

# Car Title Lending



## Driving Borrowers to Financial Ruin

A report by  
The Center for Responsible Lending and  
The Consumer Federation of America

Amanda Quester and Jean Ann Fox

April 14, 2005



[www.responsiblelending.org](http://www.responsiblelending.org)



Consumer Federation of America

[www.consumerfed.org](http://www.consumerfed.org)

---

# Table of Contents

---

Executive Summary .....	2
Introduction.....	4
Typical Characteristics of Car Title Loans .....	4
Car Title Loans Are Short-Term, Over-Secured Small Loans .....	5
Borrowers Pay Triple-Digit Interest Rates on Car Title Loans .....	5
Title Lenders Make Loans Without Regard to Ability To Repay .....	6
Car Title Loans Are Frequently Rolled Over .....	6
Title Loans Jeopardize Many Borrowers’ Most Valuable Possession.....	7
Title Lenders May Benefit When Borrowers Default.....	7
Title Loans Have a Ripple Effect on Borrowers’ Lives .....	8
The Title Lending Industry .....	9
Title Lending Is Growing Rapidly .....	9
Title Lenders Have Lobbied Hard for Laws Favorable to the Industry.....	10
Title Lenders Circumvent Existing Consumer Protections By Disguising the True Nature of Their Products.....	11
“Sales and Leasebacks” .....	11
“Title Pawns” .....	11
“Motor Vehicle Equity Line of Credit” .....	12
Title Loan Protections.....	14
Establishing Fair and Affordable Loan Terms.....	14
Protecting Borrowers After a Default .....	16
Closing Loopholes to Ensure Consistent Regulation.....	16
Monitoring Lenders through Licensing, Examination, Bonding, and Reporting Requirements .....	17
Ensuring Borrowers Can Exercise Their Rights.....	18
Conclusion .....	20
Notes .....	21
Appendix A: Table of Existing Laws that Expressly Permit Title Lending .....	32
Appendix B: Alternatives to Title Loans .....	35

## Executive Summary

---

Like payday loans, car title loans are marketed as small emergency loans, but in reality these loans trap borrowers in a cycle of debt. Car title loans put at high risk an asset that is essential to the well-being of working families—their vehicle.

A typical car title loan has a triple-digit annual interest rate, requires repayment within one month, and is made for much less than the value of the car. Title loans are typically made without regard to borrowers' ability to repay. Because the loans are structured to be repaid as a single balloon payment after a very short term, borrowers frequently cannot pay the full amount due on the maturity date and instead find themselves extending or “rolling over” the loan repeatedly. In this way, many borrowers pay fees well in excess of the amount they originally borrowed. If the borrower fails to keep up with these recurring payments, the lender may summarily repossess the car, often stripping borrowers of their most valuable possession and only means of transportation.

Although high-priced title loans are illegal in most states, the title lending industry has grown tremendously in recent years in states that have failed to take adequate steps to protect borrowers. Title lenders have made generous campaign contributions, and industry-friendly laws have passed in some states at breakneck speed. In other states, title lenders have sought to hide the true nature of their products in order to exploit loopholes in existing laws – pretending, for example, that their abusive loans are “sales and leasebacks” or “pawns” when in fact that is not the case.

In light of the title lending industry's history of evasions and abusive practices, states that permit small loans to be secured by the title to the borrower's vehicle should enact strict legal requirements to ensure that borrowers are well protected, including the following:

- **Establishing Fair and Affordable Loan Terms.** Title loans should have a longer loan term and provide borrowers an affordable installment repayment schedule rather than requiring one massive lump sum payment shortly after the loan is made. Rates should be limited, and lenders should consider their customer's ability to repay before making a title loan. Borrowers should also have a right to cancel loans within a reasonable time after obtaining them and a right to prepay loans without penalty at any time.
- **Protecting Borrowers After a Default.** States should provide borrowers with protections in the event of default, since the car is often the borrower's largest asset and essential to the borrower being able to retain employment and access to services. These post-default protections should include reasonable repossession procedures, a right to redeem, commercially reasonable sales, return of surplus after sale, and a prohibition on personal liability after repossession.

## Car Title Lending: Driving Borrowers to Financial Ruin

- **Closing Loopholes to Ensure Consistent Regulation.** States that permit title lending should close loopholes regarding what loans are covered and ensure that laws apply to all lenders, including those that operate interstate.
- **Monitoring Lenders Through Licensing, Bonding, Reporting, and Examination Requirements.** States with active title lenders should enact strong licensing, bonding, reporting, and examination requirements to ensure that the lenders are closely monitored.
- **Ensuring Borrowers Can Exercise Their Rights.** Borrowers should have a private right of action and a right to void contracts that lenders enter into in violation of the statutory requirements, so that they can exercise and enforce their rights. Binding mandatory arbitration clauses that operate to deny borrowers a fair chance to challenge abuses in court should also be eradicated from title lending agreements.

## Introduction

---

Car title loans are small loans secured by a borrower's vehicle that typically have triple-digit interest rates. In an effort to sidestep usury laws and other protections, title lenders sometimes refer to such loans as "sales and leasebacks," "title pawns," or "motor vehicle equity lines of credit."<sup>1</sup> Title loans drag low- and moderate-income borrowers into a cycle of debt that results in tremendous expenses and can strip borrowers of their most valuable possession. Losing a car because of a title loan can make it impossible for borrowers to keep a job, attend school, or obtain health care. Newspapers across the country have recounted borrowers' wrenching experiences with these high-cost balloon loans, including the following:

- Gregory Dotson, a Tennessee sanitation worker, took out a \$200 loan from Golden Title Loans secured by his 1989 Chrysler New Yorker in order to make a downpayment on a house.<sup>2</sup> Mr. Dotson paid \$329 over seven months and then lost the car to Golden Title Loans.<sup>3</sup>
- Amparo Lopez borrowed \$1,500 from a title lender in New Mexico in August 2003, using her 1996 Chevrolet Tahoe as security.<sup>4</sup> By January 2005, she had paid \$5,000 in interest – over three times the amount borrowed – and still owed the full \$1,500.<sup>5</sup>
- Felicia Scrubb, a 26-year-old single mother, obtained a \$450 loan from Atlanta Title Loans in July 2004 to pay rent and utilities.<sup>6</sup> Each month, she had to pay \$112.50 in interest on the loan.<sup>7</sup> When she was unable to pay the full interest amount in November 2004, her car was repossessed in the middle of the night.<sup>8</sup> Without her own vehicle, she was unable to make it to work.<sup>9</sup> Ms. Scrubb finally got her car back in January, but not until a reporter from the Atlanta Journal-Constitution contacted the title lender.<sup>10</sup>

---

## Typical Characteristics of Car Title Loans

---

Car title loans<sup>11</sup> are short-term, high-interest loans secured by title to a used car. The borrower generally keeps possession of the car during the term of the loan, but leaves the title with the lender as security for repayment of the loan. The lender may also demand a copy of the keys to facilitate repossession in the event of default. If the borrower is unable to repay the loan at maturity, the lender frequently renews the loan while tacking on additional charges. If the borrower is unable to keep up with this debt treadmill, the lender may repossess the car. Lenders also often insert binding mandatory arbitration clauses in

## Car Title Lending: Driving Borrowers to Financial Ruin

car title loan contracts to prevent borrowers from challenging the lenders' actions in court or through a class action.<sup>12</sup>

### **Car Title Loans Are Short-Term, Over-Secured Small Loans**

Title loans are usually made for a short period, such as thirty days, with a lump sum payment due at the end of the term.<sup>13</sup> The loans are generally made for relatively small amounts. According to a 2001 report by the Missouri Office of the State Auditor on its audit of the regulation of the instant-loan industry, the typical title loan was just \$350.<sup>14</sup>

Most title loans are also made for much less than the value of the car that secures the loan. The amount extended is usually based on how much the car is worth and typically does not exceed 33% of the car's value.<sup>15</sup> Car title lenders generally require prospective borrowers to have free and clear title to the car before obtaining a loan.<sup>16</sup> Thus, the loan-to-value ratio of a title loan is rarely greater than 33%, in marked contrast to the loan-to-value ratio on finance companies' used car loans as tracked by the Federal Reserve Board. The average loan-to-value ratio on those loans is close to 100%.<sup>17</sup> Because car title loans are so well secured, the lender is protected even if the borrower defaults. As the then-Attorney General of Florida explained in the year 2000, "[t]he most secure loan in the state of Florida is a title loan."<sup>18</sup>

### **Borrowers Pay Triple-Digit Interest Rates on Car Title Loans**

Even though title loans are over-secured, title lenders routinely charge extremely high interest rates.<sup>19</sup> Title lending surveys have found triple-digit annual interest rates to be typical absent effective legislative caps, which means that borrowers pay back more in interest than they received in principal in less than a year. For example, the Missouri State Auditor's 2001 report found that annual fees on title loans ranged from 183% to 377%.<sup>20</sup> Common fees charged by a Missouri title lender on a \$500 loan were 25% per month or 300% annually.<sup>21</sup> A 1999 survey by the Illinois Department of Financial Institutions similarly found an average annual percentage rate of 290% for Illinois title loan companies.<sup>22</sup> In the late 1990s, before Florida amended its title lending laws, Florida PIRG found that Florida title loan companies were charging, on average, an annual percentage rate of 273%.<sup>23</sup> In states without rate caps, borrowers have reported rates of 800% or more.<sup>24</sup>

Reported rates may well be understated when charges for unnecessary or bogus services are packed onto car title loans. The Legal Aid Society of Milwaukee, Inc. filed a putative class action last year charging among other things that Wisconsin Auto Title Loans, Inc. told consumers that they were required to purchase car club memberships to obtain a title loan.<sup>25</sup> According to the complaint, the 300% APR that Wisconsin Auto Title Loans, Inc. disclosed to borrowers was much lower than the real APR for the loans because the company failed to include the \$15 monthly car club membership fees in calculating the finance charge.<sup>26</sup>

## **Title Lenders Make Loans Without Regard to Ability To Repay**

Title lenders often make their short-term, high-interest loans with little or no regard to their borrowers' ability to repay the loans.<sup>27</sup> Because a car secures each loan, the lender is protected even if the borrower defaults. Lenders frequently advertise that they do not perform credit checks, that loans can be completed on the spot, and that the application will take only a few minutes.<sup>28</sup> For instance, a recent online advertisement stated: "If you own a car, you qualify!"<sup>29</sup>

Unfortunately, title lenders also often target borrowers who can ill afford such high-cost short-term balloon loans, virtually guaranteeing that many of the loans will fail. Low-income individuals are frequent borrowers of title loans. Title and payday lenders surveyed in the Missouri audit estimated that 70% of their borrowers earned less than \$25,000 per year.<sup>30</sup> The 1999 Illinois survey found that the average salary of Illinois title loan borrowers was less than \$20,000.<sup>31</sup> Like payday lenders, title lenders also target people living on fixed incomes, who are particularly vulnerable to title loans because they have no means to make large irregular, lump-sum payments.<sup>32</sup> Military servicemembers are another target for car title loans.<sup>33</sup> Military officials have raised concerns that the nation's military preparedness has been adversely affected because young servicemembers are worried that their cars will be repossessed due to title loans.<sup>34</sup>

## **Car Title Loans Are Frequently Rolled Over**

The short term and high rates of car title loans make it very difficult for borrowers to repay their loans at the end of the term. Confronted with a large lump sum pay-off amount, borrowers are often forced to roll their title loans over several times.<sup>35</sup> Rather than making the full payment at the end of the loan term, many borrowers pay only the accrued interest charges while rolling over the principal amount into a new loan with additional exorbitant fees.

Borrowers across the country find themselves sucked into a spiral of debt, paying more and more fees while the principal on the loan remains largely unchanged. A woman in Gallup, New Mexico, for example, took out a \$300 loan for two weeks, rolled it over ten times, and, all told, paid \$881 on the loan.<sup>36</sup> Fifteen months after taking out a \$300 loan, Tennessee borrower Marius Hodges had paid \$864 in interest and fees and had only reduced the principal balance on his loan by \$5.<sup>37</sup>

Burdened by medical expenses, Barbara Toll of Boise, Idaho took out a \$516 title loan from Northwest Title Loans in September 2003.<sup>38</sup> The loan was secured by Ms. Toll's 1991 Isuzu Trooper, which she needed for her job.<sup>39</sup> The loan was a thirty-day loan, with interest of \$30 for every \$100 borrowed, and was renewed month after month.<sup>40</sup> By August 2004, Ms. Toll had paid \$1,551.44 in interest on the loan over eleven months, while cutting the principal by only \$50.<sup>41</sup>

The statistics that are available on title loan rollovers show that these borrowers' experiences are far from isolated instances. In Oregon, 19% of title loans that were paid off in May 2002 had been renewed *six* times prior to payoff.<sup>42</sup> The Missouri Auditor found

## Car Title Lending: Driving Borrowers to Financial Ruin

that “on average, title and payday lenders make 3.5 times more renewal loans than new loans each month.”<sup>43</sup> The Illinois Department of Financial Institutions concluded in 1999 that “title loans are rarely paid off within the initial term of the loan” but were instead rolled over repeatedly.<sup>44</sup> As the Department noted at the end of its report:

*Industry members... have referred to their customers as average citizens who encounter unexpected financial hardships. What they have failed to mention was that the financial strains placed on consumers were rarely short-lived. Customers playing catch-up with their expenses do not have the ability to overcome unexpected financial hardships because their budgets are usually limited. The high expense of a short term loan depletes the customer's ability to catch-up, therefore making the customer “captive” to the lender.*<sup>45</sup>

### **Title Loans Jeopardize Many Borrowers' Most Valuable Possession**

As high as car title loan charges are, they do not represent the full cost of the loan for those borrowers who, after paying as much as they can month after month, in the end lose their cars. One Tennessee borrower, Kerry Jones, took out a \$300 title loan from Golden Title Loans, paid over \$1,900 on the loan over the course of two years, but lost his 1984 Cadillac after he missed one payment.<sup>46</sup>

Little data has been published regarding title loan repossessions, but it is clear that like Mr. Jones, many borrowers lose their cars in title loan transactions. Although title lenders did not set up shop in Iowa until May 2004,<sup>47</sup> at least 150 cars have already been repossessed from one eastern Iowa car title loan shop.<sup>48</sup> An Arizona Court found in 2000 that about 18% of the customers of a title lender named Sal Leasing, Inc. had forfeited cars they had owned free of liens before doing business with the company.<sup>49</sup> Community Loans of America, the largest title lender in the country, has stated publicly that it has about a 4-6% repossession rate.<sup>50</sup> It is unclear whether this number reflects a percentage of borrowers, loans, or rollovers. Community Loans of America acknowledges that for most title loan customers, the vehicle at stake in the title loan is in fact the customer's biggest asset.<sup>51</sup>

