

<p>SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #126 (“Payday Loans”)</p> <p><b>Petitioner:</b> Bill Fritts,</p> <p>v.</p> <p><b>Respondents:</b> Corrine Fowler and Reverend Dr. Annie M. Rice-Jones,</p> <p>and</p> <p><b>Title Board:</b> Suzanne Staiert, Glen Roper, and Julie Pelegrin</p>	<p>▲ COURT USE ONLY ▲</p>
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<p><b>PETITIONER’S ANSWER BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

It contains 3,194 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

**The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).**

**For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

**In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.**

/s/ Jason R. Dunn

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Petitioner Bill Fritts submits his Answer Brief and in support thereof states as follows.

## **ARGUMENT**

### **I. THE TITLE BOARD HAS CHANGED ITS VIEW AND NOW CONSIDERS THE TERM “PAYDAY” MISLEADING AND A CATCHPHRASE.**

On April 18, 2018, the Title Board came to a surprising and unusual conclusion in an unrelated, but similar, matter that bears on this appeal. In setting the title for two measures – Proposed Initiative #183 and Proposed Initiative #184 – which concern the same subject matter and amend the same statutory provision as Proposed Initiative #126, the Title Board refused to use the term “payday” in the titles of those measures. It did so over the objection of Respondents and despite acknowledging that it would create inconsistency with the title set for Proposed Initiative #126, opting instead to use the term “deferred

deposit loan.”<sup>1</sup> In so ruling, the Title Board acknowledged – and perhaps admitted – that its use of the term “payday” when setting title for Proposed Initiative #126 was improper because the term is a catchphrase. The Title Board further found that the statutory term “deferred deposit loan” is an adequately descriptive and neutral term that is also used in the statute, and was thus the more appropriate term to use in titles impacting the Deferred Deposit Loan Act.<sup>2</sup>

As during the rehearing for Proposed Initiative #126, it was argued during the hearing for Proposed Initiatives #183 and #184 that in 2010, as part of a comprehensive regulatory overhaul of the industry, the General Assembly outlawed “payday” loans in Colorado and replaced that statutory scheme with one that allows and regulates a different type of loan product – short-term installment loans. Unlike a

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<sup>1</sup> See Ex. 6, Proposed Initiatives #183 and #184 Ballot Titles, *available at*: <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/results/2017-2018/183Results.html> *and* <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/results/2017-2018/184Results.html>.

<sup>2</sup> See Ex. 7, Unofficial Transcript of April 18, 2018 Title Board Hearing, 2017-2018 Proposed Initiatives #183 and #184, *available at*: <http://pub.sos.state.co.us/20180418110951A>.

traditional “payday” loan, the loans may be no *shorter* than six months, have no connection to a borrower’s pay period, and don’t involve post-dated checks or balloon payments. In effect, they are much more akin to a traditional auto or personal bank loans. Although it is convenient to continue to refer to these short-term installment loans colloquially as “payday” loans, as Respondents would have this Court rule, the descriptor is wholly inaccurate because there is no longer anything “payday” about these loans; “payday” loans simply do not exist in Colorado anymore. As has been raised by Petitioner here regarding Proposed Initiative #126, and before the Title Board regarding Proposed Initiatives #183 and #184,<sup>3</sup> even the federal Consumer Financial Protection Bureau has recognized this, noting that Colorado has “bann[ed] covered short-term lending altogether.”<sup>4</sup> Instead, Colorado was one of the first states to enact significant regulatory reform of

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<sup>3</sup> See Pet. Op. Br., pp. 22-23, n. 20 *and* Ex. 7, Tr. pp. 2-3.

<sup>4</sup> Ex. 8, CFPB Final Rule, p. 622, *available at*: [http://files.consumerfinance.gov/f/documents/201710\\_cfpb\\_final-rule\\_payday-loans-rule.pdf](http://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf)

“payday” loans, and has become a model for short-term lending reform nationwide.

Respondents contend in their Opening Brief that the terms “payday loan” and “payday lender” contribute to voter understanding. Resp. Op. Br., p. 15. However, the average voter is unlikely to be aware of the extent of the changes made in 2010 or its results. Indeed, Colorado’s population has grown by more than ten percent since 2010, meaning that many Coloradans were not even here at the time of those changes.<sup>5</sup> Moreover, so-called “payday” loans have long been a topic of national conversation, and the likelihood is high that the roughly 600,000 new residents that Colorado has added since 2010 moved from states that have not reformed the industry to the extent Colorado has, or even at all.<sup>6</sup> Thus, to use the terms “payday loan” and “payday lender” in the title is not only a catchphrase likely to incite unfounded

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<sup>5</sup> Ex. 9, U.S. Census Bureau, Colorado Quick Facts, *available at*: <https://www.census.gov/quickfacts/CO>. *See also* Ex. 7, pp. 3-4.

<sup>6</sup> *See* Ex. 8, CFPB Final Rule, p. 45-46, describing the reforms made by the eleven states and jurisdictions that have sought to restrict or eliminate traditional “payday” loans.



support, but is misleading because – while convenient as a colloquialism – their use implies that the industry has not been regulated and that Colorado still allows “payday” loans when it does not.

Moreover, at the rehearing for Proposed Initiative #126, and in their Opening Brief to this Court, Respondents analogized the use of the term “payday loans” to a title previously set by the Title Board using the term “full-strength beer and wine” instead of “malt and vinous liquor.” Resp. Op. Br., p.13 and Tr. 73:8-15. In the latter case, however, “full-strength beer and wine” was an accurate descriptor of the subject of the measures, while here “payday loan” simply does not accurately describe the loan product Proposed Initiative #126 seeks to alter as discussed above. Thus, Respondents’ analogy is inapposite.

Respondents also contend in their Opening Brief that the terms “payday loan” and “payday lenders” are not catchphrases because they are common terms that do not provoke emotion. Resp. Op. Br., pp. 14-15. However, during the hearing for Proposed Initiatives #183 and #184, Title Board member Jason Gelender noted that the Colorado

Deferred Deposit Loan Act “uses the term ‘deferred deposit loan’ and ‘payday loan’ interchangeably.” Ex. 7, Tr. p. 5. He believed, and ultimately persuaded Title Board Chair Suzanne Staiert – who also cast the vote in opposition to using the catchphrase “payday” in the title for Proposed Initiative #126 – that use of the term “deferred deposit loan” instead of “payday loan” would achieve the Title Board’s statutory responsibility to set clear title without use of a catchphrase. Ex. 7, Tr. pp. 9-10.

The exchange among the Title Board members concerning use of “payday loan” in the titles for Proposed Initiatives #183 and #184 echoed the deliberation among the Title Board during the rehearing for Proposed Initiative #126. During the rehearing for Proposed Initiative #126, Title Board member Glenn Roper explained that the terms “payday loan” and “deferred deposit loan” are not used interchangeably in the statute, but rather that the Colorado Deferred Deposit Loan Act primarily uses the term “deferred deposit loan” and uses the term

“payday loan” only twice – once as part of the definition of “deferred deposit loan” and another time in section 1-40-105:

MS. TIERNEY: [I]f you use the term “short-term installment loan,” you will not be telling the voters what these [loans] are.

MR. ROPER: And do you feel like that’s true with “deferred deposit loan” as well?

MS. TIERNEY: I think nobody knows what a “deferred deposit loan” is.

MR. ROPER: That’s the term used primarily in the statute.

MS. TIERNEY: They’re both used in the statute.

MR. ROPER: In the definition it does add “payday loan.” It says “deferred deposit loan” or “payday loan” to define it. But throughout the rest of the article, it just uses “deferred deposit loan.”

Resp. Op. Br., Tr. 76:5-19.

Likewise, Title Board Member Julie Pelegrin noted that the statutorily required notice to consumers who take out these loan products uses the term “deferred deposit loan”:

MS. PELEGRIN: Do you think it makes a difference that the notice to consumers that they [the lenders] have to place in a prominent place on each loan agreement uses the term “deferred deposit loan”?

MS. TIERNEY: Do I think it makes a difference for this title?

MS. PELEGRIN: In terms of how much – whether people know what a “deferred deposit loan” is?

MS. TIERNEY: Well, I think in the statute, the definitions – defines them interchangeably.

Resp. Op. Br., Tr. 78:6-15.

In flipping its 2-1 vote on Proposed Initiative #126, the Title Board opted to use the neutral statutory term “deferred deposit loan” instead of the “payday” catchphrase for the titles set for Proposed Initiatives #183 and #184. In rejecting the term “payday loan” in Proposed Initiatives #183 and #184, the Title Board was well aware that it was creating inconsistency with the title it had set for Proposed Initiative #126, and perhaps was requesting this Court to return Proposed Initiative #126 to it for correction:

MS. TIERNEY: I just want to reiterate that I think that what you raised earlier, that the voters are not going to know that these are the same loans [as those in #126]. So if one’s called a deferred deposit loan, and it’s right underneath one called a payday loan, they are going to think they are not the same loans.

