L E G I S L A T I V E   A C T I O N

DATE: January 5, 2007

TO: City Council Members

FROM: City Council Member Nancy Saxton

RE: Briefing: Legislative Action Regarding Payday-Loan Businesses

CC: Cindy Gust-Jenson, Ed Rutan, Steve Fawcett, Louis Zunguze, Orion Goff, Edna Drake, Gary Mumford, Melanie Reif

I would appreciate the City Council's support for a Legislative Action to prepare an ordinance that would restrict the number of businesses in Salt Lake City that provide "payday loans."

Council Members may recall that at its November 7 meeting the Council informally agreed to calendar this proposal for a briefing and discussion. The discussion would take place after receiving an opinion from the City Attorney's Office about the best methods available for municipalities to regulate the number of payday loan businesses.

The City Attorney's Office has determined that amending the City zoning ordinance – as other cities in Salt Lake County have – is the best course for municipalities to take in the regulation of this legal business. I should note that Congress has passed legislation pertaining to payday loans to military personnel. The business also has drawn the attention of the Utah Legislature and Salt Lake County Council.[1] However, my proposal pertains to regulating the number and location of payday loan businesses within Salt Lake City's boundaries.

Payday loans are short-term, high-interest, cash advances made to individuals who have a checking account and a steady source of income. When making a loan, lenders take a post-dated check for the loan amount plus interest as collateral. If a borrower does not return with a cash payment when the loan is due, the lender cashes the check.[2] Studies by state governments, scholars and consumer advocates generally indicate average payday loan annual percentage rates range from 364 percent to 550 percent.[3] It should be noted that Utah law considers payday loan businesses as legitimate, regulated enterprises.[4]

Salt Lake City had 24 businesses that provide payday loans to consumers when I first raised this issue.[5] That number may have increased since then. According to the Business License Office, before the year 2004 the City received 10 applications for businesses licenses to operate payday-loan businesses. Since 2004, 14 similar firms have applied for business licenses. The increase appears to be part of a statewide trend. According to a Deseret Morning News article, the number of businesses providing payday loans in Utah has gone from 17 in 1994 to 381 in 2005.[6] According to the article, "Utah has more payday loan stores than 7-Elevens, McDonald's, Burger Kings and Subway stores – combined."

Some cities in Salt Lake County have noted the growth of the payday loan business and have taken steps to limit the presence of the businesses in them.

The West Valley City adopted the following definition about five years ago to regulate the number of payday loan businesses, according to Deputy City Attorney Nichole Cottle. The definition reads:

> 7.1.103 (30) "Check Cashing" means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. No check cashing or deferred deposit loan business shall be located within 600 feet of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. One check cashing or deferred deposit loan business shall be allowed for every 10,000 citizens living in West Valley City. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

Taylorsville adopted a similar definition in 2005 and listed check cashing businesses as conditional uses zoned for community commercial and intense commercial uses.

According to the Deseret Morning News article in 2005, the average number of businesses in states that allow payday lending is one business per 10,000 residents. Utah averages 1.6 payday-lending businesses per 10,000, according to the article.

I would like the City Council's support in asking the City Attorney's Office to prepare an ordinance limiting the number of payday lending businesses in Salt Lake City. The presence of 24 businesses of that kind may mean that the number of businesses have exceeded the average of businesses like that in states that allow the practice. The 2000 Census listed Salt Lake City's population at 181,743. That number divided by 24 means there is a payday lending business for every 7,572 residents.

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[1] Article and Editorial: The Salt Lake Tribune, December 7 and December 12, 2006.
[2] Article: Virginia-Pilot, May 16, 2006.
[3] Article, *Predatory Lending and the Military*, Christopher L. Peterson, March 9, 2005.
[4] Please see attached Utah Code 7-23, *Check Cashing Registration Act.*
[5] Please see attached list.
[6] Article, Deseret Morning News, Lee Davidson, November 14, 2005.

Payday lenders: Legislature should consider further regulations

Tribune Editorial
Article Last Updated: 12/21/2006 07:39:13 PM MST

Congress passed a law last year to protect U.S. troops and their families from predatory business practices by some payday lenders. But if America's fighting men and women are worthy of this consumer protection, why not all Americans?

We ask this question because *The Tribune* reported last Sunday that the Utah Legislature may take up bills to further regulate payday lenders in this state. Today, Utah's rules for these outfits do not include caps on interest rates, fees or loan amounts, any limit on the number of outstanding loans a single borrower may have at one time, or any requirement that a lender try to determine whether a borrower has a reasonable chance of repaying a loan.

The lenders argue that a rate cap is unnecessary in a competitive industry where the market sets the price of small loans. They also claim that their profit margin is not outside the norm for other businesses, and that viewing the cost of borrowing in terms of annual percentage rates is misleading because the term of most payday loans is two weeks. For example, borrowers often are charged $15 to borrow $100 for two weeks. That's an annual percentage rate of 390 percent, though many customers do not consider a $15 fee to originate a $100 loan unreasonable.

But Congress, acting after a Pentagon report disclosed that unscrupulous payday lenders were preying on members of the armed services, imposed a rate cap of 36 percent on interest and fees. That law applies, however, only to U.S. troops.

It is a measure of our times that the word usury has gone out of the vocabulary and that 36 percent per annum is considered a justifiable interest rate. But when bank credit card companies regularly charge 20-30 percent, plus exorbitant fees, we begin to wonder whether this society has a conscience about usury anymore.

As the Utah Legislature considers additional regulations for payday lenders, we encourage lawmakers to read the Pentagon report (www.usa4militaryfamilies.dod.mil) and the model legislation prepared by the National Consumer Law Center.

Microcredit can be a good thing, but there's a difference between it and loansharking. Utah should encourage the former and close down the latter.

Easy Money: With strings attached

Consumer advocates say operators prey on the poor, but the industry says it provides a service that no one else does

By Lesley Mitchell
The Salt Lake Tribune
Salt Lake Tribune

Article Last Updated:12/17/2006 12:32:20 AM MST

For years, consumer groups have warned Utahns about the dangers of payday loans.

Their success at urging legislators and city officials to crack down on an industry that charges an annual percentage rate of 400 percent or more for a quick short-term loan has been limited, though.

Until now.

In recent months, a host of cities along the Wasatch Front have either imposed limits on the number of payday lenders that can operate within their boundaries or are considering it. Salt Lake County is moving forward on a similar proposal. On the federal level, Congress passed a measure capping interest rates at 36 percent on payday loans for the nation's military personnel after a number were denied security clearance because of high levels of indebtedness.

Buoyed by all the momentum, legislators and consumer advocates are quietly laying the foundation for not one but several pieces of legislation. Together, they could provide sweeping reform of an industry that many say preys on the poor but that the industry contends meets a need that no one else can or will.

"Before, we were never sure if we would be able to find even one legislator to run a bill for us," said consumer advocate Linda Hilton, who has lobbied for years for greater consumer protections. "Now there are a lot of people coming to us, saying, 'Let's talk about a bill that does something about the payday loan industry.' "

That said, the industry has some formidable allies in the Legislature and a powerful cadre of lobbyists. Majority Leader Dave Clark is a Zions Bank manager and one of a number of bankers who in the past have opposed interest rate caps. Then there's James Evans, a payday loan operator, who is the Salt Lake County Republican Party chairman.

But for the first time, those protecting the interests of the industry might be outnumbered - or even outmaneuvered - by those demanding reform.

"The public is fed up and they want something done," said State Rep. Paul Ray, R-Clearfield, one of several legislators planning to support one or more bills. "And that gives us a tremendous advantage."

Rate cap? No way

The payday loan industry's trade group, the Utah Consumer Lending Association, says it might even support some of the measures, especially those designed to weed out bad operators and provide greater oversight of Internet-based lenders. But interest rate caps? No way.

Tracy Rawle, a Check City vice president, said caps make no sense because "there's a lot of competition to keep rates in line."