### **Title Lenders May Benefit When Borrowers Default**

The excruciating experience of losing a car that represents both a means of transportation and a key asset is exacerbated in many cases by title lenders' actions in summarily repossessing and selling off the vehicles. In some cases, after selling the vehicle, lenders have not returned the difference between the sales price and the amount the borrower owed.<sup>52</sup> This surplus can be sizeable because the loans are so over-secured, as Willie Hampton learned after he took out a loan from a Georgia title lender named E Pawn in December 2002.<sup>53</sup> According to the Atlanta Journal-Constitution, the \$3,000 loan was secured by Mr. Hampton's 2000 Cadillac Escalade, which had a wholesale value of \$21,600.<sup>54</sup> Mr. Hampton made payments for six months totaling \$2,332, but could not keep up after tools he used in his yardwork business were stolen.<sup>55</sup> At the time of his default, Mr. Hampton owed \$4,303.<sup>56</sup> E Pawn repossessed his Cadillac, but did not return any of the surplus to him after selling off the vehicle.<sup>57</sup>

## Car Title Lending: Driving Borrowers to Financial Ruin

Title lenders have even sought in some instances to hold borrowers personally liable for additional amounts after taking their vehicles. Keith Rush, a Belleville, Illinois snow cone stand owner, took out a title loan from Midwest Title Loans in 2002 after his five-year-old daughter had heart surgery.<sup>58</sup> The \$200 loan was secured by a 1988 Chevrolet Cavalier, worth approximately \$800 according to Mr. Rush.<sup>59</sup> After he fell behind on his payments, Midwest Title Loans repossessed the car.<sup>60</sup> In November 2003, Mr. Rush received a letter demanding an additional \$1,200 on the loan.<sup>61</sup> The \$200 loan ultimately cost Mr. Rush \$2,000.<sup>62</sup>

### **Title Loans Have a Ripple Effect on Borrowers' Lives**

Above and beyond the massive direct monetary costs of car title loans are the ripple effects that such loans can have on borrowers' lives. For borrowers of limited means, losing a car can make it impossible to keep a job, attend school, or obtain health care. Lack of transportation is widely recognized as one of the most significant barriers to obtaining and maintaining employment, and for many title loan borrowers, public transportation is simply not available or not an acceptable substitute for a private vehicle. In 2001, only about half of all Americans reported that they had public transportation service.<sup>63</sup> Moreover, as Congress has recognized, "two-thirds of all new jobs are in the suburbs, whereas three-quarters of welfare recipients live in rural areas or central cities," and "even in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit."<sup>64</sup> Study after study has confirmed what is intuitively obvious: having a car can be essential to maintaining employment and obtaining access to critical life services.<sup>65</sup>

The disastrous effects of title loans are, of course, not limited to the borrowers who ultimately lose their cars. Even those who ultimately manage to keep their cars live from month-to-month fearing that they will lose their most valuable possession and often pay much more than they can afford to ensure that that does not happen.

## The Title Lending Industry

---

### Title Lending Is Growing Rapidly

Although high-priced title loans are illegal in most states, the title lending industry has grown tremendously in recent years in states that have failed to take adequate steps to protect borrowers.<sup>66</sup> Although no comprehensive statistics are available, some of the data that has been compiled demonstrates how widespread title lending has become:

- Alabama has over 900 licensed pawnshops, most of which engage in title lending, according to Arise Citizens' Policy Project.<sup>67</sup>
- One lender has estimated that car title loans now represent a \$20 million industry in California.<sup>68</sup>
- According to the Mississippi Department of Banking and Consumer Finance, there were 272 title pledge licensees in the state at the end of 2003, which conducted 54,016 transactions in 2003 and had over \$24,602,704 in loans outstanding as of December 31, 2003.<sup>69</sup>
- As of late 2004, Missouri had licensed over 230 title loan locations under its title loan statute.<sup>70</sup>
- The number of licensed title lenders in Montana increased from 21 in the year 2000 to 45 in April 2004.<sup>71</sup> These numbers do not include pawnshops that offer title loans.<sup>72</sup> Licensed title lenders in Montana made nearly 16,000 loans in 2002.<sup>73</sup>
- As of last year, one Tennessee county alone had 116 title loan offices.<sup>74</sup>

Title lending has also spread to a number of states not listed above.<sup>75</sup> Community Loans of America, previously known as Title Loans of America, is reportedly the nation's largest title lender and has extended its operations into at least nineteen states.<sup>76</sup> Like many companies that engage in title lending, Community Loans of America also makes payday loans.<sup>77</sup> The company has hundreds of lending offices across the country.<sup>78</sup>

Another major title lender, Select Management Resources, is run by a former partner in Title Loans of America who has opened approximately 150 title loan stores in about eighteen states under the names Atlanta Title Loans, Loan Max, and North American Title Loans.<sup>79</sup> These stores make about 250,000 loans each year.<sup>80</sup> In addition to Community Loans of America, Select Management Resources, and their affiliates and subsidiaries, many other title lenders run smaller storefront operations, sometimes advertising on television and radio.

## Car Title Lending: Driving Borrowers to Financial Ruin

In recent years, some title lenders have broadened their market base by offering loans on the Internet.<sup>81</sup> Websites tout title loans “in one hour”<sup>82</sup> or a “2 minute application”<sup>83</sup> and promise to deposit funds directly into borrowers’ bank accounts.<sup>84</sup>

Many of these Internet lenders are located in states that have permissive laws and no applicable rate cap. Some pretend that Internet transactions with borrowers in other states take place at their offices, despite the reality that the borrower resides, completes the application, receives the loan proceeds, and maintains the titled property in another state. One such company, Equity1Auto, charges 260% APR and asserts in legal disclosures on its website that:

*All applications, transactions, and credit decisions will be deemed to have taken place in New Mexico, regardless of where you may be viewing or accessing this site. . . . Our transactions are governed by laws of the state of New Mexico.*<sup>85</sup>

### **Title Lenders Have Lobbied Hard for Laws Favorable to the Industry**

As they have grown in size and number, title lenders have made substantial campaign contributions and have succeeded in forwarding their legislative agenda in a number of states. Title lending giant Rod Aycox, a former partner in Title Loans of America and the creator of Select Management Resources, has contributed to political campaigns throughout the country and was reportedly the largest individual contributor in the 1998 Tennessee state elections.<sup>86</sup> The Atlanta Journal-Constitution recently reported that Mr. Aycox, his companies, and his close relatives had donated over \$300,000 to 130 state and federal candidates and political committees in 10 states since the year 2000.<sup>87</sup>

In several of these states, the title lending industry has succeeded in obtaining laws favorable to it at sometimes astounding speed. Some laws, such as the Tennessee Title Pledge Act and a 1995 Florida act, have passed so rapidly that even the legislators did not fully understand the terms of the legislation at the time of enactment.<sup>88</sup> In 2000, Florida’s Attorney General Bob Butterworth described the 1995 Florida act as “the worst piece of legislation ever passed by the Florida legislature.”<sup>89</sup>

Some states have resisted the car title lenders’ lobbying efforts or have managed to repeal laws pushed through by the lenders. It took Florida five years to replace its 1995 law, which permitted title lenders to charge up to 264% APR, but in 2000 the legislature passed a title lending law designed to protect borrowers that limits interest rates to 30% per year for loans of \$2,000 or less.<sup>90</sup> In Kentucky, as many as 100 companies were making title loans until the legislature rejected an industry-backed bill that would have legalized the industry and instead enacted a law that protects borrowers.<sup>91</sup> The 1998 statute limits rollovers to three additional 30-day periods and subjects title lenders to the rate limits in Kentucky’s consumer loan law, including a 36% annual cap on charges for loans of \$1,000 or less.<sup>92</sup> Other states, including Arizona, California, and Oklahoma, have also refused to pass bills pushed by title lenders.<sup>93</sup>

## **Title Lenders Circumvent Existing Consumer Protections By Disguising the True Nature of Their Products**

In addition to lobbying for new laws, title lenders exploit exceptions in existing laws by disguising the true nature of their products. In the course of their short history, title lenders have tried to depict their loans as “sales and leasebacks,” “pawn transactions,” and most recently “motor vehicle equity lines of credit” in an effort to evade usury limits and other provisions designed to protect borrowers.<sup>94</sup>

### ***“Sales and Leasebacks”***

Early on, some title lenders used a pretense that the car was leased back to the borrower, so they could pretend that payments received were not interest subject to usury statutes and that other lending requirements did not apply.<sup>95</sup> Recognizing that lease-purchase contracts are often used to disguise usurious loans, courts saw through this ruse and recognized title loans for what they are – secured loans.<sup>96</sup>

### ***“Title Pawns”***

Title lenders have also tried to characterize their loans as “pawn transactions,” because in some states pawn transactions are not subject to the usury caps that apply to normal loans or other requirements.<sup>97</sup> Some courts and legislatures have proven receptive to this type of argument. The Alabama Supreme Court held in 1993 that title loans fall under the Alabama Pawnshop Act and are *not* subject to usury restrictions.<sup>98</sup> In other states including Georgia and Minnesota, legislatures have explicitly authorized “title pawns” as a type of pawn transaction.<sup>99</sup>

By contrast, courts in states such as Virginia and West Virginia have held that title loans are not pawn transactions.<sup>100</sup> Some legislatures have also categorically rejected the notion of a “title pawn” and explicitly require in their pawnbroker statutes that pawnbrokers take possession of a vehicle if it is the subject of a pawn transaction.<sup>101</sup>

These courts and legislatures have recognized that a title loan is an entirely different type of transaction than a pawn. The high value and function of the asset at stake make title loans qualitatively different from real pawns, which typically involve a household item, tool, television, musical instrument, or piece of jewelry worth much less than a car.<sup>102</sup> Title lenders also do not hold the item itself (as opposed to the title) during the term of the loan, unlike a real pawn.<sup>103</sup> The price structure set up to cover storage and insurance for pawned items simply does not fit loans secured by a title where the borrower keeps the vehicle.

Tellingly, pawnbrokers themselves have resisted title lenders’ efforts to bring themselves within the scope of pawnbroker statutes.<sup>104</sup> In Indiana, current law prohibits pawnbrokers from making loans secured by a car without taking possession of the vehicle, but a Senate bill was introduced this year that would have permitted them to do so.<sup>105</sup> The stakes on the bill were high: Under Indiana’s Pawnbroking Law, pawnbrokers can charge the same interest that supervised lenders can charge, *plus* an additional fee not to exceed 20% of the

## Car Title Lending: Driving Borrowers to Financial Ruin

principal per *month* for servicing the pledge.<sup>106</sup> The proposed bill would have authorized Indiana title loans with APRs of up to 276%, a dream result for title lenders seeking to evade Indiana’s usury law. Weighing in against the bill, which was subsequently defeated, the Indiana Pawnbroker’s Association explained the difference between title loans and real pawns as follows:

*Title lending and pawnbroking, both short-term credit transactions, are two entirely different products and industries. Under SB 121, a person could continue to possess and use their automobile by presenting the car’s title to the pawnbroker. But by definition, a pawn transaction is the deposit of personal property made to the pawnbroker as security for a loan, not merely the presentment of the certificate of title. **The proposed change completely ruins the Indiana statute designed for pawnbrokers since pawn loans are possessory collateral loans.***

*It is disturbing that [Community Loans of America] would attempt to alter the Indiana Pawnbroking Statute to bring their product to Indiana. . . . The act of pawnbroking has been a fiducial, possession based, non-recourse credit transaction for the past 3000 years. SB 121 disrupts this foundation, and opens the Pawnbroking Act up to unquestionable misconduct. **Pawn services involve being responsible for, storing, insuring, protecting, and reporting pledged merchandise. For these services, our fees are commensurate. SB 121 is an effort to circumvent these expensive obligations, yet still charge for them.***<sup>107</sup>

### **“Motor Vehicle Equity Line of Credit”**

Recently, some title lenders have moved away from the “pawn” label and have sought instead to characterize title loans as open-end credit to take advantage of exceptions in Virginia and Iowa usury law.<sup>108</sup> For instance, title lender Fast Auto Loans, Inc. offers a “Motor Vehicle Equity Line of Credit” in Virginia with an APR of 300%.<sup>109</sup> As the Virginia State Corporations Commission Bureau of Financial Institutions explains on its website:

*The Bureau of Financial Institutions has received a number of calls about a fairly new product being offered in Virginia called a “motor vehicle equity line of credit”. These are generally small loans secured by your motor vehicle (a lien is recorded on your automobile title). Borrowers are required to provide the lender with a duplicate set of keys for the motor vehicle. According to the motor vehicle equity lines of credit we have seen, borrowers who fail to make required payments within ten days after the payment due date (or are otherwise in default of their agreement with the lender) could lose their car. The amount you can borrow is typically based on the value of your car (which you must own outright). Interest is calculated on the balance of the loan at a very high annual rate, often **300% to 360%**! Because of the high interest rate on these loans and the risk of losing your car, consider a loan from a bank, a credit union, or a family member before obtaining a motor vehicle equity line of credit.*<sup>110</sup>

Except for the name, these loans sound like run of the mill title loans. The new name for the product – “motor vehicle equity line of credit” – seems to be driven not by any

## Car Title Lending: Driving Borrowers to Financial Ruin

significant change in the nature of the product, but by exceptions in Virginia and Iowa law that permit lenders to contract for any interest rate they want on open-end credit.<sup>111</sup> These obscure exceptions were drafted to permit credit card companies to charge the same rates nationwide when extending unsecured, revolving credit through credit cards.<sup>112</sup> Nothing could be further removed from car title loans, which are secured and, in most cases, vastly over-secured.

## Title Loan Protections

---

As noted above, high-priced title loans remain illegal in most states. In light of the title lending industry's history of evasions and abusive practices, states that permit small loans to be secured by the title to the borrower's vehicle should enact strict legal requirements to ensure that borrowers are well protected. At a minimum, such states should require affordable terms and an installment repayment schedule, provide adequate post-default protections, close legal loopholes, closely monitor lenders, and ensure that borrowers can exercise their rights.