MS. STAIERT: Yeah, I think that’s true, I just am not sure that the second proponent in line should be completely bound by what happened to the first proponent in line. I mean, there’s competing [objectives:] trying to set a clear

title, not confusing voters versus catchphrases, and I mean, there's just a lot of competing interests here.

Ex. 7, Tr. p. 9.<sup>7</sup> Indeed, this Court can reestablish consistency among the titles of these three measures before there is any voter confusion on the November ballot, and thus fully restore balance to the competing objectives the Title Board weighed.

Accordingly, to provide clarity and to prevent prejudicing voters into mistakenly believing that Proposed Initiative #126 reforms an industry that has not previously been reformed, the term “payday” should be removed from the title here – just as the Title Board did for Proposed Initiatives #183 and #184 – and replaced with a neutral descriptive term such as “deferred deposit loan” or “short-term installment loan” as Petitioner has argued for all along.

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<sup>7</sup> At the hearing for Proposed Initiatives #183 and #184, counsel assured the Title Board that if it “were to vote a different way [than it did for Proposed Initiative #126], obviously we would inform the Court of that and request that it send back [Proposed Initiative #126] so that there could be a reconciliation of these titles.” Ex. 7, Tr. p.8.

**II. WHETHER THE TITLE BOARD HAS JURISDICTION TO RETURN THE FISCAL IMPACT STATEMENT AND ABSTRACT TO LEGISLATIVE COUNCIL REMAINS AN OPEN QUESTION BEFORE THIS COURT.**

On April 6, 2018, in *In the Matter of the Title, Ballot Title and Submission Clause 2017-2018 #97* (Case No. 18SA31), the Court issued a summary order affirming the Title Board's actions for that measure. There, the petitioner raised the same issue raised by Petitioner here – namely, that the Title Board has erroneously abdicated its authority to return a statutorily deficient fiscal impact statement and abstract to Legislative Council for revision or correction. Because the Court has yet to speak on this issue, opting instead to affirm the Title Board's actions without opinion in that case, the question remains an open one that the Court ought to decide here in order to provide the Title Board and Legislative Council with guidance and clarity necessary to fully effectuate the language, purpose, and application of sections 1-40-105.5 and 1-40-107 concerning Legislative Council's preparation of the required initial fiscal impact statement.

### **III. THE TESTIMONY OF LEGISLATIVE COUNCIL’S FISCAL DIRECTOR DEMONSTRATES BOTH AMBIGUITY IN SECTION 1-40-105.5 AND THE STATUTORY DEFICIENCIES IN THE FISCAL IMPACT STATEMENT AND ABSTRACT PREPARED HERE.**

Section 1-40-105.5(2)(c)(I) requires Legislative Council to draft a fiscal impact statement that is “substantially similar in form and content to the fiscal notes provided by the legislative council of the general assembly for legislative measures.” In addition, section 1-40-105.5(3)(a)-(c) requires Legislative Council to draft an abstract that includes: “an estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted”; “a statement of the measure's economic benefits for all Coloradans”; and “an estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if the measure is enacted.”

Section 1-40-105.5 is not permissive – it is a statutory directive. As the Legislative Council’s Fiscal Director testified before the Title Board, it is always her office’s intention to provide numbers if they can

in the fiscal impact statement or abstract, but that Legislative Council Staff does not have the ability to do so because “it requires a lot of resources and a lot more time than we have to put these analyses together.” Resp. Op. Br., Tr. 50:5-14, 51:2-14. The fact that Legislative Council’s Fiscal Director went even further in her testimony to opine that it was never the intent of the General Assembly to require Legislative Council to conduct an economic analysis of proposed ballot measures further demonstrates the ambiguity of this new statutory directive and the need for this Court to construe what is and what is not required by Legislative Council to meet its obligations. Resp. Op. Br., Tr. 51:6-14.

For instance, although Legislative Council’s Fiscal Director testified that the initial fiscal impact statements prepared for proposed ballot initiatives must be in substantially similar form to the fiscal notes prepared for proposed legislation, the initial fiscal impact statement Legislative Council prepared for Proposed Initiative #126 bears no resemblance to the typical legislative fiscal note. Here, the



entirety of Legislative Council’s economic analysis for Proposed Initiative #126 – a measure that will likely extinguish Colorado’s short-term installment loan industry<sup>8</sup> – is a mere *two sentences*:

**Economic Impact**

The measure will result in smaller interest payments paid by payday borrowers and received by payday lenders. To the degree borrowers spend marginally more money than lenders on goods and services, the measure may increase spending in the economy.

Ex. 1.

By contrast, Legislative Council’s economic analysis in most

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<sup>8</sup> According to an analysis conducted by the Colorado Attorney General’s Office, the number of “deferred deposit/payday loans” decreased by nearly two-thirds from 1,110,224 to 444,333 after enactment of the 2010 reform legislation that outlawed payday loans and replaced them with short-term installment loans. See Ex. 10, Colorado Attorney General 2016 DDLA Comparison Chart, *available at*: [https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2016\\_ddla\\_charts.pdf](https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2016_ddla_charts.pdf).

The precipitous drop in the number of loans coincided with an over 50% reduction in the number of stores from 505 to 235. See, Ex. 2, Pew Report, p. 7, tbl. 5. While the Pew Report quotes former Attorney General John Suthers and former Governor Bill Ritter as stating “Colorado’s [2010] law is better for borrowers and viable for lenders,” the changes sought by Proposed Initiative #126 are so restrictive that it is highly likely all lenders in Colorado will be put out of business. Ex. 2, p. 6.

legislative fiscal notes is much more detailed and robust, even when the economic impact of the proposed legislation is unknown or abstract. For example, in the five-page fiscal note for House Bill 18-1299, a bill that would authorize third-party providers to electronically process automobile registration, lien, and titling information, the fiscal note details several economic assumptions based “on a March 2017 American Association of Motor Vehicle Administrators (AAMVA) survey”<sup>9</sup> – the very type of information Legislative Council’s Fiscal Director testified before the Title Board that Legislative Council does not have the time or resources to research and gather. Resp. Op. Br., Tr. 51:2-14. In that fiscal note, Legislative Council used data in the AAMVA survey to make the assumption that of the eight third-party providers that provide electronic vehicle registration, lien, or titling services, there will be up to five that operate in Colorado. The fiscal note for House Bill 18-1299 also assumes that 2,658 entities, including 75% of new car dealers, 25%

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<sup>9</sup> See Ex. 11, House Bill 18-1299 Fiscal Note, p.2, *available at*: [https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a\\_hb1299\\_00.pdf](https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a_hb1299_00.pdf).

of used car and power sports dealers, 10 financial institutions, and 12 rental car companies, will enter into an agreement with a third-party provider for these services.

Contrary to the testimony of Legislative Council's Fiscal Director, then, it is neither unreasonable nor contrary to the language of the statute or the intent of the General Assembly to require Legislative Council to look to readily available resources in order to provide a meaningful and useful economic analysis in the fiscal impact statements it prepares for proposed ballot measures. Here, Legislative Council could have and should have looked to the industry data maintained by the Attorney General's Office detailing not only the number and amount of loans, but also the number of stores and statistical and demographic information across time.<sup>10</sup> Such information shows how the 2010 reform legislation effected the industry and could have been used to make assumptions about what impact the

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<sup>10</sup> Attorney General's Office Website, Colorado Uniform Consumer Credit Code: General Information, Deferred Deposit/Payday Lenders, *available at*: <https://coag.gov/uccc/info>.

changes contained in Proposed Initiative #126 will have on the industry, just as the 2017 AAMVA survey was used in the fiscal note for House Bill 18-1299.

Even if Legislative Council believed the economic impacts of Proposed Initiative #126 are too abstract to be estimated, it could have said so. In the fiscal note for House Bill 18-1368, a bill that would allow local governments to set their own minimum wage, Legislative Council states that it “does not estimate how the [legislation] will conditionally affect individuals’ wages and the subsequent impact on tax collections, nor does it estimate the overall impact to businesses and the economy” because “[s]uch an estimate would rely on many secondary factors outside the scope of this analysis.”<sup>11</sup> Instead of acknowledging its limitations as it did in the fiscal note for House Bill 18-1368, Legislative Council here made an unsubstantiated, blanket prediction that “the measure may increase spending in the economy.” According to

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<sup>11</sup> Ex. 12, House Bill 18-1368 Fiscal Note, p.2, *available at*: [https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a\\_hb1368\\_00.pdf](https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a_hb1368_00.pdf).

Legislative Council's Fiscal Director, this prediction was based on nothing more than broad "economic theory" and her personal expectation that the industry will not "completely dry up":

MS. STAIERT: So then what did you rely on to come up with the "to the degree borrowers spend marginally more money on goods and services, the measure will result in additional spending in the economy"?

