



Consumer Federation of America



November 29, 2005

Georgia Representative Earl Ehrhart
Chairman, ALEC National Board of Directors
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Via E-Mail and U.S. Mail

Dear Representative Ehrhart:

We understand that the National Board of Directors of the American Legislative Exchange Council (ALEC) is considering whether to approve a model Title Pledge Act that was adopted by ALEC's Commerce, Insurance and Economic Development Task Force earlier this year. We write to express our serious concerns about this model legislation. Like payday loans, car title loans are marketed as small, short-term emergency loans, but in reality these loans trap borrowers in a cycle of debt. Car title loans put at high risk an asset that is essential to the well-being of working families—their vehicle. Rather than protecting borrowers from these dangers, the model legislation adopted by the task force would encourage the spread of car title lenders' abusive lending practices.

Research conducted by Consumer Federation of America (CFA) and the Center for Responsible Lending (CRL) indicates that the typical car title loan has a triple-digit annual interest rate, requires repayment within one month, and is made for much less than the value of the car.¹ Title loans are typically made without regard to borrowers' ability to repay. Because the loans are generally structured to be repaid as a single balloon payment after a very short term, borrowers frequently cannot pay the full amount due on the maturity date and instead find themselves extending or "rolling over" the loan repeatedly. In this way, many borrowers pay fees well in excess of the amount they originally borrowed. For example, at 300% APR, a rate commonly charged by title lenders, \$400 borrowed for just three months would cost \$300 in interest and fees, while the full \$400 in loan principal would still be owed.

¹ See CFA, *Driven Into Debt: CFA Car Title Loan Store and Online Survey* (Nov. 17, 2005), available at http://www.consumerfed.org/pdfs/Car_Title_Loan_Report_111705.pdf; CRL & CFA, *Car Title Lending: Driving Borrowers to Financial Ruin* (April 14, 2005), available at http://www.responsiblelending.org/pdfs/rr008-Car_Title_Lending-0405.pdf. Speaking of Florida's 1995 law, which permitted annual rates of 264% on title loans, then-Attorney General Bob Butterworth stated, "We've legalized loan sharking. We even made the Mafia look good." "Need Cash?," 60 Minutes (CBS Television Broadcast, Jan. 2, 2000).

If the borrower fails to keep up with these recurring payments, the lender may summarily repossess the car, stripping borrowers of what is often their most valuable possession and only means of transportation. Data recently compiled by the New Mexico Financial Institutions Division indicate that there were 1,984 title loan repossessions in that state alone in 2004, of which only 972 were reclaimed by the borrower during the calendar year. Lack of transportation is widely recognized as one of the most significant barriers to obtaining and maintaining employment, and for many title loan borrowers, public transportation is simply not available or not an acceptable substitute for a private vehicle.² For borrowers of limited means, losing a car can make it impossible to keep a job, attend school, or obtain health care.

Newspapers across the country have recounted borrowers' wrenching experiences with these high-cost balloon loans, including the following:

- Gregory Dotson, a Tennessee sanitation worker, took out a \$200 loan from Golden Title Loans secured by his 1989 Chrysler New Yorker in order to make a downpayment on a house. Mr. Dotson paid \$329 over seven months and then lost the car to Golden Title Loans.³
- Amparo Lopez borrowed \$1,500 from a title lender in New Mexico in August 2003, using her 1996 Chevrolet Tahoe as security. By January 2005, she had paid \$5,000 in interest – over three times the amount borrowed – and still owed the full \$1,500.⁴
- Felicia Scrubb, a 26-year-old single mother, obtained a \$450 loan from Atlanta Title Loans in July 2004 to pay rent and utilities. Each month, she had to pay \$112.50 in interest on the loan. When she was unable to pay the full interest amount in November 2004, her car was repossessed in the middle of the night. Without her own vehicle, she was unable to make it to work. Ms. Scrubb finally got her car back in January, but not until a reporter from the Atlanta Journal-Constitution contacted the title lender.⁵

² In 2001, only about half of all Americans reported that they had public transportation service. Linda Bailey, Surface Transportation Policy Project, *Aging Americans: Stranded Without Options* at 5 (Apr. 2004) (citing the 2001 U.S. Census Bureau American Housing Survey); *see also* Most Americans Want Improved Public Transportation and Roadways, Research Alert, Jul. 16, 2004, at 1 (noting that 91% of working Americans drive to work). Moreover, as Congress has recognized, “two-thirds of all new jobs are in the suburbs, whereas three-quarters of welfare recipients live in rural areas or central cities,” and “even in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit.” Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 3037(a), 112 Stat. 107 (1998).