### **Establishing Fair and Affordable Loan Terms**

Title loans must be fairly priced and provide borrowers an affordable installment repayment schedule rather than requiring one massive lump sum payment shortly after the loan is made. There are several critical elements to ensuring a feasible repayment schedule.

#### ***Loans should have a longer term.***

A typical title loan at present requires repayment in a lump sum after a very short period, such as 30 days. In fact, some statutes *require* title loans to mature within 30 days or less,<sup>113</sup> which guarantees that many borrowers will not be ready to pay the loan off at maturity and will instead have to pay massive fees to roll the loan over. Longer loan terms will ensure that borrowers have adequate time to make enough money to pay back the principal and accrued interest.

#### ***Loans should permit repayments in installments.***

Repayment should also be in a series of manageable installments based on the size of the loan, rather than one massive lump sum. In order to escape financial emergencies, borrowers need the opportunity to whittle away at an emergency loan in a series of small payments of principal and interest.

#### ***Rates should be lower.***

A key element of the title loan debt trap is, of course, triple-digit rates. A useful point of comparison is the average interest rate reported by the Federal Reserve Board on finance companies' used car loans, which is currently about 9% with an average loan-to-value ratio of close to 100%.<sup>114</sup> According to various statewide surveys, the average APR on a title loan is more than 25 times higher, despite the fact that the average loan-to-value ratio on a car title loan is much lower than a used car purchase loan!<sup>115</sup> Given that title loans are over-secured and that the rate on less-secured used car loans averages less than 10%, current title loan rates cannot be justified based on risk or cost. In comparison to state rate caps for unsecured small loans, equivalent-sized loans secured by the title to a paid-for

## Car Title Lending: Driving Borrowers to Financial Ruin

vehicle should be less expensive. Typical state small loan laws cap rates at 36% annual interest rates.

A number of states, including Illinois, Missouri, New Hampshire, New Mexico, Oregon, and Utah, have no limits on the rates that title lenders can charge.<sup>116</sup> Where specific rate caps exist, they often greatly exceed the rates allowed for other small consumer loans. A 1995 Tennessee law legalized charging up to 2% monthly interest plus an additional 20% in monthly fees, which results in a 264% annual rate.<sup>117</sup> A Tennessee borrower will therefore incur more interest in five months than the entire principal amount of the loan. Several other states, including Alabama, Georgia, Mississippi, and Montana, permit charges of up to 25% per month for the first few months of the loan or, in some cases, until the loan is paid off, yielding a 300% APR.<sup>118</sup> Under its 1995 title lending act, Florida law permitted annual rates of 264% on title loans, which then-Attorney General Bob Butterworth described as “legalized loan sharking” and “flat-out stealing” because title loans were in fact the most secure loans in the state.<sup>119</sup>

Florida has since joined Kentucky in placing meaningful restrictions on title loan rates. Florida’s current law limits interest to 30% per annum on the first \$2,000 of any title loan and prohibits unauthorized charges or fees.<sup>120</sup> In Kentucky, a 1998 statute provides that title loan charges may not exceed 36% per year.<sup>121</sup> There is no question that limits of this nature are necessary in the title lending market. As the Atlanta Journal Constitution recently noted, in Georgia, “[w]ith few exceptions, all title loans cost the same – the maximum allowed by law.”<sup>122</sup> Georgia and other states that permit title lending should follow the lead of Florida and Kentucky and put an end to title lenders gouging their residents with triple-digit annual rates.

Title lenders also must not be allowed to circumvent applicable rate limits by requiring borrowers to purchase unnecessary or sham products or services in connection with their loans. States should take all steps necessary to prevent lenders from packing additional charges onto their loans under the guise of “car club memberships” or other “services” that the borrowers do not want or need.

### ***Lenders should consider ability to repay.***

Because title loans are well secured, lenders have little incentive to verify that borrowers will be able to repay the loan and may even profit more when borrowers default. Title lenders have acknowledged that the default rate for car title loans is as high as 30%, suggesting that almost one in three title loans may be failing.<sup>123</sup> A few states, including Missouri, Oregon, South Carolina, and Utah currently require lenders to consider ability to repay in making title loans, although it is unclear to what extent these provisions are enforced.<sup>124</sup> Other states that permit title lending should also require lenders to consider borrowers’ ability to repay before making loans.

### ***Borrowers should have a right to cancel and prepay without penalty.***

Title lenders should also afford borrowers an opportunity to cancel a title loan within a reasonable time after obtaining the loan.<sup>125</sup> Such a right is analogous to the three-day right of rescission that the Truth in Lending Act provides for certain home loans.<sup>126</sup> Because

## Car Title Lending: Driving Borrowers to Financial Ruin

title loans are often closed within a matter of hours, it is important to provide borrowers with a way out of the loan if they determine on reflection that they cannot afford the loan or do not want to risk the vehicle that may be their largest asset and primary means of transportation. For example, the South Carolina law governing short-term vehicle secured loans requires the lender to provide a right of rescission “entitling the borrower to repay the principal amount borrowed without interest or other cost at any time until the close of business on the business day following the date the original loan was executed.”<sup>127</sup> Borrowers should also be permitted to repay loans at any time without incurring a prepayment penalty.<sup>128</sup>

### **Protecting Borrowers After a Default**

Laws that permit title lending should also provide borrowers with post-default rights, including adequate notices regarding repossession and sale, a right to redeem the car, and the return of surplus from the sale proceeds. Many of these rights are found in Article 9 of the Uniform Commercial Code, which at a minimum should apply to all title lending transactions.<sup>129</sup>

#### ***Lenders should follow reasonable repossession procedures.***

States should prevent repossession abuses. Among other protections, borrowers should receive adequate notices informing them of any repossession or sale of their vehicles, explaining their right to redeem, and providing a full accounting of the amount due.<sup>130</sup> Prior to any repossession, borrowers should be afforded an opportunity to make the vehicle available to the lender in a manner that is reasonably convenient to the borrower and should be permitted to remove any personal belongings from the vehicle without charge or cost.<sup>131</sup>

#### ***Borrowers should have a right to redeem.***

Title loan borrowers should have a right to redeem their vehicles by paying off the debt.<sup>132</sup>

#### ***Sales should be conducted in a reasonable manner, any surplus must be returned, and borrowers should not be personally liable after losing their cars.***

When a lender disposes of the vehicle, the sale should be conducted in a commercially reasonable manner.<sup>133</sup> Title lenders should not be permitted to operate used car lots where they sell off the vehicles they repossess.<sup>134</sup> States should also require title lenders to return any surplus when cars are sold, to avoid an unfair windfall to lenders and a massive financial hit to borrowers.<sup>135</sup> Laws that permit lenders to keep the surplus, or even part of the surplus, should be amended.<sup>136</sup> Borrowers also should not be subject to any personal liability for a title loan after their vehicles have been repossessed and sold.<sup>137</sup>

### **Closing Loopholes to Ensure Consistent Regulation**

#### ***Loopholes regarding which loans are covered should be closed.***

In its short history, the title lending industry has deftly side-stepped laws that are plagued with exceptions regarding what loans are covered — exploiting, for example, the fact that in some states rate caps and other provisions do not apply to loans of certain sizes or to

## Car Title Lending: Driving Borrowers to Financial Ruin

loans that are classified as open-end credit.<sup>138</sup> In South Carolina, for example, title lenders make loans of \$601 or more and refer to themselves as “601 lenders” because the rates that they can charge are only limited for loans of \$600 or less.<sup>139</sup> Similarly, although the California legislature failed to pass legislation in the late 1990s that would have explicitly authorized title loans, title lenders have exploited a perceived loophole in California law to make title loans of over \$2,500 at extremely high rates of interest.<sup>140</sup> Title lenders are apparently relying on §§ 22303 and 22304 of the California Finance Lenders Law, which set out rate limits but state that the limits do not apply to loans with a bona fide principal amount of \$2,500 or more.<sup>141</sup> Loopholes of this nature should be closed to protect borrowers from title lenders who do not hesitate to ignore the intention of these laws.

### ***Laws should apply to all lenders, including those that operate interstate.***

Borrowers’ rights in title lending transactions should not vary dramatically depending on who is making the loan. Unfortunately, title lending laws may exclude certain types of institutions from their scope or impose different types of requirements depending on who the lender is. When the Missouri auditor’s office reviewed Missouri’s laws in 2001, for example, it found that “[i]nstant loan companies [could] . . . pick and choose which statute serves them best without concern for consumer interests.”<sup>142</sup>

Problems of this nature will only grow worse if companies are permitted to evade applicable state laws by operating across state borders.<sup>143</sup> States should take action against any title lender that makes loans to their residents in violation of their laws, even if the company maintains its physical offices out-of-state. Regulators and banks also should firmly oppose any effort to use national banks to “export” permissive laws from one state to another. Several years ago, the Office of the Comptroller of the Currency and the Office of Thrift Supervision issued guidance noting that title loan companies were approaching depository institutions urging them to enter into contractual arrangements to fund title loans and warning of the risks associated with such transactions.<sup>144</sup> Banks should continue to heed such warnings, as states that permit title lending work to close loopholes so that protections apply to all title loans made by all types of lenders, regardless of the lender’s location.

## **Monitoring Lenders through Licensing, Examination, Bonding, and Reporting Requirements**

### ***States should impose strong licensing and examination requirements.***

States that permit title lending should vigilantly monitor title loan companies’ operations and pursue violations. Some states that permit title lending currently do not require title lenders to obtain a license from a state regulator. As the Atlanta Journal-Constitution recently explained, “Georgians have no way to determine how many loans are made, how many end in default, or how many borrowers lose their cars to repossession and, consequently, their jobs because they can no longer get to work. No one even knows how many title lenders exist.”<sup>145</sup>

In Tennessee, licenses are issued by county clerks, who apparently exercise no substantive oversight authority over their licensees. According to an official in the Shelby County

## Car Title Lending: Driving Borrowers to Financial Ruin

Clerk's Office, which has licensed over 100 title lenders, "Once they pay that initial fee we don't look at them."<sup>146</sup> Tennessee regulators also do not conduct routine examinations of title lenders.<sup>147</sup> In fact, when regulators visit locations that engage in both title and payday lending, they only examine the payday operations.<sup>148</sup> In the words of the sheriff of Hamilton County, Tennessee, Tennessee's car title lending industry is simply "out of control."<sup>149</sup>

Even in states where state agencies issue their own licenses to title loan companies, regulators have been overwhelmed in recent years by the growth of fringe-lending institutions and have failed to enforce even the limited consumer protection provisions that are on the books.<sup>150</sup> In many places, title loan companies are examined less frequently than other types of financial institutions, even though the examination results are typically worse.<sup>151</sup> Just 21% of title loan companies in Missouri were examined in 1999, and of those, 78% received a less-than-satisfactory rating.<sup>152</sup> In the absence of vigorous state enforcement, noncompliance is rampant. For example, a 2002 survey by New Mexico PIRG found that only 25% of title loan companies were in compliance with New Mexico's disclosure requirements.<sup>153</sup> To curb this type of abuse, states should enact strong licensing<sup>154</sup> and examination<sup>155</sup> requirements and should provide regulators with adequate resources and enforcement mechanisms<sup>156</sup> to carry out their missions.

### ***Title lenders should be bonded.***

Several states now require title lenders to obtain a bond, certificate of deposit, or letter of credit before doing business, a key step towards deterring wrongdoing and ensuring that money will be available to redress borrowers when it occurs.<sup>157</sup> Bonds of this nature should be for the benefit and security of title loan borrowers.<sup>158</sup>

### ***States should implement strong reporting requirements.***

New Mexico has recently begun requiring title lenders to report on the title loans they make each year, which will assist in monitoring title lenders and informing the public regarding the industry.<sup>159</sup> Other states that permit title lending should also require lenders to provide detailed reports about their practices, including repossessions, and should ensure that this information is made available to the public. It is absolutely critical for regulators to collect and publish this type of information to shed light on industry practices, inform public policy, and prevent abusive lending practices.

## **Ensuring Borrowers Can Exercise Their Rights**

### ***States should ensure that borrowers are able to enforce their rights by bringing private actions and voiding unlawful contracts.***

Borrowers should have a private right of action as well as the right to void transactions when title lenders fail to adhere to legal requirements.<sup>160</sup> Although disclosures are never a substitute for substantive protections, states should also require title lenders to provide clear and conspicuous disclosures that explain borrowers' rights and what borrowers can expect in a title loan transaction *before* the loan is made.<sup>161</sup>

***Binding mandatory arbitration clauses and other provisions that operate to deny borrowers a fair chance to challenge abuses in court should be banned.***

Binding mandatory arbitration clauses in title loan contracts provide lenders with substantial advantages should a dispute arise. When a title lender includes such a clause in its contracts, it means the borrower's disputes must be decided in a private legal system. Because such clauses are "binding," the borrower must abide by the decision and has no right to appeal. By entering into loan agreements that include binding mandatory arbitration clauses, many borrowers are unknowingly waiving their legal rights, including the right to present a case to a jury of their peers.

To prevent abuses of this nature, states should adopt the National Consumer Law Center's model state laws preserving individual rights and limiting mandatory arbitration, which are available on NCLC's website at <http://www.consumerlaw.org/initiatives/model/index.shtml>. Among other provisions, the model laws provide that prior to a dispute, a written agreement shall not waive a party's rights to obtain relief on a class-wide basis, punitive damages, or other relief. They also render consumer arbitration agreements void and unenforceable except to the extent federal law provides for their enforceability.<sup>162</sup> Because title loans often jeopardize borrowers' most valuable asset, it is critical that borrowers retain their rights to go to court and enforce the law.

## Conclusion

---

Car title loans trap borrowers in a cycle of debt. Title lenders often make these short-term high-cost balloon loans without regard to the borrower's ability to repay, knowing that they can take the car if the borrower defaults. Forced to roll the loans over from month to month, borrowers pay much more than they can afford in an effort to keep their cars. In many cases, the car at risk is the borrower's largest asset and only means of transportation to work, health care, education, and other services.

The car title lending industry has exploited legal loopholes and mischaracterized its over-secured loans as "pawns" and "sales and leasebacks" to charge higher rates, to trap borrowers in continuous loan flipping, and to grab borrowers' equity in paid-for vehicles. Due to generous financial contributions and misplaced faith in competition to regulate the small loan market for cash-strapped families, title lenders have won favored treatment that they do not deserve from some state legislatures. In no instance should state legislatures give loans secured by the titles to paid-for vehicles the protection of pawn laws or permit title lenders to charge rates that are higher than otherwise applicable usury laws.