Plus, he thinks that looking at annual percentage rates is misleading.

Check City, which is based in Provo and has 43 locations in Utah and four other states, charges

$8 interest per week for every $100 borrowed. That works out to an APR - annual percentage rate - of 417 percent.

But payday loans are not paid back over years such as with other types of loans. "Our average loan is for only 13 days," Rawle said. "There is no way to make that short term of loan for a low APR."

He also contends that consumers would pay far more in fees if they bounced a check. If they neglect to pay their rent or utility bills, the repercussions could be even greater.

So what exactly are payday loans, and why are they so polarizing?

They are short-term loans for people who need cash to tide them over until their next paycheck. They often are paired with other check-cashing enterprises and also are known as cash-advance or postdated-check loans.

The first payday loan company opened in Utah in the early 1980s. Today, there are 128 state-registered lenders, with more than 400 offices, mainly along the Wasatch Front. Many are open round the clock or until midnight.

Borrowers taking out payday loans typically pay at least $8 interest a week for each $100 of principal. It may not sound like much, but the annual percentage rate works out to more than 400 percent, with some loans approaching 1,000 percent. The typical high-rate credit card, by comparison, charges 20 percent or 30 percent.

Bad lenders

In a recent report, the nonprofit Center for Responsible Lending said "predatory payday lending costs American families $4.2 billion per year in excessive fees." Utah's share was $69 million, the center estimates.

Fees can be become a real issue because of the way loans are structured.

Unlike with other types of loans, payments by payday loan borrowers are not made over time. They must pay the entire amount borrowed - plus interest - in one lump sum, typically in about two weeks. Loans can be rolled over, or continued, for those who can't pay off the entire amount at once, but additional fees apply. State law limits such rollovers to 12 weeks to protect consumers from being trapped in a cycle of debt.

Rep. Ray said yet another issue is that payday lenders in Utah don't share a common database, as such lenders do in other states.

That means a low-income borrower could take out multiple payday loans based on the same paycheck - something payday lenders probably never would allow if they knew about it because such borrowers would have a slim chance of repaying.

Perhaps the biggest issue is that even though most payday lenders are law abiding, there are a host of unscrupulous operators who have skirted laws and abused consumers, advocate Hilton said.

She said there are plenty of payday lenders who don't make it clear to borrowers they have 24 hours to rescind the loan or that they can make partial payments in an effort to reduce the amount they owe. Both were protections passed at the state level several years ago.

The industry counters that abusive lenders are the exception.

Tom Despain is the operations director for USA Cash Services of Ogden, which operates 40 lending shops in seven states, including 12 in Utah. His company charges $10 per week for each $100 borrowed.

He doesn't believe the industry needs additional regulation because competition tends to drive out the bad operators.

"Customers won't go to a bad lender once they figure out they are a bad lender," he said.

But by then, advocates say, it is too late. People who go to a bad lender are more likely to face serious financial difficulties, including bankruptcy.

Too many stores?

Like many operators, he is enraged at the steps cities have taken to limit the number of operations in their boundaries.

"It's like saying you can't have a McDonald's next to a Burger King."

Despain and Rawle of Check City also consider interest rate caps unreasonable.

"What do you think McDonald's would do if the federal government told them they had to sell quarter-pounders with cheese for 14 cents to the military?"

He contends McDonald's would halt such sales, and his company has decided it will stop lending to military personnel and their dependents once the 36 percent cap goes into effect late next year.

Under that cap, he said he would be able to charge about 70 cents per week for every $100 borrowed instead of the $10 per week he charges now.

"We can't even cover our costs [of doing business] and overhead if we were to take in only 70 cents," he said.

He said the public misunderstands payday loans, and he takes the industry's argument about loan rates one step further.

"These are high-risk loans." In other words, when a bank provides a car loan at a single-digit interest rate, that lender has collateral in the form of the vehicle's title until the loan is paid off.

Payday loans are not secured, and losses can be high, which he contends means interest rates have to be stout or some lenders would not be able to stay in business.

Although there are numerous concerns about payday loans, industry representatives say that the state receives few complaints, which is something the Utah Department of Financial Institutions confirms. Advocates say consumers often don't complain because they don't know where to go - or they figure no one will help. People with little education - financial or otherwise - and those who speak limited English are especially at risk, they say.

National security

Despain offers another explanation. He thinks it's because his industry is meeting a need by providing a valuable service - giving borrowers a source of cash in a time of need.

"Many of these people have no other place to go," he said.

That is exactly why Congress passed the measure capping interest rates for military personnel.

A number soldiers and others in need of cash - especially those being deployed to Iraq and other hot spots - increasingly have been taking out payday loans. Due in great part to the high interest rates, many have been caught in a cycle of debt. This can affect national security when someone has to be reassigned from an area because their debt loads are so high they become a risk.

Karen Burton of West Valley, who has two sons in the military, supports the interest rate cap because she has seen how easily young members of the military - including her own sons - can build up mounds of debt.

"The younger guys, especially, don't understand how high the interest rates are," she said. "All they know is they have to pay their bills."

Payday loan operators insist that borrowers know the consequences.

Rawle, vice president of Check City, said nearly one-quarter of his customers are college graduates. More than one-third are homeowners.

"Our customers are educated individuals who are capable of making a wise financial decision. It saves them money over more costly alternatives."

Trista Gibson of Salt Lake City, who has used payday loans several times in the past year, says she is more than capable of making sound lending decisions. She views payday loans as an emergency fund.

"It makes me feel secure. If something happens, you can go there and they will help you."

Rate cap in question

Though there is little agreement between opponents and proponents about payday loans, there is even less among those who want to try to regulate the industry.

The Utah Department of Financial Institutions, which has oversight over such companies, is helping draft one reform bill. But it will not include an interest rate cap.

That's because Commissioner Ed Leary contends that caps stifle a free-market system. He prefers to see greater fines for violations of state law, greater oversight of Internet-based payday lenders and a measure that would limit the financial penalties loan operators could assess.

Bankers also do not support rate caps, which has led some critics to consider banks supporters of payday lenders.

"Bankers are not opposed to efforts to regulate payday lenders," said Howard Headlee of the Utah Bankers Association. "Reports that banks were involved in the defeat of last year's payday lending bill are simply not true."

Headlee concedes he would not actively oppose a cap for payday lenders that would exempt banks.

Whether consumer advocates would be willing to provide an exemption is not clear. One thing is for sure: They are hoping credit unions will support payday industry reform.

Scott Simpson, president and CEO of the Utah League of Credit Unions, is trying to figure out whether his powerful lobby should get involved. Like the bankers, credit unions traditionally have been reluctant to support limits on the operations of other financial services company.

It's too early to know what shape the bills will take - and whether they will go anywhere.

But Sen. Ed Mayne, D-West Valley City, is another legislator who believes this next session will bring meaningful reform.

He supports a bill that would stiffen penalties for bad operators and offer greater disclosures about loan terms.

And like others, he is hoping the Legislature will give more thought to capping rates.

"We have made some progress, and I think we'll make even more," he said. "But we never have been able to take the last step of capping interest rates. We should be doing the same thing that the federal government has done to protect their military personnel."

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* *Tribune* reporters
JENNIFER SANCHEZ AND BRIANNA LANGE contributed to this story.

What is a payday loan?

A short-term loan for people who need cash to tide them over until they get their next paycheck. Often, people who take out payday loans have maxed out their charge cards, do not have access to credit, have little or no savings or cannot borrow from family and friends.

Borrowers typically pay $8 to $15 in interest a week for each $100 of principal they borrow. Such loans also are called cash-advance or postdated-check loans.

Attachment 1

News Story

Norfolk aims to curb number of payday lenders

May 16, 2006 - Norfolk, Virginia

Like gas stations and convenience stores, payday lenders tend to spring up wherever consumer traffic is heavy.