³ Marc Perrusquia, *Last-Resort Loans*, THE COMMERCIAL APPEAL, Jul. 11, 2004, at A1. In addition to charging the maximum rate allowed by law, Golden Title Loans also charged Mr. Dotson extra fees when he paid late, even though his loan contract did not mention any such fees. *Id.*

⁴ Andrew Webb, *Payday Loans in Lawmakers' Cross Hairs Again*, ALBUQUERQUE J., Jan. 18, 2005, at A1.

⁵ Alan Judd, Carrie Teegardin, & Ann Hardie, *Borrower Beware: Why Georgia is a Bad Place to Borrow Money: AN AJC SPECIAL REPORT: The Cost Is So High and So Is the Risk for Borrowers Who Post Car Titles as Collateral for Quick Cash*, THE ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2005, at A1.

The title lending industry has grown tremendously in recent years in states that have failed to take adequate steps to protect borrowers. Low-income individuals are frequent borrowers of title loans. Title and payday lenders surveyed in a 2001 Missouri audit estimated that 70% of their borrowers earned less than \$25,000 per year.⁶ This is consistent with an earlier study by the Illinois Department of Financial Institutions, which found that the average salary for title loan customers in that state was \$19,808.⁷

Title lenders have made generous campaign contributions, and industry-friendly laws have passed in some states at breakneck speed. In other states, title lenders have sought to hide the true nature of their products in order to exploit loopholes in existing laws – pretending, for example, that their abusive loans are “sales and leasebacks” or “pawns” when in fact that is not the case.

In light of the title lending industry’s history of evasions and abusive practices, states that permit small loans to be secured by the title to the borrower’s vehicle need to enact strict legal requirements to ensure that borrowers are well protected. In a joint report released in April, CRL and CFA set out a number of protections that we believe are necessary at a minimum if states permit title lending at all. Unfortunately, the model Title Pledge Act adopted by ALEC’s Commerce, Insurance and Economic Development Task Force fails to include many of these critical protections.

Establishing Fair and Affordable Loan Terms. States that permit title lending should require title lenders to establish fair and affordable loan terms by, among other things, providing longer terms, permitting repayment in installments, setting lower rates, and requiring consideration of the borrower’s ability to repay the loan. The model Title Pledge Act would not accomplish this goal due to a number of deficiencies, including the following:

- Sections 3-9 and 12-1 would require title loans to mature within thirty days, which guarantees that many borrowers will not be ready to pay the loan off at maturity and will instead have to pay sizeable fees to roll the loan over.⁸
- Section 10-1 would permit title lenders to charge any interest rate that the parties agree to in writing. Provisions of this nature have led to average APR’s near 300%⁹ and borrowers reporting rates of 800% or more.¹⁰

⁶ Missouri Office of the State Auditor, Report No. 2001-36: Division of Finance and Regulation of the Instant Loan Industry (May 9, 2001), at 3, available at <http://www.auditor.state.mo.us/press/2001-36.htm>.

⁷ Illinois Department of Financial Institutions, Short Term Lending: Final Report at 26, available at <http://www.state.il.us/dfi/ccd/pdfs/Shorterm.pdf> (hereinafter “Illinois DFI 1999 Short Term Lending Report”).

⁸ Section 12-3 of the proposed legislation also would not require that any payments be applied to principal until the *sixth* renewal.

⁹ Illinois DFI 1999 Short Term Lending Report at 26.

¹⁰ See Deborah Baker, *Madrid to Seek Interest Cap on Small Loans*, ASSOCIATED PRESS NEWSWIREs, Oct. 1, 2004; Missouri Auditor Report No. 2001-36, at 4 (noting that one Missouri consumer complained that she was being charged 900% APR on her title loan); KATHLEEN E. KEEST & ELIZABETH RENUART, THE

- Section 4-2 would inexplicably exempt title lenders operating under the Title Pledge Act from otherwise applicable usury laws, giving title lenders a free pass to charge usurious rates that lenders could not charge on unsecured loans. In comparison to state rate caps for unsecured small loans, equivalent-sized loans secured by the title to a paid-for vehicle should be less expensive, not more, since the security protects the lender in the event of default.¹¹
- Section 14-1-j would also permit title lenders to offer memberships in automobile clubs or associations with their loans, a practice that may permit title lenders to tack on additional fees to car title loans that are already incredibly costly.¹² This is simply an effort to permit the same kind of “loan-packing” that has plagued small loan and predatory mortgage loan borrowers for years.
- The model Title Pledge Act would not require lenders to consider the borrowers’ ability to repay the loan. Such a requirement is necessary to ensure that lenders do not make loans simply to get the borrower’s vehicle.