If states permit small loans to be based on the title to the borrower's vehicle, they should enact strong legal requirements to make loans affordable and to safeguard borrowers' assets. The consequences for both borrowers and their communities when transportation is lost to abusive lending justify a high standard of protections.

Title lenders also should not be permitted to operate in the dark and out of the public eye. State lawmakers, regulators, and the public will benefit from closer scrutiny of the car title lending industry in all its permutations to inform policymakers about industry practices, the impact on vulnerable borrowers, and the collection tactics used.

## Notes

---

<sup>1</sup> See *Sal Leasing, Inc. v. State ex rel. Napolitano*, 10 P.3d 1221, 1228 (Ariz. Ct. App. 2000) (discussing loans disguised as “sale and lease-back” transactions); *State ex rel. McGraw v. Pawn America*, 518 S.E.2d 859 (W.Va. 1998) (holding that the “licensed pawnbroker” exclusion from the West Virginia Consumer Credit and Protection Act did not apply to a pawnbroker’s “title pawn” transaction); Virginia State Corporation Commission Bureau of Financial Institutions, Consumer Affairs and Information: Know the Facts About Motor Vehicle Equity Lines of Credit, available at <http://www.scc.virginia.gov/division/banking/cons.htm> (accessed Jan. 30, 2005) (printout on file with authors).

<sup>2</sup> Marc Perrusquia, *Last-Resort Loans*, THE COMMERCIAL APPEAL, Jul. 11, 2004, at A1.

<sup>3</sup> *Id.* In addition to charging the maximum rate allowed by law, Golden Title Loans also charged Mr. Dotson extra fees when he paid late, even though his loan contract did not mention any such fees. *Id.*

<sup>4</sup> Andrew Webb, *Payday Loans in Lawmakers’ Cross Hairs Again*, ALBUQUERQUE J., Jan. 18, 2005, at A1.

<sup>5</sup> *Id.*

<sup>6</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money: AN AJC SPECIAL REPORT: The Cost Is So High and So Is the Risk for Borrowers Who Post Car Titles as Collateral for Quick Cash*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Although this report focuses on car title loans, title loans exist for other types of titled property. See, e.g., Mont. Code Ann. § 31-1-803(8), (11). Some states even permit title loans on mobile homes, although others expressly prohibit it. Compare Or. Rev. Stat. § 725.600(4); Utah Code Ann. § 7-24-102(3)(a), with, e.g., Fla. Stat. Ann. § 537.003(10) (excluding mobile homes that are their owners’ principal residence); Ky. Rev. Stat. Ann. § 368.200(5), (8) (excluding mobile homes).

<sup>12</sup> See, e.g., *Wisconsin Auto Title Loans, Inc. v. Jones*, Cir. Ct. No. 02SC013843, Appeal No. 03-2457, slip op. (Wis. Ct. App. Mar. 24, 2005) (finding an arbitration clause in a title loan agreement to be unconscionable); *Fast Auto Loans, Inc. Motor Vehicle Equity Line of Credit Agreement – Version VA1003* (received Feb. 8, 2005, on file with authors) (including in paragraph 20 an “Arbitration Agreement Provision Including Waiver of Jury and Class Action Participation”); Equity1Auto Legal Disclosures, accessed Jan. 18, 2005 at <http://equityoneauto.com/legaldisclosure.html> (printout on file with authors) (including in paragraph 8 a provision requiring arbitration of all disputes).

<sup>13</sup> In its Final Report based on its 1999 survey, the Illinois Department of Financial Institutions stated that Illinois title lending companies “offer single payment loans usually for 30 days.” Illinois Department of Financial Institutions, Short Term Lending: Final Report at 4, 23, available at <http://www.state.il.us/dfi/ccd/pdfs/Shortterm.pdf> (hereinafter “Illinois DFI 1999 Short Term Lending Report”); see also Missouri Office of the State Auditor, Report No. 2001-36: Division of Finance and Regulation of the Instant Loan Industry (May 9, 2001), at 3, available at <http://www.auditor.state.mo.us/press/2001-36.htm> (hereinafter “Missouri Auditor Report No. 2001-36”) (noting that title loans are typically made for 30 days); Office of the Comptroller of the Currency Advisory Letter AL 2000-11 (Nov. 27, 2000) (describing the term of title loans as “typically 30 days or less”).

<sup>14</sup> Missouri Auditor Report No. 2001-36, at 3; see also John J. McCloskey, Esq., Vice President & General Counsel, Community Loans of America, Inc., “Everything You Wanted to Know About ‘Title Loans’ (That You Could Learn in 15 Minutes)” (powerpoint presentation at National Conference of State Legislatures, Dec. 9, 2004) (copy on file with authors) (citing an average of \$500 for title loans). As explained below, California title loans are probably considerably larger than loans in other states, because the industry is exploiting a perceived loophole in California law regarding loans over \$2,500. See *infra* text accompanying notes 140-41.

<sup>15</sup> See Illinois DFI 1999 Short Term Lending Report at 4 (“The amount extended to the customer is usually based upon a percentage [of the] value of the automobile. These percentages vary amongst the licensees, but 33% seems to be the industry norm.”); Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners*

## Car Title Lending: Driving Borrowers to Financial Ruin

---

*a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1 (“Title lenders usually won’t lend more than about a third of the car’s value.”).

<sup>16</sup> See, e.g., Thomas B. Pfankuch, *House Again Passes Bill to Limit Title Loan Rates*, THE FLORIDA TIMES-UNION, Apr. 20, 2000, at A-1.

<sup>17</sup> Federal Reserve Statistical Release: G.20 Finance Companies (Feb. 23, 2005), available at [www.federalreserve.gov/releases/g20/](http://www.federalreserve.gov/releases/g20/).

<sup>18</sup> “Need Cash?,” 60 Minutes (CBS Television Broadcast, Jan. 2, 2000) (BurrellesLuce transcript on file with authors).

<sup>19</sup> See Office of the Comptroller of the Currency Advisory Letter AL 2000-11 (Nov. 27, 2000) (noting interest rates on title loans are often 25% or more per month); CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, *REPOSSESSIONS AND FORECLOSURES* (5<sup>th</sup> ed. 2002) § 3.5.5.1 (“Generally, annual percentage rates are at least 264%.”).

<sup>20</sup> Missouri Auditor Report No. 2001-36, at 5.

<sup>21</sup> *Id.*

<sup>22</sup> Illinois DFI 1999 Short Term Lending Report at 26.

<sup>23</sup> Florida PIRG, *New Survey Shows Outrageous Interest Rates Charged By Florida Title Loan Companies* (Mar. 31, 1998), available at <http://floridapirg.org> (accessed Dec. 1, 2004). The Iowa Division of Banking’s finance bureau chief also recently observed that car title loans appear to have the highest interest rates of all loans in Iowa. Frank Santiago, *Senator Seeks Ban on Car Title Loans*, DES MOINES REGISTER, Jan. 28, 2005.

<sup>24</sup> See Deborah Baker, *Madrid to Seek Interest Cap on Small Loans*, ASSOCIATED PRESS NEWSWIRES, Oct. 1, 2004; Missouri Auditor Report No. 2001-36, at 4 (noting that one Missouri consumer complained that she was being charged 900% APR on her title loan); KATHLEEN E. KEEST & ELIZABETH RENUART, *THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES* (2d ed. 2000) § 7.5.2.3 (noting effective APRs as high as 900%).

<sup>25</sup> *Russell v. Wisconsin Auto Title Loans, Inc.*, No. 04CV002942 (City of Milwaukee Cir. Ct. complaint filed Mar. 29, 2004) (copy on file with authors), at ¶¶ 9, 21-22, 30.

<sup>26</sup> *Id.* at ¶¶ 13, 26, 34, 58-61.

<sup>27</sup> See Michael S. Barr, *Banking the Poor*, 21 YALE J. REG. 121, 166 (2004); Office of the Comptroller of the Currency Advisory Letter AL 2000-11 (Nov. 27, 2000).

<sup>28</sup> E.g., Pawnshop Superstore Advertisement accessed Mar. 6, 2005 at [www.pawnshopsuperstore.com/car\\_title.html](http://www.pawnshopsuperstore.com/car_title.html) (printout on file with authors).

<sup>29</sup> Equity1Auto.Com Advertisement accessed Jan. 17, 2005 at [http://www.plastics.com/cashadvance/auto\\_title\\_car\\_equity\\_loans.html](http://www.plastics.com/cashadvance/auto_title_car_equity_loans.html) (printout on file with authors).

<sup>30</sup> Missouri Auditor Report No. 2001-36, at 3.

<sup>31</sup> Illinois DFI 1999 Short Term Lending Report at 26. A 1996 survey of 300 households in Atlanta, Georgia with annual incomes of \$25,000 or less found that 9.1% had had an auto title loan in the past year. John Caskey, *Lower Income Americans, High Cost Financial Services* at 11 & Table 2 (1997).

<sup>32</sup> See Illinois DFI 1999 Short Term Lending Report at 27 (noting that college students and people living on fixed incomes are among those targeted by short-term lenders).

<sup>33</sup> Steve Tripoli & Amy Mix, *In Harm’s Way – At Home: Consumer Scams and the Direct Targeting of America’s Military and Veterans: A Report by the National Consumer Law Center* (May 2003), at 7-9, 22-23, 40-41, available at [www.nclc.org](http://www.nclc.org).

<sup>34</sup> “Need Cash?,” 60 Minutes (CBS Television Broadcast, Jan. 2, 2000) (BurrellesLuce transcript on file with authors).

<sup>35</sup> See Office of the Comptroller of the Currency Advisory Letter AL 2000-11 (Nov. 27, 2000) (“It is common that a borrower will roll over a title loan several times.”); Office of Thrift Supervision Memorandum for Chief Executive Officers Re Title Loan Programs (Nov. 27, 2000); Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1 (reporting that title loans are often extended 4 to 6 times).

<sup>36</sup> Deborah Baker, *Madrid to Seek Interest Cap on Small Loans*, ASSOCIATED PRESS NEWSWIRES, Oct. 1, 2004.

<sup>37</sup> *Lawmakers Question Oversight of ‘Title Loans,’* ASSOCIATED PRESS NEWSWIRES, Jul. 19, 2004.

<sup>38</sup> Joe Estrella, *Surviving on Shrinking Paychecks: Payday Loans, Plastic Can Trap the Unwary*, THE IDAHO STATESMAN, Aug. 23, 2004.

<sup>39</sup> *Id.*

## Car Title Lending: Driving Borrowers to Financial Ruin

---

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> State of Oregon Dep't of Consumer & Business Services, Division of Finance & Corporate Securities, "Consumer Finance Title Lenders Loan Renewal Activity By Month," available at [www.cbs.state.or.us/external/dfcs/activity\\_reports/cf/renew2001.htm](http://www.cbs.state.or.us/external/dfcs/activity_reports/cf/renew2001.htm) (accessed Jan. 26, 2005) (printout on file with authors).

<sup>43</sup> Missouri Auditor Report No. 2001-36, at 4.

<sup>44</sup> Illinois DFI 1999 Short Term Lending Report at 8; *see also id.* at 21 (according to data provided by Illinois Title Loan Company, the average duration of a loan, including extensions, is between 3.5 and 4.5 months, and about 46% of the company's borrowers are repeat customers).

<sup>45</sup> *Id.* at 30, quoted in part in Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 609 (2000).

<sup>46</sup> *Lawmakers Question Oversight of 'Title Loans,'* ASSOCIATED PRESS NEWSWIRES, Jul. 19, 2004; Marc Perrasquia, *Last-Resort Loans*, THE COMMERCIAL APPEAL, Jul. 11, 2004, at A1.

<sup>47</sup> Frank Santiago, *Senator Seeks Ban on Car Title Loans*, DES MOINES REGISTER, Jan. 28, 2005.

<sup>48</sup> Email from Joe Bolkcom to Kathleen Keest dated Feb. 22, 2005 (copy on file with authors).

<sup>49</sup> *Sal Leasing, Inc. v. State ex rel. Napolitano*, 10 P.3d 1221, 1228 (Ariz. Ct. App. 2000).

<sup>50</sup> John J. McCloskey, Esq., Vice President & General Counsel, Community Loans of America, Inc., "Everything You Wanted to Know About 'Title Loans' (That You Could Learn in 15 Minutes)" (powerpoint presentation available at [http://www.ncsl.org/slides/banking/TitleLoanOverview\\_jpg\\_files/frame.htm](http://www.ncsl.org/slides/banking/TitleLoanOverview_jpg_files/frame.htm)) (accessed 4/3/05, printout on file with authors).

<sup>51</sup> *Id.* ("Most title loan customers don't own a home so their vehicle is their largest asset.").

<sup>52</sup> *See* Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1 (reporting that under Georgia law, title lenders can and do keep the surplus); Office of the Comptroller of the Currency Advisory Letter 2000-11 (Nov. 27, 2000); Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 600 & n.49 (2000).

<sup>53</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Mike Fitzgerald, *Cycle of Debt: Payday and Car Title Loans*, BELLEVILLE NEWS-DEMOCRAT, Feb. 29, 2004.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Linda Bailey, Surface Transportation Policy Project, *Aging Americans: Stranded Without Options* at 5 (Apr. 2004) (citing the 2001 U.S. Census Bureau American Housing Survey); *see also* Most Americans Want Improved Public Transportation and Roadways, Research Alert, Jul. 16, 2004, at 1 (noting that 91% of working Americans drive to work).

<sup>64</sup> Transportation Equity Act for the 21<sup>st</sup> Century, Pub. L. No. 105-178, § 3037(a), 112 Stat. 107 (1998).

<sup>65</sup> *See, e.g.,* Tami Richards & Donald Bruce, *Car Access and Employment Outcomes for Tennessee Welfare Recipients: A Report to the Tennessee Department of Human Services* (June 2004) (citing authorities); Paul M. Ong, *Car Access & Welfare-to-Work*, J. POLICY ANALYSIS & MANAGEMENT, Vol. 21, No. 2, 255-268 (2002); *see also* J.M. Hirsch, *Gas Stations Become Grocery Stores in 'Food Deserts,'* ASSOCIATED PRESS NEWSWIRES, Jul. 5, 2004 (describing how many Americans have difficulty accessing grocery stores).

