

# The Payday Loan Industry in Missouri

## *A Study of the Laws, the Lenders, the Borrowers and the Legislation*

### Executive Summary



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## **Executive Summary**

### **Purpose Of This Study**

One of the Better Business Bureau's responsibilities is to inform the public of questionable or unfair practices in the marketplace. In the past few years the payday loan industry, termed by many as "predatory lending," has grown significantly, both nationally and in Missouri. In 1996 there were an estimated 2,000 payday loan outlets nationally, and by 2008, that number grew to an estimated 22,000. During 2008, 2.8 million payday loans were made by 1,275 lenders licensed in Missouri, according to the Missouri Division of Finance. This study examines current Missouri laws regulating payday loans and how these laws compare with those of other states. The study also looks at the status of pending legislation and the effects of past legislation on the industry.

Sources used in this study include Missouri Division of Finance; 2001 Performance Audit by State Auditor Claire McCaskill; current state laws; Form 10-Ks filed by some companies with the U.S. Securities & Exchange Commission; interviews with officials; National Consumer Law Center; bills introduced in the Missouri Legislature and Congress; Web sites of lawmakers; FDIC Center for Financial Research; AARP; court suits; Consumers Union; Missouri Secretary of State; PACER and Case.net (the court case tracking systems of federal and Missouri courts respectively); Arkansas Supreme Court; Consumer Federation of America; Center for Responsible Lending; the Community Financial Services Association of America (CFSA); and BBB staff visits to nursing homes.

### **Current Missouri Laws**

In 2001, then-Missouri Auditor Claire McCaskill issued a Performance Audit regarding the payday loan industry. She noted that statutes at that time did not limit the interest rates lenders charge and that an annual percentage rate (APR) of 391% was common. While not recommending a specific interest rate that the Legislature should impose, the audit did recommend that the number of renewals of loans be reduced.

The next year, the Legislature passed laws that would allow a lender to charge fees and interest up to 75% of the amount of the loan. On a two-week loan, that translates into a 1,950% APR, the highest allowed among the 43 states that have either banned or set APR caps on payday loans. There are no APR caps in the seven other states. The new laws also allow up to six renewals of loans. Since enactment of the laws, payday loans made to consumers average more than 400% APR, according to the Division of Finance. Missouri's usury law is ineffective in policing exorbitant interest rates as the Division notes on its Web site: "It applies to very little anymore because there are so many exceptions." Also on the site, the Division characterizes the current state laws as consumer friendly in that they "subject this type of lender to a host of consumer safeguards, i.e., places a 75% cap on interest and fees on the initial loan and renewals, limits renewals to no more than six . . . ."

Obtaining a payday loan license in Missouri is a simple process. All that's required is an application and payment of a fee. There is no background check or determination of financial capability, a Division spokesman said.

### **Missouri's Laws Compared With Those Of Other States**

The laws enacted by the Legislature in 2002 require the Division of Finance to report biennially to the Legislature several facets of the payday loan industry. Responses by lenders to the biennial request are not sworn statements. Among the requirements of the report is that a comparison be made with states adjoining Missouri. The Jan. 14, 2009, report to the Legislature shows that of the nine contiguous states, only Missouri allows renewals of payday loans, allowing up to six renewals.

The lax payday loan laws in Missouri have made the state attractive to lenders. Among the nine contiguous states, only Tennessee has more payday loan locations (1,481) than Missouri (1,275) with the next highest being Kentucky with 785, according to the Division of Finance's report. The report also shows that the APR allowed by Missouri's statutes of 1,950% based on a two-week loan of \$100 is by far the highest of the nine contiguous states. The next highest was the Arkansas law which allowed an APR of 520%, but that law was declared unconstitutional by the Arkansas Supreme Court on Nov. 6, 2008, because it allowed "usurious" rates of interest in violation of the state's constitution. The rest of the states' laws based on a two-week payday loan of \$100 allow APRs of 390% except for Illinois which allows 403%.

