibited; duty to terminate prohibited relationships.

1. Except as otherwise provided in subsection 3, an officer or employee of the Division of Financial Institutions of the Department of Business and Industry shall not:
 - (a) Be directly or indirectly interested in or act on behalf of any licensee;
 - (b) Receive, directly or indirectly, any payment from any licensee;
 - (c) Be indebted to any licensee;
 - (d) Engage in the negotiation of loans for others with any licensee; or
 - (e) Obtain credit or services from a licensee conditioned upon a fraudulent practice or undue or unfair preference over other customers.
 2. An employee of the Division of Financial Institutions in the unclassified service of the State shall not obtain new extensions of credit from a licensee while in office.
 3. Any officer or employee of the Division of Financial Institutions may be indebted to a licensee on the same terms as are available to the public generally.
 4. If an officer or employee of the Division of Financial Institutions has a service, a preferred consideration, an interest or a relationship prohibited by this section at the time of his appointment or employment, or obtains it during his employment, he shall terminate it within 120 days after the date of his appointment or employment or the discovery of the prohibited act.
- (Added to NRS by 2005, 1705)

REGULATION OF BUSINESS PRACTICES

NRS 604A.400 Unlawful acts; criminal penalties.

1. A person, including, without limitation, a person licensed pursuant to chapter 675 of NRS, shall not operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.
 2. A person must have a license regardless of the location or method that the person uses to operate such a service, including, without limitation, at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except that the person shall not operate such a service through any automated loan machine in violation of the provisions of subsection 3.
 3. A person shall not operate a deferred deposit loan service or short-term loan service through any automated loan machine, and the Commissioner shall not issue a license that authorizes the licensee to conduct business through any automated loan machine.
 4. Any person, and any member, officer, director, agent or employee thereof, who violates or participates in the violation of any provision of this section is guilty of a misdemeanor.
- (Added to NRS by 2005, 1688; A 2005, 22nd Special Session, 97)



AB478



Introduced on: Mar 19, 2007

By: (Bolded name indicates primary sponsorship)
Buckley , Anderson , Oceguela , Conklin , Leslie , Carpenter , Denis ,
 Gerhardt , Grady , Hardy , Hogan , Kirkpatrick , Koivisto , Mabey ,
 Manendo , McClain , Munford , Parks , Parnell , Pierce , Smith , Amodei ,
 Coffin , Titus

Revises provisions governing loans and loan services. (BDR 52-394)

Fiscal Notes View Fiscal Notes

Effect on Local Government: No.
 Effect on State: Yes.

Most Recent History

Action: Approved by the Governor. Chapter 265.
 (See full list below)

Upcoming Hearings

Past Hearings

Assembly Commerce and Labor	Mar. 28, 2007	01:00 PM	Minutes	No Action .
Assembly Commerce and Labor	Apr. 09, 2007	01:00 PM		Not Heard .
Assembly Commerce and Labor	Apr. 11, 2007	12:30 PM		Amend, and do pass as amended .
Senate Commerce and Labor	May. 03, 2007	08:00 AM	Minutes	No Action .
Senate Commerce and Labor	May. 10, 2007	08:00 AM	Minutes	No Action .
Senate Commerce and Labor	May. 15, 2007	08:00 AM	Minutes	No Action .
Senate Commerce and Labor	May. 17, 2007	08:00 AM		Amend, and do pass as amended .

Votes

Assembly Final Passage	Apr. 23	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
Senate Final Passage	May. 25	Yea 20,	Nay 1,	Excused 0,	Not Voting 0,	Absent 0

Bill Text	As Introduced	1st Reprint	2nd Reprint	As Enrolled
Adopted Amendments	Amend. No.600			
Adopted	Amend. No.856			

Amendments

Bill History

Mar 19, 2007

- Read first time. Referred to Committee on Commerce and Labor. To printer.

Mar 20, 2007

- From printer. To committee.

Apr 23, 2007

- From committee: Amend, and do pass as amended.
- Placed on Second Reading File.
- Read second time. Amended. (Amend. No. 600.) To printer.
- From printer. To engrossment. Engrossed. First reprint.
- Declared an emergency measure under the Constitution.
- Read third time. Passed, as amended. Title approved, as amended. (Yeas: 42, Nays: None.) To Senate.

Apr 24, 2007

- In Senate.
- Read first time. Referred to Committee on Commerce and Labor. To committee.

May 23, 2007

- From committee: Amend, and do pass as amended.
- Placed on Second Reading File.
- Read second time. Amended. (Amend. No. 856.) To printer.

May 24, 2007

- From printer. To reengrossment. Reengrossed. Second reprint.
- Read third time.
- Taken from General File. Placed on General File for next legislative day.

May 25, 2007

- Taken from General File. Placed on Secretary's desk.
- Taken from Secretary's desk. Placed on General File.
- Read third time. Passed, as amended. Title approved. (Yeas: 20, Nays: 1.) To Assembly.

May 26, 2007

- In Assembly.
- Senate Amendment No. 856 concurred in. To enrollment.

May 28, 2007

- Enrolled and delivered to Governor.

Jun 01, 2007

- Approved by the Governor. Chapter 265.
- **Effective October 1, 2007.**

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Assembly Bill No. 478—Assemblymen Buckley, Anderson, Ocegüera, Conklin, Leslie, Carpenter, Denis, Gerhardt, Grady, Hardy, Hogan, Kirkpatrick, Koivisto, Mabey, Manendo, McClain, Munford, Parks, Parnell, Pierce and Smith

Joint Sponsors: Senators Amodei, Coffin and Titus

CHAPTER.....

AN ACT relating to financial services; making the provisions governing certain short-term loan services applicable to any person who makes a loan pursuant to a loan agreement that charges in excess of a certain annual percentage rate regardless of the term of the loan; revising the calculation of the annual percentage rate to include certain charges and fees imposed on a customer by a licensee; revising the allowable term of certain loans; providing exemptions from certain statutory provisions; clarifying the applicability of certain provisions; making persons who violate certain provisions of federal law subject to certain remedies and penalties set forth in state law; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes standards and procedures for the licensing and regulation of loans made pursuant to loan agreements that provide for an annual percentage rate of more than 40 percent and require repayment of the loan in less than 1 year. (Chapter 604A of NRS) This bill revises the applicability of those standards and procedures to make them applicable to any person who makes a loan pursuant to a loan agreement that charges an annual percentage rate of more than 40 percent regardless of the term of the loan. This bill redefines such a loan as a "high-interest loan" and the loan service for such a loan as a "high-interest loan service." This bill also provides that, subject to certain exceptions, the original term of a deferred deposit loan or high-interest loan must not exceed 35 days.

Under existing law, the annual percentage rate of such loans is required to be calculated pursuant to the provisions of the Truth in Lending Act and Regulation Z. (NRS 604A.150) This bill provides an exception to that requirement by specifying that, subject to certain exceptions, every charge or fee, regardless of the name given to the charge or fee, payable directly or indirectly by the customer and imposed directly or indirectly by the lender must be included in calculating the annual percentage rate.

Existing law provides for the licensure of persons who make installment loans. (Chapter 675 of NRS) This bill provides for the licensure of such persons pursuant to chapter 604A of NRS if the loans are high-interest loans.

Existing law exempts certain persons and entities from the provisions of chapter 604A of NRS. (NRS 604A.250) This bill extends the exemption to national banking associations and their affiliates and subsidiaries, unless a purpose of the affiliation is to evade the provisions of that chapter.



Existing law exempts certain persons and entities from the provisions of chapter 675 of NRS. (NRS 675.040) This bill extends the exemption to national banking associations. This bill also clarifies the persons to whom chapter 675 of NRS applies.

Existing federal law imposes limitations on the terms of consumer credit that is extended to members of the Armed Forces of the United States who are on active duty and their dependents, including, without limitation, a prohibition against a lender imposing an interest rate greater than 36 percent. The federal law preempts any state law that is inconsistent with the federal law. (Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364) This bill provides that any violation of the federal law shall be deemed to be a violation of chapter 604A of NRS, thereby making violators subject to the remedies and penalties set forth in that chapter, including the imposition of an administrative fine of not more than \$10,000 for each violation, the revocation or suspension of a license issued pursuant to that chapter and civil actions for damages. (NRS 604A.820, 604A.930)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 604A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6.5, inclusive, of this act.

Sec. 2. 1. *“High-interest loan” means a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent.*

2. *The term includes, without limitation, any single-payment loan, installment loan or open-ended loan which, under its original terms, charges an annual percentage rate of more than 40 percent.*

3. *The term does not include:*

- (a) A deferred deposit loan;*
- (b) A refund anticipation loan; or*
- (c) A title loan.*

Sec. 3. *“High-interest loan service” means any person engaged in the business of providing high-interest loans for a fee, service charge or other consideration.*

Sec. 4. 1. *Except as otherwise provided in this section, for the purposes of determining whether a loan is a high-interest loan, when determining whether a lender is charging an annual percentage rate of more than 40 percent, calculations must be made in accordance with the Truth in Lending Act and Regulation Z, except that every charge or fee, regardless of the name given to the charge or fee, payable directly or indirectly by the customer and imposed directly or indirectly by the lender must be included*



in calculating the annual percentage rate, including, without limitation:

- (a) Interest;*
- (b) Application fees, regardless of whether such fees are charged to all applicants or credit is actually extended;*
- (c) Fees charged for participation in a credit plan, whether assessed on an annual, periodic or nonperiodic basis; and*
- (d) Prepaid finance charges.*

2. The following charges and fees must be excluded from the calculation of the annual percentage rate pursuant to subsection 1:

- (a) Any fees allowed pursuant to NRS 604A.490 or 675.365 for a check not paid upon presentment or an electronic transfer of money that fails;*
- (b) Interest accrued after default pursuant to paragraph (c) of subsection 1 of NRS 604A.485;*
- (c) Charges for an unanticipated late payment, exceeding a credit limit, or a delinquency, default or similar occurrence; and*
- (d) Any premiums or identifiable charges for insurance permitted pursuant to NRS 675.300.*

3. Calculation of the annual percentage rate in the manner specified in this section is limited only to the determination of whether a loan is a high-interest loan and must not be used in compliance with the disclosure requirements of paragraph (g) of subsection 2 of NRS 604A.410 or any other provisions of this chapter requiring disclosure of an annual percentage rate in the making of a loan.