<sup>66</sup> The proliferation of title lenders is even more startling when one considers that title lending has apparently only been around for about two decades. *See* Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31,

## Car Title Lending: Driving Borrowers to Financial Ruin

---

2005, at A1 (explaining how Hugh Austin opened what may have been the country's first car title pawnshop in 1985).

<sup>67</sup> Arise Citizens' Policy Project, *Hard Cash: Predatory Lending in Alabama* (Oct. 25, 2004); *see also* State of Alabama State Banking Dep't, APA License Search, available at <http://www.bank.state.al.us/licensesearch.htm> (listing 951 pawnshop licenses as of Jan. 31, 2005, including 352 with the word "Title" in their names) (accessed Jan. 31, 2005, printout on file with authors).

<sup>68</sup> David Lazarus, *Lenders Levy Up to 120% Interest – Legally*, THE SAN FRANCISCO CHRONICLE, Sep. 29, 2004, at A1.

<sup>69</sup> State of Mississippi, Department of Banking and Consumer Finance, Annual Report 2003, at 20-21, available at <http://www.dbcf.state.ms.us/documents/annual-report03.pdf>.

<sup>70</sup> Missouri Division of Finance, "Chapter 367.500, Title Loan Companies\* (Active Companies – Alpha by State/City) As of November 17, 2004," available at <http://www.missouri-finance.org/pdfs/titlelenders.pdf> (accessed Feb. 23, 2005).

<sup>71</sup> Joe Mahon, *Banking on the Fringe*, FEDGAZETTE, Jul. 1, 2004.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Marc Perrusquia, *Car Title Loan Rules Scrutinized—Lawmakers Wonder Why Industry Largely Unregulated*, THE COMMERCIAL APPEAL, Jul. 19, 2004, at A1.

<sup>75</sup> *See, e.g.*, Tom Kertscher, *Wisconsin Loan Customers Pay 300 Percent Interest, Hand Over Car Keys*, MILWAUKEE J. SENTINEL, Jul. 15, 2002 (describing a putative class action filed by the Legal Aid Society of Milwaukee against Wisconsin Auto Title Loans, a subsidiary of Community Loans of America that has 22 offices in Wisconsin); Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1 (noting that from 1997 to 1999 more than 50 title loan shops opened in Illinois and the number of title lenders in Oregon grew from 0 to 34).

<sup>76</sup> *See* Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1; Michael S. Barr, *Banking the Poor*, 21 YALE J. REG. 121, 165 (2004); Bob Sanders, *Questions Linger Over Loan License*, NEW HAMPSHIRE BUSINESS REVIEW, Feb. 8, 2002, at 1 ("Title Loans of America is a rapidly growing company that has affiliates and subsidiaries and some 278 lending offices in at least 18 other states, according to a financial statement on file at the New Hampshire Banking Department."); Tom Kertscher, *Wisconsin Loan Customers Pay 300 Percent Interest, Hand Over Car Keys*, MILWAUKEE J. SENTINEL, Jul. 15, 2002. The company is owned by Alvin Malnik, who has reportedly been linked by the New Jersey Casino Control Commission and other authorities to organized crime. *See Proliferation of Title Loan Businesses Concerns Officials*, ASSOCIATED PRESS NEWSWIRE, Sep. 7, 2004. Although Mr. Malnik has never been convicted of a crime, newspaper reports indicate that a New Jersey gaming authority reached the following conclusion in the early 1990s: "This commission finds Alvin I. Malnik to be a person of unsuitable character and unsuitable reputation. As to his character, the evidence establishes that Mr. Malnik associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal." Marlon Manuel, *Florida's Crackdown on Car Title Loans May Spur Georgia*, THE ATLANTA JOURNAL AND THE ATLANTA CONSTITUTION, Oct. 5, 2000; *see generally* Bob Sanders, *Loan Firm Gets New OK Despite Questionable Ties*, NEW HAMPSHIRE BUSINESS REVIEW, Apr. 19, 2002, at A1. New Jersey and FBI reports have reportedly linked Mr. Malnik to organized crime financier Meyer Lansky. *Proliferation of Title Loan Businesses Concerns Officials*, ASSOCIATED PRESS NEWSWIRE, Sep. 7, 2004. Mr. Malnik has confirmed that he acted as an attorney for Mr. Lansky, who died in 1983, but has denied any mob involvement. Marlon Manuel, *Florida's Crackdown on Car Title Loans May Spur Georgia*, THE ATLANTA JOURNAL AND THE ATLANTA CONSTITUTION, Oct. 5, 2000.

<sup>77</sup> *See* Joe Mahon, *Banking on the Fringe*, FEDGAZETTE, Jul. 1, 2004 (describing Community Loans of America as a "multistate payday and auto title lender that operates locations in Montana, South Dakota, and Wisconsin"); Hoover's Company Profiles: QC Holdings, Inc., Nov. 17, 2004 (indicating that while QC Holdings, Inc. primarily engages in payday lending, title loan fees made up 4% of its 2003 sales); Missouri Auditor Report No. 2001-36, at 8 (describing lenders in Missouri making both payday and title loans).

<sup>78</sup> Bob Sanders, *Questions Linger Over Loan License*, NEW HAMPSHIRE BUSINESS REVIEW, Feb. 8, 2002, at 1; Michael S. Barr, *Banking the Poor*, 21 YALE J. REG. 121, 165 (2004).

<sup>79</sup> *See* Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1 (explaining that Select

## Car Title Lending: Driving Borrowers to Financial Ruin

---

Management Resources' owner, Rod Aycox, was formerly a partner in Title Loans of America); *Proliferation of Title Loan Businesses Concerns Officials*, ASSOCIATED PRESS NEWSWIRE, Sep. 7, 2004.

<sup>80</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

<sup>81</sup> It is now even possible to refinance a title loan on the Internet. Hamden Group, Inc.'s "CashCar.com" division announced recently that it "charges half the legal rate with no pre-payment penalties" and offers title loan refinancings. *Hamden Group, Inc. Announces Profitable Guidance for 2005*, PR NEWSWIRE, Dec. 9, 2004. Hamden Group, Inc. has also stated that it "allows borrowers to convert into a conventional 24-month loan at an even lower interest rate if the loan is not paid in full after 90 days." *Hamden Group, Inc. Launches New Auto Title Loan and Refinance Program*, PR NEWSWIRE, Dec. 8, 2004.

<sup>82</sup> E.g., Trading Financial Credit, LLC Advertisement accessed Feb. 24, 2005 at <http://www.tfciload.com/aboutus.tpl> ("If you own your own car, truck or van with a minimum wholesale value of \$5,000 you can get cash in 1 hour with NO CREDIT CHECK while you keep and drive your vehicle.") (printout on file with authors).

<sup>83</sup> E.g., Equity1Auto.com Advertisement accessed Jan. 17, 2005 at [http://www.plastics.com/cashadvance/auto\\_title\\_car\\_equity\\_loans.html](http://www.plastics.com/cashadvance/auto_title_car_equity_loans.html) (printout on file with authors).

<sup>84</sup> E.g., *id.*

<sup>85</sup> See <http://equityoneauto.com/legaldisclosure.html> (accessed Jan. 18, 2005) (printout on file with authors).

<sup>86</sup> *Proliferation of Title Loan Businesses Concerns Officials*, ASSOCIATED PRESS NEWSWIRE, Sep. 7, 2004.

<sup>87</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1 (citing an analysis of databases compiled by the Center for Responsive Politics and the Institute on Money in State Politics); see also Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 654-55 & n.400 (2000); Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1 (noting that Title Loans of American had contributed almost \$120,000 to Florida lawmakers as of March 1999 according to state records).

<sup>88</sup> See Marc Perrusquia, *Car Title Loan Rules Scrutinized—Lawmakers Wonder Why Industry Largely Unregulated*, THE COMMERCIAL APPEAL, Jul. 19, 2004, at A1 (reporting that Sen. Roy Herron, D-Dresden, "in the House when the Title Pledge Act passed, said it moved so quickly he and others didn't understand it until much later"); Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 655 & nn.405 & 407 (2000); "Need Cash?," 60 Minutes (CBS Television Broadcast, Jan. 2, 2000) (BurrellesLuce transcript on file with authors) (quoting Orlando Representative Bill Sublette as follows: "I think I speak for the entire Florida House at the time. And universally, without exception, each of those members had said that they had no idea what they were voting on, or what was being pushed through that day.").

<sup>89</sup> "Need Cash?," 60 Minutes (CBS Television Broadcast, Jan. 2, 2000) (BurrellesLuce transcript on file with authors).

<sup>90</sup> See Fla. Stat. Ann. Ch. 537; Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 641, 654-55 (2000).

<sup>91</sup> See Andrew Conte, *Car Title Loans Called 'Legalized Robbery'*, THE CINCINNATI POST, Jun. 23, 1999, at 1A; Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1.

<sup>92</sup> Ky. Rev. Stat. §§ 288.530(1), 368.260(1), 368.260(3).

<sup>93</sup> Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1.

<sup>94</sup> See *Sal Leasing, Inc. v. State ex rel. Napolitano*, 10 P.3d 1221, 1228 (Ariz. Ct. App. 2000) (discussing loans disguised as "sale and lease-back" transactions); *State ex rel. McGraw v. Pawn America*, 518 S.E.2d 859 (W.Va. 1998) (holding that the "licensed pawnbroker" exclusion from the West Virginia Consumer Credit and Protection Act did not apply to a pawnbroker's "title pawn" transaction); Virginia State Corporation Commission Bureau of Financial Institutions, Consumer Affairs and Information: Know the Facts About Motor Vehicle Equity Lines of Credit, available at

## Car Title Lending: Driving Borrowers to Financial Ruin

---

<http://www.scc.virginia.gov/division/banking/cons.htm> (accessed Jan. 30, 2005) (printout on file with authors).

<sup>95</sup> See ELIZABETH RENUART & CAROLYN L. CARTER, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2004 Supp.) § 7.5.2.3; KATHLEEN E. KEEST & ELIZABETH RENUART, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2d ed. 2000) § 7.5.2.3; Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 598 (2000).

<sup>96</sup> E.g., *Sal Leasing, Inc. v. State ex rel. Napolitano*, 10 P.3d 1221 (Ariz. Ct. App. 2000) & *Aple Auto Cash Express, Inc. of Okla. v. State ex rel. Oklahoma Dep't of Consumer Credit*, 78 P.3d 1231 (Okla. 2003), cited in ELIZABETH RENUART & CAROLYN L. CARTER, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2004 Supp.) § 7.5.2.3.

<sup>97</sup> See KATHLEEN E. KEEST & ELIZABETH RENUART, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2d ed. 2000) § 7.5.2.3; CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, REPOSSESSIONS AND FORECLOSURES (5<sup>th</sup> ed. 2002) § 3.5.5.1 n.398. Fortunately, it is well established that pawn transactions are subject to the Truth in Lending Act ("TILA"), so TILA's requirements apply even in states where title loans are treated as pawns. See Official Staff Commentary § 226.17(c)(1)-18; 61 Fed. Reg. 14952, 14954, 14956 (1996); ELIZABETH RENUART ET AL., TRUTH IN LENDING (5<sup>th</sup> Ed. 2003) § 2.5.2. For a discussion of some TILA issues raised by title loan transactions, see ELIZABETH RENUART ET AL., TRUTH IN LENDING (5<sup>th</sup> ed. 2003) §§ 3.6.4, 4.9.4.

<sup>98</sup> *Floyd v. Title Exchange & Pawn of Anniston, Inc.*, 620 So. 2d 576 (Ala. 1993) (rejecting the State Banking Department's argument that a title loan was a small loan transaction governed by Alabama's Small Loan Act rather than a "pawn transaction").

<sup>99</sup> See Ga. Code Ann. § 44-12-130(5) (defining "pledged goods" to include, *inter alia*, any motor vehicle certificate of title delivered into the possession of a pawnbroker in connection with a pawn transaction); Minn. Stat. §§ 325J.06(c), 325J.095. The Georgia Supreme Court has also held that Georgia's pawnbroker law trumps the criminal usury law to the extent that the two are not in harmony, paving the way for Georgia's title lenders to charge up to 300% APR. *Glinton v. And R, Inc.*, 524 S.E.2d 481 (Ga. 1999).

<sup>100</sup> E.g., *State ex rel. McGraw v. Pawn America*, 518 S.E.2d 859 (W.Va. 1998) (holding that the "licensed pawnbroker" exclusion from the West Virginia Consumer Credit and Protection Act did not apply to pawnbroker's "title pawn" transaction); *Commonwealth v. Car Pawn of Virginia, Inc.*, 37 Va. Cir. 412, 416 (1995) ("Car Pawn is essentially an unlicensed finance business which violates . . . the Consumer Finance Act. Notwithstanding that Car Pawn attempts to receive pawns of automobiles, the business does not actually retain the pawned vehicles in most cases. Moreover, if redemption does not occur within the stated period, the customer may continually renew the pawn indefinitely. In form, this transaction mimics a pawn; at heart it is simply a small loan . . . with an excessive interest rate."), quoted in *McGraw*, 518 S.E.2d at 861-62; *Commonwealth ex rel. Chandler v. Kentucky Title Loan, Inc.*, 16 S.W.3d 312 (Ky. App. 1999) (holding that Kentucky Title Loan, Inc. was not a pawnbroker as defined by Ky. Rev. Stat. § 226.010); *Lynn v. Financial Solutions Corp. (In re Lynn)*, 173 B.R. 894 (Bankr. M.D. Tenn. 1994) (interpreting Tennessee law prior to the enactment of the Tennessee Title Pledge Act); cf. State of Colorado Department of Law Office of the Attorney General, Administrative Interpretation No. 1.202-9401 (Aug. 31, 1994).

<sup>101</sup> See, e.g., La. Rev. Stat. Ann. § 37:1801.D. ("Under no circumstances shall the practice commonly referred to as motor vehicle 'title only' pawn transactions be allowed in this state. Every motor vehicle subject to a pawn transaction shall be stored at the business location at which the transaction occurred or at any other location in this state secured or maintained by the pawnbroker."); Me. Rev. Stat. § 30-A:3960(3) ("Tangible personal property" includes motor vehicles, but does not include documents evidencing title to motor vehicles."); Ohio Rev. Stat. §§ 4727.01(A) (defining "pawnbroker" as a person engaged in the business of lending money on deposit or pledges of personal property other than, *inter alia*, titles), 4727.08(E) (requiring a pawnbroker to take possession of a motor vehicle, watercraft, or outboard motor if such an item is pledged for a pawn loan); S.C. Code Ann. § 40-39-10(3) (defining "pledged goods" as "tangible personal property other than [*inter alia*] title" for purposes of pawnbroker statute).

