

Baby, You Can Take My Car: The Dangers of Auto Title Loans

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Leah Plunkett & Jessica Hiemenz
National Consumer Law Center

This webinar is sponsored with a grant from the Annie E. Casey Foundation and is one of a series of webinars about working cars for working families.
July 15, 2010

Presenter - Sarah Mattson

- Sarah joined NHLA in 2006
- Sarah Mattson is the Policy Director at New Hampshire Legal Assistance (NHLA).
- She coordinates NHLA's legislative and rulemaking advocacy on a variety of issues, including public benefits, housing, domestic violence, and consumer protection.
- She also currently directs NHLA's medical-legal partnership and handles cases for low-income clients in the Manchester area.

Presenter - James W. (Jay) Speer

- Joined the Virginia Poverty Law Center in January 2000.
- He became the executive director of the Poverty Law Center in 2006.
- Jay specializes in consumer law and he provides training and other support to legal aid attorneys and paralegals, private attorneys, and low-income clients throughout the state.
- He also engages in advocacy before state agencies and the General Assembly on issues affecting the rights of consumers.

Presenter - Leslie Parrish

- Senior Researcher at the Center for Responsible Lending (CRL)
- She leads CRL's research efforts on small credit products such as payday and car title loans, as well as bank overdraft programs.
- Prior to joining CRL, Leslie Parrish was a senior policy analyst in the Asset Building Program at the New America Foundation, working on issues such as asset limits in public assistance programs, financial education, and children's savings accounts.

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SMALL DOLLAR LOAN PRODUCTS SCORECARD—UPDATED

NCLC[®]
NATIONAL
CONSUMER
LAW
CENTER[®]

Advancing Fairness
in the Marketplace for All

Consumers Union

Nonprofit Publisher of Consumer Reports



Consumer Federation of America

May 2010

NCLC[®]
NATIONAL
CONSUMER
LAW
CENTER[®]

SMALL DOLLAR LOAN PRODUCTS SCORECARD 2010

The National Consumer Law Center,
Consumer Federation of America, and Consumers Union
(Updated 5/7/10)⁷²

STATE	LOAN TYPE	APR*	GRADE
Alabama	\$250, 2-week payday loan	456%	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	94	F
	\$1000, 1-year loan	20	P
	Criminal usury cap	None	NA
Alaska	\$250, 2-week payday loan	443	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
Arizona	\$250, 2-week payday loan	460	F ⁷³
	\$300, 1-month auto-title loan	204	F
	\$500, 6-month loan	54	F
	\$1000, 1-year loan	46	F
	Criminal usury cap	No cap	F
Arkansas	\$250, 2-week payday loan	17	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	17	P
	\$1000, 1-year loan	17	P
	Criminal usury cap	None	NA
California	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	45	F
	\$1000, 1-year loan	30	P
	Criminal usury cap	None	NA
Colorado	\$250, 2-week payday loan	521	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	91	F
	\$1000, 1-year loan	58	F
	Criminal usury cap	45	F
Connecticut	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	29	P
	\$1000, 1-year loan	26	P
	Criminal usury cap	12	P

⁷² Legislative developments through April 15, 2010, are reflected in this Scorecard, unless otherwise indicated.

⁷³ Due to the sunset provision in Arizona's payday loan law, Arizona will have a P in this category as of July 1, 2010. Ariz. Rev. Stat. Ann. § 6-1263.

* If the APR includes a plus sign ("+"), the grade is an F because the APR could be higher than the stated APR. This situation occurs if the state permits exceptions to the criminal usury cap and one of the four loan products in the Scorecard has an APR that exceeds 36%. Several states permit lenders to pick one or two or more rate and/or fee alternatives when making smaller loans. Note that the Scorecard APRs are based upon the maximum permissible rates/fees regime.