MS. MULLIS: Well, probably a combination of two things. First, economic theory. Basic economic theory talks about the marginal propensity to spend for people at different places in the income distribution.

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MS. STAIERT: And did you consider what Mr. Dunn said that perhaps these loans won't exist or people won't be able to borrow money to then buy the goods? . . .

MS. MULLIS: Well, clearly incentives matter. And if a price for a product falls, then the amount of that product that is offered is going to fall as well. And so that is definitely part of the qualitative analysis that we went through. I wouldn't expect that it would completely dry up.

Resp. Op. Br., Tr. 56:12-21; 57:3-6, 13-19.

Thus, if the intent of section 1-40-505.5 was to mimic the fiscal notes prepared by Legislative Council for proposed legislation, then this Court must rule that the fiscal impact statement and abstract drafted

for Proposed Initiative #126 is grossly deficient and fails to even try to provide any useful economic analysis as required by statute – even if to say that the information cannot be provided.

### **CONCLUSION**

Petitioner respectfully asks this Court to reverse the Title Board's denial of the motion for rehearing and rule that:

1. The ballot title includes impermissible catchphrases;
2. The Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements; and
3. The abstract fails to meet the requirements of section 1-40-105.5 and is otherwise misleading and prejudicial.

Respectfully submitted this 23rd day of April 2018.

BROWNSTEIN HYATT FARBER SCHRECK LLP

/s/ Jason R. Dunn

Jason R. Dunn

Sarah M. Clark

*Attorneys for Petitioner Bill Fritts*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2018, I electronically filed a true and correct copy of the foregoing **PETITIONER’S ANSWER BRIEF** via the Colorado Courts E-Filing System which will send notification of such filing and service on all listed below:

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*s/ Paulette M. Chesson*  
Paulette M. Chesson, Paralegal



STAFF DRAFT

**Ballot Title Setting Board**

DATE FILED: April 23, 2018 4:29 PM

Exhibit 6

**Proposed Initiative 2017-2018 #183<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes reducing the maximum annual rate of interest that a lender may charge for a deferred deposit loan or as an additional finance charge for the renewal of a deferred deposit loan from forty-five percent to thirty-six percent.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes reducing the maximum annual rate of interest that a lender may charge for a deferred deposit loan or as an additional finance charge for the renewal of a deferred deposit loan from forty-five percent to thirty-six percent?

*Hearing April 18, 2018:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 11:50 a.m.*

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<sup>1</sup> Unofficially captioned “**Interest Rates for Payday Loans**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

## **Ballot Title Setting Board**

### **Proposed Initiative 2017-2018 #184<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes reducing the maximum amount of the monthly maintenance fee that a lender may charge for an outstanding deferred deposit loan from the lesser of seven dollars and fifty cents per one hundred dollars loaned or thirty dollars per month to the lesser of five dollars per one hundred dollars loaned or twenty-five dollars per month.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes reducing the maximum amount of the monthly maintenance fee that a lender may charge for an outstanding deferred deposit loan from the lesser of seven dollars and fifty cents per one hundred dollars loaned or thirty dollars per month to the lesser of five dollars per one hundred dollars loaned or twenty-five dollars per month?

*Hearing April 18, 2018:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 11:55 a.m.*

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<sup>1</sup> Unofficially captioned “**Maintenance Fees on Payday Loans**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Colorado Secretary of State  
Title Board  
April 18, 2018

DATE FILED: April 18, 2018 4:29 PM

Exhibit 7

UNOFFICIAL TRANSCRIPT

2017-2018 Proposed Initiatives #183 and #184

**Appearing for the Title Board:**

Chair – Suzanne Staiert  
Member – Jason Gelender  
Member – Glenn Roper  
Staff – Steve Ward

**Appearing for the Proponents:**

Sarah Mercer

**Appearing for the Objectors:**

Martha Tierney

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Chair: That takes us to 2017-2018 No. 183, interest rates on payday loans.

Mercer: Thanks. Good morning.

Chair: Good morning.

Mercer: My name is Sarah Mercer. I'm an attorney at the law firm Brownstein Hyatt Farber Schreck, here on behalf of the proponents of Proposed Initiative 183, Trista Gibson and Bill Fritts are the proponents of the measures. And they're here and they've assigned their designated representative affidavits as well.

Chair: Do you want to just start out by telling us what you believe the single subject of your measure is.

Mercer: Sure. The single subject of Proposed Initiative 183 is to reduce the maximum annual percentage rates on short-term installment loans that are given out under Colorado's Deferred Deposit Loan Act.

Chair: Any questions on the single subject? No?

Gelender: No.

Chair: No, alright.

Gelender: I move that the Board find the Proposed Initiative 2017/18 No. 183 has a single subject and we have jurisdiction to set a title.

Roper: Second.

Chair: All of those in favor?

All: Aye.

Chair: Alright. Do you have any comments on the staff draft?

Mercer: I do. Before we get to the staff draft on the title, I did just want to make a comment on the record about the fiscal impact statement, if that's okay.

Chair: You can, but we don't actually do anything with it until the rehearing.

Mercer: Yeah.

Chair: But you can make a comment.

Mercer: Yeah, thank you. I just wanted to, this certainly is an issue that we'll consider addressing in a rehearing, but just for the record I wanted to just raise that we share the same concerns on the fiscal impact statement that was created for Proposed Initiative 183 as the fiscal impact statement for Proposed Initiative 126, namely that the fiscal impact statement and the abstract fail to provide really any meaningful information to voters around the economic impact of this measure. The reason I state that on the record is because since that rehearing happened, the Colorado Supreme Court issued a ruling without opinion in the matter of Proposed Initiative 97 in which the Title Board intervened and filed an answer brief asking the court to provide some guidance as to the role of Leg. Council, the Title Board, the proponents and the opponents in the process of creating those fiscal impact statements. This is still an open question before the court. It's been raised in the appeal for Proposed Initiative 126. Certainly another way to get this issue before the court may be for the Title Board to actually send back the abstract or the fiscal impact statement to the Legislative Council for revision and sort of see what happens from there too. Just a point that I wanted to put on the record.

With respect to the staff draft, my comments are pretty limited. In, just really to use of the word payday as a catchphrase. So that's the issue that I'd like to address. Is that okay?

Chair: Sure, go ahead.

Mercer: Okay. Great. So really the issue with payday is that these are, the use of the word payday loans, payday lenders, is that these are not payday loans. As was discussed in the rehearing on Proposed Initiative 126, there was comprehensive

regulatory overhaul that happened in 2010 to Colorado's Deferred Deposit Loan Act, which is where these loans are housed. And it effectively abolished payday loans. And it transformed them really into a different loan product, a six-month short-term installment loan. I want to pass out just a couple of pieces of information. First is, the rules from the Consumer Financial Protection Bureau. You may be aware that last year under the Obama administration the CFPB undertook a very large and comprehensive study, payday loans is an issue of national concern of course, and they did really a comprehensive review of what are all the laws in each of the states and what should the CFPB, how should the CFPB intervene, issue some broad based guidelines. That certainly states were free to be more restrictive but kind of put out some guardrails around this industry. And even there, there's extensive discussion in the 1600 page rule about Colorado's system and how Colorado's system and Colorado's industry now after the reform, is no longer a payday loan system.

So let me just pass this out I want to just highlight a few things. So I did not include all 1600 pages of the rule. I just pulled out a few excerpts but this gives you a flavor. So the second page or your packet, begins to talk about the 11 states and jurisdictions that have regulated payday loans on their own and on that third page, kind of in the middle of the page, there it says, "In 2010, Colorado's legislature banned short-term single payment balloon loans in favor of longer term six month loans." As you can imagine, sort of defining what a payday loan is was part of this rule and the short-term single payment balloon loan is really what is a payday loan. And you will see then on the third page, which is page 622 of the 1600 page rule document, they note that commenters raised Colorado's laws as a model. They though rejected using Colorado as a model because following such an approach would involve banning covered short-term lending all together since that state allows loans of at least six months in term. So although sort of the colloquial term in the parlance of calling these loans, payday loans is still in use, sort of around the community and in law, they really are not payday loans anymore. And the reason that that's important is really to the second and last point that I'll make, which is that using the term payday in that colloquial way really misleads voters who are unaware of those 2010 reforms, who are unaware that Colorado actually has had this model reform legislation that has abolished the payday, sort of payday loans as we know them, and has transformed the industry into this short-term installment loan industry. And the issue there is that these voters, who are unaware of that 2010 reform, are going to lump the idea of payday loans as used here in this title, with payday loans as they think of them nationally or I think more importantly in states where they've moved from.