Sec. 5. 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan or high-interest loan must not exceed 35 days.

2. The original term of a high-interest loan may be up to 90 days if:

- (a) The loan provides for payments in installments;*
- (b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;*
- (c) The loan is not subject to any extension; and*
- (d) The loan does not require a balloon payment of any kind.*

3. Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan.



Sec. 6. *A violation of any provision of section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation adopted pursuant thereto shall be deemed to be a violation of this chapter.*

Sec. 6.5. *All provisions of this chapter governing enforcement or collection of an obligation originated under this chapter apply to:*

- 1. Any purchaser or assignee of the obligation; and*
- 2. Any person seeking to enforce or collect the obligation on behalf of a licensee.*

Sec. 7. NRS 604A.010 is hereby amended to read as follows:
604A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 604A.015 to 604A.125, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 604A.015 is hereby amended to read as follows:
604A.015 1. "Automated loan machine" means any machine or other device, regardless of the name given to it or the technology used, that:

- (a) Is automated;
- (b) Is designed or intended to allow a customer, without any additional assistance from another person, to receive or attempt to receive a deferred deposit loan or ~~short-term~~ *high-interest* loan through the machine or other device; and
- (c) Is set up, installed, operated or maintained by or on behalf of the person making the loan or any agent, affiliate or subsidiary of the person.

2. The term does not include any machine or other device used directly by a customer to access the Internet unless the machine or other device is made available to the customer by the person making the loan or any agent, affiliate or subsidiary of the person.

Sec. 9. NRS 604A.040 is hereby amended to read as follows:
604A.040 "Customer" means any person who receives or attempts to receive check-cashing services, deferred deposit loan services, ~~short-term~~ *high-interest* loan services or title loan services from another person.

Sec. 10. NRS 604A.075 is hereby amended to read as follows:
604A.075 "Licensee" means any person who has been issued one or more licenses to operate a check-cashing service, deferred deposit loan service, ~~short-term~~ *high-interest* loan service or title loan service pursuant to the provisions of this chapter.

Sec. 11. NRS 604A.080 is hereby amended to read as follows:
604A.080 "Loan" means any deferred deposit loan, ~~short-term~~ *high-interest* loan or title loan, or any extension or repayment



plan relating to such a loan, made at any location or through any method, including, without limitation, at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means.

Sec. 11.5. NRS 604A.105 is hereby amended to read as follows:

604A.105 1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:

(a) Charges an annual percentage rate of more than 35 percent; and

(b) Requires the customer to secure the loan by ~~giving~~ **either:**

(1) Giving possession of the title to a vehicle legally owned by the customer to the ~~person making the loan, or to~~ licensee or any agent, affiliate or subsidiary of the ~~person, whether or not the person making the loan or taking possession of the title perfects a security interest in the vehicle by having the person's name noted on the title as a lienholder.~~ licensee; or

(2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.

2. The term does not include ~~;~~

~~(a) A~~ a loan which creates a purchase-money security interest in a vehicle or the refinancing of any such loan. ~~;~~

~~(b) Any other loan for which a vehicle is used as security or collateral if the person making the loan, or any agent, affiliate or subsidiary of the person, does not take possession of the title.~~

Sec. 12. NRS 604A.200 is hereby amended to read as follows:

604A.200 The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation ~~;~~ calling :

1. **Calling** a loan by any other name ~~for using~~ ;

2. **Using** any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter ~~;~~ ; or

3. **Having any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter pursuant to subsection 1 of NRS 604A.250, the effect of which is to evade the provisions of this chapter, including, without limitation, making a loan while purporting to be the agent of such an exempt entity where the purported agent holds, acquires or maintains a preponderant economic interest in the revenues generated by the loan.**



Sec. 13. NRS 604A.250 is hereby amended to read as follows:
604A.250 The provisions of this chapter do not apply to:

1. ~~{A}~~ *Except as otherwise provided in NRS 604A.200, a person doing business pursuant to the authority of any law of this State or of the United States relating to banks, **national banking associations**, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies or insurance companies ~~{}~~, including, without limitation, any affiliate or subsidiary of such a person regardless of whether the affiliate or subsidiary is a bank.*
2. A person who is primarily engaged in the retail sale of goods or services who:
 - (a) As an incident to or independently of a retail sale or service, from time to time cashes checks for a fee or other consideration of not more than \$2; and
 - (b) Does not hold himself out as a check-cashing service.
3. A person while performing any act authorized by a license issued pursuant to chapter 671 of NRS.
4. A person who holds a nonrestricted gaming license issued pursuant to chapter 463 of NRS while performing any act in the course of that licensed operation.
5. A person who is exclusively engaged in a check-cashing service relating to out-of-state checks.
6. A corporation organized pursuant to the laws of this State that has been continuously and exclusively engaged in a check-cashing service in this State since July 1, 1973.
7. A pawnbroker, unless the pawnbroker operates a check-cashing service, deferred deposit loan service, ~~{short-term}~~ **high-interest** loan service or title loan service.
8. A real estate investment trust, as defined in 26 U.S.C. § 856.
9. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.
10. An attorney at law rendering services in the performance of his duties as an attorney at law if the loan is secured by real property.
11. A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.
12. Any firm or corporation:
 - (a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;



(b) Approved by the Federal National Mortgage Association as a seller or servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

13. A person who provides money for investment in loans secured by a lien on real property, on his own account.

14. A seller of real property who offers credit secured by a mortgage of the property sold.

15. A person who makes a refund anticipation loan, unless the person operates a check-cashing service, deferred deposit loan service, ~~short-term~~ *high-interest* loan service or title loan service.

Sec. 14. NRS 604A.400 is hereby amended to read as follows:

604A.400 1. A person, including, without limitation, a person licensed pursuant to chapter 675 of NRS, shall not operate a check-cashing service, deferred deposit loan service, ~~short-term~~ *high-interest* loan service or title loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.

2. A person must have a license regardless of the location or method that the person uses to operate such a service, including, without limitation, at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except that the person shall not operate such a service through any automated loan machine in violation of the provisions of subsection 3.

3. A person shall not operate a deferred deposit loan service or ~~short-term~~ *high-interest* loan service through any automated loan machine, and the Commissioner shall not issue a license that authorizes the licensee to conduct business through any automated loan machine.

4. Any person, and any member, officer, director, agent or employee thereof, who violates or participates in the violation of any provision of this section is guilty of a misdemeanor.

Sec. 15. NRS 604A.405 is hereby amended to read as follows:

604A.405 1. A licensee shall post in a conspicuous place in every location at which he conducts business under his license:

(a) A notice that states the fees he charges for providing check-cashing services, deferred deposit loan services, ~~short-term~~ *high-interest* loan services or title loan services.

(b) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers.

↪ The Commissioner shall adopt regulations prescribing the form and size of the notices required by this subsection.



2. If a licensee offers loans to customers at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except for an automated loan machine prohibited by NRS 604A.400, the licensee shall, as appropriate to the location or method for making the loan, post in a conspicuous place where customers will see it before they enter into a loan, or disclose in an open and obvious manner to customers before they enter into a loan, a notice that states:

(a) The types of loans the licensee offers and the fees he charges for making each type of loan; and

(b) A list of the states where the licensee is licensed or authorized to conduct business from outside this State with customers located in this State.

3. A licensee who provides check-cashing services shall give written notice to each customer of the fees he charges for cashing checks. The customer must sign the notice before the licensee provides the check-cashing service.

Sec. 15.5. NRS 604A.410 is hereby amended to read as follows:

604A.410 1. Before making any loan to a customer, a licensee shall provide to the customer a written loan agreement which may be kept by the customer and which must be written in:

(a) English, if the transaction is conducted in English; or

(b) Spanish, if the transaction is conducted in Spanish.

2. The loan agreement must include, without limitation, the following information:

(a) The name and address of the licensee and the customer;

(b) The nature of the security for the loan, if any;

(c) The date and amount of the loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z;

(d) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;

(e) A disclosure of the right of the customer to pay his loan in full or in part with no additional charge pursuant to the provisions of this chapter;

(f) A disclosure stating that, if the customer defaults on the loan, ~~the customer has the opportunity within 30 days of the date of default to enter into a repayment plan with a term of at least 90 days, and that the licensee must offer the~~ a repayment plan to the



customer before the licensee commences any civil action or process of alternative dispute resolution or, if appropriate for the loan, before the licensee repossesses a vehicle; and

(g) Any other disclosures required under the Truth in Lending Act and Regulation Z or under any other applicable federal or state statute or regulation.