"We're located in malls and near big-box retailers because that's where our customers are," said Wayne "Jabbo" Covert, vice president for government affairs at Check into Cash Inc., a Cleveland, Tenn., lender with 21 stores in Hampton Roads.

The proliferation of payday lenders in Norfolk has been hard to miss. Since 2002, when Virginia opened its doors to providers of the short-term, high-interest loans, stores have opened in several of the city's shopping centers and along major corridors including Virginia Beach Boulevard, Little Creek Road and Tidewater Drive.

The city, however, is seeking to curb their growth by barring new stores from opening in large shopping centers and requiring a special exemption for lenders seeking to open stores in other commercial areas. Existing payday-lending stores would be allowed to continue doing business.

The proposed change in Norfolk's zoning ordinance also would apply to check-cashers, auto-title lenders and retailers of used merchandise. The change would exclude antique stores from the restrictions. Used-car dealers and pawnshops would not be affected.

Payday loans are short-term, high-interest cash advances made to individuals who have a checking account and a steady source of income. When making a loan, lenders take a post dated check for the loan amount plus the interest as collateral. If a borrower doesn't return with a cash payment when the loan is due, the lender cashes the check.

In Virginia, licensed lenders are allowed to make loans of $100 to $500 for one to four weeks. They can charge as much as $15 for every $100 lent, which works out to an annual percentage rate of 390 percent for the typical two-week loan.

Paul R. Riddick, a member of the City Council, expressed concern Monday about the increasing number of payday-lending stores in Norfolk and the financial harm that the loans can cause.

"From my perspective, we have so many people looking for these to carry them through to the next paycheck," said Riddick, whose ward takes in the southeastern area of Norfolk. Many of the borrowers, he noted, are lower-income individuals and members of the military.

The proposal to restrict the opening of payday-lending stores, check-cashers, auto-title lenders and used-merchandise retailers was approved by the city's planning commission in March. The council has scheduled a public hearing on the measure for 7:30 p.m. May 23.

Norfolk's attempt to curb the spread of payday-lending stores has been taking shape amid similar efforts by several other cities. In October, Jacksonville, Fla., imposed several restrictions on payday lenders, including an interest-rate ceiling on their loans and a prohibition against lenders contacting the commanding officers of military borrowers who default on a loan. Jacksonville also barred lenders from opening new stores within five miles of a military installation.

This year, San Francisco imposed a moratorium on new payday-lending and check-cashing stores while the city considered ways to limit the proliferation of these businesses in particular neighborhoods. Meanwhile, Phoenix and a handful of other Arizona cities have sought to restrain the growth in payday-lending stores.

In a report released this month, Virginia's Bureau of Financial Institutions said the volume of payday lending in the state approached $1.2 billion last year, an increase of 21 percent from 2004. The number of loans, it said, rose 16 percent to 3.37 million. Meanwhile, the number of borrowers climbed 15 percent to 445,891.

The report by Virginia's banking regulator doesn't break down the volume of lending by municipality, but it does list the store locations of licensed lenders. At year-end 2005, Norfolk had 46, an increase of three from a year earlier. Among Hampton Roads cities, Virginia Beach had the greatest number of locations with 67.

In Norfolk, the Navy-Marine Corps Relief Society, a charitable organization, repeatedly has called attention to the difficulties that households of young enlisted personnel encounter when using payday loans. Also, consumer advocates have campaigned to eliminate the lending in Virginia, citing the rising number of borrowers who use more than a dozen of the loans a year. Because of the triple-digit interest rates, they argue, consumers who use the loans repeatedly are vulnerable to being overwhelmed by the interest costs.

However, attempts in the General Assembly to abolish payday lending in the state have stalled amid heavy lobbying by the industry and its opponents.

Covert of the Check into Cash lending chain played down the effects that high interest rates have on frequent users of payday loans. Many of Check into Cash's customers, he said, use 7 or 8 loans over a year to 18 months because of a job loss, a divorce or other problem. Once the problem is resolved, they stop using the loans, he said.

Check into Cash, he said, has adjusted to efforts by cities to limit the concentration of payday-lending stores in particular areas. However, Covert contended that municipalities should allow market forces to determine the number of stores and their locations rather than zoning laws.

"All we are doing is responding to demand," he said. "We build where the customers are."

News Source

The Virginia-Pilot, Tom Shean, Staff Reporter

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- Virginia payday loan reform is past due [May 24, 2006]
- Norfolk aims to curb number of payday lenders [May 16, 2006]
- Payday lending now has 1 billion dollar foothold in Virginia [May 4, 2006]
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financial vulnerability facing past, current, and future military personnel, and introduces the emerging debate over payday lending to military personnel. Part III and introduces leading law and geography theory and summarizes our empirical methodology. Part IV juxtaposes our empirical description of payday lender location strategies near U.S. military bases with descriptions of the payday lending legal environment in force at each location. Part V analyzes the results of this study, ultimately drawing descriptive and prescriptive conclusions for policy makers, including state and federal law makers, as well as military leaders.

II. BACKGROUND

A. Payday Lending

1. What Are Payday Loans?

Payday loans are high interest rate, rapidly compounding loans meant to tide over cash-short borrowers until their next paycheck.[19] In a typical transaction, a customer might borrow $200.00 by writing a check drawn on her personal checking account and made out to the lender for $235.00.[20] Typically, the borrower "post-dates" the check by writing a date one or two weeks in the future.[21] This date is the day that the parties agree the borrower will repay the loan and interest. Before making the loan, payday lenders generally verify the debtor's identity by asking for documents or identification such as a driver's licence, recent pay stubs, bank statements, car

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[19]Payday loans go by many other names, including deferred deposit transactions, deferred presentment check cashing, post-dated check loans, and check loans. Jean Ann Fox, *What Does It Take to Be a Loanshark in 1998? A Report on the Payday Loan Industry,* 772 PRAC. L. INST./COM. 987, 989 (1998).

[20]Some lenders are now replacing the use of checks with a borrower's agreement to allow the lender to simply debit the borrower's bank account on the due date of the loan. Michael S. Barr, *Banking the Poor,* 21 YALE J. ON REG. 121, 149 (2004).

[21]*See* Scott Andrew Schaaf, Note, *From Checks to Cash: The Regulation of the Payday Lending Industry,* N.C. BANKING INST. 339, 341-42 (2001).

registration, or telephone bills.[22] Many lenders telephone the borrower's human resource manager or boss to verify the borrower's employment.[23] Virtually all lenders require the names, addresses, and telephone numbers of close family and friends in the event the borrower skips town.[24] Payday lenders usually decide whether to issue a loan on the spot without obtaining a credit report.[25] Both parties are aware that the borrower's checking account does not have sufficient funds to cover the check when the check is signed.[26] The assumption is that the borrower will have deposited sufficient funds in her checking account to cover the check before the due date of the loan. After the paperwork is complete, the debtor walks away with $200.00 in cash or a check drawn on the lender's account. When the two weeks are up, the debtor can redeem the check with cash or a money order, permit the check to be deposited, or attempt to renew the loan by paying another fee.[27] If the borrower cannot pay off the loan, the obligation continues to accrue thirty-five dollars in interest every two weeks. Although the initial thirty-five dollar fee represents only 17.5% of the loan amount, the annual percentage rate of the transaction is around 455%.

A 455% interest rate is by no means uncommon.[28] Studies by state governments, scholars,

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[22]Fox, *supra* note 19, at 989.

[23]Christopher Lewis Peterson, *Only Until Payday: A Primer on Utah's Growing Deferred Deposit Loan Industry*, UTAH B.J., Mar. 2002, at 16, 16.

[24]*Id.*

[25]Fox, *supra* note 19, at 990.

[26]*Id.*; Deborah A. Schmedemann, *Time and Money: One State's Regulation of Check-Based Loans*, 27 WM. MITCHELL L. REV. 973, 974-76 (2000).