I've got another document to pass out to you, that according to the U.S. Census Bureau, Colorado's population was just over 5 million in 2010 when that reform was passed. But it grew to an estimated, 5.6 million people in 2017, it's probably a little higher than that now. Here let me just pass these out.

Chair: So let me ask you this though because here's how I see the problem. I think I agree last time that I thought payday lenders was a catch phrase but I think it made the question right? It's in there?

Mercer: It's in the title for 126 that's right.

Chair: In the title, okay, so yours is a competing measure?

Mercer: Sure, yeah.

Chair: So that one goes up with payday loans and the voters say, I hate payday loans and they all vote for this measure to kill payday loans. Then your measure goes up and it doesn't say payday loans, so nobody understands your measure is a competing measure so you get less votes than payday loan got because you're wording is something different than payday.

Mercer: I appreciate your sort of acknowledgement, it may be some assistance to our political strategy on this but I think for the proponents of these measures it's important to get the terminology right. And for these 600, these sort of roughly 600,000 new Colorado residents, they likely moved from a state where the payday lending industry has never been reformed.

Chair: Right.

Mercer: And so without more clarification about what this actually is, in terms of what payday loans actually means, what kind of loans these are in the title, they're going to lump that in with what they know from there, the other places that they've come from. And so in order to protect the voters from that, I think it's pretty important that we get the definition right. There was a suggestion Madam Chair by you during the rehearing for Proposed Initiative 126 to just describe what these loans are. And I think we can do that in a fairly, in a way that voters can understand, in a fairly, sort of easy way to describe them.

Chair: I think we can to and I thought we could then. But the problem now is that we also have a duty to write the questions in a way that don't confuse the voters when we have competing questions and it seems to me that at this point we are in a bit of a quandary because if we write it differently it makes it sound like we're not doing the same thing. And the voters won't know that we're talking about the same loan structure. They will think that these are different loan structures. They will think that a payday loan is different than a short-term, whatever the terminology was, loan. And that's my concern at this point in not using the word payday. I mean I guess if that's really what you all want, I'm certainly willing to entertain it but I do think it's, it's going to be a bit confusing for voters.

Mercer: I think that you make the really the point in the case for the proponents here in distinguishing between what a payday loan is and these short-term installment loans. And there's still an opportunity for correction of the title, I mean the appeal for Proposed Initiative 126 is still before the Colorado Supreme Court. If

you set a title today in a rehearing in a couple of weeks this is certainly an issue that they can resolve. This is an issue, it think that there is some opportunity there to get some resolution without, if we're persuasive in making this case today, I think there's some merit in considering this in a little bit of isolation or at least considering some of this information separate and apart from 126.

Chair: Either way go ahead.

Mercer: I think that we're sort of there in terms of kind of what the confusion would be to voters because these really aren't payday loans. The last piece of documentation I will pass out is, go ahead.

Gelender: Thanks. We decide whether they are payday loans or not. Are they still deferred deposit loans? Or are they exclusively installment loans?

Mercer: They're not really deferred deposit loans either, even though they're still under the Deferred Deposit Loan Act. I mean that was not changed. But the way that the industry currently works is it's not tied to people's paychecks in that same, in the same way that you think about having a signed check.

Gelender: But we \_\_\_\_\_ like a paycheck. So no one, if I went in and got one of these loans, I'm signing a piece paper but I'm not giving them a check in the amount of the loan to cash later if I don't pay up, or am I?

Mercer: No, I don't, no. Usually there is just an authorization to draw out the amount of money from an account but not at certain...

Gelender: Well that's the same thing. Okay that's what I wanted to know. Because I don't know that I share the Chair's concern with the confusion of payday versus non payday. I mean I think they are very different proponents, very different ideas. I notice that the statute currently uses the term deferred deposit loan and payday loan interchangeably. To me if it is in fact a situation where there's the authorization where if I don't make my payment or payments by x date, direct withdraw the money from my account, then to me that's still a deferred deposit loan and I'd be inclined to use that term rather than short-term installment loan.

Mercer: Sure I think.

Chair: I think the issue is, were you here last time on this?

Gelender: Mm-hmm.

Chair: Okay. My issue is that this is the same language we saw last time and last time we called it a payday loan.

Gelender: Or at least we said payday lenders.

Chair: Well whatever we said, if we say something different this time.

Gelender: I don't have the other measures in front of me unfortunately I thought we did a quite a bit of different stuff.

Mercer: And I agree. I think that one of the terms that, the proponents of Proposed Initiative 126 offered was to use deferred deposit loan but that seemed to not be descriptive enough which is why I thought maybe just describing it as what it is. But that's a fine alternative. I'm not sure that that's more descriptive then, it's more of a term of art I think then these actually are. But that's fine.

Gelender: I mean what it is, I think if it's still the situation where there's an automatic withdrawal on the due date if I don't pay up, rather than something like a car loan or collateralized loan where they come seize the property or they start doing other things then to me, we're crossing the length of the period. It still feels like the same thing, a payday loan and maybe someone gets paid infrequently. So I'm less concerned about, I mean I think either payday or deferred deposit loan works for me. I think short-term installment loan doesn't work for me because I'm not sure it accurately describes exactly what is going.

Chair: Well I mean if there's no money, there's no repayment I would guess. If you have something to draw on and there's no money in the account than the banks not going...

Gelender: But some of them always go bad anyways which is why the interest rates are higher than any number of other kinds of loans.

Mercer: And you know the reason, that description as a short-term installment loan, the reason that we would advance that is because that is how they're described in, and distinguished from what people traditionally in their minds think about as these sort of small balloon, single balloon payment loans which Colorado just does not have anymore. And so that's where sort of the issue of describing it as what it is but separating that out from the catch phrase, when people would confuse what they are thinking about when they are voting with what's happening in other places in the country is really important.

So let me, I want to just pass out one other, one other document for the literature which is the Pew Charitable Trust has sort of put out a policy document for use by other states and by the federal government in talking about the success that Colorado has had in its reforms to this industry. And I think further supports this idea that these are really no longer payday loans.

Gelender: Are they, I'll wait until we get back to the microphone but are they banned, is it, are they always installment loans? Does the ban, the ban goes to this shorter than six months but can the terms provide that it's a single payment? Like you have to pay x back by x date as opposed to you have to pay 1/6<sup>th</sup> of x back every month or whatever.

Mercer: In 2007, was the first sort of crack at reforming the industry, and it did not change that and that was found to be not really successful in getting out what the issues



were perceived to be by policy makers. So the 2010 reforms, yes, do now prohibit sort of this lump sum, single payment loan in Colorado. So they have to be installments.

Gelender: Thank you.

Chair: Anything else?

Mercer: And I have some suggested, I did just sort of take the liberty of drafting up some suggested language that I'll pass out. It does use that phrase short-term installment loans, certain short-term installment loans.

Chair: Is there anyone else that wants to speak on this? Question?

Tierney: Hi, Martha Tierney here on behalf of the proponents for 126 which is before the Supreme Court right now. I did want to address just a question that Mr. Gelender had and these measures are not very different. They are competing measures, directly competing measures. So to the Madam Chair's point about confusing the voters, I think it's a real concern. And if it would be helpful I can give you copies of 126, you can see what it looks like. But I think it was Julie Pellegrin who was sitting for that measure so maybe you aren't as familiar with it. But I do think the statute would be violated by not using the same term because voters aren't going to know that they are competing measures.

Mercer: And just in response to that, I think, there's additional information that voters when they actually vote will get to understand these measures, you know, the Blue Book mainly, which will likely refer to the Deferred Deposit Loan Act in providing background on these measures. As Ms. Tierney indicated these are similar measures in the sense of the reduction of the \_\_\_\_\_ finance charges and there is some mirroring in the language. The use of sort of this different term, I don't know if that creates a lot of, I don't believe it creates a lot of confusion, I think it accurately states what these, what this is doing.

Gelender: What effects would be different from this measure than from 126?

Mercer: 126, seeks sort of in one fell swoop to limit the, to eliminate basically any additional charges beyond the annual interest rate that can be charged. So this measure here simply reduces the maximum interest rate but still allows for maintenance fees for example.

Chair: My concern is that I think voters are going to think these are companion measures. They're going to think there is one to reduce the interest rate on payday loans and another one to reduce the interest rate on certain short-term installment loans. And they're not going to understand one is different than the other. Which I don't like being in this position because I wasn't a proponent of using what I thought was a catch phrase back then but now I don't know what to do about it.

Gelender: It covers, this covers the same loans though as 126 did.

Mercer: Correct.

Gelender: Well I think my inclination then would be somewhat reluctantly to use the payday loans term because in the statute, I mean, what's strange about this is we've apparently had this long, what these things actually are, this change to the law but the existing statutes continue to use the terminology deferred deposit loan and then if you look at the definition for that is says or payday loan. So it's exactly the same thing, so you know, we're usually pretty safe tracking the statute and we avoid your concern and Ms. Tierney's concern about confusion with the competing measures. So I would be inclined to do that. I do think we can shorten the staff draft. I don't think we need to reference lenders at all because we're talking about the loans not the people who are making them.