STATE	LOAN TYPE	APR*	GRADE
Delaware	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
District Of Columbia	\$250, 2-week payday loan	24	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	None	NA
Florida	\$250, 2-week payday loan	342	F
	\$300, 1-month auto-title loan	30	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	25+	F
Georgia	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	304	F
	\$500, 6-month loan	44	F
	\$1000, 1-year loan	31	P
	Criminal usury cap	60	F
Hawaii	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	No cap	F
Idaho	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
Illinois	\$250, 2-week payday loan	404	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	20+	F
Indiana	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	45	F

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STATE	LOAN TYPE	APR*	GRADE
<i>Iowa</i>	\$250, 2-week payday loan	358	F
	\$300, 1-month auto-title loan	35	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
<i>Kansas</i>	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	35	P
	Criminal usury cap	None	NA
<i>Kentucky</i>	\$250, 2-week payday loan	471	F
	\$300, 1-month auto-title loan	36	P
	\$500, 6-month loan	42	F
	\$1000, 1-year loan	41	F
	Criminal usury cap	None	NA
<i>Louisiana</i>	\$250, 2-week payday loan	521	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	81	F
	\$1000, 1-year loan	47	F
	Criminal usury cap	None	NA
<i>Maine</i>	\$250, 2-week payday loan	261	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	None	NA
<i>Maryland</i>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	33	P
	\$1000, 1-year loan	33	P
	Criminal usury cap	None	NA
<i>Massachusetts</i>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	37	F
	\$1000, 1-year loan	27	P
	Criminal usury cap	20+	F
<i>Michigan</i>	\$250, 2-week payday loan	375	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	43	F
	\$1000, 1-year loan	35	P
	Criminal usury cap	25+	F

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STATE	LOAN TYPE	APR*	GRADE
Minnesota	\$250, 2-week payday loan	235	F
	\$300, 1-month auto-title loan	116	F
	\$500, 6-month loan	51	F
	\$1000, 1-year loan	38	F
	Criminal usury cap	None	NA
Mississippi	\$250, 2-week payday loan	572	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	52	F
	\$1000, 1-year loan	44	F
	Criminal usury cap	None	NA
Missouri	\$250, 2-week payday loan	1,955	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	24+	F
Montana	\$250, 2-week payday loan	652	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
Nebraska	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	47	F
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
Nevada	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	40	F
	\$1000, 1-year loan	40	F
	Criminal usury cap	None	NA
New Hampshire	\$250, 2-week payday loan	36	P
	\$300, 1-month auto-title loan	36	P
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
New Jersey	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	30	P

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STATE	LOAN TYPE	APR*	GRADE
New Mexico	\$250, 2-week payday loan	409	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	45	F
New York	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	25	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	25	P
North Carolina	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	54	F
	\$1000, 1-year loan	37	F
	Criminal usury cap	None	NA
North Dakota	\$250, 2-week payday loan	520	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	28	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	10.8+	F
Ohio	\$250, 2-week payday loan	28	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	70	F
	\$1000, 1-year loan	54	F
	Criminal usury cap	25+	F
Oklahoma	\$250, 2-week payday loan	396	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	46	F
	\$1000, 1-year loan	30	P
	Criminal usury cap	45	F
Oregon	\$250, 2-week payday loan	Prohibited ⁷⁴	P
	\$300, 1-month auto-title loan	154	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
Pennsylvania	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	26	P
	\$1000, 1-year loan	22	P
	Criminal usury cap	36	P

⁷⁴ Two-week payday loans are prohibited in Oregon; however, the APR for a \$250, thirty-one-day payday loan (the minimum length permitted by law) is 154%, which merits a F.

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STATE	LOAN TYPE	APR*	GRADE
Rhode Island	\$250, 2-week payday loan	390	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	21+	F
South Carolina	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	117	F
	\$500, 6-month loan	71	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
South Dakota	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
Tennessee	\$250, 2-week payday loan	313	F
	\$300, 1-month auto-title loan	264	F
	\$500, 6-month loan	87	F
	\$1000, 1-year loan	54	F
	Criminal usury cap	None	NA
Texas	\$250, 2-week payday loan	156 ⁷⁵	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	84	F
	\$1000, 1-year loan	81	F
	Criminal usury cap	None	NA
Utah	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	No cap	F
Vermont	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	18 or 20	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	Soft cap	P
Virginia	\$250, 2-week payday loan	610	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA

⁷⁵ Some lenders get around the rate cap on payday loans as well as the prohibition on title lending by setting themselves up as credit service organizations and facilitating both these loans with no rate cap. Tex. Fin. Code Ann. § 393.201 (Vernon).