[27]Fox, *supra* note 19, at 990.

[28]CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH COST CREDIT MARKET 10-11 (2004).

and consumer advocates generally indicate average payday loan rates range from 364% to 550%. A consumer advocate coalition study surveying lenders in nineteen states and the District of Columbia found an average interest rate of 474%.[29] Other regional data tend to roughly confirm this figure. For instance, the Indiana Department of Financial Institutions survey found the average Indiana payday loan interest rate was 498.75%.[30] North Carolina consumers purchase about sixty-three percent of their payday loans at annual interest rates between 460.08% and 805.15%.[31] A recent report on Oklahoma payday lenders may suggest a slightly lower average APR of around 364.47% in that state.[32] A report on payday lenders in Salt Lake City showed an average rate of 528.49%.[33] Still, some lenders charge rates far in excess of these averages. For example, Indiana regulators found one lender offering payday loans at an interest rate of 7600%.[34] Moreover, these interest rates do not include common contingent charges including late fees and bounced check fees, which can cost nearly as much, or even more, interest as the loan itself.

Payday lenders argue that quoting an annual percentage rate for a two week loan is

[29] JEAN ANN FOX & EDMUND MIERZWINSKI, SHOW ME THE MONEY 8 (2000).

[30] IND. DEP'T OF FIN. INSTS., SUMMARY OF PAYDAY LENDER EXAMINATION (July-Sept. 1999), *available at* http://www.dfi.state.in.us/conscredit/PayDay%20Lender%20Summary.html.

[31] OFFICE OF THE COMM'R OF BANKS, REPORT TO THE GENERAL ASSEMBLY OF PAYDAY LENDING, Feb. 22, 2001, at 3.

[32] A survey of payday loans registered in a database required under Oklahoma law suggested an average payday loan principal of $307.59 with an average fee of $43.00. OKLAHOMA TRENDS IN DEFERRED DEPOSIT LENDING: OKLAHOMA DEFERRED DEPOSIT PROGRAM 4 (Dec. 2004), *available at* http://www.veritecs.com/OK_trends_12_2004.pdf [hereinafter OKLAHOMA TRENDS]. Assuming a fourteen day repayment period, these figures suggest an APR of 363%.

[33] Christopher L. Peterson, Note, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 UTAH L. REV. 543, 563.

[34] IND. DEP'T OF FIN. INSTS., *supra* note 30, at 1.

misleading and unhelpful.[35] Instead, payday lenders prefer to quote loan prices as a percent of the principal borrowed.[36] For instance, if the consumer borrows $300.00 for two weeks in exchange for a fee of $52.50, lenders will often describe this as a "17.5%" loan. Lenders suggest payday loans compare favorably to bounced check fees, which average around twenty-one dollars.[37] Critics of payday lending retort that a bounced check fee is a one-time charge that does not continue to compound again and again.[38] For loans, annualized interest rates are the uniform metric which all mainstream creditors use to compare prices. Home mortgages, student loans, and automobile loans are all disclosed and regulated with an annual percentage rate terminology. Even other short-term lenders, such as credit card issuers, use annual percentage rates. Consumers wishing to compare the price of available credit options tend to be confused and surprised by different price quoting conventions for different types of credit. To those with limited financial literacy, or even to casual observers, a cash advance or purchase on a 17.5% APR credit card may be indistinguishable from a payday loan with 17.5%-of-principal fee. Most payday loan borrowers will be surprised to know the interest rate of the latter loan is about *twenty-six times more expensive* than that of the former. Not surprisingly, one industry-sponsored telephone survey found seventy-two percent of payday loan borrowers said they did not know the

[35] *See Stay away from Payday Lenders: There are Few, If Any, Sensible Reasons to Use a Payday Lender*, WIS. STATE. J., Nov. 10, 2002, at B3.

[36] Professor Johnson's study of Ohio payday lending found that lenders systematically obscure their annual percentage rates by leaving them out of advertisements and refusing to provide Truth in Lending disclosures until after loan consummation. *See* Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 38-39 (2002).

[37] BD. OF GOVERNORS OF THE FED. RESERVE SYS., ANNUAL REPORT TO CONGRESS ON RETAIL FEES AND SERVICES OF DEPOSITORY INSTITUTIONS (June 2002).

[38] *See* John Hackett, *Ethically Tainted*, US BANKER, Nov. 2001, at 48.

annual percentage rate of their most recent loan.[39] More than half of the small minority who claimed to know their annual percentage rate incorrectly believed that their rate was far lower than it actually was.[40]

Annual percentage rate terminology is also appropriate for payday loans because these loans often compound for durations coming close to or exceeding a year. For any given loan, many payday loan borrowers simply lack the funds to pay on the due date and are accordingly forced to roll over the loan.[41] Compelling evidence suggests a substantial portion of the payday loan market is made up of extensions of previous loans, sometimes for protracted durations. North Carolina regulators found that about eighty-seven percent of borrowers would roll over any given loan at least one time with any given lender.[42] Not counting debtors who borrowed from multiple locations, nearly forty percent of North Carolina borrowers renewed their payday loans more than ten times.[43] The Indiana Department of Financial institutions study found that seventy-seven percent of all payday transactions were extensions of previous loans.[44] In Oklahoma, the average payday loan customer took out 4.3 payday loans during a four month period from August 2004 to November 2004—just over one per month.[45] Consumer advocates have found that the

[39] JOHN P. CASKEY, THE ECONOMICS OF PAYDAY LENDING 3 (2002) (citing GREGORY ELLIEHAUSEN & EDWARD C. LAWRENCE, GEORGETOWN UNIV., PAYDAY ADVANCE CREDIT IN AMERICA: AN ANALYSIS OF CUSTOMER DEMAND 54-55 (2001)).

[40] *Id.* (citing ELLIEHAUSEN & LAWRENCE, *supra* note 39, at 54-55).

[41] Some lenders and borrowers use "same day advances" where "the borrower pays the loan in full, but that same day takes out another payday loan in an amount equivalent to the balance paid earlier." Barr, *supra* note 20, at 136.

[42] OFFICE OF THE COMM'R OF BANKS, *supra* note 31, 59, 147, 147, at 6.

[43] *Id.*

[44] IND. DEP'T OF FIN. INSTS., *supra* note 30, at 1.

[45] OKLAHOMA TRENDS IN DEFERRED DEPOSIT LENDING, *supra* note 9, at 9.

average payday loan customer borrows 10.19 payday loans per year.[46] In Iowa, the Division of Banking found an average of 12.5 loans per year per customer.[47] An industry-sponsored study found that thirty percent of borrowers had seven or more loans in a year, and that about seventy-five percent of borrowers rolled over their loan at least one time.[48] Regulators in Illinois found payday loan borrowers "who were borrowing continuously for over a year on their original loan."[49] An empirical study by Professor Creola Johnson found that payday lenders repeatedly roll over payday loans even in states with statutes prohibiting this practice.[50] Moreover, there are frequent reports of loans outstanding for one, two, or even three years.[51] Collectively theses statistics have led consumer advocates to argue that payday loans trap borrowers into a cycle of "chain debt."[52]

Payday lenders argue that the high prices and long durations of their loans are justified by the high administrative costs of doing business and by the high default rates.[53] Scholars have

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[46]FOX & MIERZWINSKI, *supra* note 29, 46, 51, at 8.

[47]Kathleen E. Keest, *Stone Soup: Exploring the Boundaries Between Subprime Lending and Predatory Lending, in* CONSUMER FINANCIAL SERVICES LITIGATION 2001 at 1107, 1114 (Practicing Law Institute Corporate Law and Practice Course Handbook Series B-1241, 2001) (citing IOWA DIVISION OF BANKING, SURVEY (Dec. 2000)).

[48]ELLIEHAUSEN & LAWRENCE, *supra* note 39, at . This study likely understates the duration of payday loans because it relies on a sample of more affluent payday borrowers, only surveys borrowers willing to discuss their loans, and did not reach borrowers who had their telephone service disconnected.