Chair: Well last time we said lenders. I mean we should say whatever we said last time. Which I didn't like what we said last time but I'm just saying I think we should say whatever we said last time. You want to pull it up?

Mercer: And Mr. Gelender if I may respond to that point about the use of the statutory language because I agree with you that's usually a good place to go. This is a really unusual case I think. To have Colorado be a leader in the country in changing the type of loan product that an industry that has been known for a really long time is offering, while other places in the country continue to have, have continued to have, I think what can fairly be described as some predatory practices. I mean in Nevada there was a sort of "payday lender" who was allowing people to put their pets up as collateral. I mean, Colorado has cleaned up this industry. The colloquial use of that term, the use in the statutes has remained, which isn't an issue for people who know about the industry. I think the concern is that in this unusual and unique case, voters who have no idea what has happened and what has transpired, they're not customers, they don't use and take out these loans. They're not government officials who understand the statute. They're not policy makers. They're not sort of business people who are involved in the industry. That they're going to have this negative connotation because they have this negative sort of connotation that is from sort of elsewhere. I appreciate the sort of wanting to lean on the statutory language. I really believe this is a very unique circumstance where voters are going to be swayed by how they feel about this. Not to mention that this current administration has decided to roll back the rules that the CFPB has imposed. And so they may feel like Colorado has, they may feel and believe that Colorado's industry is sort of predatory in the ways that it is in other places and that this is their chance to reform the industry because no one else is doing it. And they're just wrong on that. The use of that word is going to lead them down that path.

Chair: I 100% agree with you but...

Mercer: I appreciate that, thank you.

Chair: But I don't know, I mean I think at this point it takes the Supreme Court to send back the first one in order to change the second one. I just don't know how we put up this second question and have it be different from the first without confusing voters, so.

Ward: Okay.

Chair: You got it up?

Ward: That's the 126.

Mercer: If I may, Madam Chair, because I think, you know, I appreciate the bind that, you're sort of between a rock and a hard place here. You know, as I mentioned before, the appeal on Proposed Initiative 126 is still pending. So if the Board were to vote a different way, obviously we would inform the Court of that and request that they send back 126 so that there could be a reconciliation of these titles. So I think there is a way forward here, to get the voters, to get these measures, 126, this Measure 183 and 184, to a place where there is no longer, that there isn't voter confusion in November.

Roper: So I would be inclined to keep with the same language we did in 126, and if the Court were to issue something between now and a rehearing, we could readdress, but I may be the only Board member who doesn't share the concerns about use of the term "payday loans." It sounds like it's been almost a decade since it was changed, and the fact that people may have moved here from other states and where they had a different understanding of what that meant, that doesn't worry me about use of the term in the title here.

Mercer: So, in terms of the other sort of framing of the staff draft of the title, we didn't have any issues, I know that I see on sort of the revision that was sort of done in real time with my explanation of a single subject. I think the way that the staff draft was written tracked 126. And our concern with 126 as here is just simply the use of the term "payday," so.

Chair: Okay. What do you want to do...

Gelender: Well, yeah, because I staff for the rehearing on 126, not the initial hearing, which is probably why I missed some of it. I mean, what I've done here is largely, as much as I think is, is taking sort of the lender out of it and going for brevity and being direct and just describing what it says. I mean, I think if we're worried about the inconsistency, changing deferred deposit to payday in both spots with that language works fine. If people otherwise object to the different structure of the title, then I'll defer to what you guys want to do.

Chair: I mean, I'm fine as is, if that's how you want to send it up.

Gelender: We could ask Mr. Roper, because I mean, to me, deferred deposit versus payday, I mean, they're interchangeable in the statutes. So...

Roper: I would probably go with payday because that's what we did with 126. But, I'm one of three.

Chair: I mean, I'd stick with deferred deposit, but I'm probably going to vote yes either way, just because there's arguments on both sides. I'm probably not going to let one word in the title hold it up. Yeah, go ahead.

Tierney: Madam Chair, if I might, Martha Tierney. I just want to reiterate that I think that what you raised earlier, that the voters are not going to know that these are the same loans. So if one's called a deferred deposit loan, and it's right underneath one called a payday loan, they are going to think they are not the same loans they are voting on. So...

Chair: Yeah, I think that's true, I just am not sure that the second proponent in line should be completely bound by what happened to the first proponent in line. I mean, there's competing, trying to set a clear title, not confusing the voters, versus catchphrases, and I mean, there's just a lot of competing interests here.

Tierney: With all due respect to the Title Board, I think the voters have to come first here.

Chair: Well yeah, but in considering the voters, I guess since my position the first time around was that payday was a catchphrase, that's where I walk a line here, because I think that phrase was confusing. So, I don't know. Mr. Gelender, I think you're just going to have to make some kind of motion.

Gelender: Alright. Want me to read what's up there?

Chair: I'll read it. Right now, it says, "A change to the Colorado Revised Statutes, reducing the maximum annual interest rate of interest that a lender may charge for a deferred deposit loan or as an additional finance charge for the renewal of a deferred deposit loan from forty-five percent to thirty-six percent."

Gelender: Alright. I move that we set the title as it's just been written out, appears on the screen.

Chair: Second. All those in favor?

Gelender: Aye.

Chair: Aye. Opposed?

Roper: No.

Chair: Alright, that takes us to, took my agenda. Steve, you have another agenda? I buried it somewhere.

Roper: 184 is next on the agenda.

Chair: So that takes us to 184. And, go ahead.

Mercer: Thank you, Madam Chair. Sarah Mercer with Brownstein Hyatt Farber Schreck here on behalf, and appearing for the proponents, Bill Fritts and Trista Gibson, both of whom are here and have signed their designated representative affidavits in front of the notary. I can maybe just start with a single subject of this measure. The single subject of Proposed Initiative 184 is to reduce the maximum maintenance fees that can be charged for deferred deposit loans or short-term interest loans under Colorado's Deferred Deposit Loan Act to \$5 per \$100 loaned, and up to a maximum of \$25 per month. The arguments here, you know, are arguments here on title. Oh, do you want to, I can stop there.

Chair: Yeah, let's do single subject first. Anyone who wants to speak on single subject? Alright.

Gelender: I move that we find that Proposed Initiative 2017-18 No. 184 has a single subject and the Board has the jurisdiction to set a title.

Roper: Second.

Chair: All those in favor?

All: Aye.

Chair: Alright. So that takes us to title, and did you want to incorporate your comments from 183 to the extent they apply to the whole deferred deposit issue?

Mercer: Yes, thank you. In addition, not just to the title, but to the fiscal impact statement as well, yes, I incorporate those comments and have the same concerns on payday, the use of payday here.

Chair: Alright. Anything else?

Mercer: I have a copy of a revised title for Proposed Initiative 184 that I can pass out. I think making changes consistent with the changes that were made to Proposed Initiative 184 would make sense here, given the conversation we just had on that proposed initiative.

Chair: Okay.

Roper: Can I ask you a question about the amended draft?

Mercer: Sure.

Roper: I noticed that in the second line, you added the word "percent" after 20, so it now reads "20 percent of the first \$300" instead of "20 of the first \$300."

Mercer: Yeah.

Roper: Was that in response to a question that review in comment?

Mercer: Yeah, thank you. When I transcribed the wording from the statute into my word processor, I had inadvertently omitted percent from, which appears in the statute.

Roper: Okay, so percent is currently in the statute.

Mercer: Exactly, and so they asked me to add that back in.

Roper: Thank you.

Chair: Ms. Tierney, you want to incorporate your comments, or you want to make anything new?

Tierney: Thank you. Martha Tierney. I will just incorporate my comments.

Chair: Okay. Alright, so right now, it says, "Change to the Colorado Revised Statutes, reducing the maximum amount of the monthly maintenance fee that a lender may charge for an outstanding deferred deposit loan from the lesser of seven dollars and fifty cents per one hundred dollars loaned or thirty dollars per month to the lesser of five dollars per one hundred dollars loaned or twenty-five dollars per month."

Gelender: I move that we set the title for Proposed Initiative 2017-18 No. 184 as it's just been read and appears on the screen.

Chair: Second. All those in favor?

Gelender: Aye.

Chair: Aye. Opposed?

Roper: No, on the same grounds as before where I would say payday loan instead of deferred deposit loan to avoid the risk of voter confusion.

Chair: Alright, that takes us to Proposed Initiative 2017/2018 No. 182, transportation funding.