<sup>102</sup> See National Pawnbrokers Association, Frequently Asked Questions About Pawnbroking, available at <http://www.nationalpawnbrokers.org/faq.htm> (accessed Feb. 23, 2005) (printout on file with authors) ("Pawnbrokers lend money on items of value ranging from gold and diamond jewelry to musical instruments, televisions, tools, household items, etc. . . . A typical [pawn] loan is small, averaging \$75 to \$100. . . . Although the loan to collateral ratio varies over time across pawnshops, a loan of 30-50 percent of the resale

## Car Title Lending: Driving Borrowers to Financial Ruin

---

of the collateral is typical.”); S.J. Diamond, *Despite Cleanup Effort, Pawnshops Hardly Rate as Bargain Boutiques*, LOS ANGELES TIMES, Nov. 19, 1992, at 1 (describing the average pawn loan as \$50 to \$75).

<sup>103</sup> By contrast, some businesses offer what they call “car pawns,” in which they take possession of the vehicle during the term of the loan.

<sup>104</sup> Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About The Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 656-57 (2000).

<sup>105</sup> S.B. 121, 114<sup>th</sup> Gen. Assembly (Ind.).

<sup>106</sup> Ind. Code §§ 24-4.5-3-508(2) (permitting supervised lenders to charge 21% to 36% per year, depending on the size of the loan), 28-7-5-28, 28-7-5-28.5.

<sup>107</sup> Letter from Steve Krupnik, President, Indiana Pawnbroker's Association to Insurance & Financial Institutions Committee Members (copy on file with authors) (emphasis in original).

<sup>108</sup> See Frank Santiago, *Senator Seeks Ban on Car Title Loans*, DES MOINES REGISTER, Jan. 28, 2005; Virginia State Corporation Commission Bureau of Financial Institutions, Consumer Affairs and Information: Know the Facts About Motor Vehicle Equity Lines of Credit, available at <http://www.scc.virginia.gov/division/banking/cons.htm> (accessed Jan. 30, 2005) (printout on file with authors).

<sup>109</sup> *Fast Auto Loans, Inc. Motor Vehicle Equity Line of Credit Agreement – Version VA1003* (received Feb. 8, 2005, on file with authors).

<sup>110</sup> Virginia State Corporation Commission Bureau of Financial Institutions, Consumer Affairs and Information: Know the Facts About Motor Vehicle Equity Lines of Credit, available at <http://www.scc.virginia.gov/division/banking/cons.htm> (accessed Jan. 30, 2005) (printout on file with authors) (emphasis in original).

<sup>111</sup> Va. Code Ann. § 6.1-330.78; Iowa Code Ann. § 537.2402.

<sup>112</sup> Credit card loans are unsecured and therefore more risky than secured loans. Despite the greater risk, the current average annual interest rate charged by credit card companies is about 12.5%, which is more than 20 times lower than the average rates that surveys have found for car title loans. Compare Federal Reserve Statistical Release: G.19 Consumer Credit (March 7, 2005), available at

[www.federalreserve.gov/releases/g19/](http://www.federalreserve.gov/releases/g19/); with Illinois DFI 1999 Short Term Lending Report at 4, 26; Florida PIRG, New Survey Shows Outrageous Interest Rates Charged By Florida Title Loan Companies (Mar. 31, 1998), available at <http://floridapirg.org> (accessed Dec. 1, 2004); Missouri Auditor Report No. 2001-36, at 5.

<sup>113</sup> E.g., Ga. Code Ann. § 44-12-131(a)(1) (“All pawn transactions shall be for 30 day periods but may be extended or continued for additional 30 day periods.”); Miss. Code Ann. § 75-67-403(h); Mont. Code Ann. § 31-1-803(8); Tenn. Code Ann. §§ 45-15-103(5), 45-15-113(a).

<sup>114</sup> Federal Reserve Statistical Release: G.20 Finance Companies (Feb. 23, 2005), available at [www.federalreserve.gov/releases/g20/](http://www.federalreserve.gov/releases/g20/). As of February 25, 2005, Bankrate.com quoted a 6.82% overnight average interest rate on 36-month used car loans. See [http://www.bankrate.com/brm/rate/auto\\_home.asp?link=5](http://www.bankrate.com/brm/rate/auto_home.asp?link=5) (accessed Feb. 25, 2005) (printout on file with authors).

<sup>115</sup> Missouri Auditor Report No. 2001-36, at 5; Illinois DFI 1999 Short Term Lending Report at 4, 26; Florida PIRG, New Survey Shows Outrageous Interest Rates Charged By Florida Title Loan Companies (Mar. 31, 1998), available at <http://floridapirg.org> (accessed Dec. 1, 2004).

<sup>116</sup> Ill. Admin. Code tit. 38, §§ 110.300 to 110.410; Mo. Rev. Stat. §§ 367.515, 408.100, 408.140; N.H. Rev. Stat. Ann. § 399-A:12 (permitting any interest rate agreed upon in writing for loans of up to \$10,000); N.M. Stat. Ann. §§ 58-15-1 to 58-15-31 (allowing unlimited interest rates for small loans of \$2,500 or less); Or. Rev. Stat. §§ 725.340(1), 82.025; Utah Code Ann. §§ 7-24-101 to 7-24-305. As noted elsewhere, South Carolina and California title lenders are charging any rate they want for loans above a certain size, and title lenders in Virginia and Iowa are exploiting the fact that the usury limits do not apply to open-end credit. See *infra* text accompanying notes 139-41 & *supra* text accompanying notes 108-12.

<sup>117</sup> Tenn. Code Ann. § 45-15-111(a).

<sup>118</sup> In Alabama, where title loans are treated as pawns, pawnbrokers may charge a pawnshop charge of up to 25% of the principal amount per month. Ala. Code § 5-19A-7(a). Similarly, in Georgia, a pawnbroker may charge interest and charges of up to 25% of the principal amount for each 30-day period during the first 90 days of a title loan. Ga. Code Ann. § 44-12-131(a)(4)(A); see also Ga. Code Ann. § 44-12-131(a)(4)(B) (“On any pawn transaction which is continued or extended beyond 90 days, a pawnbroker may charge for

## Car Title Lending: Driving Borrowers to Financial Ruin

each 30 day period interest and pawnshop charges which together equal no more than 12.5 percent of the principal amount advanced, with a minimum charge of up to \$5.00 per 30 day period.”). The Mississippi Title Pledge Act permits a title pledge lender to receive 25% of the principal amount per month. Miss. Code Ann. § 75-67-413(1). The Montana Title Loan Act permits interest rates of up to 25% for each 30-day period for loans of up to \$2,000. Mont. Code Ann. § 31-1-817.

<sup>119</sup> “Need Cash?,” 60 Minutes (CBS Television Broadcast, Jan. 2, 2000) (BurrellesLuce transcript on file with authors).

<sup>120</sup> Fla. Stat. Ann. §§ 537.011 (“A title loan lender may charge a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent per annum on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent per annum on that part of the principal amount exceeding \$3,000.”), 537.013(1)(i), 516.031(1) (provision analogous to § 537.011 under Consumer Finance Act); *see also* Fla. Stat. Ann. § 537.003(6) (defining interest as “the cost of obtaining a title loan and includes any profit or advantage of any kind whatsoever that a title loan lender may charge, contract for, collect, receive, or in any way obtain as a result of a title loan”). Florida law also prohibits title lenders selling or charging for any insurance in connection with a title loan agreement. Fla. Stat. Ann. § 537.013(1)(h).

<sup>121</sup> Ky. Rev. Stat. Ann. §§ 368.260(1), 288.530(1) (capping rates at 3% per month on that part of the principal balance not in excess of \$1,000).

<sup>122</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

<sup>123</sup> David Lazarus, *Lawmakers Look to Drive Out Car-Title Loans*, THE SAN FRANCISCO CHRONICLE, Oct. 1, 2004, at C1 (according to lenders, the default rate for car title loans in California is as high as 30%); John J. McCloskey, Esq., Vice President & General Counsel, Community Loans of America, Inc., “Everything You Wanted to Know About ‘Title Loans’ (That You Could Learn in 15 Minutes)” (noting default rates of “up to 30%” in discussion of loss ratios). Of course, the fact that a substantial percentage of loans are defaulting does not necessarily mean that lenders are losing money on them. Because car title loans are so well secured, lenders may well be profiting on loans that default.

<sup>124</sup> Mo. Rev. Stat. § 367.525.4; Or. Rev. Stat. § 725.605; Or. Admin. R. 441-730-0275(18)-(20) (requiring lenders to form a good faith belief in the borrower’s ability to repay but including a provision relating to preexisting business relationships that may weaken the rule); S.C. Code Ann. § 37-3-413(3); Utah Code Ann. § 7-24-202.

<sup>125</sup> In addition to a right to cancel, borrowers should have an extended right to void any transaction that lenders enter into in violation of statutory requirements, as discussed below in the section entitled “Ensuring Borrowers Can Exercise Their Rights.”

<sup>126</sup> 12 C.F.R. § 226.23.

<sup>127</sup> S.C. Code Ann. § 37-3-413(6)(b).

<sup>128</sup> *See, e.g.*, Fla. Stat. Ann. §§ 537.013(k), (l); N.M. Stat. Ann. § 58-15-15.1.

<sup>129</sup> *See generally* CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, REPOSSESSIONS AND FORECLOSURES (5<sup>th</sup> ed. 2002) § 3.5.5.5 (discussing borrowers’ post-repossession rights under Article 9).

<sup>130</sup> For examples of notice requirements that states have implemented, *see, e.g.*, Fla. Stat. Ann. § 537.012; Or. Admin. R. 441-730-0275(9)-(10).

<sup>131</sup> *See, e.g.*, Fla. Stat. Ann. § 537.012(2); Ill. Admin. Code tit. 38, § 110.390(b).

<sup>132</sup> *See, e.g.*, Ky. Rev. Stat. Ann. § 368.275; *see generally* CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, REPOSSESSIONS AND FORECLOSURES (5<sup>th</sup> ed. 2002) §§ 3.5.5.5, 3.5.5.7.

<sup>133</sup> *See, e.g.*, Ky. Rev. Stat. Ann. § 368.275; Fla. Stat. Ann. § 537.012(3); State of Idaho Dep’t of Fin. Enforcement Policy #2000-1, *Fraudulent & Unconscionable Conduct in Title Loans* (Dec. 26, 2000).

<sup>134</sup> *See, e.g.*, Fla. Stat. Ann. § 537.013(1)(m).

<sup>135</sup> *See, e.g.*, Fla. Stat. Ann. § 537.012(5); Ky. Rev. Stat. Ann. § 368.275; Mont. Code Ann. § 31-1-818(8); Or. Admin. R. 441-730-0275(13); S.C. Code Ann. § 37-3-413(5); Utah Code Ann. § 7-24-204; State of Idaho Dep’t of Fin. Enforcement Policy #2000-1, *Fraudulent & Unconscionable Conduct in Title Loans* (Dec. 26, 2000) (noting that Idaho Code § 28-9-504, from Chapter 9 of the UCC, requires return of surplus proceeds); *see generally* CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, REPOSSESSIONS AND FORECLOSURES (5<sup>th</sup> ed. 2002) §§ 3.5.5.5, 3.5.5.7. Even in the absence of a statutory provision explicitly requiring a return of surplus, it may be usurious for a lender to keep any surplus from the sale if the lender

## Car Title Lending: Driving Borrowers to Financial Ruin

---

has already charged the maximum rate permitted by law. *See generally* Advisory Legal Opinion, Office of the Florida Attorney General, Attorney General Opinion 99-38 (Jun. 14, 1999) (discussing Florida law that has since been amended), *cited in* CAROLYN L. CARTER, ODETTE WILLIAMSON, & JOHN RAO, REPOSSESSIONS AND FORECLOSURES (5<sup>th</sup> ed. 2002) § 3.5.5.5 & n.433; *see also* KATHLEEN E. KEEST & ELIZABETH RENUART, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2d ed. 2000) § 7.5.2.3 & n.269.

<sup>136</sup> *See, e.g.*, Miss. Code Ann. § 75-67-411(5) (requiring return of only 85% of “the amount received from the sale above the amount of the unpaid principal balance, the delinquent service charge, the actual cost of the repossession and a sales fee of One Hundred Dollars”).

<sup>137</sup> *See, e.g.*, Fla. Stat. Ann. § 537.013(1)(d); Ky. Rev. Stat. Ann. § 368.285(2); Minn. Stat. § 325J.08(6); Miss. Code Ann. § 75-67-415(d); Mont. Code Ann. §§ 31-1-816(2)(i), 31-1-825(1)(b); S.C. Code Ann. § 37-3-413(5); Tenn. Code Ann. § 45-15-115(2); Utah Code Ann. § 7-24-204; State of Idaho Dep’t of Fin. Enforcement Policy #2000-1, Fraudulent & Unconscionable Conduct in Title Loans (Dec. 26, 2000) (“Borrowers should . . . not be pursued for deficiencies following disposal of the vehicle.”). *But see* Or. Admin. R. 41-730-0275(17) (requiring lender to inform borrower that “[t]he borrower may be liable to pay additional funds if the proceeds do not equal at least the amount of the debt plus the cost of repossession and sale”). Because title loans are so over-secured, lenders should not need to pursue borrowers personally after taking their vehicles. Moreover, permitting lenders to do so would diminish lenders’ incentive to obtain the vehicles’ full value on resale after repossession. According to its Vice President, Community Loans of America does not seek deficiency balance judgments and limits its borrowers’ exposure to their vehicles. John J. McCloskey, Esq., Vice President & General Counsel, Community Loans of America, Inc., “Everything You Wanted to Know About ‘Title Loans’ (That You Could Learn in 15 Minutes)” (powerpoint presentation at National Conference of State Legislatures, Dec. 9, 2004) (copy on file with authors).

<sup>138</sup> *See* Mike Fitzgerald, *Cycle of Debt: Payday and Car Title Loans*, BELLEVILLE NEWS-DEMOCRAT, Feb. 29, 2004 (reporting that the Illinois Department of Financial Institutions has chosen not to release a draft report that it completed in 2003, which concluded that Illinois’s short term lending rules are “virtually irrelevant” because the industry has side-stepped them). As noted above, in Virginia and Iowa, title lenders are exploiting the fact that the usury limits do not apply to open-end credit. *See supra* text accompanying notes 108-112 (citing Va. Code Ann. § 6.1-330.78; Iowa Code Ann. § 537.2402).