[49]ILL. DEP'T OF FIN. INSTS., SHORT TERM LENDING: FINAL REPORT 30 (1999), *available at* http://www.state.il.us/dfi/ccd/pdfs/Shorterm.pdf.

[50]Johnson, *supra* note 36, at 32-33.

[51]Peterson, *supra* note 33, at 569 n.167 (payday loan store cashier stating loans accrue interest for "two or three years" in state with 12 week limit on rollover duration); FOX & MIERZWINSKI, *supra* note 29, 46, 51, at 8 (loan renewed 66 times for two-and-half years).

[52]*See, e.g.*, Barr, *supra* note 20, at 149-50; Johnson, *supra* note 36, at 6-7.

[53]*See* Marcus Franklin, *Payday Loans Role Debated at Forum*, DAYTON DAILY NEWS, Nov. 9, 1999, at 1B.

countered that high payday loan prices actually "mutually reinforce" loan losses because the high prices induce default which in turn raises prices.[54] Moreover, even if payday loan loss rates justify higher pricing, the payday lending business has still proven wildly profitable. A Federal Deposit Insurance Agency official wrote that, despite credit and reputational risks, "higher pricing on payday loans promises higher revenues and wider margins for lenders."[55] One economics professor has estimated that payday lending operations earn ten to twenty times higher return on equity than traditional banks.[56] Similarly, after the Tennessee Legislature took steps to legalize payday lending, the Tennessee Department of Financial Institutions conducted a follow-up survey finding that licensed payday lenders "earned over 30 percent returns on investment in the first nine months of legal operation."[57] But perhaps most interesting is that payday lender profits come disproportionately from high-frequency borrowers. Peter Skillern's study of the North Carolina market found that eighty-five percent of payday lender revenue in that state comes from borrowers making five or more payday loans in a year.[58]

Critics of the payday lenders have also complained of a culture of disregard for the rule of law in the industry. For example, in 718 payday lender inspections conducted over a three-year

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[54]Barr, *supra* note 20, at 149 n.148; Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 AM. ECON. REV. 393 (1981).

[55]Barbara A. Monheit, *Consumer Financial Services Litigation: The Regulators Speak*, 1361 PRACTICING LAW INSTITUTE: CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES 459, 503 (March - May 2003) (PLI Order No. B0-01TA).

[56]Mike Hudson, *Going for Broke: How the 'Fringe Lending' Boom Cashes in on the Poor*, WASH. POST, Jan. 10, 1993, at C1.

[57]FOX & MIERZWINSKI, *supra* note 29, 46, 51, at 8.

[58]PETER SKILLERN, CMTY. REINVESTMENT ASS'N OF N.C., SMALL LOANS, BIG BUCK$: AN ANALYSIS OF THE PAYDAY LENDING INDUSTRY IN NORTH CAROLINA 4 (2002), *available at* http://www.cra-nc.org/small%20loans%20big%20bucks.pdf.

period, North Carolina Banking officials found 8,911 violations of simple state consumer-protection rules.[59] Payday lenders in many states refuse to obtain licenses required by state law.[60] Over a thousand payday lenders in Texas openly ignore state interest rate limitations.[61] Creola Johnson's study of Ohio payday lenders found payday lenders in that state systematically refused to provide false and misleading information on loan contract terms, illegally advertise the cost of credit without using Annual Percentage Rate terminology, and allowed consumers to roll over payday loans in violation of state law.[62] And there are wide spread reports that many payday lenders false but intimidating threats of criminal prosecution under "bad check" laws.[63] Needless to say, criminal prosecution has not been a remedy available to traditional creditors since debtors prisons were outlawed after the Civil War.[64]

2. Payday Lending in History: Ancient Lineage and Recent Resurgence

Payday loans are only one recent incarnation of a consumer financial product dating back to our earliest recorded civilizations. While it is true that the use of a negotiable instrument (or an agreement to allow an electronic debit) as a form of collateral is a relatively recent innovation amongst consumer borrowers, pledging to pay one's earnings in the immediate future in

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[59]OFFICE OF THE COMM'R OF BANKS, *supra* note 31, 59, 147, 147, at 2.

[60]There are widespread reports of unlicensed payday lenders in many states including California, Florida, and North Carolina. *See infra* notes 83, 105, and 130 and accompanying text.

[61]JEAN ANN FOX, CONSUMER FEDERATION OF AMERICA, UNSAFE AND UNSOUND: PAYDAY LENDERS HIDE BEHIND FDIC BANK CHARTERS TO PEDDLE USURY 13 (March 30, 2004), available at: <www.consumerfed.org> (viewed: February 28, 2005).

[62]Johnson, *supra* note 10, at 32-33.

[63]A Texas regulator testified that in only one year, payday lenders filed 13,000 criminal charges against their customers in one Dallas precinct. John Conyn, Attorney General of Texas, *Be Wary of Payday Loans*, ASK THE AG *available at*http://www.occc.state.tx.us. *See also* Fox & Mierzwinski, *supra* note 9, 12, at 10 (discussing threats of criminal prosecution in Ohio).

[64]Peterson, *Historical Context of Truth in Lending*, *supra* note 15, at 846.

Attachment 3

UTAH CHECK CASHING REGISTRATION ACT

7-23-101. Title.

This chapter is known as the "Check Cashing Registration Act."

7-23-102. Definitions.

As used in this chapter:
(1) "Business of a check casher" means:
(a) cashing a check for consideration; or
(b) extending a deferred deposit loan.
(2) "Check" is as defined in Section **70A-3-104**.
(3) "Check casher" means a person that engages in the business of a check casher.
(4) "Deferred deposit loan" means a transaction where:
(a) a person:
(i) presents to a check casher a check written on that person's account; or
(ii) provides written or electronic authorization to a check casher to effect a debit from that person's account using an electronic payment; and
(b) the check casher:
(i) provides the maker an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and
(ii) agrees not to cash the check or process the debit until a specific date.
(5) (a) "Electronic payment" means any electronic method by which a check casher:
(i) accepts a payment from a person; or
(ii) makes a payment to a person.
(b) "Electronic payment" includes a payment made through:
(i) an automated clearing house transaction;
(ii) an electronic check;
(iii) a stored value card; or
(iv) an Internet transfer.
(6) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

7-23-103. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or with a Utah resident unless the person:
(i) registers with the department in accordance with this chapter; and
(ii) maintains a valid registration.
(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of a check casher.
(c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a check casher in this state on May 3, 1999, is not required to be registered under this section until July 1, 1999.
(2) (a) A registration and a renewal of a registration expires on April 30 of each year unless on or before that date the person renews the registration.
(b) To register under this section, a person shall:
(i) pay an original registration fee established under Subsection **7-1-401**(8); and

(ii) submit a registration statement containing the information described in Subsection (2)(d).
(c) To renew a registration under this section, a person shall:
(i) pay the annual fee established under Subsection **7-1-401**(5); and
(ii) submit a renewal statement containing the information described in Subsection (2)(d).
(d) A registration or renewal statement shall state:
(i) the name of the person;
(ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);
(iii) the address of the person's principal business office, which may be outside this state;
(iv) the addresses of all offices in this state at which the person conducts the business of a check casher;
(v) if the person conducts the business of a check casher in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;
(vi) the name and address in this state of a designated agent upon whom service of process may be made;
(vii) disclosure of any injunction, judgment, administrative order, or conviction of any crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person; and
(viii) any other information required by the rules of the department.
(3) If the information in a registration or renewal statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:
(a) that person is required to renew the registration; or
(b) the department specifically requests earlier notification.
(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for the form, content, and filing of a registration and renewal statement.

7-23-104. Posting of fee schedules for cashing checks.

(1) A check casher shall post a complete schedule of all fees for cashing a check in a conspicuous location on its premises that can be viewed by a person cashing a check.
(2) The schedule of fees required to be posted under Subsection (1) shall state the fees using dollar amounts.