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

DATE FILED: April 23, 2018 4:30 PM

**12 CFR Part 1041**

**Exhibit 8**

**[Docket No. CFPB-2016-0025]**

**RIN 3170-AA40**

**Payday, Vehicle Title, and Certain High-Cost Installment Loans**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final Rule; official interpretations.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing this final rule to establish 12 CFR 1041, which creates consumer protections for certain consumer credit products, and the official interpretations to the rule. First, the rule identifies it as an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay the loans according to their terms. The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Second, for the same set of loans along with certain other high-cost longer-term loans, the rule identifies it as an unfair and abusive practice to make attempts to withdraw payment from consumers' accounts after two consecutive payment attempts have failed, unless the consumer provides a new and specific authorization to do so. Finally, the rule prescribes notices to consumers before attempting to withdraw payments from their account, as well as processes and criteria for registration of information systems, for requirements to furnish and obtain information from them, and for compliance programs and record retention. The rule prohibits

orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account; refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit; and refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit. In 2007, the Department of Defense issued its initial regulation under the MLA, limiting the Act’s application to closed-end loans with a term of 91 days or less in which the amount financed did not exceed \$2,000; closed-end vehicle title loans with a term of 181 days or less; and closed-end tax refund anticipation loans.<sup>110</sup> However, the Department found that evasions developed in the market as “the extremely narrow definition of ‘consumer credit’ in the [then-existing rule] permits a creditor to structure its credit products in order to reduce or avoid altogether the obligations of the MLA.”<sup>111</sup>

As a result, effective October 2015 the Department of Defense expanded its definition of covered credit to include open-end credit and longer-term loans so that the MLA protections generally apply to all credit subject to the requirements of Regulation Z of the Truth in Lending Act, other than certain products excluded by statute.<sup>112</sup> In general, creditors must comply with the new regulations for extensions of credit after October 3, 2016; for credit card accounts, creditors are required to comply with the new rule starting October 3, 2017.<sup>113</sup>

At the State level, the last States to enact legislation authorizing payday lending—Alaska and Michigan—did so in 2005.<sup>114</sup> At least 11 States and jurisdictions that previously had authorized payday loans have taken steps to restrict or eliminate payday lending. In 2001, North

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<sup>110</sup> 72 FR 50580 (Aug. 31, 2007).

<sup>111</sup> 80 FR 43560, 43567 n.78 (July 22, 2015).

<sup>112</sup> 80 FR 43560 (July 22, 2015).

<sup>113</sup> 80 FR 43560 (July 22, 2015).

<sup>114</sup> Alaska Stat. secs. 06.50.010–900; Mich. Comp. Laws secs. 487.2121–.2173.



Carolina became the first State that had previously permitted payday loans to adopt an effective ban by allowing the authorizing statute to expire. In 2004, Georgia also enacted a law banning payday lending.

In 2008, the Ohio legislature adopted the Short Term Lender Act with a 28 percent APR cap, including all fees and charges, for short-term loans and repealed the existing Check-Cashing Lender Law that authorized higher rates and fees.<sup>115</sup> In a referendum later that year, Ohioans voted against reinstating the Check-Cashing Lender Law, leaving the 28 percent APR cap and the Short Term Lending Act in effect.<sup>116</sup> After the vote, some payday lenders began offering vehicle title loans. Other lenders continued to offer payday loans utilizing Ohio's Credit Service Organization Act<sup>117</sup> and the Mortgage Loan Act;<sup>118</sup> the latter practice was upheld by the State Supreme Court in 2014.<sup>119</sup> Also in 2008, the District of Columbia banned payday lending which had been a permissible activity under the District's check cashing law, making the loans subject to the District's 24 percent per annum maximum interest rate cap.<sup>120</sup>

In 2010, Colorado's legislature banned short-term single-payment balloon loans in favor of longer-term, six-month loans. Colorado's regulatory framework is described in more detail in the discussion of payday installment lending below.

As of July 1, 2010, Arizona effectively prohibited payday lending after the authorizing statute expired and a statewide referendum that would have continued to permit payday lending

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<sup>115</sup> Ohio Rev. Code secs. 1321.35 and 1321.40.

<sup>116</sup> See generally *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 13 N.E. 3d 1115 (2014).

<sup>117</sup> Ohio Rev. Code sec. 4712.01.

<sup>118</sup> Ohio Rev. Code sec. 1321.52(C).

<sup>119</sup> *Scott*, 139 Ohio St.3d 536, 13 N.E. 3d 1115 (2014).

<sup>120</sup> Payday Loan Consumer Protection Amendment Act of 2007, D.C. Act 17-42 (2007); D.C. Official Code sec. 28-3301(a) (2011).

without re-borrowing. And Utah law allows 10 weeks of re-borrowing, as opposed to the Bureau's cap of three loans in a sequence (under § 1041.5(d)), which would result in a shorter period for consumers taking out 14-day loans (approximately six weeks of re-borrowing), but a longer period for consumers taking out 30-day loans (approximately 12 weeks of re-borrowing).

Of course, the Bureau's approach is not more restrictive than that used by all the States. For example, only a minority of States, 19 by the Bureau's count, permit vehicle title lending with lump-sum (typically short-term) structures, and 15 States and the District of Columbia either ban payday loans or set fee or interest caps that payday lenders find too low to sustain the business model (*see* part II). Even in States that do allow payday lending, certain parts of their payday lending laws may be more restrictive. For example, the cooling-off period imposed by Virginia in certain circumstances lasts 45 or 90 days,<sup>795</sup> while the Bureau's rule sets cooling-off periods, such as the one in § 1041.5(d), at 30 days.

Commenters also raised Colorado's laws as a model. However, following such an approach would involve banning covered short-term lending altogether since that State only allows loans of at least six months in term. To the extent the Bureau engages in further study and potential future rulemaking concerning longer-term installment products, the Bureau will continue to consider whether the Colorado model may provide additional insight.<sup>796</sup>

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<sup>795</sup> Va. Code Ann. sec. 6.2-1816. Specifically, the law requires a 45-day cooling-off period after a consumer has taken out five loans in 180 days and a 90-day cooling-off period after a consumer completes an extended payment plan. The Bureau received a comment letter from the State Attorney General in Virginia that urged the Bureau to finalize a 60-day cooling-off period or, at minimum, a 45-day cooling-off period, and discussed the above referenced 45-day cooling-off period under Virginia law as context for the request. See the discussion of § 1041.5(d) below for a more detailed description of the Bureau's decision to adopt a 30-day cooling-off period in the final rule.

<sup>796</sup> The Bureau also notes that Colorado does require lenders to obtain detailed information and credit histories from consumers for creditworthiness analysis in cases in which the loan exceeds a certain size threshold.



**QuickFacts**  
**Colorado**



QuickFacts provides statistics for all states and counties, and for cities and towns with a **population of 5,000 or more**.



**Table**

ALL TOPICS	Colorado
Population estimates, July 1, 2017, (V2017)	5,607,154
Population estimates, July 1, 2016, (V2016)	5,540,545
<b>PEOPLE</b>	
<b>Population</b>	
Population estimates, July 1, 2017, (V2017)	5,607,154
Population estimates, July 1, 2016, (V2016)	5,540,545
Population estimates base, April 1, 2010, (V2017)	5,029,325
Population estimates base, April 1, 2010, (V2016)	5,029,324
Population, percent change - April 1, 2010 (estimates base) to July 1, 2017, (V2017)	11.5%
Population, percent change - April 1, 2010 (estimates base) to July 1, 2016, (V2016)	10.2%
Population, Census, April 1, 2010	5,029,196
<b>Age and Sex</b>	
Persons under 5 years, percent, July 1, 2016, (V2016)	6.1%
Persons under 5 years, percent, April 1, 2010	6.8%
Persons under 18 years, percent, July 1, 2016, (V2016)	22.8%
Persons under 18 years, percent, April 1, 2010	24.4%
Persons 65 years and over, percent, July 1, 2016, (V2016)	13.4%
Persons 65 years and over, percent, April 1, 2010	10.9%
Female persons, percent, July 1, 2016, (V2016)	49.7%
Female persons, percent, April 1, 2010	49.9%
<b>Race and Hispanic Origin</b>	
White alone, percent, July 1, 2016, (V2016) (a)	87.5%
Black or African American alone, percent, July 1, 2016, (V2016) (a)	4.5%
American Indian and Alaska Native alone, percent, July 1, 2016, (V2016) (a)	1.6%
Asian alone, percent, July 1, 2016, (V2016) (a)	3.3%
Native Hawaiian and Other Pacific Islander alone, percent, July 1, 2016, (V2016) (a)	0.2%
Two or More Races, percent, July 1, 2016, (V2016)	3.0%
Hispanic or Latino, percent, July 1, 2016, (V2016) (b)	21.3%
White alone, not Hispanic or Latino, percent, July 1, 2016, (V2016)	68.6%
<b>Population Characteristics</b>	
Veterans, 2012-2016	383,699
Foreign born persons, percent, 2012-2016	9.8%
<b>Housing</b>	
Housing units, July 1, 2016, (V2016)	2,339,118
Housing units, April 1, 2010	2,212,898
Owner-occupied housing unit rate, 2012-2016	64.4%
Median value of owner-occupied housing units, 2012-2016	\$264,600
Median selected monthly owner costs -with a mortgage, 2012-2016	\$1,585
Median selected monthly owner costs -without a mortgage, 2012-2016	\$427
Median gross rent, 2012-2016	\$1,057
Building permits, 2016	38,974
<b>Families &amp; Living Arrangements</b>	
Households, 2012-2016	2,051,616
Persons per household, 2012-2016	2.56
Living in same house 1 year ago, percent of persons age 1 year+, 2012-2016	81.1%
Language other than English spoken at home, percent of persons age 5 years+, 2012-2016	17.0%
<b>Education</b>	
High school graduate or higher, percent of persons age 25 years+, 2012-2016	91.0%
Bachelor's degree or higher, percent of persons age 25 years+, 2012-2016	38.7%
<b>Health</b>	
With a disability, under age 65 years, percent, 2012-2016	7.2%
Persons without health insurance, under age 65 years, percent	▲ 8.6%