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STATE	LOAN TYPE	APR*	GRADE
Washington	\$250, 2-week payday loan	390	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	39	F
	\$1000, 1-year loan	33	P
	Criminal usury cap	None	NA
West Virginia	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	38	F
	\$1000, 1-year loan	35	P
	Criminal usury cap	Soft cap	P
Wisconsin	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	20+	F
Wyoming	\$250, 2-week payday loan	313	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA

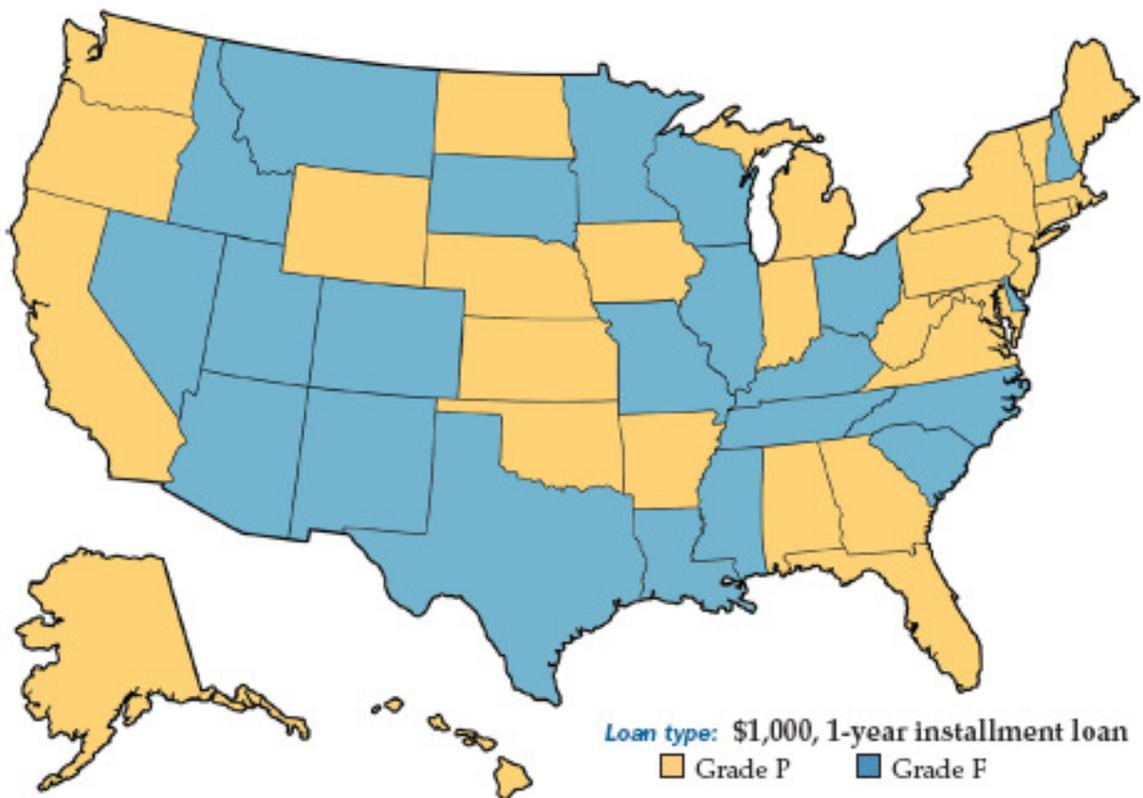
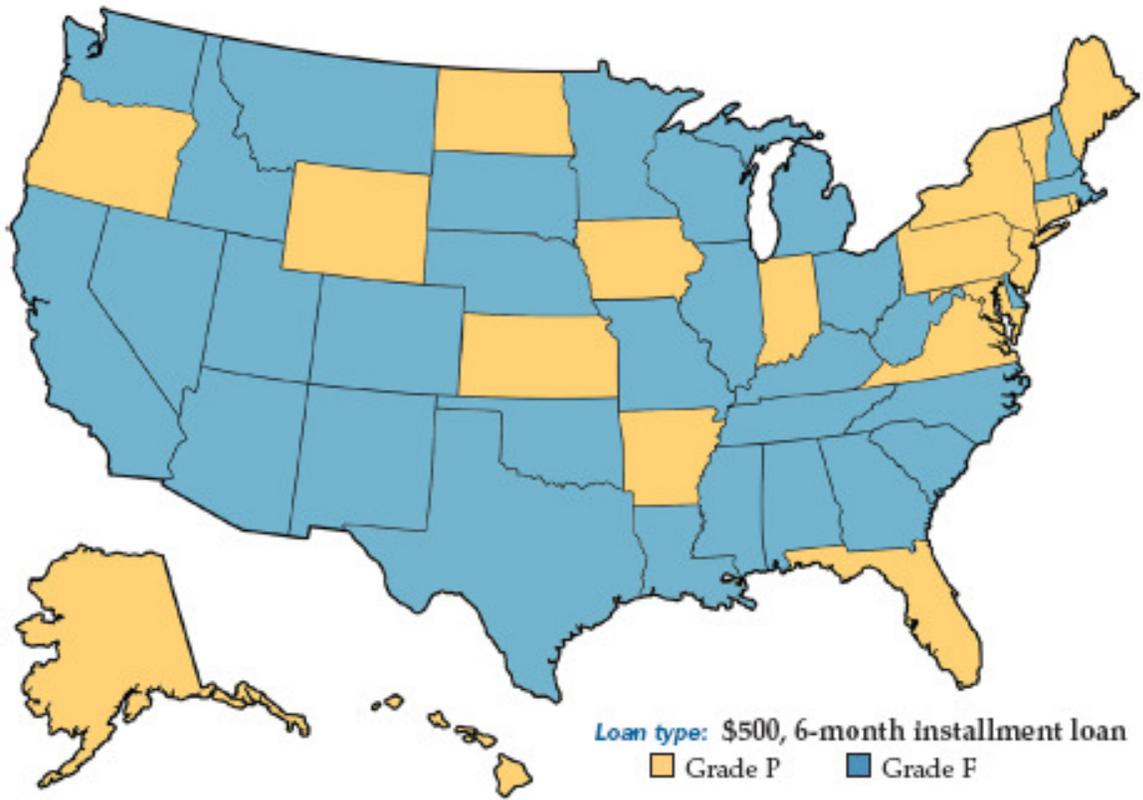
Website link to this document available at:

<http://www.nclc.org/reports/content/cu-small-dollar-scorecard-2010.pdf>

Website link to the statutory backup available at:

http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/cu-small-dollar-scorecard-backup-2010.pdf

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Title Lending 101:

Overview of the product and policy

Leslie Parrish
July 15, 2010

Overview

- **The basics**—how title loans work, how they compare to other high-cost/subprime products
- **Title lending policy**—where title loans are offered, different title lending models/structures
- **Predatory features**—short-term balloon payment, no consideration of ability to repay, potential loss of car and car equity

Basics: What is a title loan?

- Secured by the title of a car, usually owned free-and-clear
- Unlike payday loans, title loans vary by state and lender

- Generally:
 - 30 day balloon payment (some are offered with longer installment terms)
 - No credit check
 - Borrower is charged interest and perhaps some other fees (lien filing, processing, documentation, origination, membership in car club, etc.)

- Requirements:
 - Car title
 - Copy of keys
 - Identification, verification of address
 - Personal references
 - Some lenders also look at a recent paystub or other income information

Basics: Other variations exist



- Longer-term installment product
 - Often used for larger loan amounts, can be for terms of a year or more
- Motor vehicle equity line of credit
 - Open-ended revolving credit model
- Second lien
 - Does not require free and clear car title

Basics: How do title loans work?

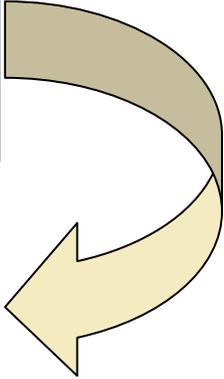


Drive your car over to the title lending store and bring your drivers license, car title, a spare car key, and (perhaps) a recent paystub

Lender will determine car's wholesale value, allow a portion to be borrowed

Get cash, schedule an appointment to return in 30 days

30 days later, return to the store with to buy back your title, or just pay another fee to extend the loan