7-23-105. Operational requirements for deferred deposit loans.

(1) If a check casher extends a deferred deposit loan, the check casher shall:
(a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:
(i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;
(ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and
(iii) a list of states where the check casher is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;
(b) enter into a written contract for the deferred deposit loan;
(c) conspicuously disclose in the written contract that, under Subsection (4)(b), the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed;

(d) provide the person seeking the deferred deposit loan a copy of the deferred deposit contract;

(e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:

(i) the amount of any interest rate or fee;

(ii) the date on which the full amount of the deferred deposit loan is due; and

(iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed; and

(f) comply with the following as in effect on the date the deferred deposit loan is extended:

(i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

(iv) Title 70C, Utah Consumer Credit Code.

(2) If a check casher extends a deferred deposit loan through the Internet or other electronic means, the check casher shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan in a conspicuous manner prior to the completion of the deferred deposit loan.

(3) A check casher that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

(a) make partial payments in increments of at least $5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and

(b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the check casher on or before 5 p.m. the next business day following the loan transaction.

(4) A check casher that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance 12 weeks after the day on which the deferred deposit loan is executed;

(b) rollover a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from the day on which the deferred deposit loan is first executed; or

(c) threaten to use or use the criminal process in any state to collect on the deferred deposit loan.

(5) Notwithstanding Subsections (4)(a) and (4)(c), a check casher that is the holder of a check, draft, order, or other instrument that has been dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments.

7-23-105.1. Electronic disbursement and collections.

If a check casher collects payment on a deferred deposit loan through an electronic payment, the check casher shall, on the day the loan is executed:

(1) credit the amount of the deferred deposit loan through an electronic payment to the person receiving the deferred deposit loan; or

(2) make the amount of the deferred deposit loan immediately available to the person receiving the deferred deposit loan.

7-23-106. Enforcement by department -- Rulemaking.

Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act, the department may:

(1) (a) receive and act on complaints;

(b) take action designed to obtain voluntary compliance with this chapter;

(c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter; or

(d) take action against any check casher that fails to:

(i) respond to the department, in writing within 30 days, to a complaint; or

(ii) submit information as requested by the department;

(2) counsel persons and groups on their rights and duties under this chapter;

(3) make rules to:

(a) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;

(b) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between check cashers and customers; or

(c) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and

(4) employ hearing examiners, clerks, and other employees and agents as necessary to perform its duties under this chapter.

7-23-107. Examination of books, accounts, and records by the department.

(1) At least once every calendar year the department shall, for each premise engaging in the business of a check casher:

(a) examine the books, accounts, and records; and

(b) make investigations to determine compliance with this chapter.

(2) In accordance with Section **7-1-401**, the check casher shall pay a fee for an examination conducted under Subsection (1).

7-23-108. Penalties.

(1) A person who violates this chapter or who files materially false information with a registration or renewal under Section **7-23-103** is:

(a) guilty of a class B misdemeanor, except for a violation of:

(i) Subsection **7-23-105**(1)(f)(i), (ii), or (iii); or

(ii) rules made under Subsection **7-23-106** (3); and

(b) subject to revocation of a person's registration under this chapter.

(2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department determines that a person is engaging in the business of cashing checks in violation of this chapter, the department may:

(a) revoke that person's registration under this chapter;
(b) issue a cease and desist order from committing any further violations; or
(c) prohibit the person from continuing to engage in the business of a check casher.

7-23-109. Civil liability.

Nothing in this chapter is intended to limit any civil liability that may exist against a check casher for:
(1) breach of contract;
(2) violation of federal law; or
(3) other unlawful act.

7-23-110. Exemptions.

The following are not subject to the requirements of this chapter:
(1) a depository institution;
(2) a depository institution holding company;
(3) an institution directly or indirectly owned or controlled by one or more:
(a) depository institutions; or
(b) depository institution holding companies; or
(4) a person that cashes a check in a transaction:
(a) that is incidental to the retail sale of goods or services; and
(b) for consideration that does not exceed the greater of:
(i) 1% of the amount of the check; or
(ii) $1.

Attachment 4

CHECK CASHING
BUSINESSES LOCATED
IN SALT LAKE CITY

Business Name	Address	Ownership	Telephone
1st Choice Money Center	274 East 900 South	RFG Utah LLC	623-1711
Access 2 Cash	65 North 1000 West	RRZ Financial Services	886-2662
All Types Checkcashing	369 S Main St	Rhonda/Robert Hovseth-pine	328-2274
Buckeye Checksmart	832 W North Temple St	Buckeye Check Cashing of Utah	(614) 798-5900
Check Max	1726 W North Temple #C	DDK Cash LLC	994-0616
Check N Go	1645 West 700 North	Check N Go of Utah Inc	364-7977
Check N Go	1423 South 300 West #A	Great Plains Specialty Finance inc	486-4438
Check N Go	1423 South 300 West	Great Plains Specialty Finance inc	486-4438
Check N Go	1645 West 700 North	Great Plains Specialty Finance inc	364-7974
Checkmate Payday Loans & Check Cashing	1290 South 300 West	LMSA Financial Corp Arizona	478-0728
Checkmax	1726 W North Temple #C	David Ha Truong	994-0616
Easy Money	350 East 200 South	Reed Bensen	359-2212
ELITECASHADVANCE	2150 South 1300 East #500	ELITCASHADVANCE	(888) 920-5111
Envios Yosi	169 East 900 South	Envios Yosi	wrong #
Five Star of Salt Lake City	1850 S Redwood Rd	Tali Hoi LLC	972-3808
Money Mart	370 S State St	Jeffrey Weiss	532-5765
Money Mart Express Inc	1355 S 4700 W #200	Money Mart Express Inc.	933-4520
Money Menders	231 East 400 South #112	Savage Holdings Inc	386-0558
Money Talk	180 South 300 West	Alice Marie Folau	wrong #
Nationwide Budget Finance	665 S State St	Western Budget Finance	575-8172
Perulawn Care Services	1465 S State St #1	Carlos Roman	604-0578
Quick Loan	675 East 2100 South #O	Quick Loan Inc.	485-8181
Rent A Center Inc #02310	797 N Redwood Rd	Rent A Center Inc	521-8001
Rent A Center Inc #02313	409 East 400 South	Rent A Center Inc	532-2002

Attachment 5

deseretnews.com

Deseret Morning News, Monday, November 14, 2005

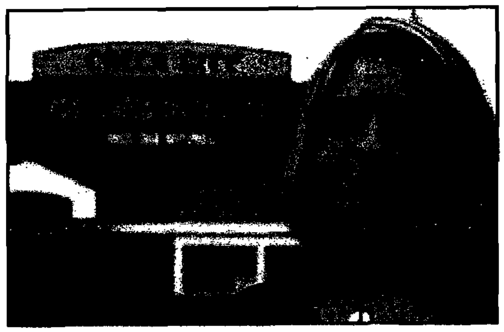
Thriving in Utah: Payday loan stores are popping up everywhere

Payday loan stores are popping up everywhere

By Lee Davidson
Deseret Morning News

As Megan Pedersen of Midvale struggled with finances, she was tempted constantly by the bright yellow or green awnings of stores advertising instant payday loans. "It seemed like they were on every corner."

She finally decided to try one seven years ago to avoid asking her parents again for money. She says paying off the loan stores' 500-percent-or-so interest is hard, but she still uses them occasionally because they offer a quick, convenient way to handle emergencies.


Megan Pedersen, who says payday lenders seem to be everywhere, has used this Check City in Taylorsville.
Jason Olson, Deseret Morning News

Pedersen is not just imagining that payday lenders are rampant in Utah. Data show they are.

Industry critics say that may be because Utah's laws are especially friendly to the industry. Lenders, however, say Utah may simply have more needy people than in other states.