Is this page helpful? ×

Yes  No

<b>Economy</b>	
In civilian labor force, total, percent of population age 16 years+, 2012-2016	67.5%
In civilian labor force, female, percent of population age 16 years+, 2012-2016	62.5%
Total accommodation and food services sales, 2012 (\$1,000) (c)	13,617,654
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	29,488,161
Total manufacturers shipments, 2012 (\$1,000) (c)	50,447,098
Total merchant wholesaler sales, 2012 (\$1,000) (c)	77,034,971
Total retail sales, 2012 (\$1,000) (c)	67,815,200
Total retail sales per capita, 2012 (c)	\$13,073
<b>Transportation</b>	
Mean travel time to work (minutes), workers age 16 years+, 2012-2016	24.9
<b>Income &amp; Poverty</b>	
Median household income (in 2016 dollars), 2012-2016	\$62,520
Per capita income in past 12 months (in 2016 dollars), 2012-2016	\$33,230
Persons in poverty, percent	▲ 11.0%
 <b>BUSINESSES</b>	
<b>Businesses</b>	
Total employer establishments, 2015	161,737 <sup>1</sup>
Total employment, 2015	2,253,795 <sup>1</sup>
Total annual payroll, 2015 (\$1,000)	117,539,555 <sup>1</sup>
Total employment, percent change, 2014-2015	3.3% <sup>1</sup>
Total nonemployer establishments, 2015	480,847
All firms, 2012	547,352
Men-owned firms, 2012	284,554
Women-owned firms, 2012	194,508
Minority-owned firms, 2012	85,849
Nonminority-owned firms, 2012	442,365
Veteran-owned firms, 2012	51,722
Nonveteran-owned firms, 2012	469,524
 <b>GEOGRAPHY</b>	
<b>Geography</b>	
Population per square mile, 2010	48.5
Land area in square miles, 2010	103,641.89
FIPS Code	08

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 Yes  No

**Value Notes**

- 1. Includes data not distributed by county.

▲ This geographic level of poverty and health estimates is not comparable to other geographic levels of these estimates

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info ⓘ icon to the left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2017) refers to the final year of the series (2010 thru 2017). *Different vintage years of estimates are not comparable.*

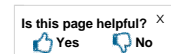
**Fact Notes**

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

**Value Flags**

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest or upper interval of an open ended distribution.
- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- NA Not available
- S Suppressed; does not meet publication standards
- X Not applicable
- Z Value greater than zero but less than half unit of measure shown

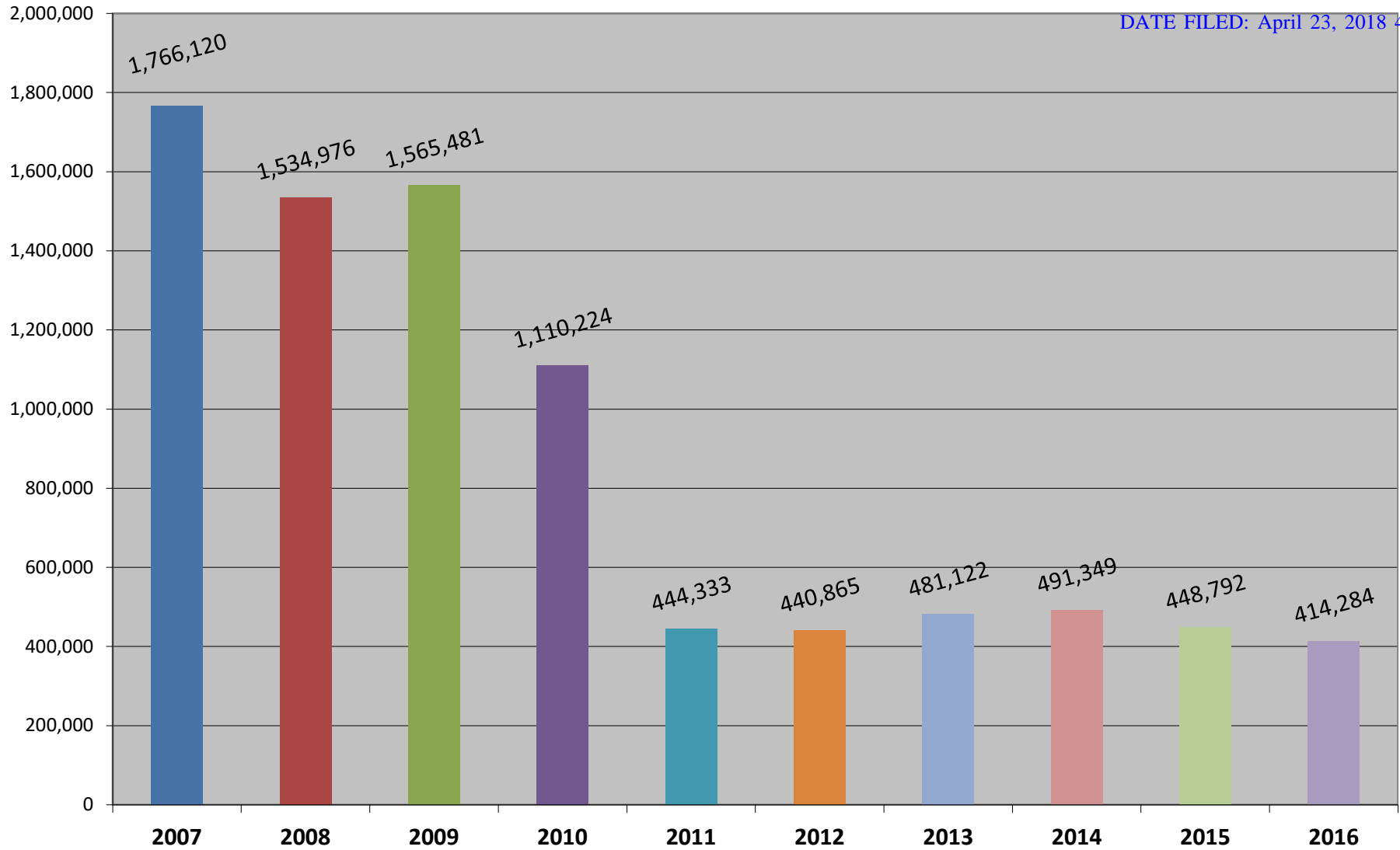
QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.