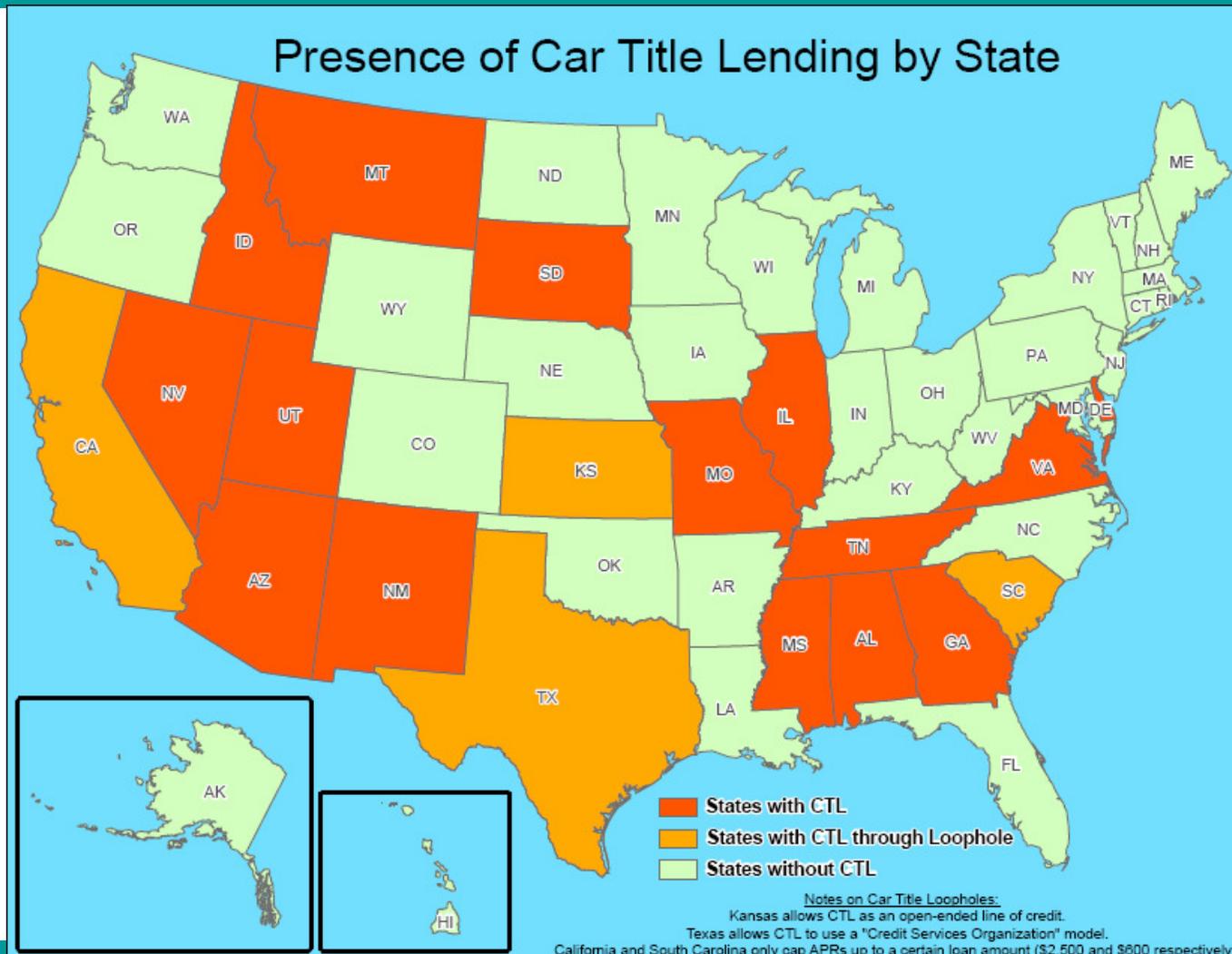


Basics: Payday loans vs. title loans



Payday Loan	Title Loan
Secured by checking account	Secured by car title
Loans usually \$500 or less	Potential for larger loan amounts of \$500-\$1K+
14-30 day loan (one pay cycle)	30 day loan (sometimes longer installment loan)
Triple digit APRs	Triple digit APRs
No credit check, need source of income	No credit check, need car title
Default: potential NSF charges, other fees	Default: potential repossession, lost equity

Policy: Where are Title Loans Available?