## **The Lenders**

While the number of payday loan licenses in Missouri may seem large, there are only 24 companies with 10 or more licenses. They operate at 719 locations, or 56% of the total number of locations in the state. Seventeen of these larger lenders are based out of state. Their headquarters are in Arkansas, Texas, North Carolina, Georgia, Tennessee, Ohio, Colorado, Pennsylvania, Kansas, Alabama and Illinois. There are also 34 out-of-state online companies that are licensed payday lenders in Missouri.

The three largest companies licensed to provide payday loans in Missouri are:

- QC Holdings, Inc., a publicly traded company which does business under the name Quik Cash, headquartered in Kansas City, Kan.;
- Advance America, Cash Advance Centers, Inc., headquartered in Spartanburg, S.C., also a publicly traded company; and
- Bn'T Loan, LLC, of Springfield, Mo., which has licenses at various retail locations.

The three companies operate 292 payday loan locations in Missouri or about 23% of the total number of locations. Missouri accounted for 30% of QC Holdings' total branch gross profits last year, while Illinois accounted for 7%. The Form 10-Ks filed with the U.S. Securities & Exchange Commission reveal that Cash Advance and Quik Cash made a combined \$5.5 billion in payday loans nationally in 2008. The primary business of both companies is payday lending, and both companies began operations as the payday lending industry began its great expansion, QC Holdings in 1992 and Advance America in 1997. Bn'T Loan, LLC was created in 2002.

As the phenomenon of payday loans soared, the reputation of companies making them declined. Said one large lender, "Certain banks have notified us and other companies in the payday loan and check-cashing industries that they will no longer maintain bank accounts for these companies due to reputation risks. . . ."

## **Nursing Homes Have Payday Loan Licenses**

Two allied groups headquartered in Sikeston, Mo., operate 62 nursing homes in Missouri with payday loan licenses. Principals in the two allied groups are James and Judy Lincoln, Sikeston; Mathias P. Dasal, Eldon, Mo.; Gary Crane, Rogers, Ark.; and Timothy Drake, Pascagoula, Miss. The sole director of a third group of 30 nursing homes is Don Bedell, Sikeston, who also is sole director of a payday loan company that has licenses at the homes. Nursing homes have regularly made loans to their employees at high interest rates, deducting the payback of the loans from the employees' next paycheck.

In September 2006, then-Gov. Matt Blunt announced that nursing homes would no longer be allowed to make payday loans to their employees, saying, "Employers should not be making money off the wages they pay their hardworking long-term care facility employees."

A spokesman for the Department of Health and Senior Services said that since then, the department has been

in negotiations with the nursing home owners, and that the negotiations “became serious” this year. In April, he said the department and nursing home owners reached an oral agreement, which will allow a parent company of nursing home subsidiaries to hold a payday loan license and to conduct payday loan operations at nursing homes that it owns, with payback of the loans being deducted from the employees’ paychecks. Employees will take out a loan through computer terminals at the nursing homes, the spokesman said. The transition to the system, which in essence changes the present system very little, will be completed by late September, the spokesman said. Department officials said loans were made only to employees and not to residents of the homes.

## **The Borrowers**

As might be expected, the definition of the typical customer taking out a payday loan differs widely between companies that make them and consumer advocates. Two large payday loan companies or their trade association say that borrowers are under 45 years old, a large percentage have incomes of at least \$40,000, nearly half are homeowners, at least 87% have high school diplomas and more than half have attended college.

That picture of the typical borrower is in sharp contrast to that painted by officials and consumer advocates. The Consumer Federation of America says that “payday loan borrowers are typically female, make around \$25,000 a year, are renters, and more likely to be minorities than the general population.” Former Missouri State Auditor Claire McCaskill said in an audit that “title and payday consumers are generally lower income individuals. Title and payday lenders estimated 70 percent of their consumers earned less than \$25,000 annually.”

In a press release from the office of U.S. Rep. Luis Gutierrez (D-Ill.), who introduced a bill that some say is friendly to the payday loan industry, it was noted: “Concentrated in low-income and minority neighborhoods, payday lenders typically offer short-duration loans, waiving the credit history requirement imposed by traditional banks. Unfortunately, those who most need these loans are often the least able to repay them.”