<sup>139</sup> *See* S.C. Code Ann. §§ 37-3-201 (capping finance charges for some consumer loans of \$600 or less, but placing no limit on rates on larger consumer loans made by supervised lenders as long as the rates are properly filed and posted), 37-3-413; *see also* South Carolina Appleseed Legal Justice Center, Auto Title Loans and The Law (July 2004), available at <http://www.scjustice.org/pdfs/TitleLoans.pdf> (accessed Mar. 2, 2005).

<sup>140</sup> David Lazarus, *Lenders Levy Up to 120% Interest – Legally*, THE SAN FRANCISCO CHRONICLE, Sep. 29, 2004, at A1.

<sup>141</sup> *Id.* On January 27, 2005, Senate Bill 120 was introduced in the California Senate, which would replace \$2,500 in §§ 22303 and 22304 with \$10,000 and would impose disclosure and annual interest rate requirements for title loans.

<sup>142</sup> Missouri Auditor Report No. 2001-36, at 8 (concluding that “[c]onsumers cannot rely on consistent protection from the state” because laws governing instant loans “vary in loan terms including allowable fees, length of term, maximum and minimum amounts, due process, and annual reporting requirements”). Missouri’s laws were amended shortly after the auditor’s report was released. H.B. 738, 91<sup>st</sup> Gen. Assem. (Mo. Jul. 12, 2001). Although Florida has a title lending statute, most title lending is conducted under statutes that impose less stringent requirements. The Title Loan Act that Florida enacted in 2000 does not apply to a number of different types of financial institutions. Fla. Stat. Ann. § 537.003(11). No lenders were licensed under the Title Loan Act as of November 16, 2004. *See* Florida Dep’t of Financial Services Bureau of Regulatory Review Office of Financial Regulation, Licensing and Regulation: Title Loan Companies, available at <http://www.dbf.state.fl.us/licensing/titleloanco.html> (accessed Dec. 15, 2004). Instead, most title lenders are regulated under the Florida Consumer Finance Act, which provides less protection for borrowers than the Title Loan Act. *See* Florida Attorney General, How to Protect Yourself: Title Loans, available at <http://myfloridalegal.com/pages.nsf/0/76D0D43D99E8986285256CC9005FB7F0?OpenDocument> (accessed Nov. 23, 2004). Although the Consumer Finance Act contains similar caps on rates, “repossession and sale procedures, and what lenders can charge as extra fees, are not as specific [under it] as in [the Title Loan Act].” *Id.*

## Car Title Lending: Driving Borrowers to Financial Ruin

<sup>143</sup> After Florida passed its current title lending law in 2000, a number of title lenders opened up shop just across the border in Georgia. Steve Tripoli & Amy Mix, *In Harm's Way – At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans: A Report by the National Consumer Law Center* (May 2003), at 22-23, available at [www.nclc.org](http://www.nclc.org).

<sup>144</sup> Office of the Comptroller of the Currency Advisory Letter AL 2000-11 (Nov. 27, 2000); Office of Thrift Supervision Memorandum (Nov. 27, 2000); *see also* National Credit Union Administration Letter No. 01-FCU-03 (urging federal credit unions “to be aware of the risks associated with payday lending and title loan programs”).

<sup>145</sup> Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

<sup>146</sup> Marc Perrusquia, *Tenn. Law 'Is An Absolute Outrage' – Car Title Loans Aren't Regulated; Reform Unlikely*, THE COMMERCIAL APPEAL, Jul. 11, 2004, at A2 (quoting the manager of the Shelby County Clerk's business tax license office).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Marc Perrusquia, *'Legal Loan Sharking' Under Fire – Car Title Lender Needs to Go, Lawyer for Poor Says*, THE COMMERCIAL APPEAL, Sep. 9, 2004, at A1; *Proliferation of Title Loan Businesses Concerns Officials*, ASSOCIATED PRESS NEWSWIREs, Sep. 7, 2004 (quoting the sheriff further as follows: “‘The legislature gave them the authority to rob,’ he said. ‘I’ve got people in my jail that didn’t make nearly as much money using a gun as these people do without one.’”).

<sup>150</sup> In its 1999 report, the Illinois Department of Financial Institutions noted, for example, that: “The Consumer Credit Division has been overwhelmed during the past two years due to the growth of short term loan companies. . . . During the peak of the short term loan industry growth, our Department was receiving in excess of 60 applications a month.” Illinois DFI 1999 Short Term Lending Report at 10.

<sup>151</sup> Missouri Auditor Report No. 2001-36, at 15-16.

<sup>152</sup> *Id.* In the year 2000, 24% of all Missouri title lenders received less-than-satisfactory ratings, and as of November 2000, 12 of the 22 title lenders that had received a less-than-satisfactory rating in 1999 had not been reexamined. *Id.*

<sup>153</sup> Ray Prushnok, *Payday, Mayday! Payday and Title Lender Compliance to Signage and Brochure Regulations* at 8 (Mar. 2002). For companies that offer both payday and title loans, the compliance rate was 33%. *Id.*

<sup>154</sup> For an example of a current licensing requirement, see, e.g., Fla. Stat. Ann. §§ 537.004 to 537.007 (setting forth licensing requirements and providing remedies for title loans made without licensure).

<sup>155</sup> For examples of current inspection, investigation, and examination provisions, see, e.g., Fla. Stat. Ann. §§ 537.013(b), 537.016, 537.017; Ky. Rev. Stat. Ann. §§ 368.230 - 368.245; Miss. Code Ann. §§ 75-67-435, 75-67-447; Mo. Rev. Stat. §§ 367.509, 367.524; Mont. Code Ann. §§ 31-1-810, 31-1-815, 31-1-821; N.H. Rev. Stat. Ann. §§ 399-A:10, 399-A:16; N.M. Stat. Ann. § 58-15-9; Tenn. Code Ann. § 45-15-109; Utah Code Ann. § 7-24-302.

<sup>156</sup> Florida's statute gives the Office of Financial Regulation the authority to issue subpoenas and cease and desist orders and to bring enforcement actions in court, among other powers. Fla. Stat. Ann. § 537.016. The Florida statute also provides for criminal penalties, treats any excessive interest charge on a title loan as a usury violation, and gives the Financial Services Commission rulemaking authority. Fla. Stat. Ann. §§ 537.011(5) (excessive interest as usury), 537.015 (criminal penalties), 537.016 (rulemaking authority).

<sup>157</sup> *E.g.*, Fla. Stat. Ann. § 537.005(3) (requiring each title lender to obtain a bond, certificate of deposit, or irrevocable letter of credit of the lesser of \$100,000 for each license or \$1 million); Ky. Rev. Stat. Ann. § 368.215(3) (requiring a bond of \$100,000); Miss. Code Ann. § 75-67-421(1)(c) (requiring a bond of \$50,000 for each location or cash, a certificate of deposit, or government bonds of \$25,000 for each location, with required amount not to exceed \$250,000 total if there are multiple locations); Mo. Rev. Stat. § 367.509.2 (requiring a “corporate surety bond [or an irrevocable letter of credit] in the principal sum of twenty thousand dollars per location”); Mont. Code Ann. § 31-1-805(6) (requiring a bond of \$10,000 for each location).

<sup>158</sup> *See, e.g.*, Ky. Rev. Stat. Ann. § 368.215(3) (“This bond shall be maintained for the benefit and security of the title pledge borrowers and for the benefit and security of the Commonwealth with respect to the civil and criminal penalties provided in KRS 368.991”).

<sup>159</sup> N.M. Stat. Ann. § 58-15-10; N.M. Admin. Code tit. 12, § 12.18.6 (requiring annual reports due on or before March 31, 2005 to include information pertaining to title loans made during the preceding year). For

---

examples of other states' current reporting and/or recordkeeping requirements, see, e.g., Fla. Stat. Ann. § 537.009; Ky. Rev. Stat. Ann. § 368.250; Minn. Stat. § 325J.05; Miss. Code Ann. § 75-67-409; Miss. Title Pledge Act Regs. §§ 1, 2; Mo. Rev. Stat. § 367.524; Mo. Code Regs. Ann. tit. 4, § 140-29.010; Mont. Code Ann. §§ 31-1-815; 31-1-821; N.H. Rev. Stat. Ann. §§ 399-A:6, 399-A:17; N.H. Banking Dep't Regs. Ch. Ban 2400; N.M. Stat. Ann. § 58-15-10; Or. Rev. Stat. § 725.330, Or. Admin. R. 441-730-0110 to 441-730-0140, 441-730-0320; Tenn. Code Ann. § 45-15-109; *cf.* Cal. Fin. Code § 23026 (requiring detailed reports from licensees under the California Deferred Deposit Transaction Law).

<sup>160</sup> See, e.g., Mont. Code Ann. §§ 31-1-804(2), 31-1-826; Fla. Stat. Ann. §§ 537.007, 537.011(4), 537.012(5).

<sup>161</sup> For examples of various disclosure requirements that states currently have in place, see Fla. Stat. Ann. § 537.008; Ga. Code Ann. § 44-12-138; Ill. Admin. Code tit. 38, §§ 110.360, 110.370(e), (f), 110.380; Ky. Rev. Stat. Ann. §§ 368.250, 368.260(2); Minn. Stat. §§ 325J.04, 325J.07(e); Miss. Code Ann. §§ 75-67-405, 75-67-407, 75-67-409, 75-67-411(6); Miss. Title Pledge Act Regs. § 3; Mo. Rev. Stat. §§ 367.518, 367.524, 367.525, Mo. Code Regs. Ann. tit. 4, § 140-29.010; Mont. Code Ann. §§ 31-1-818, 31-1-819, 31-1-821; N.H. Rev. Stat. Ann. §§ 399-A:11(XIV), 399-A:12; N.M. Stat. Ann. § 58-15-17; N.M. Admin. Code §§ 12.18.3, 12.18.4; Or. Rev. Stat. §§ 725.360, 725.620; Or. Admin. R. 441-730-0240, 441-730-0250, 441-730-0275; S.C. Code Ann. §§ 37-3-413(6)(a), 37-3-301, 37-3-302, 37-3-303, 37-3-305; Tenn. Code Ann. §§ 45-15-111, 45-15-113(b); Rules of the Tenn. Dep't of Fin. Institutions Chapter 0180-27-.04; Utah Code Ann. §§ 7-24-202, 7-24-203; State of Idaho Dep't of Fin. Enforcement Policy #2000-1, Fraudulent & Unconscionable Conduct in Title Loans (Dec. 26, 2000). Among other things, these requirements address what information lenders must include in the title loan agreement and require that an exact copy of the executed agreement be provided to the borrower. See, e.g., Fla. Stat. Ann. §§ 537.008 (detailing requirements), 537.011(3) (applying same requirements to any extensions).

<sup>162</sup> Some states have also adopted provisions in their loan laws banning unconscionable provisions like mandatory arbitration clauses. See, e.g., Ga. Code Ann. § 7-6A-7(g) (establishing that any provision of a home loan agreement that allows a party to require a borrower to assert a claim or defense in a less convenient, more costly, or more dilatory forum than a Georgia judicial forum where the borrower could otherwise bring the claim is unconscionable and void); *cf. Wisconsin Auto Title Loans, Inc. v. Jones*, Cir. Ct. No. 02SC013843, Appeal No. 03-2457, slip op. (Wis. Ct. App. Mar. 24, 2005) (finding an arbitration clause in a title loan agreement to be unconscionable and unenforceable). For a general discussion of consumer arbitration agreements and the preemptive effect of the Federal Arbitration Act, see F. PAUL BLAND, JR., ET AL., CONSUMER ARBITRATION AGREEMENTS: ENFORCEABILITY AND OTHER TOPICS (3d ed. 2003).

## Appendix A

### Table of Existing Laws that Expressly Permit Title Lending

The following table very briefly describes aspects of state statutes and regulations that specifically address and permit title loans. In many states, title loans may be regulated under general laws, caselaw, or other non-statutory authorities, which are not discussed here. Statutes that prohibit “title pawns” and title loans are also not included below.

State	Statute/Regulations	Description
Florida	Fla. Stat. Ann. Chapter 537 (“Title Loans”), Chapter 516 (“Consumer Finance”); Florida Administrative Code Chapter 69V-45 (“Title Loan Companies”)	Caps interest rates at 30% per annum on the first \$2,000 of the loan, §§ 537.011(1); 516.031(1). Provides a number of protections for title loan borrowers, but includes more specific requirements regarding repossession and sale procedures and additional fees that may be charged for lenders licensed under Chapter 537 than for lenders licensed under Chapter 516, see Florida Attorney General, How to Protect Yourself: Title Loans, available at <a href="http://myfloridalegal.com">http://myfloridalegal.com</a> .
Georgia	Ga. Code Ann. §§ 44-12-130 to 44-12-138 & 44-14-403 (pawnbroker provisions)	Permits pawnbrokers to engage in car title pawns, § 44-12-130(5), with charges of up to 25% for each 30-day period during the first 90 days and up to 12.5% for each 30-day period thereafter, § 44-12-131(a)(4). Permits municipal authorities to license pawnbrokers, § 44-12-136, but does not require state-issued licenses. Does not discuss return of surplus in pawnbroker statute.
Illinois	Ill. Admin. Code tit. 38, §§ 110.300 to 110.410 (“Short Term Lending”)	Does not cap rates that title lenders can charge. Provides that “short-term loans” (including title loans with a term of up to 60 days) “may be refinanced a maximum number of 2 times, but only when the outstanding balance of the loan has been reduced by at least 20%,” § 110.370(b). Prohibits loans, other than the refinancing of an existing short-term loan, to an obligor who has had an outstanding short-term loan within the last 15 days, § 110.370(c). Limits the size of title loans to \$2,000, and provides that “no loan shall be made in such amount that the principal and interest payments . . . exceed 50% of the obligor’s gross income” for the period, § 110.370(a).
Kentucky	Ky. Rev. Stat. Ann. §§ 368.200 to 368.285 & 368.991 (“Title Pledge Lending”)	Imposes a 36% annual cap on charges for loans of up to \$1,000 and annual caps between 24% and 36% for larger loans, §§ 288.530(1), 368.260(1). Limits rollovers to 3 additional 30-day periods, § 368.260(3).