Sec. 16. NRS 604A.420 is hereby amended to read as follows:

604A.420 1. If a customer is ~~{called to active duty in}~~ **a member of the military**, a licensee shall:

(a) ~~{Defer for the duration of the active duty all collection activity against the customer and his property, including, without limitation, any community property in which the customer has an interest; and~~

~~—(b)}~~ Honor the terms of any repayment plan between the licensee and customer, including, without limitation, any repayment plan negotiated through military counselors or third-party credit counselors.

(b) Honor any proclamation by a base commander that a certain branch location of the licensee is off-limits to members of the military and their spouses.

2. ~~{When collecting any defaulted loan,}~~ **If a customer is a member of the military**, a licensee shall not:

(a) Garnish or threaten to garnish any wages or salary ~~{paid to a customer for active service in the military;}~~ **of the customer or his spouse;** or

(b) Contact or threaten to contact the military chain of command of a customer in an effort to collect the ~~{defaulted}~~ loan.

3. **If a customer is a member of the military and is deployed to a combat or combat supporting position, a licensee shall not engage in any collection activity against the customer or his spouse.**

4. As used in this section, "military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

Sec. 17. NRS 604A.425 is hereby amended to read as follows:

604A.425 1. A licensee shall not:

(a) Make a deferred deposit loan that exceeds 25 percent of the expected gross monthly income of the customer when the loan is made; or

(b) Make a ~~{short-term}~~ **high-interest** loan which, under the terms of the loan agreement, requires any monthly payment that exceeds 25 percent of the expected gross monthly income of the customer.



2. A licensee is not in violation of the provisions of this section if the customer presents evidence of his gross monthly income to the licensee and represents to the licensee in writing that:

(a) For a deferred deposit loan, the loan does not exceed 25 percent of his expected gross monthly income when the loan is made; or

(b) For a ~~short-term~~ **high-interest** loan, the monthly payment required under the terms of the loan agreement does not exceed 25 percent of his expected gross monthly income.

Sec. 18. NRS 604A.430 is hereby amended to read as follows:

604A.430 *1.* A licensee shall not make more than one deferred deposit loan, **single-advance, single-payment loan** or ~~short-term~~ **high-interest** loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:

~~1-1~~ (a) The customer is seeking multiple loans that do not exceed the limits set forth in NRS 604A.425;

~~1-2~~ (b) The licensee charges the same or a lower **fee or service charge per \$100 if it is a deferred deposit loan or single-advance, single-payment loan, or the same or a lower annual percentage rate of interest if it is a high-interest loan that is not a single-advance, single-payment loan**, for any additional loans as he charged for the initial loan;

~~1-3~~ (c) Except for that part of the finance charge which consists of interest only, the licensee does not impose any other charge or fee to initiate any additional loans, except that a licensee who makes deferred deposit loans or ~~short-term~~ **high-interest** loans in accordance with the provisions of subsection 2 of NRS 604A.480 may charge a reasonable fee for preparing documents in an amount that does not exceed \$50; and

~~1-4~~ (d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid upon presentment ~~or~~ **or one or more electronic transfers of money fail**, the licensee does not charge any fees to the customer pursuant to NRS 604A.490, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment ~~or~~ **or electronic transfer of money that failed**.

2. *As used in this section, "single-advance, single-payment loan" means a transaction in which, pursuant to a loan agreement, a customer is given a single advance equal to the amount financed with payment in full due within 35 days after the date of the transaction.*



Sec. 19. NRS 604A.435 is hereby amended to read as follows:
604A.435 A licensee shall not:

1. Accept:

(a) Collateral as security for a loan, except that a title to a vehicle may be accepted as security for a title loan.

(b) An assignment of wages, salary, commissions or other compensation for services, whether earned or to be earned, as security for a loan.

(c) A check as security for a ~~{short-term}~~ *high-interest* loan or title loan.

(d) More than one check or written authorization for an electronic transfer of money for each deferred deposit loan.

(e) A check or written authorization for an electronic transfer of money for any deferred deposit loan in an amount which exceeds the total of payments set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer.

2. Take any note or promise to pay which does not disclose the date and amount of the loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z.

3. Take any instrument, including a check or written authorization for an electronic transfer of money, in which blanks are left to be filled in after the loan is made.

4. Make any transaction contingent on the purchase of insurance or any other goods or services or sell any insurance to the customer with the loan.

5. Fail to comply with a payment plan which is negotiated and agreed to by the licensee and customer.

6. Charge any fee to cash a check representing the proceeds of a loan made by the licensee or any agent, affiliate or subsidiary of the licensee.

Sec. 19.5. NRS 604A.445 is hereby amended to read as follows:

604A.445 Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.

2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:



(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(b) The annual percentage rate charged on the title loan during any period of extension is not more than the annual percentage rate charged on the title loan during the original term; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fees, are charged in connection with any extension of the title loan.

3. *The original term of a title loan may be up to 210 days if:*

(a) *The loan provides for payments in installments;*

(b) *The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;*

(c) *The loan is not subject to any extension; and*

(d) *The loan does not require a balloon payment of any kind.*

Sec. 20. NRS 604A.460 is hereby amended to read as follows:

604A.460 1. A customer may rescind a loan on or before the close of business on the next day of business at the location where the loan was initiated. To rescind the loan, the customer must deliver to the licensee:

(a) A sum of money equal to the face value of the loan, less any fee charged to the customer to initiate the loan; or

(b) The original check, if any, which the licensee gave to the customer pursuant to the loan. Upon receipt of the original check, the licensee shall refund any fee charged to the customer to initiate the loan.

2. If a customer rescinds a loan pursuant to this section, the licensee:

(a) Shall not charge the customer any fee for rescinding the loan; and

(b) Upon receipt of the sum of money or check pursuant to subsection 1, shall give to the customer a receipt showing the account paid in full and:

(1) If the customer gave to the licensee a check or a written authorization for an electronic transfer of money to initiate a deferred deposit loan, the check or written authorization stamped "void";

(2) If the customer gave to the licensee a promissory note to initiate a ~~short-term~~ *high-interest* loan, a copy of the promissory note stamped "void" or the receipt stamped "paid in full"; or



(3) If the customer gave to the licensee a title to a vehicle to initiate the title loan, the title.

Sec. 21. NRS 604A.465 is hereby amended to read as follows:

604A.465 1. A customer may pay a loan, or any extension thereof, in full at any time, without an additional charge or fee, before the date his final payment on the loan, or any extension thereof, is due.

2. If a customer pays the loan in full, including all interest, charges and fees negotiated and agreed to by the licensee and customer as permitted under this chapter, the licensee shall:

(a) Give to the customer:

(1) If the customer gave to the licensee a check or a written authorization for an electronic transfer of money to initiate a deferred deposit loan, the check or the written authorization stamped "void";

(2) If the customer gave to the licensee a promissory note to initiate a ~~{short-term}~~ **high-interest** loan, the promissory note stamped "void" or a receipt stamped "paid in full"; or

(3) If the customer gave to the licensee a title to a vehicle to initiate a title loan, the title; and

(b) Give to the customer a receipt with the following information:

(1) The name and address of the licensee;

(2) The identification number assigned to the loan agreement or other information that identifies the loan;

(3) The date of the payment;

(4) The amount paid;

(5) An itemization of interest, charges and fees;

(6) A statement that the loan is paid in full; and

(7) If more than one loan made by the licensee to the customer was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.

Sec. 21.5. NRS 604A.475 is hereby amended to read as follows:

604A.475 1. Before a licensee attempts to collect the outstanding balance on a loan in default by commencing any civil action or process of alternative dispute resolution or ~~{by}~~ repossessing a vehicle, the licensee shall offer the customer an opportunity to enter into a repayment plan. The licensee:

(a) Is required to make the offer available to the customer for a period of at least 30 days after the date of default; and

(b) Is not required to make such an offer more than once for each loan.



2. ~~[Not]~~ *If the licensee intends to commence any civil action or process of alternative dispute resolution or repossess a vehicle in an effort to collect a defaulted loan, the licensee shall deliver to the customer, not later than 15 days after the date of default, ~~the licensee shall provide to the customer~~ or not later than 5 days after a check is not paid upon presentment or an electronic transfer of money fails, whichever is later, written notice of the opportunity to enter into a repayment plan. The written notice must:*

(a) Be in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish;

(b) State the date by which the customer must act to enter into a repayment plan;

(c) Explain the procedures the customer must follow to enter into a repayment plan;

(d) If the licensee requires the customer to make an initial payment to enter into a repayment plan, explain the requirement and state the amount of the initial payment and the date the initial payment must be made;

(e) State that the customer has the opportunity to enter into a repayment plan with a term of at least 90 days after the date of default; and

(f) Include the following amounts:

(1) The total of payments or the remaining balance on the original loan;

(2) Any payments made on the loan;

(3) Any charges added to the loan amount allowed pursuant to the provisions of this chapter; and

(4) The total amount due if the customer enters into a repayment plan.

3. Under the terms of any repayment plan pursuant to this section:

(a) The customer must enter into the repayment plan not later than 30 days after the date of default, unless the licensee allows a longer period;

(b) The licensee must allow the period for repayment to extend at least 90 days after the date of default, unless the customer agrees to a shorter term;

(c) The licensee may require the customer to make an initial payment of not more than 20 percent of the total amount due under the terms of the repayment plan;

(d) For a deferred deposit loan:

(1) The licensee may require a customer to provide, as security, one or more checks or written authorizations for an



electronic transfer of money which equal the total amount due under the terms of the repayment plan;

(2) The licensee shall, if the customer makes a payment in the amount of a check or written authorization taken as security for that payment, return to the customer the check or written authorization stamped "void" or destroy the check or written authorization; and

(3) The licensee shall not charge any fee to the customer pursuant to NRS 604A.490 for a check which is provided as security during the repayment plan and which is not paid upon presentment if, in connection with that loan, the licensee has previously charged at least one such fee.

4. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall honor the terms of the repayment plan, and the licensee shall not:

(a) Except as otherwise provided by this chapter, charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:

(1) Any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the annual percentage rate charged during the term of the original loan agreement; or

(2) Any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee;

(b) Except as otherwise provided in this section, accept any additional security or collateral from the customer to enter into the repayment plan;

(c) Sell to the customer any insurance or require the customer to purchase insurance or any other goods or services to enter into the repayment plan;

(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in NRS 604A.425;

(e) During the term of the repayment plan, attempt to collect the outstanding balance by commencing any civil action or process of alternative dispute resolution or by repossessing a vehicle, unless the customer defaults on the repayment plan; or

(f) Attempt to collect an amount that is greater than the amount owed under the terms of the repayment plan.



5. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall:

(a) Prepare a written agreement establishing the repayment plan; and

(b) Give the customer a copy of the written agreement. The written agreement must:

(1) Be signed by the licensee and customer; and

(2) Contain all of the terms of the repayment plan, including, without limitation, the total amount due under the terms of the repayment plan.

6. Each time a customer makes a payment pursuant to a repayment plan, the licensee shall give to the customer a receipt with the following information:

(a) The name and address of the licensee;

(b) The identification number assigned to the loan agreement or other information that identifies the loan;

(c) The date of the payment;

(d) The amount paid;

(e) The balance due on the loan or, when the customer makes the final payment, a statement that the loan is paid in full; and

(f) If more than one loan made by the licensee to the customer was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.

7. If the customer defaults on the repayment plan, the licensee may, to collect the outstanding balance, commence any civil action or process of alternative dispute resolution or repossess a vehicle as otherwise authorized pursuant to this chapter.

Sec. 22. NRS 604A.480 is hereby amended to read as follows:

604A.480 1. Except as otherwise provided in subsection 2, if a customer agrees *in writing* to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or ~~{short-term}~~ *high-interest* loan to pay the balance of the outstanding loan, the licensee shall not establish or extend ~~{such a}~~ *the* period beyond 60 days after the expiration of the initial loan period. *The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan.*

2. This section does not apply to a *new* deferred deposit loan or ~~{short-term}~~ *high-interest* loan if the licensee:

(a) Makes the *new* deferred deposit loan or ~~{short-term}~~ *high-interest* loan to a customer pursuant to a loan agreement which, under its original terms:



- (1) Charges an annual percentage rate of less than 200 percent;
 - (2) Requires the customer to make a payment on the loan at least once every 30 days;
 - (3) Requires the loan to be paid in full in not less than 150 days; and
 - (4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;
- (b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;
 - (c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;
 - (d) Gives the customer the right to rescind the *new* deferred deposit loan or ~~short-term~~ *high-interest* loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;
 - (e) Participates in good faith with a counseling agency that is:
 - (1) Accredited by the Council on Accreditation for Services for Families and Children, Inc., or its successor organization; and
 - (2) A member of the National Foundation for Credit Counseling, or its successor organization; and
 - (f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

Sec. 22.5. NRS 604A.485 is hereby amended to read as follows:

604A.485 1. ~~{Except as otherwise provided in NRS 604A.445, if}~~ *If* a customer defaults on a loan or on any extension or repayment plan relating to the loan, whichever is later, the licensee may collect only the following amounts from the customer, less all payments made before and after default:

- (a) The *unpaid* principal amount of the loan.
- (b) The *unpaid* interest, *if any*, accrued before the ~~{expiration of the initial loan period}~~ *default* at the annual percentage rate set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer. If there is an extension, *in writing and signed by the customer*, relating to the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 60 days after the expiration of the initial loan period, unless otherwise allowed by NRS 604A.480.
- (c) The interest accrued after the expiration of the initial loan period or after any extension or repayment plan that is allowed pursuant to this chapter, whichever is later, at an annual percentage



rate not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the expiration of the initial loan period, plus 10 percent. The licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 90 days. After that period, the licensee shall not charge or collect any interest on the loan.

(d) Any fees allowed pursuant to NRS 604A.490 for a check that is not paid upon presentment *or an electronic transfer of money that fails* because the account of the customer contains insufficient funds or has been closed.

➤ *The sum of all amounts collected pursuant to paragraphs (b), (c) and (d) must not exceed the principal amount of the loan.*

2. Except for the interest and fees permitted pursuant to subsection 1 and any other charges expressly permitted pursuant to NRS 604A.430, 604A.445 and 604A.475, the licensee shall not charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of the extension of the period for the payment of the loan or the extension of credit. Such ~~an amount includes.~~ *prohibited amounts include*, without limitation:

(a) Any interest, other than the interest charged pursuant to subsection 1, regardless of the name given to the interest; or

(b) Any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee.

Sec. 22.7. NRS 604A.490 is hereby amended to read as follows:

604A.490 1. A licensee may collect a fee of not more than \$25 if a check is not paid upon presentment *or an electronic transfer of money fails* because the account of the customer contains insufficient funds or has been closed.

2. If the account of the customer contains insufficient funds, the licensee may collect only two fees of \$25 each regardless of the number of times the check is presented for payment ~~+~~ *or the electronic transfer of money is attempted.*

3. If the account of the customer has been closed, the licensee may collect only one fee of \$25 regardless of the number of times the check is presented *or the electronic transfer of money is attempted* for payment.



4. A customer is not liable for damages pursuant to NRS 41.620 or to criminal prosecution for a violation of chapter 205 of NRS unless the customer acted with criminal intent.

Sec. 23. NRS 604A.655 is hereby amended to read as follows:

604A.655 1. Except as otherwise provided in this section, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other lending business is solicited or engaged in, except an insurance agency or notary public, or in association or conjunction with any other business, unless authority to do so is given by the Commissioner.

2. A licensee may conduct the business of making loans in the same office or place of business as:

(a) A mortgage broker if:

(1) The licensee and the mortgage broker:

- (I) Maintain separate accounts, books and records;
- (II) Are subsidiaries of the same parent corporation; and
- (III) Maintain separate licenses; and

(2) The mortgage broker is licensed by this State pursuant to chapter 645B of NRS and does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.

(b) A mortgage banker if:

(1) The licensee and the mortgage banker:

- (I) Maintain separate accounts, books and records;
- (II) Are subsidiaries of the same parent corporation; and
- (III) Maintain separate licenses; and

(2) The mortgage banker is licensed by this State pursuant to chapter 645E of NRS and, if the mortgage banker is also licensed as a mortgage broker pursuant to chapter 645B of NRS, does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.

3. If a pawnbroker is licensed to operate a check-cashing service, deferred deposit loan service, ~~short-term~~ **high-interest** loan service or title loan service, the pawnbroker may operate that service at the same office or place of business from which he conducts business as a pawnbroker pursuant to chapter 646 of NRS.

Sec. 24. NRS 604A.710 is hereby amended to read as follows:

604A.710 1. For the purpose of discovering violations of this chapter or ~~to~~ securing information lawfully required under this chapter, the Commissioner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein of:

(a) Any licensee;



(b) Any other person engaged in the business of making loans or participating in such business as principal, agent, broker or otherwise; and

(c) Any person who the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.

2. For the purpose of examination, the Commissioner or his authorized representatives shall have and be given free access to the offices and places of business, and the files, safes and vaults of such persons.

3. For the purposes of this section, any person who advertises for, solicits or holds himself out as willing to make any deferred deposit loan, ~~short-term~~ **high-interest** loan or title loan is presumed to be engaged in the business of making loans.

Sec. 25. NRS 604A.920 is hereby amended to read as follows:

604A.920 If a person operates a check-cashing service, deferred deposit loan service, ~~short-term~~ **high-interest** loan service or title loan service without obtaining a license pursuant to this chapter:

1. Any contracts entered into by that person for the cashing of a check or for a deferred deposit loan, ~~short-term~~ **high-interest** loan or title loan are voidable by the other party to the contract; and

2. In addition to any other remedy or penalty, the other party to the contract may bring a civil action against the person pursuant to NRS 604A.930.

Sec. 26. NRS 604A.930 is hereby amended to read as follows:

604A.930 1. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, if a person violates any provision of NRS 604A.400, 604A.410 to 604A.500, inclusive, 604A.610, 604A.615, 604A.650 or 604A.655 **or section 6 of this act** or any regulation adopted pursuant thereto, the customer may bring a civil action against the person for : ~~any or all of the following relief.~~

(a) Actual and consequential damages;

(b) Punitive damages, which are subject to the provisions of NRS 42.005;

(c) Reasonable attorney's fees and costs; and

(d) Any other legal or equitable relief that the court deems appropriate.

2. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, the customer may bring a civil action against a person pursuant to subsection 1 to recover an



additional amount, as statutory damages, which is equal to \$1,000 for each violation if the person knowingly:

(a) Operates a check-cashing service, deferred deposit loan service, ~~short-term~~ **high-interest** loan service or title loan service without a license, in violation of NRS 604A.400;

(b) Fails to include in a loan agreement a disclosure of the right of the customer to rescind the loan, in violation of NRS 604A.410;

(c) Violates any provision of NRS 604A.420;

(d) Accepts collateral or security for a deferred deposit loan, in violation of NRS 604A.435, except that a check or written authorization for an electronic transfer of money shall not be deemed to be collateral or security for a deferred deposit loan;

(e) Uses or threatens to use the criminal process in this State or any other state to collect on a loan made to the customer, in violation of NRS 604A.440;

(f) Includes in any written agreement a promise by the customer to hold the person harmless, a confession of judgment by the customer or an assignment or order for the payment of wages or other compensation due the customer, in violation of NRS 604A.440;

(g) Violates any provision of NRS 604A.485; ~~or~~

(h) Violates any provision of NRS 604A.490 ~~+~~; **or**

(i) **Violates any provision of section 6 of this act.**

3. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

(b) Was technical in nature; and

(c) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. For the purposes of subsection 3, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to the person's obligations under this chapter is not a bona fide error.

Sec. 27. NRS 99.050 is hereby amended to read as follows:

99.050 ~~Parties~~ **Except as otherwise provided in section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation adopted pursuant thereto, parties** may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees. The parties shall specify in writing the rate upon which they



agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

Sec. 28. Chapter 675 of NRS is hereby amended by adding thereto a new section to read as follows:

The provisions of this chapter apply to any person who:

1. *Makes installment loans that are not subject to regulation pursuant to chapter 604A of NRS;*

2. *Is an affiliate, subsidiary or holding company of a bank, national banking association, savings bank, trust company, savings and loan association, credit union, development corporation, mortgage broker, mortgage banker, thrift company or insurance company; or*

3. *Seeks to evade its application by any device, subterfuge or pretense, including, without limitation:*

(a) Calling a loan by any other name;

(b) Using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter; or

(c) Having any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter pursuant to subsection 1 of NRS 675.040, the effect of which is to evade the provisions of this chapter, including, without limitation, making a loan while purporting to be the agent of such an exempt entity where the purported agent holds, acquires or maintains a material economic interest in the revenues generated by the loan.

Sec. 29. NRS 675.040 is hereby amended to read as follows:

675.040 This chapter does not apply to:

1. ~~{A}~~ *Except as otherwise provided in section 28 of this act, a person doing business under the authority of any law of this State or of the United States relating to banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers or insurance companies.*

2. *A real estate investment trust, as defined in 26 U.S.C. § 856.*

3. *An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.*

4. *An attorney at law rendering services in the performance of his duties as an attorney at law if the loan is secured by real property.*

5. *A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.*



6. Except as otherwise provided in this subsection, any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller or servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

7. A person who provides money for investment in loans secured by a lien on real property, on his own account.

8. A seller of real property who offers credit secured by a mortgage of the property sold.

9. A person holding a nonrestricted state gaming license issued pursuant to the provisions of chapter 463 of NRS.

10. A person licensed to do business pursuant to chapter 604A of NRS with regard to those services regulated pursuant to chapter 604A of NRS.

Sec. 29.5. NRS 675.060 is hereby amended to read as follows:

675.060 1. No person may engage in the business of lending in this State without first having obtained a license from the Commissioner pursuant to this chapter for each office or other place of business at which the person engages in such business, except that if a person intends to engage in the business of lending in this State as a deferred deposit loan service, ~~short-term~~ *high-interest* loan service or title loan service, as those terms are defined in chapter 604A of NRS, the person must obtain a license from the Commissioner pursuant to chapter 604A of NRS before the person may engage in any such business.

2. For the purpose of this section, a person engages in the business of lending in this State if he:

(a) Solicits loans in this State or makes loans to persons in this State, unless these are isolated, incidental or occasional transactions; or

(b) Is located in this State and solicits loans outside of this State or makes loans to persons located outside of this State, unless these are isolated, incidental or occasional transactions.

Sec. 29.7. NRS 675.365 is hereby amended to read as follows:

675.365 In addition to the interest allowed pursuant to NRS 675.363, a licensee may, pursuant to the agreement for a loan for an indefinite term, receive from the borrower or add to the unpaid balance in that borrower's account:

1. Any fees imposed on the licensee pursuant to this chapter;
2. Any charge for insurance under NRS 675.300;



3. A charge not exceeding 25 cents for each transaction in which a loan or advance is made pursuant to the agreement or an annual fee for the use of an open-end account in an amount not to exceed \$20;

4. If the interest calculated for any billing cycle pursuant to NRS 675.363 is less than 50 cents:

(a) For a billing cycle which is monthly or longer, a charge in an amount not exceeding 50 cents; or

(b) For a billing cycle less than monthly, a charge in an amount equal to that portion of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bear to 365 divided by 12;

5. For any check written by the borrower to the licensee which is returned ~~for~~, *or any electronic transfer of money that fails, because of insufficient funds*, a charge of \$10 or in an amount equal to the charges imposed on the licensee because of his reliance on that check ~~or~~ *or electronic transfer of money*, whichever amount is greater; and

6. Any charge assessed the licensee by a third party for the printing and distribution of any checks, drafts or other instruments to be used by the borrower in obtaining advances pursuant to the agreement.

Sec. 30. NRS 604A.095 and 604A.100 are hereby repealed.

Sec. 31. Any license to operate a short-term loan service that was issued by the Commissioner of Financial Institutions pursuant to chapter 604A of NRS before October 1, 2007, shall be deemed to be a license to operate a high-interest loan service which was issued by the Commissioner pursuant to the provisions of chapter 604A of NRS and which expires on the date on which the license to operate a short-term loan service would have expired pursuant to the provisions of NRS 604A.640.

Sec. 32. 1. A license to engage in the business of lending in this State which was issued by the Commissioner of Financial Institutions pursuant to chapter 675 of NRS before October 1, 2007, to a person who, pursuant to the provisions of this act, is subject to regulation only pursuant to chapter 604A of NRS, shall be deemed to be a license issued by the Commissioner pursuant to chapter 604A of NRS. Such a license expires on December 31, 2007, and may be renewed on or before its expiration in accordance with NRS 604A.640. Upon the renewal of such a license, the Commissioner shall issue to the holder of the license a license pursuant to chapter 604A of NRS in lieu of the license issued pursuant to chapter 675 of NRS.



2. Any person who is licensed pursuant to chapter 675 of NRS to engage in the business of lending in this State on September 30, 2007, may continue to operate in the same location upon becoming licensed pursuant to chapter 604A of NRS, notwithstanding any ordinance or other zoning regulation to the contrary. This subsection does not exempt such a person from any provision of chapter 604A of NRS or any regulation adopted pursuant thereto.

Sec. 33. The amendatory provisions of this act do not apply to loans entered into before October 1, 2007.

Sec. 34. This act becomes effective on October 1, 2007.



138.06 Effect of usury and penalties. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 138.05, 138.051 or 138.052 shall be valid and effectual to secure the repayment of the principal amount loaned in excess of \$2,000; but no interest may be recovered thereon except upon bottomry and respondentia bonds and contracts.

(2) Any lender or agent of a lender who violates s. 138.05, 138.051 or 138.052 may be fined not less than \$25 nor more than \$500, or imprisoned not more than 6 months, or both.

(3) Any borrower who paid interest on a loan or forbearance at a rate greater than the rate allowed in s. 138.05, 138.051 or 138.052 may personally or by personal representative recover in an action against the lender or personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than \$2,000 of principal, if the action is brought within the time provided by s. 893.62.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 138.05 (4) with respect to a loan or forbearance may by himself or herself or his or her personal representative recover in an action against the lender or the lender's personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than \$50 plus reasonable attorney fees incurred in such action.

(5) Notwithstanding subs. (1) to (4), if any violation of s. 138.05, 138.051 or 138.052 is the result of an unintentional mistake which the lender or agent of the lender corrects upon demand, such unintentional violation shall not affect the enforceability of any provision of the loan contract as so corrected nor shall such violation subject the lender or the agent of the lender to any penalty or forfeiture specified in this section.

(6) In connection with a sale of goods or services on credit or any forbearance arising therefrom prior to October 9, 1970, there shall be no allowance of penalties under this section for violation of s. 138.05, except as to those transactions on which an action has been reduced to a final judgment as of May 12, 1972.

(7) Notwithstanding sub. (6), a seller shall, with respect to a transaction described in sub. (6), refund or credit the amount of interest, to the extent it exceeds the rate permitted by s. 138.05 (1) (a), which was charged in violation of s. 138.05 and paid by a buyer since October 8, 1968, upon individual written demand therefor made on or before March 1, 1973, and signed by such buyer. A seller who fails within a reasonable time after such demand to make such refund or credit of excess interest shall be liable in an individual action in an amount equal to 3 times the amount thereof, together with reasonable attorney fees.

(8) This section does not apply to a loan or forbearance made on or after November 1, 1981.

History: 1971 c. 308; 1979 c. 168 s. 21; 1979 c. 323, 355; 1981 c. 45 ss. 4, 51; 1993 a. 482, 490.

Sub. (7) is constitutional. *Wiener v. J. C. Penney Co.*, 65 Wis. 2d 139, 222 N.W.2d 149 (1974).

Class actions for the recovery of usurious interest charged by revolving credit plans are not precluded by (3). *Mussallam v. Diners' Club, Inc.*, 69 Wis. 2d 437, 230 N.W.2d 717 (1975).

Sub. (6) is constitutional. 60 Atty. Gen. 198.