Regardless, the lenders' numbers are booming, and debt counselors say that problems from them are, too, especially among the poor and Hispanics. Their neighborhoods also happen to be where payday lenders are most heavily concentrated, although the industry insists it does not specifically target those groups.

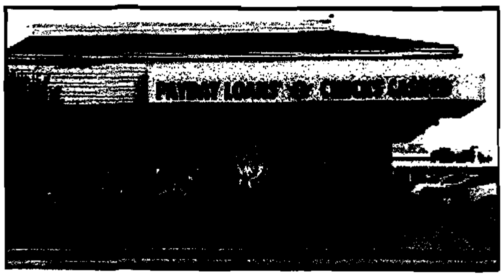
The boom

Recent growth of payday lenders in Utah has been astronomical. The first store appeared in Utah in 1984. In 1994, 17 were in the Salt Lake area. Now, state-license lists show Utah has 381 payday loan stores and online lenders licensed here.

That means Utah has more payday loan stores than 7-Elevens, McDonald's, Burger Kings and Subway stores — combined.

Utah also has a far higher rate of payday lenders per resident than average. States that allow payday lenders average one store per 10,000 residents. Utah averages 1.6 per 10,000 residents.

Morning News analysis shows that 74 percent of Utahns live in a ZIP code with at least one payday lender. (ZIP codes without any payday lenders tend to be either in lightly populated rural areas or in the wealthiest of areas.) Even some unlikely tiny towns such as Midway, Salina, Hyde Park and Grantsville have payday lenders.



The first payday loan store appeared in Utah in 1984. In 1994, 17 were in the Salt Lake area. Now, utah has 381 payday loan stores and online lenders licensed in the state.

Tom Smart, Deseret Morning News

Such stores in Utah are scattered among poor, middle-income and high-income areas. That may be unusual. News reports in other states repeatedly say stores there are heavily concentrated in poor areas and virtually nonexistent in rich places. While poorer Utah areas have higher than average numbers of payday lenders, stores here are still found in communities of about every economic ilk.

"Their business is built on being convenient and fast," said Frank Pignanelli, attorney, lobbyist for the industry's Utah Consumer Lending Association and a Morning News political columnist, giving one reason why payday lenders have become the 7-Elevens of the financial world and have located seemingly everywhere to offer quick service — at a higher price. Not surprisingly, many are open late, even until midnight. A few are now open 24 hours a day, seven days a week.

The payday loan industry's Consumer Credit Research Foundation says surveys show 5 percent of Americans have had a payday loan and 10 percent say they are somewhat or very likely to obtain one in the future.

Why so many?

Industry critics say one reason so many payday lenders may locate here is that few states have friendlier laws for the industry than Utah.

It is among 39 states that explicitly allow such loans. It is among 10 with no cap on interest rates or fees. It is among two with no maximum amounts for such loans. Utah has among the longest limits for "rolling over" or extending loans at high interest: 12 weeks. Most states ban rollovers.

"They obviously like doing business here with those kind of laws," said Linda Hilton, coordinator of the Coalition of Religious Communities, an advocacy group for the poor.

The Morning News also found that some online lenders offering payday loans nationwide via the Internet are located in Utah, apparently to take advantage of its friendly laws.

For example, Instant Cash Flow (cashthis.net) says as part of its online application form, "Our loans are governed by Utah law. Utah law governing payday loans may differ from the laws of the state where you reside. If you do not want to enter into a loan agreement subject to Utah law, you should apply for this loan at a lender located in the state where you live."

Utah-based online lenders can charge higher rates than would be allowed in most states. For example, Global Pay Day (Cashnet500.com) of Murray charges $30 for a two-week, $100 loan. The annual percentage rate is 782 percent. That is higher than maximum rates allowed by at least 23 of 39 states that explicitly allow payday loans, not to mention the 11 states that have not legalized them but likely do not try to stop such Internet transactions.

Quik Payday, based in Logan, was issued a cease-and-desist advisory a few years ago by Colorado's consumer credit regulator for offering Internet loans at rates higher than Colorado allows. Quik Payday charged $20 per $100 for loans up to $500. Colorado caps rates at 20 percent for two weeks on the first $300, and 7.5 percent for loans from $300 to $500.

Pignanelli says the large numbers of payday lenders attracted to Utah come not so much for its laws but because of large numbers of people who need their services.

Targeting the poor and Hispanics?

TOP 10 BY CITY

Rank	City	Number of payday lenders	Rate per 10,000 residents	Poverty rate	Per capita income	Hispanic percentage
1.	Midvale	[illegible]	6.83	13.1%	$17,809	[illegible]
2.	South Salt Lake	14	6.35	[illegible]	$15,474	22.4%
3.	Cedar City	9	4.38	22.1%	$14,057	4.1%
4.	Murray*	17	3.90	[illegible]	$21,094	[illegible]
5.	Clearfield	[illegible]	3.68	12.2%	$13,945	[illegible]
6.	Ogden	26	3.32	[illegible]	[illegible]	[illegible]
7.	Logan	14	3.21	22.7%	$13,765	8.2%
8.	Taylorsville	18	3.07	[illegible]	$17,812	12.2%
9.	Layton*	[illegible]	2.96	[illegible]	$19,804	7.0%
10.	Tooele	6	2.67	[illegible]	$16,580	10.1%
	Statewide	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

*Murray and Layton are exceptions to the trend. Murray is a regional shopping area and Layton is near Hill Air Force Base, which appears to be a magnet for payday lenders.

TOP 10 BY ZIP CODE

Rank	City	Number of payday lenders	Rate per 10,000 residents	Poverty rate	Per capita income	Hispanic percentage
1.	84003, American Fork	[illegible]	53.71	[illegible]	$15,794	[illegible]
2.	84115, South S.L.	[illegible]	[illegible]	[illegible]	$15,004	23.0
3.	84047, Midvale	17	6.0	[illegible]	$17,908	20.2
4.	84770, St. George	[illegible]	4.9	[illegible]	[illegible]	[illegible]
5.	84111, Salt Lake City	[illegible]	[illegible]	[illegible]	$16,537	[illegible]
6.	84066, Roosevelt	[illegible]	4.60	[illegible]	$12,235	[illegible]
7.	84041, Layton	[illegible]	4.29	7.7%	$16,976	[illegible]
8.	84627, Ephraim	2	4.23	30.1%	$9,643	[illegible]
9.	84107, Murray	[illegible]	4.23	[illegible]	$20,879	[illegible]
10.	84701, Richfield	3	39.7	[illegible]	$14,359	2.4

SOURCE: Deseret Morning News analysis of state payday lender lists and U.S. Census data.

Deseret Morning News graphic

"Our low wages (Utah is near the bottom of per capita income nationally) contribute to financial problems here. That is reflected by the growth in payday lenders," he said.

Hilton agrees on that one point. "Our wages in Utah are very low. We have larger families. And we also have older (college) students with families that a lot of other areas in the country do not. So, families here tend to have higher financial burdens."

Poor targets?

The Morning News used computer analysis to see where growth is occurring and where stores are concentrated.

It found that, generally, the poorer the residents are in a specific ZIP code or city, the more payday loan stores they tend to have. Also generally, the more Hispanics in a ZIP code or city, the more payday lenders they have.

Three key exceptions appear, however.

First, areas containing regional shopping malls or big commercialized highway strips (such as

Salt Lake County's State Street or Redwood Road) have more payday lenders than expected from demographic data. Areas near Hill Air Force Base also have far more than would be expected. And some cities that legally restrict the numbers of stores have fewer than expected.

Accordingly, areas that are relatively low-income, have large Hispanic populations and have regional shopping areas have the most payday lenders.

For example, among the 62 Utah cities and communities that have at least one payday lender, Midvale has the most per resident: 6.63 per 10,000 residents. South Salt Lake is second with a rate of 6.35 per 10,000 residents. Both rates are four times higher than the state average.