The Missouri Division of Finance conducted a study in 2007. The survey of about 3,700 borrowers showed that the average age of consumers taking out payday loans was 43 and income was \$24,607. Borrowers were classified by vocation with 21% being “labor,” and 12% classified as “secretarial/clerical.” The survey showed that 439 loans or 12% were made to consumers on Supplemental Security Income (SSI) or disability. On its Web site, AARP has this to say about the elderly and payday loans: “As studies show that older people are incurring greater debt than ever before, and are filing for bankruptcy in record numbers, they may find that their usual sources of credit are no longer available. They may join the ranks of other low- and moderate-income consumers (who) turn to non-traditional credit sources for very expensive loans.”

In a press release announcing his filing of a bill, U.S. Sen. Richard J. Durbin (D-Ill.) said, “These excessive rates are often hidden and can have crippling effects on those individuals who can afford it least.”

Last year, customers of payday loan companies filed 473 complaints with BBBs alleging wrongdoing on the part of their lenders.

## **Bane Or Boon?**

As with the identity of the typical borrower, the question of whether payday loans are beneficial or not receives widely disparate answers from the industry and consumer advocates. The Community of Financial Services Association of America (CFSA), the trade association for the industry, says on its Web site, “Typically, a customer uses a payday advance to cover small, unexpected expenses between paydays to avoid expensive bounced-check fees, late bill payment penalties, and other less desirable short-term credit options.” A major lender

notes, "We believe that our customers choose the payday loan product because it is quick, convenient and in many instances a lower-cost or more suitable alternative for the customer than the other available alternatives." Another major lender says, "We believe customers use cash advances as a simple, quick and confidential way to meet short-term cash needs between paydays while avoiding the potentially higher costs and negative credit consequences of other alternatives."

Consumer advocacy groups think differently. A study by the Center for Responsible Lending noted: "Despite attempts to reform payday lending . . . lenders still collect 90 percent of their revenue from borrowers who cannot pay off their loans when due, rather than one-time users dealing with short-term emergencies." In comments to the Federal Trade Commission, the Consumer Federation of America stated: "The essential features of a payday loan make them a debt trap for borrowers" because the loans are made without considering the borrower's ability to repay and interest rates are exorbitant. The Center for Responsible Lending said in another survey that "the entire payday lending industry relies on a business model that encourages chronic borrowing."

The consequences of the "debt trap" may be severe. A study made under the auspices of the Federal Deposit Insurance Corp. (FDIC) was titled "Do Payday Loans Cause Bankruptcy?" The researcher concluded: "We find that payday loan applicants approved for their first loans file for Chapter 13 bankruptcy significantly more often than rejected first-time borrowers." And several consumer groups, in a letter to the sponsor of an industry-friendly bill in Congress, said, "Using payday loans doubles the risk a borrower will end up in bankruptcy within two years."

Borrowers who cannot pay off a payday loan also may find themselves as defendants in court actions. One of the largest lenders in Missouri has filed more than 100 small claims suits in Missouri to force borrowers to pay.

A Center for Financial Responsibility study listed the cost of payday lending to borrowers who have five or more loans per year in the 50 states and the District of Columbia. California topped the list at \$365 million, while Missouri ranked second with \$317 million.

## **Legislation**

A bill introduced in the U.S. Senate by Sen. Durbin began by saying that governments have been trying "to prohibit usurious interest rates in America since colonial times."

Currently, there are four pending bills in Congress and two were introduced in the recently concluded Missouri Legislature. But if the past--when several bills both at the state and federal level died in committee or were not assigned to a committee--is any indication of the future, the prospects of meaningful regulation of payday lenders is questionable. Bills were introduced in the U.S. House or Senate in 2005, 2006, 2007 and 2008. And in Missouri bills were introduced in the House or Senate in 2006, 2007 and 2008. Only one of the bills was enacted into law--a bill passed by Congress in 2006 for military service members and their families that placed an APR cap of 36% on several consumer credit products including payday loans. Only two of the bills introduced this year provide protection against extremely high interest rates.