Policy: Recent policy changes



- Recent bans or lowered rate caps, causing lenders to leave the state
 - Oregon
 - Iowa
 - New Hampshire
 - Wisconsin (Dec 2010)
- More modest reforms to industry
 - Virginia
 - Illinois
- Ballot initiative in Montana to cap rates this Fall

Predatory: Easy to get into, hard to get out of



“The average 30 day loan is typically renewed approximately 8 times, providing significant additional interest payments.”
-CEO, Title Max

Predatory: Short-term balloon payment causes repeat borrowing



Hard to retire car title debt in just 30 days while meeting other obligations
(ex: \$35K borrower in TN)

Monthly income	\$2917
minus taxes, Social Security	\$228
Income after tax	\$2688
Car title balance and fee due (\$500 loan with 22% monthly fee)	\$610
Money left over	\$2078
minus basic living expenses (housing, food, transportation, and healthcare)	\$1958
Amount remaining for any other debt payments, child care expenses, etc	\$120

Predatory: asset-based lending



- Similar to predatory subprime mortgage products which provided loans based on a home's value and not the borrower's ability to repay
- In many cases, title lender does not even ask about income (and definitely does not ask about other obligations)
- Even worse than asset-based lending in the mortgage context, title loans are based on the value of an asset that's almost guaranteed to depreciate

Predatory: asset-based lending

QUALIFICATIONS

CAR TITLE

- 1 Car Title
- 2 Job
 - a) Only if car is worth less than \$2000.00 rough value. If more, no job required.



BRING IN:

Auto Title Loans:

- ✓ Drivers License
- ✓ Your Vehicle
- ✓ Auto Title

Payday & Installment Loans:

- ✓ Photo ID
- ✓ Pay Stub (latest)
- ✓ Bank Statement (latest)
- ✓ Checkbook

Cash Advances and Title Loans**

- Government income O.K.
- Prior bankruptcy O.K.
- Bad Credit O.K.
- Non-conventional salary** O.K.
- Vehicle not paid off** O.K.

In this troubled economy, we are here whenever you need a little extra cash, and we pledge that we will deal with you honestly and confidentially. We provide title loans and payday loans to make your life easier, and our process is fast and simple. If your vehicle runs and you have a clear title, you can get at least \$300 **GUARANTEED!** If you have an active

Predatory: Default and repossession risk



- Lenders do not want the car, they want the continued interest payments every 30 days
- Borrowers will “rob Peter to pay Paul” and default on other obligations to keep paying on their title loan
- Repossession rates ~10%
- Borrowers do not always receive surplus funds; these may also be drained away to repay late fees, attorney fees, towing fees, etc.

More information

- CRL's Title Lending resources at www.responsiblelending.org/other-consumer-loans/car-title-loans/
- CFA's *Driven into Debt* (survey of title lenders), 2005 at www.consumerfed.org
- New CRL/CFA paper coming soon
- My contact info: 202-349-1854 or leslie.parrish@responsiblelending.org

Baby, You Can Take My Car: The Dangers of Auto Title Loans

July 15, 2010

Jay Speer
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Car Title Loans in Virginia





Consumer Alliance of Virginia

Empowering Your Choice

Financial Freedom is the real choice.



**She spent five years paying off
her dream car.**

**It took three minutes for a title
lender to tow it away.**

Don't let the promise of quick cash or easy money haul away your dreams. Spot the scams.
www.consumeraallianceva.org

Short history of car title lending in Virginia

- Have been making use of open-end loan exception to usury law
- Not too many lenders because of regulatory uncertainty
- We kept stopping authorizing legislation
- Payday lenders started doing line of credit loans in 2009 to avoid new payday loan law

A sad history, cont..

- 2009 General Assembly closed open-end credit loophole to payday lenders (sort of) BUT
- Opens the door wide to car title lending—now regulatory certainty
- 2010 General Assembly passes motor vehicle title loan law to take effect October 1st
- This will be the first regulation of the industry in Virginia.

POLL: What is the most effective way to deal with predatory car title lending?