Midvale and South Salt Lake also happen to be near the top of Utah cities with the highest poverty rates and lowest per-person income. They rank No. 2 and 3 among all Utah cities for percentage of Hispanics. And both Midvale and South Salt Lake have heavily commercialized State Street running through them, lined with strip malls and discount stores.

Of course, Midvale is close to Fashion Place Mall, just over the border in Murray. As an example of how large shopping centers seem to attract payday lenders, 18 payday loan shops are on State Street in Murray and Midvale within a mile of Fashion Place. That makes it convenient for borrowers to spend money from their convenient loans.

Do payday lenders specifically target the poor and Hispanics?

"No," Pignanelli said, referring to the 10 chains belonging to the Utah Consumer Lending Association he represents. "But there are some bad apples (elsewhere) in the industry."

He adds that sometimes lenders may locate in areas where populations are poorer or more Hispanic "because it is easier to get a lease there, say along State Street, for example."

He says it would not make sense for the industry to target the poor. "We don't prey on the poor and the homeless, because the poor and homeless don't pay back loans."

But Patty Bailey, who filed bankruptcy after problems with payday loans, is not so sure. In the years she took out such loans, "I saw a lot of people who looked like they had little education. I saw a lot of students. I saw a lot that did not speak English well, not just Hispanics but others. I wonder if they understood what they read."

Almost all the 67 payday loan stores visited by the Morning News had signs advertising that employees spoke Spanish. Some even offered candy from Mexico for Hispanic customers. Some advertised only in Spanish, with no English on their signs.

Military attack

The Morning News found an unusually large number of payday lenders near Hill Air Force Base. It identified 28 within short distances in Layton and Clearfield.

That means one of every 14 payday lenders in Utah is near Hill Air Force Base.

Actually, that is not surprising. The Pentagon has long expressed concern about payday and other high-interest lenders that flock around bases nationally.

A recent study of 15,000 payday loan stores in 20 states with 109 military bases concluded, "There is irrefutable evidence demonstrating payday lenders are actively and aggressively targeting U.S. military personnel." It was written by Steven Graves of California State University-Northridge and Christopher Peterson of the University of Florida.

Peterson is a Utah native who once worked as a collector for a payday lender here. He said members of the military are a perfect target for payday lenders. "Today's junior military personnel are typically cash-strapped and often find themselves waiting eagerly for the next paycheck," he wrote in a book about high-interest lenders.

The U.S. Government Accountability Office, a research arm of Congress, complained in April that the military is not doing enough to protect employees from payday lenders. In response, the Pentagon launched a program in June to educate military members about their potential dangers. Hill Air Force Base has joined in that effort.

Hill's installation commander, Col. Sharon K.G. Dunbar, said, "We owe it to our airmen to educate them on the best avenues of becoming financially responsible and secure. I would hope that payday lenders would feel the same sense of obligation, particularly given the sacrifices military members make on their behalf every day."

Pignanelli says the industry does not specifically target the military. He said it also goes to extra lengths to help any military members who have problems with loans. "For example, one of the chains here forgave loans, principal and interest, to anyone who was sent to Iraq," he said.

Border effect

Morning News analysis found that some cities do not have as many payday lenders as would be expected from their poverty and Hispanic levels because they have legally restricted the numbers of payday lenders they allow. But enterprising lenders tend to set up shop just across the border.

"We call it the border effect," Hilton said.

West Valley City was apparently the first to adopt an ordinance locally. Its version allows only one payday lender for every 10,000 residents. It already had far more than that number but allowed existing stores to continue. But the ordinance prevents construction of more, or replacement of any that close.

"They were just popping up everywhere," said City Council member Margaret Peterson, mother of law professor Peterson.

Margaret Peterson says she pushed an ordinance to restrict numbers in part because "of the victimization of people seen by my son. . . . I also have a friend and a co-worker who were also caught up in it."

Also, she says West Valley merchants requested help saying the heavy influx of such stores gave some areas a run-down feeling that they worried chased away desirable business.

When West Valley City adopted its ordinance, Hilton says new lenders started popping up just over the border in Taylorsville, often literally across the street from West Valley City.

Taylorsville Mayor Janice Auger says its business owners soon noticed a big influx and called city officials because they were worried, too.

As Hilton said about worries expressed in many cities, "Whenever you get payday lenders, they tend to attract pawnshops, dollar shops, thrift stores and lingerie stores. Once you have them in a certain area, it's hard to get a bookstore, a pet store or a Chinese restaurant."

Auger says her city also found payday lenders attracted a high number of police calls, costing the city extra money. She says many were in response to calls about passing bad checks, and some were for drug deals made by borrowers who had just obtained loans.

Also, she said, "Taking off my mayor's hat, I was a public

accountant for 35 years. I am very offended by their tactics and what it costs people."

Taylorsville adopted an ordinance similar to West Valley City. Since then, some new payday loan stores have popped up literally across the street from both cities in the neighboring unincorporated community of Kearns.

Hilton says her advocacy group has been attempting to persuade the county and cities with large numbers of payday lenders to similarly restrict the number of stores, and to do so in a way that would not merely chase them from just over one border to another.

Trouble booming?

As the number of payday lenders has grown, credit counselors and others say problems caused by them have increased, too.

Don Hester, co-owner of the Debt Free Consumer counseling service in Provo, says that when he tabulated data about his clients, he found: "The percentage of people trapped by payday loans increases about 400 percent per year."

Different credit counselors report different levels of problems with payday lenders, but all say it tends to be serious.

Preston Cochrane, executive director of AAA Fair Credit Foundation, says the percentage of people his agency helps who have payday loan problems "is high. It used to be more medium. . . . We have seen it increase, definitely, over the last two years. It's a reflection of how many new offices are opening up. . . . If they have one payday loan, they tend to have three to five."

Hester says at Debt Free Consumer, "Approximately 15 percent of people who seek counseling have one or more payday loans. Few people will have one payday loan. Generally, they will have anywhere from five to 20 loans, all from different payday companies."

Mike Peterson, vice president of the American Credit Foundation, says only about 5 percent of the people counseled by his foundation have payday loan problems, but the problems that are found are usually serious.

"They end up in a vicious cycle. They figure they will go in one time to fix a little emergency, and end up going back month after month," he said.

Michele Morin, a consumer protection lawyer who works with debt counseling, says among people she has helped with bankruptcy, "almost all of them had trouble with payday loans," and also reports seeing increased percentage of people with such problems.

Pignanelli says, however, that 20 years ago — before payday lenders appeared in the state — "Utah had the highest rate of bankruptcies in the nation. It still has the highest rate of bankruptcies in the nation. So I don't think you can blame people's financial problems here on the (payday loan) industry."

Profit boom

Pignanelli says the booming payday loan industry is making a lot of money. But no one knows exactly how much it is making in Utah. The state does not require lenders to report such things as how many loans they make, how many they must write off or how much profit they make.

Pignanelli says his industry association in Utah also does not compile such information.

But nationally, the industry's Consumer Credit Foundation said 22,000 payday loan stores nationally in 2002 made an estimated 180 million payday loans valued at $45 billion.

That means, on average, each store made 8,182 loans valued at $204,545.

If the 381 payday loan stores in Utah followed that national average, the Utah industry would have had a total of 3.1 million loans valued at $77.9 million.

The Center for Responsible Lending, a group opposing the payday loan industry, estimates the average profit rate per dollar on a payday loan is 34 percent. If that is correct, Utah's 381 payday loan stores would have made a profit in 2002 of $26.5 million.

Cash America, national chain of pawn stores and payday lenders, is publicly traded, so its profits are known and may be an example of what other companies make.

It reported that its revenue increased from $350.5 million in 2002 to $469.5 million in 2004 — up 34 percent in two years.

Earnings per share for stockholders jumped from 48 cents a share in 2002 to $1.18 a share in 2004 — up 145 percent in two years.