These bills have been introduced:

- U.S. Senate Bill 500 – Introduced on March 19, 2009, by Sen. Durbin. The bill would cap interest rates on several consumer credit products including payday loans at a 36% APR and would provide a penalty for violation of the law of a year in prison or a fine of \$50,000.
- U.S. House of Representatives Bill 1608 – Introduced on March 19, 2009, by Rep. Jackie Speier (D-Calif.). This bill is identical to Senate Bill 500.
- U.S. House of Representatives Bill 1214 – Introduced Feb. 26, 2009, by Rep. Gutierrez. The bill would cap

fees and interest at 15 cents per dollar, an APR of 390% on a two-week loan. Twelve consumer advocacy groups sent a letter to Rep. Gutierrez opposing the bill, saying it would “stall or stop the significant progress that has been made at the state level to curb usurious lending” and that “legalizing payday lending at triple-digit rates runs counter to President Obama’s promise to cap payday lending and other loans at 36 percent annual rates.”

- U.S. House of Representatives Bill 1846 – Introduced April 1, 2009, by Rep. Joe Baca (D-Calif.). One of the main provisions of the bill is that it would preempt state laws on payday lending, including those in states that have banned payday lending entirely. The bill also calls for a 390% APR.
- Missouri Senate Bill 20 – Pre-filed Dec. 1, 2008, by Sen. Rita Heard Days (D-St. Louis). The bill allows a 390% APR (based on a two-week loan) for the first 30 days of a loan and an APR of 36% thereafter. The bill also prohibits renewal of payday loans. The legislative session ended with no action taken on the bill or its companion bill, Missouri House Bill 150, pre-filed by Rep. Mary Still (D-Columbia).

## **Effects Of Past Legislation**

More and more states are clamping down on the payday loan industry with legislation that either bans payday lending entirely or provides stiff regulation of the industry. More than 200 bills have been introduced in state legislatures in recent years. And as laws are enacted, payday lending companies have ceased operations in those states. “In states where a 36% cap is mandated, without additional fees, we are unable to operate at a profit,” said QC Holdings in its 10-K report filed with the Securities & Exchange Commission. And Cash Advance said in its 10-K, “Any federal law that would impose a national 36% APR limit on our services, like that proposed in the Durbin bill, if enacted, would likely eliminate our ability to continue our current operations.” The company also noted that since 2007 it has closed or will close payday loan outlets in Arkansas, New Mexico, New Hampshire, Oregon and Pennsylvania. Not only is the industry facing the possibility of prohibitive legislation at the federal and state levels, local governments have entered the picture by restricting payday lending through zoning and permit laws.

In addition to the prospect of increased regulation by federal, state and local governments, payday loan companies also find themselves as defendants in court actions. Class action suits are pending against two of Missouri’s largest payday lenders in Arkansas, California, Florida, Georgia, North Carolina, Pennsylvania, South Carolina and Missouri. Class action suits have been filed in St. Louis County Circuit Court and the U.S. District Court in Jefferson City, Mo. Both suits are pending appeal regarding procedural matters. The suit in St. Louis County alleges that QC Holdings (Quik Cash) violated Missouri law by renewing loans more than six times, by failing to determine the customer’s ability to repay the loans, and by charging interest and fees which were more than 75% of the face amount of the original loan.

## **Conclusions**

Missouri’s weak payday loan laws have attracted major out-of-state lenders to engage in predatory lending, costing Missourians who can least afford it millions of dollars a year. Because the continually increasing debt owed to payday loan companies is so onerous, some consumers are caught in the “debt trap,” unable to pay the loan off or meet other needs such as utilities, rent and food. Bankruptcy is the only answer for some of these consumers. The bill introduced in Congress by Sen. Durbin and its companion bill in the House, if enacted, would appear to halt the usurious practices, not only in Missouri but nationally as well. The Missouri Legislature has not joined the parade of states which have taken action recently to either prohibit or severely restrict payday lending. Payday loans are banned in 12 states while three others have adopted restrictive laws. The two bills introduced in this session of the Missouri Legislature, while forbidding renewals, would still allow an APR of 390% on a two-week loan. Payday loan companies have ceased operations in states that have enacted strict regulations on payday lending, including placing a 36% or less APR cap on interest and fees.

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