- A. An interest rate cap of 36%
- B. Jail time for anyone charging more than the usury limit
- C. Tell Lenny the Leg-breaker someone is trying to take over his territory
- D. All of the Above

How can consumers protect themselves?

- Never get one of these loans because you can't get out unless you are willing to give up your car
- Most lenders don't want the car so might take a lump sum settlement if you have already paid
- Might get help from your state legislator if any legislative battles are on the horizon
- Credit counseling agencies don't usually have much luck with them

Toll-free advice hotline

**“On the Hook for
a Car Title Loan?”**

1-866-830-4551
virginia poverty law center



- 25-30% interest per month!
- You will have a hard time keeping up with the very high monthly payments
 - You may lose your car and be in debt for years

Need help? Call **1-866-830-4551**

Woman called me last week- Christina

- Borrowed \$900 last year
- Has repaid \$4K—Still owes \$900
- Car is 11 years old and over 200,000 miles
- She needs car to get to work
- How do I get out without losing my job?

Why does Christina keep paying?

- It is incremental (or slow torture)
- The car isn't worth much but the real issue is the cost of another car
- She needs the car to get to work. We have had 2 people tell us they couldn't pay their car title loan and their rent so they paid the loan to keep their job and became homeless.

POLL

Why do we have predatory lending?

- A. Borrowers are tricked
- B. Borrowers are trapped
- C. Legislators are tricked
- D. All of the above

Virginia legislative changes

- Take effect October 1st so we don't know yet whether any of it will work
- We got an interest rate “cap” of 180 to 274% APR (little help but less than what they currently charge)
- Must be closed end loans and repayment must be in substantially equal monthly installments of principal and interest
- Loans must be 4 months to 1 year

Virginia car title loan interest and fee restrictions

- No interest may be charged after repossession and after the loan is in default 60 days, unless the borrower hides the vehicle
- Lender can't charge any other fees except cost of perfecting lien and reasonable costs of repossession and sale

Virginia car title loan restrictions

- Minimum loan term of 120 days and a maximum of one year
- Loans must be closed-end and repayment must be in substantially equal monthly installments of principal and interest
- If the borrower defaults, the lender can only repossess. Lender can't file suit for a judgment unless borrower intentionally impairs the security interest

Other Virginia CTL restrictions

- Cannot loan more than 50 percent of the fair market value of the car
- The car used as collateral must be lien-free
- The lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower and most of the Fair Debt Collection Practices Act applies to them collecting their own debt

Virginia CTL Notices Required

- At least 10 days prior to repossessing the borrower's car, the lender must send a notice to the borrower, by mail, that the loan is in default and give the borrower the opportunity to redeem.
- Notices required after repossession before sale and again giving right to redeem.

Legislation in your state?

- Interest rate cap is the best solution
- They are savy at playing the state legislator game
- You will never negotiate a good deal with these people
- Media attention is crucial
- If you can't get a good interest rate cap think of other options to help borrowers and hurt their business model

potential legislative fixes other than an interest rate cap

- In Virginia, if the borrower defaults, the lender can only repossess. Lender can't file suit for a judgment.
- Better proposal that failed: Lender can't repossess if borrower has repaid 100% of the amount borrowed.
- Lenders always claim they don't want the cars and the cars are not worth much.

Litigating against car title lenders in Virginia

- Virginia car title lenders all do spurious or fake open-end loans
- The only question is how obvious is it?
- Unfortunately, it is a question of fact whether a loan is spurious—you usually can't just look at the documents (but sometimes you can—for example a loan that is due in 30 days is not an open-end loan)

Lawsuits against car title lenders based upon open-end lending

- The reality seems to be that only credit card issuers know how to properly do open-end loans
- Truth in Lending violations—scrutinize the periodic statements (if they even send them)
- Failure to send = TILA violation

State statute violations by car title lenders

- Look closely at your state statutes
- Virginia has a usury exception for open-end loans and the only restriction is a 25-day grace period
- Big car title lenders were charging a 25% cash advance fee at the time of the loan until they were sued by the Attorney General's office
- When the new law takes effect in Virginia, I expect lots and lots and lots of violations

What happens with the lawsuits in Virginia?