Protecting Borrowers After a Default. The model Title Pledge Act also does not appear to provide borrowers with adequate post-default rights, which are particularly important due to the significance of the asset at stake. For example, sections 13-1 and 13-2 would provide a borrower with only ten days from the date of the notice to cure any default and only ten days’ notice to redeem a vehicle. Section 13-4 provides that no notice of right to cure or redeem is required after a “voluntary” surrender, an exception that makes for an easy loophole.

COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2d ed. 2000) § 7.5.2.3 (noting effective APRs as high as 900%).

¹¹ Despite the greater risk, the current average annual interest rate charged by credit card companies is about 13%, which is more than *20 times* lower than the average rates that surveys have found for car title loans. *Compare* Federal Reserve Statistical Release: G.19 Consumer Credit (Sep. 8, 2005), available at <http://www.federalreserve.gov/releases/g19/>; *with* Illinois DFI 1999 Short Term Lending Report at 4, 26; Florida PIRG, *New Survey Shows Outrageous Interest Rates Charged By Florida Title Loan Companies* (Mar. 31, 1998), available at <http://floridapirg.org> (accessed Dec. 1, 2004); Missouri Auditor Report No. 2001-36, at 5.

¹² Although section 14-1-j would require the title lender to inform the pledgor in writing that the membership is optional, we believe that allowing title lenders to market these services would open the door to abuse. The Florida Attorney General and the Legal Aid Society of Milwaukee have both alleged that borrowers were forced to accept memberships that they did not want or need to get title loans in the past. *See Consumers to Receive \$5.6 Million from Title Loan Company*, US FED NEWS, Aug. 1, 2005 (describing a settlement announced by the Florida Attorney General with Fast Payday Loans, formerly known as Florida Auto Loans, relating to allegations that the company forced borrowers to buy travel club memberships to obtain title loans); *Russell v. Wisconsin Auto Title Loans, Inc.*, No. 04CV002942 (City of Milwaukee Cir. Ct. complaint filed Mar. 29, 2004) (alleging in a putative class action complaint that Wisconsin Auto Title Loans, Inc. told consumers that they were required to purchase car club memberships to obtain a title loan and that the 300% APR that Wisconsin Auto Title Loans, Inc. disclosed to borrowers was much lower than the real APR for the loans because the company failed to include the \$15 monthly car club membership fees in calculating the finance charge).

Monitoring Lenders. The model Title Pledge Act does not include adequate monitoring provisions. For example, it does not include a bonding requirement for title lenders, an important element to deter wrongdoing and ensure that money will be available to redress borrowers when violations occur. The model legislation also does not include a strong reporting requirement regarding loans made, and section 8-3 would require that certain records remain confidential despite the public's interest in knowing, for example, if a title lender is convicted of a felony.

Ensuring Borrowers Can Exercise Their Rights. The model Title Pledge Act also does not seem to provide borrowers with the tools that they would need to enforce their own rights, such as a private right of action with strong remedies and a right to void any transaction entered into in violation of the statute's protective requirements. For example, section 4-2 would prohibit borrowers from bringing an action more than one year after the date of the occurrence of any violation, which would likely prevent some borrowers from pursuing viable claims. Adequate private rights of action, including the right to attorney's fees and costs, are essential for any regulatory system to work. As budgets and resources of regulatory agencies are increasingly restrained, reliance solely or exclusively on regulatory agencies for enforcement virtually assures inadequate enforcement.

We urge you not to approve the model Title Pledge Act because it would encourage many of the abusive practices that have made car title loans so dangerous for borrowers. We have enclosed a copy of our recent reports and would be happy to discuss these issues with you further. Thank you in advance for your consideration of our concerns regarding this important issue.

Sincerely,

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Enclosures

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