138.09 Licensed lenders. (1d) In this section, "division" means the division of banking.

(1m) (a) Before any person may do business under this section or charge the interest authorized by sub. (7) and before any creditor other than a bank, savings bank, savings and loan association or credit union may assess a finance charge on a consumer loan in excess of 18% per year, that person shall first obtain a license from the division. Applications for a license shall be in writing and upon forms provided for this purpose by the division. An applicant at the time of making an application shall pay to the division a nonrefundable \$300 fee for investigating the application and a \$500 annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds \$300, the applicant shall upon demand of the

division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) 1. Except as provided in par. (c), an application under par. (a) for a license shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(c) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Notwithstanding sub. (3) (b), any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(2) The division may also require the applicant to file with the division, and to maintain in force, a bond in which the applicant shall be the obligor, in a sum not to exceed \$5,000 with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of \$5,000 in the aggregate, to be approved by the division, and such bond shall run to the state of Wisconsin for the use of the state and of any person or persons who may have a cause of action against the obligor of the bond under the provisions of this section. Such bonds shall be conditioned that the obligor will conform to and abide by each and every provision of this section, and will pay to the state or to any person or persons any and all moneys that may become due or owing to the state or to such person or persons from the obligor under and by virtue of the provisions of this chapter.

(3) (a) Upon the filing of such application and the payment of such fee, the division shall investigate the relevant facts. Except as provided in par. (am), if the division shall find that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the division shall not so find, the division shall deny such application.

(am) The division may not issue a license under this section to an applicant if any of the following applies:

1. The applicant fails to provide any information required under sub. (1m) (b).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

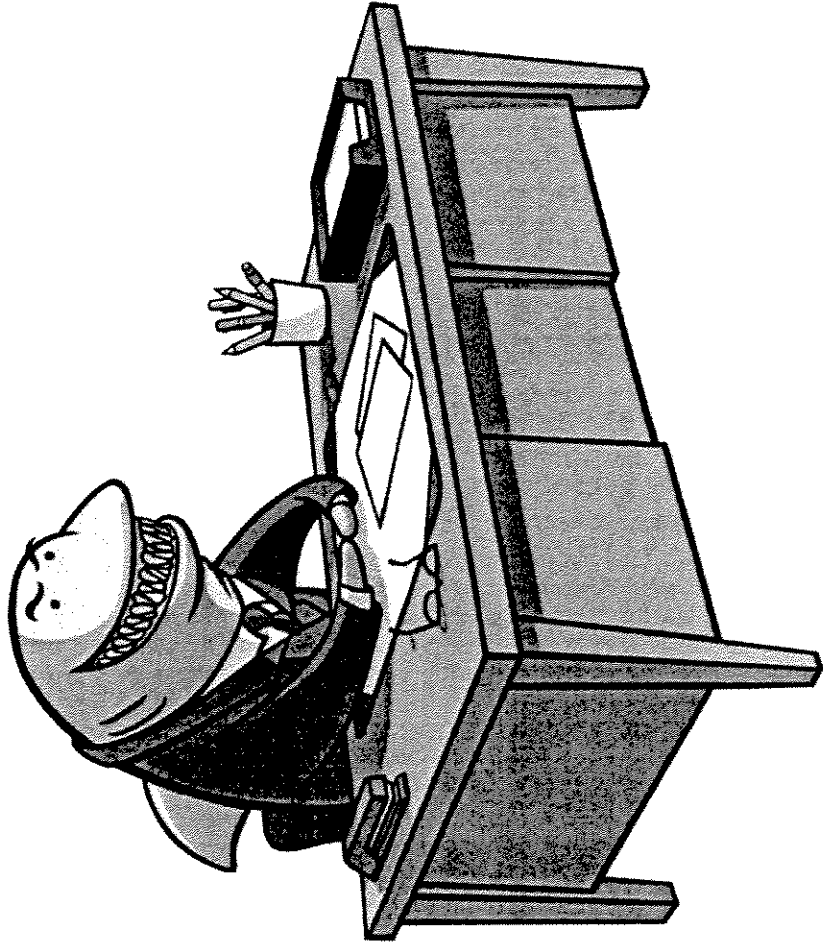
4. The applicant is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(b) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each Decem-

Assembly Bill 478

Assembly Speaker Barbara Buckley
Testimony before the Senate
Committee on Commerce and Labor

Assembly Bill 478 – Stop Predatory Lending Practices!



The purpose of
Assembly Bill 478 is:

Close a loophole in
the current high
interest loan law (NRS
604A) being exploited
by high interest
lenders (NRS 604A);
and

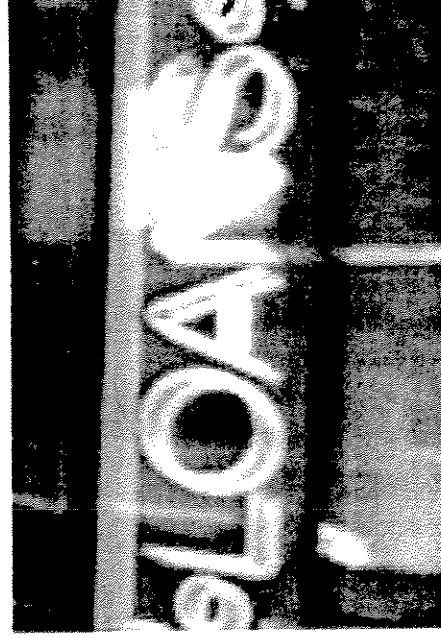
- Provide greater
protection to members
of the military.

604A Was Drafted With Input From the Installment, Payday and Title Lenders.

* In 2005, AB 384 was passed, providing protection for customers of payday lenders, title lenders and high interest installment lenders. The uniform rules created a level playing field for all of these lenders.

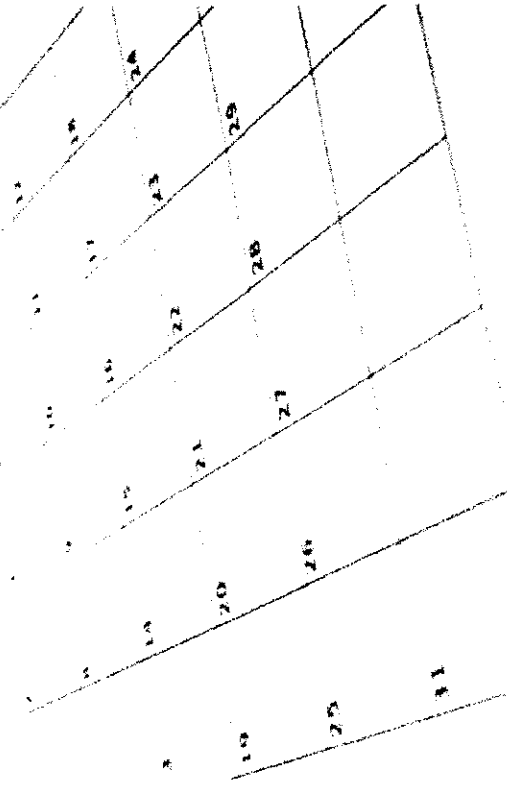
* While the consumer protection components have been largely successful, and most of these lenders obtained licenses and abided by the requirements of 604A, a few have chosen to evade the law.

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How Are Some Lenders Evading The Law?

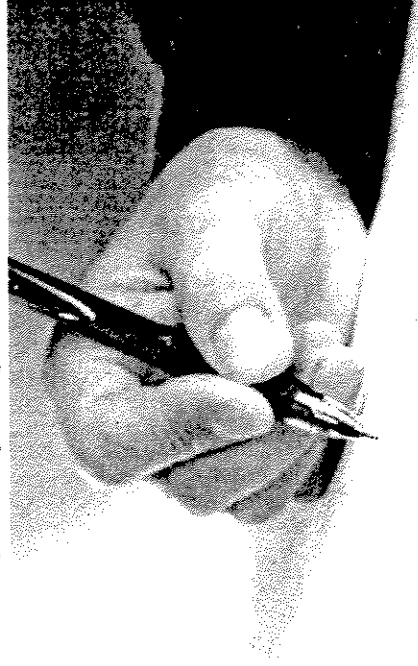
- * Under 604A, a short term loan was defined as a loan that charged an annual percentage rate of more than 40 percent and had a loan term of less than one year.
- * Prior to the enactment of the 604A, the short-term loan industry typically made loans for a term ranging from one to four weeks.
- * After 2005, in a deliberate attempt to evade the law passed in 2005, some lenders re-wrote their contracts so that the term of the loan became 1 year and 1 day!



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What Tactics Are Some Lenders Using To Evade The Law?

- * Customers are required to sign a one year contract every few months, providing interest-only monthly payments, often with a large balloon payment the last month.
- * These lenders also charge late fees and post-judgment default fees.
- * Customers are referred to affiliated companies of the original lender for additional loans in order to get the cash to make the monthly, interest-only payments.



Contract Examples of Pre- and Post-July 2005 Loans – Handy Cash Loan Centers

	Pre-July 2005 Example	Post-July 2005 Example
Loan Amount	\$200.	\$200
A.P.R. Disclosed	714%	803%
Loan Period	4 months	1 year
Number of payments	8 payments	26 payments
Total Finance Charge	\$344.	\$1,602.60

**Pre- and Post-July 2005 Loan amount is identical.
Post-July 2005 Finance Charge increased 366%.**

Contract Examples of Pre- and Post-July 2005 Loans - Budget Loans

	Pre-July 2005 Example	Post-July 2005 Example
Loan Amount	\$403	\$800
A.P.R. Disclosed	521%	521%
Loan Period	14 days	1 year
Number of payments	1 payment	26 payments
Total Finance Charge	\$80.53	\$4,319.98

Pre-July 2005 Loan Amount increased 100%

Post-July 2005 Finance Charge increased 5,300% - from \$81 to \$4,320.