- Up until now, most settle
- The lawsuits teach the lenders what they are doing wrong and they adjust
- Eventually they are more resistant to settling and some are trying to force arbitration
- Most clients want to keep their car and are not willing to risk litigation if they get an offer that includes keeping it and getting out of the loan

Second liens on cars

- Watch out for this even if it seems foolish for lenders to do this
- The trick is to make the borrower think you can take the car and sell it even if you can't

Second liens on cars-legal?

- A possible argument is that it's not a valid security interest under the UCC—see the NCLC book on repossessions
- In Virginia (and probably other states) this is a void lien if it impairs the borrower's "poor debtor's exemptions". Virginia protects \$2K value in a car as a poor debtor exemption and a creditor lien is void unless it is a purchase money lien or if the lien is perfected. Perfecting in Virginia means you record a lien on the title and these second liens can't be perfected since the first lienholder is holding the title.
- Some states (not Virginia) say you don't have a valid security interest unless the lien is perfected by recording a lien on the title

Car title loans

There is no good reason why any lender should be permitted to charge 300% interest on a secured loan. No borrower that wasn't desperate or tricked into it would pay it, no scrupulous lender would demand it, and no unscrupulous lender should be allowed to exploit a borrower's circumstances to charge it.

POLL

Who should head the new Consumer Financial Protection Bureau?

- A. Elizabeth Warren
- B. Joe the Plumber
- C. Mr. T
- D. Sarah Palin

Car Title Loans in New Hampshire
Sarah Mattson, Esq.
Policy Director, New Hampshire Legal Assistance
July 15, 2010

History of the Predatory Small Loan Industry in New Hampshire

- Longstanding small loan interest rate cap repealed in 1999
- Development of payday and car title loan industries during 2000s
- By mid-2000s, significant numbers of payday lenders (both national chains and local stores) operating in New Hampshire, concentrated in southern cities
- By mid-2000s, two car title lenders operating in New Hampshire: New England Auto and Payday Loans and LoanMax (both Georgia-based), concentrated in southern cities
- Features of car title loans circa mid-2000s:
 - Unlimited interest rates (but typically around 300 percent)
 - Borrowers assessed \$25 fee for perfection of security interest with Department of Motor Vehicles
 - Loans up to \$10,000 (but typically around \$750)
 - With insignificant limits, loans could be rolled over 11 times
 - In 2006, over 10,000 loans with total volume of over \$7.5 million

Advocacy for Individual Consumers

- Thorough file review necessary
- Identify possible issues:
 - Inaccurate disclosures
 - Violation of state small loan law
 - UCC violations including perfection of security interest and repossession process
- Key settlement terms:
 - Reduce balance owed as much as possible (compare amount loaned to payments already made)
 - No additional interest
 - Affordable payment plan – amount and timing
 - Clear instructions for how to make payments

Policy Advocacy

- The New Hampshire experience
 - Passage of a 36 percent interest rate cap on payday and car title loans took two sessions after failed bills in earlier years
 - Subsequent passage of an across-the-board small loan cap took two more sessions (still waiting for signature by the Governor)
 - Success resulted from development of a diverse and committed coalition of advocates
- Messaging tips for car title loan interest rate cap advocacy
 - Risk to the car – most significant asset for many families, crucial for access to work, school, medical care
 - Unequal bargaining power in repayment plan negotiations
 - Nothing beats live storytelling by victimized consumers; consider “story banking” as a good second-best option

SAMPLE HANDOUT FROM NEW HAMPSHIRE CAMPAIGN

THE TROUBLE WITH TITLE LOANS

- During the past year, New Hampshire Legal Assistance received more telephone calls from consumers about title loans than about payday loans
- Title lenders do not belong to the Community Financial Services Association of America (CFSA), the payday loan industry trade group, and therefore do not pledge to abide by the CFSA Industry Best Practices
- Under RSA 399-A:15, lenders may roll title loans over 11 times, collecting triple-digit interest over the course of an entire year
- Title lenders lack incentive to agree to manageable repayment arrangements because they may lawfully repossess borrowers' vehicles in the case of default
- Repossession of a family's vehicle can lead to disastrous consequences such as loss of employment



**ONLY AN INTERST RATE CAP WILL PROTECT
NEW HAMPSHIRE FAMILIES FROM
THE CAR TITLE LENDING DEBT TRAP!**