Car Title Lending: Appendix A

State	Statute/Regulations	Description
Minnesota	Minn. Stat. §§ 325J.01 to 325J.13 (“Pawnbroker Regulation”)	Regulates title loans under pawnbroker law and chapter 168A (Vehicle Titles)/chapter 336 (Uniform Commercial Code), § 325J.06(c). Permits a pawnshop charge of up to 3% per month of the principal amount plus a “reasonable fee for storage and services” that “may not exceed \$20 if the property is not in the possession of the pawnbroker,” § 325J.07(a). Prohibits pawnbrokers from selling a motor vehicle covered by a pawn transaction until 90 days after recovery of the vehicle, § 325J.095(b).
Mississippi	Miss. Code Ann. §§ 75-67-401 to 75-67-449 (“Title Pledge Act”); Mississippi Title Pledge Act Regulations issued by Department of Banking and Consumer Finance	Permits title pledge lenders to charge up to 25% of the principal amount per month (a 300% annual rate), § 75-67-413(1). Permits rollovers if the parties agree as long as the principal is reduced by at least 10% of the original principal amount for purposes of calculating the lender’s service charge, § 75-67-413(3). Requires return of only 85% of the difference between the sales price and the amount of the unpaid principal balance, the delinquent service charge, the actual cost of the repossession, and a \$100 sales fee, § 75-67-411(5). Limits title pledge agreements to \$2,500 or less, § 75-67-415(f).
Missouri	Mo. Rev. Stat. §§ 367.500 to 367.533; Mo. Code Regs. Ann. tit. 4, § 140-29.010 (“Title Loan Companies”)	Permits title lenders, like other small loan lenders, to charge any interest rate agreed to by the parties, §§ 367.515, 408.100. Permits an additional fee of up to 5% of the principal or \$75, whichever is less, on initial closed-end contracts, but not on subsequent contracts, §§ 367.515, 408.140. Permits borrowers to cancel a loan made by a title lender without any costs by returning the full principal amount by the close of the next business day, § 367.518.1(5), requires the borrower to reduce the principal of the loan by 10% upon the third or any subsequent renewal, § 367.512.1(4), requires lenders to consider the financial ability of the borrower to reasonably repay the loan, § 367.525(4), and requires lenders to comply with generally applicable provisions in taking possession and selling the vehicle upon default, §§ 367.512.1, 367.521, 367.531, 408.551 to 408.557, 408.560 to 408.562.
Montana	Mont. Code Ann. §§ 31-1-801 to 31-1-827 (“Montana Title Loan Act”)	For each 30-day period permits interest rates of up to 25% for the portion of the loan that does not exceed \$2,000, 18% for the portion of the loan between \$2,000 and \$4,000, and 10% plus fees for the portion of the loan over \$4,000, § 31-1-817; § 32-5-103(5). Permits unlimited rollovers by the lender, as long as beginning with the sixth rollover and for each subsequent rollover, the principal amount is reduced by at least 10% of the original principal amount of the loan for purposes of calculating the interest or fees due, § 31-1-816(2)(d).

Car Title Lending: Appendix A

State	Statute/Regulations	Description
New Hampshire	N.H. Rev. Stat. Ann. §§ 399-A:1 to 399-A:19 (“Regulation of Small Loans, Title Loans, and Payday Loans”)	Permits lenders to charge any rate agreed upon for loans, including title loans, of \$10,000 or less, § 399-A:12. Provides a right to cancel a title loan by the next business day following the date of the transaction, § 399-A:14(III). Permits a title lender to roll a loan over up to 11 times as long as the principal amount is reduced by at least 5% of the original principal amount at each rollover for purposes of calculating interest, § 399-A:15.
New Mexico	N.M. Stat. Ann. §§ 58-15-1 to 58-15-31 (“Small Loan Business”); N.M. Admin. Code tit. 12, ch. 18	Requires licensing of small loan lenders with the state’s Financial Institutions Division of the Regulation and Licensing Department, but allows unlimited interest rates and rollovers for small loans of \$2,500 or less, including title loans.
Oregon	Or. Rev. Stat. §§ 725.600 to 725.625 (“Title and Payday Loans”); Or. Admin. R. 441-730-0000 et seq.	Does not limit interest rates on title loans, §§ 725.340(1), 82.025. Prohibits more than 6 rollovers and requires a one-day waiting period before obtaining a new loan if the lender renewed a previous loan 6 times, § 725.615. Permits lender to seek recourse from the borrower even after car is repossessed and sold, 441-730-0275(17). Prohibits making title loans without forming a good faith belief that the consumer has the ability to repay the title loan, after considering factors set out by rule, § 725.605, 441-730-0275(18)-(20).
South Carolina	S.C. Code Ann. § 37-3-413 (“Short-Term Vehicle Secured Loans”)	Caps finance charges for some consumer loans of \$600 or less, but does not limit charges on larger consumer loans made by supervised lenders as long as they are properly filed and posted, § 37-3-201. Provides a right of rescission until the next business day, § 37-3-413(6)(b). Allows lenders to renew for no more than 6 additional periods (not to exceed 240 days), § 37-3-413(2). After the final renewal period, permits the borrower to repay the remaining principal, without any additional interest, in 6 equal monthly installments, § 37-3-413(2). Requires a good-faith belief that the borrower has the ability to repay the loan, § 37-3-413(3).
Tennessee	Tenn. Code Ann. §§ 45-15-101 to 45-15-120 (“Title Pledges”); Rules of the Tennessee Department of Financial Institutions Chapter 0180-27	Permits title pledge lenders to charge up to 2% monthly interest plus an additional 20% in fees (a 264% annual rate), §§ 45-15-111(a). Limits title pledge agreements to \$2,500, § 45-15-115(3). Provides that county clerks will issue licenses, §§ 45-15-107, 45-15-108. Permits agreements to provide for rollovers that occur automatically, § 45-15-113(a). Does not address return of surplus.
Utah	Utah Code Ann. §§ 7-24-101 to 7-24-305 (“Title Lending Registration Act”)	Does not cap rates that title lenders can charge. Requires registration rather than licensing, § 7-24-201. Requires consideration of ability to repay, § 7-24-202(3)(d).

## Appendix B

---

### **Alternatives to Title Loans**

Title lenders are not the only option for borrowers facing the need for additional cash. Alternatives to such loans include, but are not limited to:

- A payment plan with creditors
- Advances from employers
- Credit counseling
- Emergency assistance programs
- Credit union loans
- Cash advances on credit cards
- Military loans
- Small consumer loans

#### ***Payment Plan with Creditors***

The best alternative to title loans is for borrowers to deal directly with their debt. Many creditors will negotiate partial payments if a payment plan is in place. Working out a payment plan with creditors can allow the consumer to adjust billing to pay off bills over a longer period of time.

#### ***Advances from Employers***

Some employers grant paycheck advances to employees. Because this is a true advance, and not a loan, there is no interest and the advance is therefore cheaper than a title loan.

#### ***Consumer Credit Counseling***

There are various consumer credit counseling agencies throughout the country that can help borrowers work out a debt repayment plan with creditors or develop a budget. These services are available at little or no cost. Contact a nationally accredited consumer counseling agency in your area by calling 1-800-388-2227 or visiting [www.debtadvice.org](http://www.debtadvice.org).

#### ***Emergency Assistance Programs***

Many faith-based groups and community organizations provide emergency assistance, either directly or through social services programs. For example, in partnership with state agencies, the federal Low Income Home Energy Assistance Program provides financial assistance to certain low-income households that are in a heating or cooling (weather) related emergency.

#### ***Credit Union Loans***

Many credit unions offer small, short-term loans to their members. For example, North Carolina State Employees' Credit Union offers members a salary advance loan at

## Car Title Lending: Appendix B

approximately 12% annual interest -- *vastly* cheaper than a typical title loan. Some credit unions also offer free financial counseling and a savings plan to help members get back on their feet. Many other credit unions offer very low interest rate loans (prime to 18% annual interest) with quick approval on an emergency basis. Unlike the typical title loan, these loans give the borrowers a real chance to repay with longer payback periods and installment payments.

### ***Cash Advances on Credit Cards***

Credit card cash advances, which are offered at about 30% APR, are much cheaper than a typical title loan. Some credit card companies specialize in borrowers with financial problems or poor credit histories. Borrowers should shop around and not assume they do not qualify for a credit card. Secured credit cards are another option. A secured credit card is tied to a savings account. The funds on the account “secure” the amounts charged on the card. Once a consumer has successfully used the secured card for a period of time, they can then qualify for a regular unsecured credit card.

### ***Military Loans***

Several companies offer loans ranging from about \$500 to \$10,000 to active duty and retired military personnel. These loans cost less than the typical title loan because they have much lower APR.

### ***Small Consumer Loans***

Small consumer finance companies offer small, short-term loans that cost up to 60% APR, usually in the range of 25-36% APR. These loans are also much cheaper than the typical title loan; a person can borrow \$1000 from a finance company for a year, and pay much less than they would on a 300% APR title loan of *half* that size over the same period. Such loans may be made with or without security.

## Pending Title Lending Legislation<sup>1</sup>

Current as of April 2005

State	Bill	Description
Alabama	H.B. 560	Authorizes licensed pawnbrokers to sell memberships in an automobile club in conjunction with title loans under certain circumstances and provides that the sale of automobile club memberships is not deemed to be the sale of insurance.
California	S.B. 120	Amends §§ 22303 and 22304 of Financial Code by raising the amount for excepted loans from \$2,500 to \$10,000. Adds § 22343 to Financial Code, which prohibits licensees from taking title as security for a consumer loan unless disclosures are made and the annual interest rate is below an as-yet unspecified threshold.
Georgia	H.B. 675	Amends criminal usury statute to include “title pawn transactions” and changes laws governing pawnbrokers with respect to “title pawn transactions” (e.g., to require notice and provide for civil and criminal penalties).
	S.B. 198	Amends Ga. Code Ann. § 44-12-131(a)(4) to limit the interest rate on pawn transactions involving a motor vehicle or motor vehicle certificate of title to 5% per month (i.e., a 60% annual rate).
Idaho	S.B. 1031	Adds a new section to the Idaho Code relating to “Short-Term Vehicle Equity Loans” that, <i>inter alia</i> , provides that such loans are regulated consumer credit transactions and sets out lender licensing requirements.
Illinois	H.B. 427 <sup>2</sup>	Amends the Consumer Installment Loan Act and provides that a short-term lender may not impose fees (other than interest) of more than 25% of the principal amount of a short-term or title-secured loan during the 30-day period beginning with the date the loan is commenced.
	H.B. 600 <sup>2</sup>	Creates the Short-Term Loan Act, which <i>inter alia</i> limits interest to 24% per annum on loans of \$1,000 or less with a term of less than 93 days and requires licensing, examination, and reporting.

<sup>1</sup> This table may not be a comprehensive list. The descriptions provided also are not intended to provide a complete summary of any pending legislation.

<sup>2</sup> Illinois H.B. 427, H.B. 600, and H.B. 2360 were re-referred to the Rules Committee on March 10, 2005 per Rule 19(a).

Pending Title Lending Legislation (as of April 2005)

State	Bill	Description
Illinois	H.B. 2360 <sup>2</sup>	Creates the Payday and Title Loan Credit Reporting Act, requiring any lender who provides a payday or title loan to an Illinois resident to furnish the borrower's repayment history and other relevant credit information to at least one consumer reporting agency.
	S.B. 2069	As amended, contains only a short title provision for the Short-Term Loan Act.
Iowa	H.F. 307	Regulates title loans by, <i>inter alia</i> , capping interest rates at 21% per annum, requiring licensing, consideration of ability to repay, and a \$20,000 bond or irrevocable letter of credit per title loan office, imposing civil and criminal penalties, giving the Superintendent rulemaking authority, and prohibiting mandatory arbitration clauses in title loan contracts.
	S.F. 217	Prohibits a lender from receiving a finance charge that exceeds 21% per annum on the unpaid balance of a loan for money that is secured by a certificate of title to a motor vehicle. Provides that an attempt to avoid application of the maximum finance charge on a loan secured by a certificate of title to a motor vehicle by structuring the transaction as a sale, sale and repurchase, sale and lease, pawn, rental purchase, or lease with the intent to avoid the maximum finance charge shall be considered a consumer fraud subject to civil penalties.
Missouri	H.B. 566	Provides that title lenders may not charge more than double the average rate charged by credit unions in Missouri.
Nevada	A.B. 384	Makes various changes related to certain short-term, high-interest loans, including title loans. Includes specific provisions governing title loans in sections 78-86, which, <i>inter alia</i> , require lender licensing and consideration of ability to repay.
Tennessee	H.B. 1327 / S.B. 1544	Permits title pledge lenders to charge up to 2% monthly interest on the original principal amount plus an additional 20% in fees for each 30-day period (i.e., a 264% annual rate). Requires licensing by the department of financial institutions and a bond, certificate of deposit, or irrevocable letter of credit. Requires 1-2 examinations every 24 months (or more frequently under certain circumstances), but renders examination reports confidential. Includes other provisions, including a requirement that lenders return surplus.

Pending Title Lending Legislation (as of April 2005)

State	Bill	Description
Tennessee	H.B. 1631 / S.B. 1016	Amends Tenn. Code Ann. § 45-15-111(a) by changing the amount that title pledge lenders can charge in monthly interest from 2% to 1% and the additional fees that lenders can charge from 20% to 10% per month (yielding a 132% annual rate). Also adds the word “reasonable” before “repossession charge” in Tenn. Code Ann. § 45-15-111(b).
	H.B. 1670 / S.B. 1793	Limits the interest that title pledge lenders can charge to 36% per annum and contains related provisions.
	H.B. 1672 / S.B. 1794	Limits the interest that title pledge lenders can charge to 3% a month (i.e., a 36% annual rate), including all fees other than those expenses specifically identified in the statute. Requires licensing by the department of financial institutions and a bond, certificate of deposit, or irrevocable letter of credit. Requires 1-2 examinations every 24 months (or more frequently under certain circumstances), but renders examination reports confidential. Includes other requirements, including that lenders return surplus and that any violation of the title pledge provisions be construed as an unfair or deceptive act or practice subject to the penalties and remedies of the Tennessee Consumer Protection Act.
	H.B. 1784 / S.B. 2025	Deletes and/or replaces many existing provisions of the Title Pledge Act in their entirety. Does not change Tenn. Code Ann. § 45-15-111(b), which permits annual rates of up to 264%.
	H.B. 1786 / S.B. 2054	Requires licensing by the department of financial institutions and announces the policy of the state to provide for the examination and regulation of title pledge lenders by the department.