7/9/16

Contract Examples of Pre- and Post-July 2005 Loans – Lucky Credit Company, LLC

Pre-July 2005 Example

Loan Amount \$150.
 A.P.R. Disclosed 521%
 Loan Period 4 days
 Number of payments 1 payment
 Total Finance Charge \$15.

Post-July 2005 Example

\$500
 456%
 1 year
 26 payments
 \$2,470

Pre-July 2005 Loan Amount *increased* 230%

Post-July 2005 finance charge *increased* a whopping 16,367% - from \$15 to \$2,470.

Contract Examples of Pre- and Post-July 2005 Loans – The Loan Depot, Inc.

Pre-July 2005 Example

Post-July 2005 Example

Loan Amount	\$925.	\$300
A.P.R. Disclosed	260%	260%
Loan Period	7 days	2 years
Number of payments	1 payment	104 payments
Total Finance Charge	\$46.25	\$1,560.

Pre-July 2005 Loan Amount decreased 68%
Post-July 2005 Finance Charges increased 328%.

Assembly Bill 478

This bill closes the loophole that allowed some lenders to ignore 604A and to charge interest and other fees for more than one year by:

- * Deleting current language in 604A that limits application to "short-term" loans with an annual rate of interest greater than 40 percent **and** with a term of less than one year (section 2);
- * Regulated loans are now called "high interest loans", defined as any loan with an annual rate of interest greater than 40 percent.
- * All charges or fees, regardless of what they are called, must be included in calculating of the annual percentage rate of the loan (section 4); and
- * The original term of any high interest loan is limited to 90 days (sections 5 & 22).



Impact on the Military

Predatory payday lending costs military families over \$80 million in abusive fees annually.

ALL of the internet-based military installments lenders surveyed by the U.S. Department of Defense in the Report on Predatory Lending Practices *listed Nevada as their home state.*

Military leaders have come to the Nevada Legislature and asked for our help in stamping out this pernicious threat to our country's military capabilities.

"We ask that you help us put a stop to predatory payday lending practices directed against those who defend our nation's freedom."
Sgt. Maj. Wayne R. Bell, Sergeant Major for Marine Corps Bases West

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How Do Predatory Lending Practices Threaten Military Readiness?

* According to the Department of Defense, members of the military are 3 times more likely to be victims of abusive lending practices

* They are the "perfect" target:

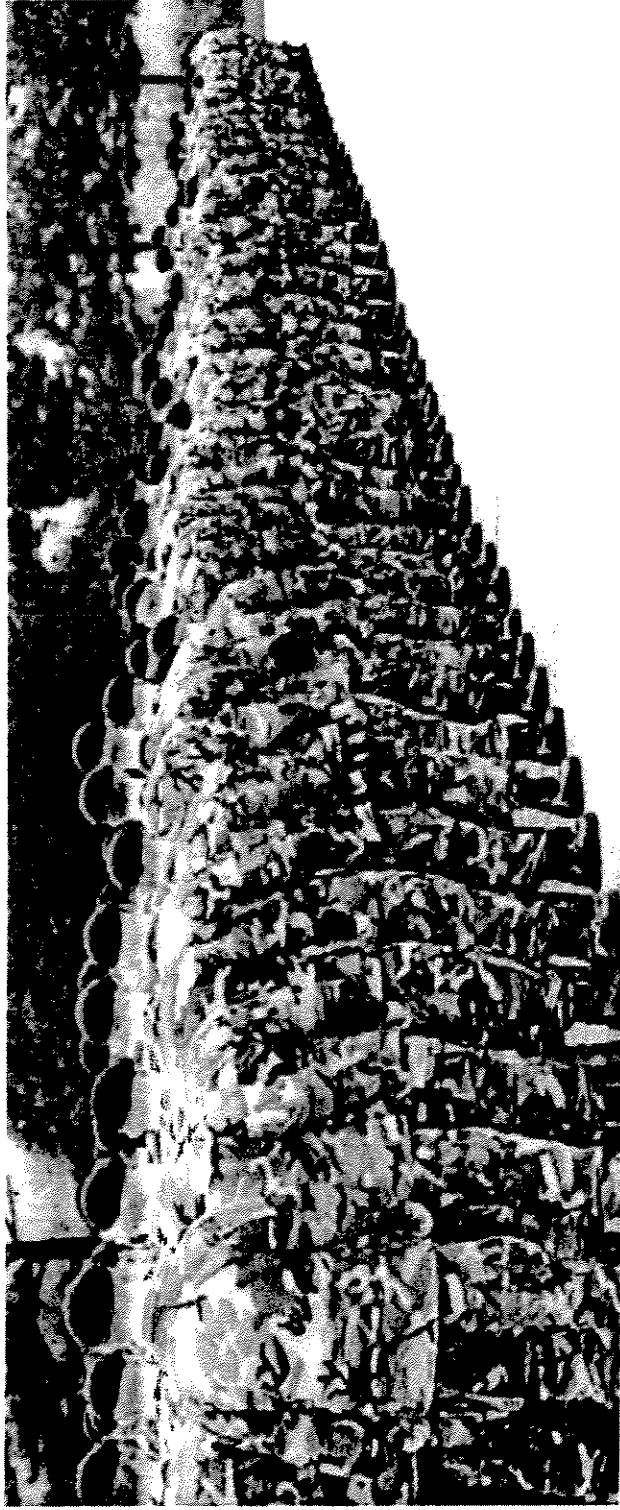
- * Young and financially inexperienced
- * Struggling to support a family
- * Have a steady income
- * Honest and want to repay loan
- * Easy to locate
- * Risk being demoted for not repaying debt

* Failure to repay a high interest loan results makes a soldier a security risk and disqualifies him or her from combat deployment: *the number of such revoked security clearances has increased 1,600% since 2000.*



Harm U.S. Security Interests By Impacting A Soldier's Combat Readiness

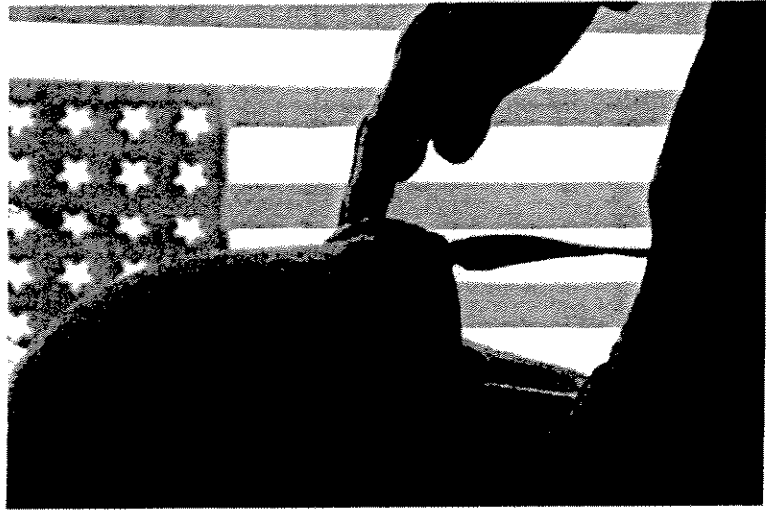
The Department of Defense report states that *predatory lending harms troop morale*. A soldier worried about paying back unreasonable loan amounts cannot focus on the important combat mission before him or her.



Assembly Bill 478

This bill extends greater protections to our soldiers and their spouses.

- * Lenders must honor any proclamation by a base commander that lending locations are off-limits to soldiers and their spouses.
- * Lenders may not garnish or threaten to garnish wages of the member or spouse, or contact or threaten to contact the military chain of command.
- * Lenders may not commence or continue collection efforts against a deployed member of the military or the member's spouse.



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Department of Defense Regulations Do Not Sufficiently Protect Our Military.

Some people think that the federal regulations recently issued under the 2006 National Defense Authorization Act will protect America's soldiers – unfortunately, they will need the protection of Nevada law as well:

- * The regulations contain a 36% interest rate cap on “short term” loans but defines a “short term” loan as:
 - * A “closed end” loan – in Pennsylvania, one lender evaded similar state language by making all loans “open ended” up to some imaginary maximum amount, thereby evading State regulation;
 - * A loan made for less than 91 days (We in Nevada know what happens when you limit regulatory coverage to loans in this fashion – lenders amend their contracts and extend the loan for 1 day over the cut-off limit. Here, lenders will simply make loans for periods of 92 days or more and evade the regulations; and
 - * Although Congress required all fees and single premium insurance to be included in the interest calculation, the regulation does not include credit insurance premiums in the interest calculation.

AB 478 Complements Federal Law

- AB 478 plugs some of the gaps left by the federal regulations – the Department of Defense does not appreciate the extent to which some unscrupulous lenders will go to evade regulation and who prey upon the gullibility of financially unsophisticated borrowers.
- Nevada knows, from hard experience, that the DOD regulations will not give our fighting forces the protection they deserve – Nevada has the means to protect the people who defend our country and the obligation to protect them.

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2 page(s) will be printed.

Record: 1

Title: First Bank of Del. Shuts Storefront Lending Business.

Authors: Jackson, Ben

Source: American Banker; 4/4/2007; Vol. 172 Issue 65, p4-4, 2/5p

Document Type: Article

Subject Terms: *BRANCH banks
*INSTALLMENT loans
*PAYDAY loans
DELEGATED legislation
FEDERAL Deposit Insurance Corp.

Company/Entity: FIRST Bank of Delaware (Company)
NAICS/Industry Codes522110 Commercial Banking

Abstract: The article discusses First Bank of Delaware's (FBOD) announcement that it will stop making third-party consumer installment loans. FBOD will stop offering the loans through storefront vendors by April 17, 2007, but will continue to offer installment loans through its branches and over the Internet. FBOD's decision to stop offering the loans comes as a result of revised Federal Deposit Insurance Corp. regulation restrictions between state-chartered banks and payday lenders.

Full Text Word Count: 533

ISSN: 0002-7561

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Database: Business Source Elite

Section: COMMUNITY BANKING**First Bank of Del. Shuts Storefront Lending Business**

Nearly a year after being forced out of the payday lending business, First Bank of Delaware has bowed to regulatory pressure and will stop making third-party consumer installment loans.

The \$124 million-asset bank said late Friday that it would stop offering consumer loans through storefront vendors by April 17. It stressed that it would continue to offer installment loans through its branches and over the Internet, but it warned investors that severing ties with storefront vendors could have a "materially adverse" effect on earnings.

First Bank of Delaware has been making loans through outlets of Dollar Financial Corp., a Berwyn, Pa., consumer lender.

The bank did not disclose its relationship with Dollar in its announcement Friday, but Dollar announced in a press release Tuesday that it is converting its installment loan product to an Internet platform, because of recent changes announced by First Bank of Delaware.

Dollar was a partner of First Bank of Delaware when it made payday loans.

First Bank shuttered its payday operation, in which it made loans in several states through third-party lenders such as Dollar and Irving, Tex.-based Ace Cash Express Inc., in June. It did so in response to revised Federal Deposit Insurance Corp. regulations that put new restrictions on state-chartered banks that partner with payday lenders.

In a news release Friday, First Bank of Delaware said it decided to stop making installment loans

through third-party vendors after discussions with the FDIC.

The FDIC did not return calls seeking comment, but First Bank of Delaware said in its 2006 annual report, released in March, that it had received a letter from the FDIC urging the bank to stop making the installment loans through third parties due to "perceived reputational, compliance, and legal risks."

First Bank of Delaware's shares fell more than 5% on the news Monday. They rebounded slightly Tuesday to close at \$3.65.

Calls to First Bank of Delaware's chief financial officer, Paul Frenkiel, in its Wilmington offices were not returned. When reached at his Philadelphia office, chief executive officer Harry D. Madonna said "No comment" and hung up.

(Mr. Madonna is also the chief executive officer at the \$1 billion-asset Republic First Bancorp Inc. in Philadelphia. First Bank of Delaware was a unit of Republic First until 2005, when it was spun off.)

First Bank of Delaware also said in a recent Securities and Exchange Commission filing that it has stopped making tax refund anticipation loans, and that the decision could also affect earnings. It said the fees on the loans were equivalent to annual interest rates of 50% to over 200%.

In its 2006 annual report, the company said tax refund products generated \$1.1 million of net income from, and short-term consumer loans generated \$673,000.

First Bank of Delaware's installment loans had terms of two weeks to 140 days and were typically under \$2,500. The unsecured loans had an annual interest rate of 450%. Many of the loans were sold to third parties.

First Bank's fourth-quarter earnings rose 168% from a year earlier, to \$581,000. Full-year earnings rose 24%, to \$3.4 million.

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By Ben Jackson

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**Record: 1**

**Title:** SAN FRANCISCO / 'Payday loan' firm sued by city attorney  
**Authors:** Heather Knight  
**Source:** San Francisco Chronicle:(CA); 04/27/2007  
**Accession Number:** 9YQ0496886463  
**Database:** Newspaper Source

**SAN FRANCISCO / 'Payday loan' firm sued by city attorney**

Edition: FINAL, Section: BAY AREA, Column: BAY AREA DIGEST, pg. B3

San Francisco City Attorney Dennis Herrera sued storefront lenders Check 'n Go and Money Mart on Thursday, accusing them of violating state fair business practices law by marketing short-term installment loans and charging exorbitant interest rates.

The institutions are licensed to provide "payday loans", in which borrowers -- usually low-income families living paycheck to paycheck -- give the lender a post-dated check in exchange for cash.

But the lawsuit charges that Check 'n Go illegally offers short-term loans for up to \$1,500 with annual percentage rates exceeding 400 percent. Check 'n Go has questionable arrangements with online affiliates and First Bank of Delaware, also named in the suit, to skirt state law, the suit alleges.

According to the complaint, Money Mart marketed an identical loan in association with First Bank of Delaware until earlier this month, when the company quietly ended the practice in its storefront locations. Company marketing materials, however, indicate Money Mart plans to launch an Internet version of the same product later this month, according to the complaint.

Neither Check 'n Go nor Money Mart is licensed to provide short-term loans or offer installment loans in the same place of business as payday loans. Herrera's complaint says the two institutions are engaging in bait-and-switch marketing practices that constitute deceptive advertising. The schemes, Herrera says, "would make a loan shark blush."

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**Source:** San Francisco Chronicle (CA), Apr 27, 2007  
**Item:** 9YQ0496886463

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# PITTSBURGH TRIBUNE-REVIEW

## State sues 'payday' lender

By Kim Leonard  
TRIBUNE-REVIEW

Thursday, September 28, 2006

Pennsylvania filed a lawsuit Wednesday against a former payday lending company that still does business in the state by switching in recent months to selling credit lines or installment loans.

The state Department of Banking filed the lawsuit in Commonwealth Court against Advance America of Spartanburg, S.C., which since June has been selling a \$500, short-term line of credit for a monthly "participation" fee of \$149.95 and a 5.98 percent interest rate.

Advance America stopped making true payday loans -- small cash advances that typically were rolled over at high interest rates -- in late March at its 101 Pennsylvania centers, because of changes to federal banking rules.

State officials consider the credit line just as dangerous. "Under this outrageous product, a person who borrows \$500 and makes minimum monthly payments (of about \$20) ends up paying back more than \$4,000 over about two years," Gov. Ed Rendell said in announcing the lawsuit.

The suit contends the monthly fee is illegal, because when combined with the interest rate, it exceeds the 6 percent rate allowed by state law.

Advance America, with about 20 Western Pennsylvania stores, declined to discuss the lawsuit yesterday. "We remain confident we are in compliance with all applicable laws, and we will vigorously defend our position," said spokesman Jamie Fulmer.

Advance America, the nation's largest payday lender, can continue to offer the credit line pending court action.

Storefront payday lenders used to hold customers' postdated, personal checks to guarantee they repaid loans within two weeks, or rolled them over.

Borrowers often couldn't come up with all the cash they owed after their next payday, and had to continue the loan for another two weeks, then another, with interest rates growing to 400 percent or higher.

The average Pennsylvania payday borrower ends up paying \$800 to borrow \$325, the Pennsylvania Coalition for Responsible Lending said, and Freya Fridy, a counselor at Pittsburgh-based Advantage Credit Counseling Service, said the loans "are never the answer."

This year, the payday lending industry nationwide expected to float about \$45

State sues 'payday' lender - Pittsburgh Tribune-Review

billion in loans -- payday advances and other short-term loans -- and collect more than \$7 billion in fees. That's an increase of 10 to 12 percent from last year, said Bob Rochford, deputy general counsel for the Financial Service Centers of America Inc., which represents the industry.

Federal Deposit Insurance Corp. rule changes last year contained a caveat that forced most Pennsylvania stores out of the controversial practice.

Payday lenders here were limited to using out-of-state banks, because their interest rates were higher than those that banks operating in Pennsylvania could charge for short-term loans.

The FDIC imposed new restrictions on those banks, deeming the payday practice risky. Gradually, the banks dropped out of Pennsylvania and other states that don't regulate payday lending. The new rules don't apply in 38 states that do regulate the practice.

Afterward, rather than closing up shop, large lenders with hundreds of outlets nationwide worked to tailor new products for each state. And in Pennsylvania, the typical solution was the installment loan, Rochford of FiSCA said.

ACE Cash Express, with more than 20 stores in the region, quit issuing payday loans June 30. The company turned to offering short-term credit through a 20-week term installment loan of up to \$1,000, with payments due every two weeks.

ACE stores, though, also offer check cashing, money orders, bill payment and money wiring services. Loans represent 34 percent of the total business, spokesman Eric Norrington said.

Elizabeth Duncan, of Robinson, has taken out payday loans and the new installment loans from ACE about eight times in the past two years.

"I know the interest is high," said Duncan, who earns straight commission and isn't paid on a regular schedule, "but sometimes you do what you have to do." Her loans have ranged from \$100 to \$1,000, and she's careful to pay them off by the due date, without rolling them over. That way, the interest is "not a killer," she said.

Check 'n Go, with about eight stores in the region, quit the payday lending business June 1, offering as an alternative a four-month installment loan that, for example, requires eight payments of \$111 to settle a loan of \$500.

"We have revisited the space of the small consumer loan," spokesman John Rabenold said. "... Our customers seem to like it."

Rabenold said Check 'n Go customers in Western Pennsylvania have traveled to other states to get traditional, two-week payday loans. "That's good for our stores in Ohio," one of the states that regulates payday lenders, "but it's inconvenient for customers to go to another state to get \$300."

*Kim Leonard can be reached at [kleonard@tribweb.com](mailto:kleonard@tribweb.com) or (412) 380-5606.*