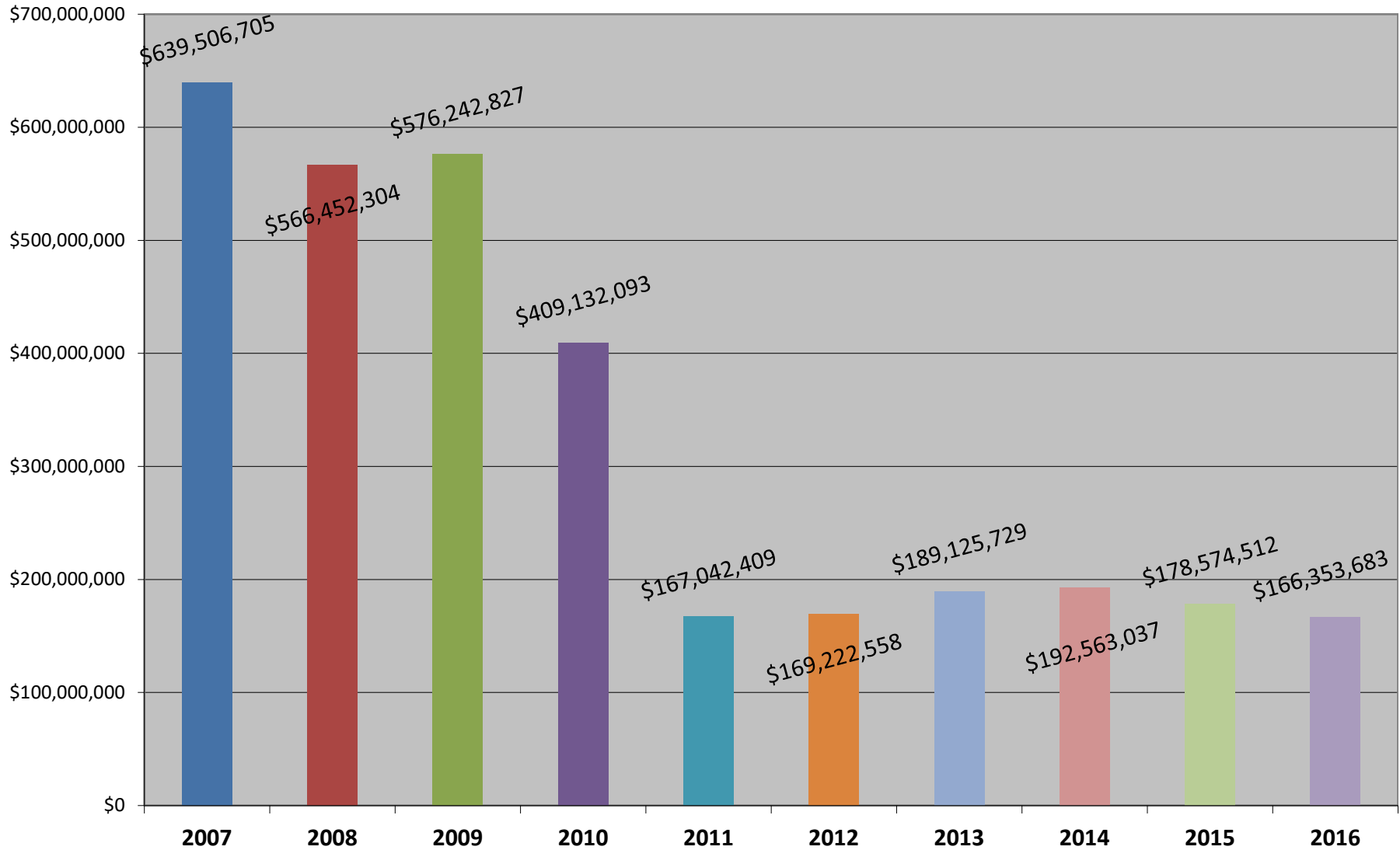
# Number of Deferred Deposit/Payday Loans 2007-2016

Exhibit 10

DATE FILED: April 23, 2018 4:31 PM



# Amount Financed of Deferred Deposit/Payday Loans 2007-2016







## **Summary of Legislation**

Under current law, the Department of Revenue (DOR) may establish a system to allow the electronic transmission of registration, lien, and titling information for motor vehicles. To implement this system, the bill allows the DOR to adopt rules to: maintain titling information electronically; accept electronic signatures on any documents; eliminate any notarization requirements for document signatures; allow all parties to electronically file and release lien information; and authorize third-party providers to process registration, lien, and titling information on behalf of a business entity.

**Third-party title and registration transactions.** Conditional upon DOR adopting rules, its approval of third-party providers to register a vehicle, file or release liens, or issue a vehicle title must be evidenced by an agreement between the third-party and the DOR. Third-party providers may charge a vendor fee for electronic registration, lien, or titling transactions. The DOR is authorized to accept gifts, grants, and donations to implement these provisions.

**Electronic interface.** Under current law, tow carriers, insurers, and salvage pools use an electronic system to access the DOR's records to verify and contact a vehicle's owner or lienholder. This bill allows a motor vehicle dealer or person approved by the DOR to access this system for the same purposes.

**Rental company titling.** This bill allows a motor vehicle rental company to obtain a title without a manufacturer's certificate of origin if the business presents an electronic manufacturer's statement of origin to the DOR and submits a signed affidavit attesting that the motor vehicle is new and has not been issued a title.

## **Background and Assumptions**

**Third-party title and registration transactions.** In FY 2016-17, there were a total of 9.7 million title and registration transactions completed by the DOR and County Clerk and Recorders. Of these transactions, approximately 1.0 million were completed on vehicles that are owned by business entities, representing about 10.5 percent of all title and registration transactions. Based on a March 2017 American Association of Motor Vehicle Administrators (AAMVA) survey, there are currently 8 entities that are established to provide electronic vehicle registration, lien, or titling services. Of the 16 states that have third-party providers, no state had all 8 operating in their state. For the fiscal note, it is assumed that there will be up to 5 third-party providers for business transactions. It is assumed that the following 2,658 entities will enter into an agreement with a third-party provider:

- of the 2,994 motor vehicle distributors, auctioneers, dealers, and wholesalers, 75 percent, or 2,246;
- of the 1,558 used motor vehicle and powersports dealers licensed in Colorado, 25 percent, or 390;
- 10 financial institutions; and
- 12 rental car companies.

**Electronic interface.** Under current law, the DOR provides a user interface for tow operators, insurers, salvage pools, and law enforcement to perform Colorado records searches related to abandoned vehicles. Records are used to return stolen vehicles and to notify relevant parties that a vehicle will be sold at auction if not claimed. This system is currently maintained by

a vendor and will be transferred to the DRIVES database in August 2018. Tow operators, insurers, and salvage pools pay a fee of \$2.20 for each vehicle search performed; there is no charge for vehicle searches performed by law enforcement. If passed, Senate Bill 18-183 will also extend this system to the agent of an insurance carrier.

**State Revenue**

Beginning in FY 2019-20, the bill will minimally increase revenue to the DRIVES Vehicle Services Account, which is administered by DOR. The fee for each search is currently \$2.20; the number of searches is not expected to change significantly under this bill.

Additionally, state revenue may increase to the extent that DOR receives gifts, grants, and donations from third-party providers to implement this bill. As of this writing, no gifts, grants, or donations have been identified. This revenue source is conditional upon DOR's adoption of rules allowing third-parties to complete title and registration activities, as permitted by the bill.

**TABOR Refund**

This bill minimally increases state revenue from fees, and may increase revenue from gifts, grants, donations, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill minimally increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

**State Expenditures**

Conditional upon the DOR's adoption of rules allowing third-parties to complete title and registration activities, as permitted by the bill, state General Fund expenditures will increase by \$1,206,738 and 2.7 FTE in FY 2018-19 and \$209,935 and 2.9 FTE in FY 2019-20. These impacts are summarized in Table 2 and described below.

**Table 2  
Expenditures Under HB 18-1299**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Department of Revenue</b>		
Personal Services	\$157,143	\$169,195
Operating Expenses and Capital Outlay Costs	\$16,674	\$2,755
Computer System Changes	\$997,590	-
Centrally Appropriated Costs*	\$35,331	\$37,985
FTE – Personal Services	2.7 FTE	2.9 FTE
<b>Total</b>	<b>\$1,206,738</b>	<b>\$209,935</b>
<b>Total FTE</b>	<b>2.7 FTE</b>	<b>2.9 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Department of Revenue.** This bill will require 2.7 FTE in FY 2018-19 and 2.9 FTE in FY 2019-20 in the DOR. Costs in the first year were adjusted to account for the General Fund pay date shift and an assumed implementation date of August 2018 to allow the department time to implement the provisions in the bill.

*Title and Registration section.* The Title and Registration section of the DOR will require 1.5 FTE in FY 2018-19 and 1.9 FTE in FY 2019-20 and future years to serve as a dedicated liaison between the department and third-party providers to assist with record management and customer support. Staff time will also increase to provide training to third-party providers and to perform systems testing on third-party provider systems. While expenditures for Title and Registration staff are typically paid from the DRIVES Vehicle Services Account, it is assumed that the cash fund will not have a sufficient fund balance to implement this bill, and General Fund will be required.

*Accounting and Financial Services section.* The Accounting and Financial Services section in DOR will require 1.2 FTE in FY 2018-19 and 1.0 FTE in FY 2019-20 and future years to reconcile accounts for new vendors; reconcile the general ledger and payment interfaces with the state's accounting system; and ensure the proper distribution of funds to taxing jurisdictions. Accounting and Financial Services FTE will be paid from the General Fund.

*Computer system changes.* In FY 2018-19 only, this bill will increase General Fund expenditures by \$981,000 to program the DRIVES system to create a new web service interface; configure and create DRIVES accounts for each approved third-party; and create a process in DRIVES to audit third-party provider transactions. These changes will be completed by a vendor, and will require 4,360 hours of work at \$225 per hour. While expenditures for DRIVES systems changes are typically paid from the DRIVES Vehicle Services Account, it is assumed that the cash fund will not have a sufficient fund balance to implement this bill, and General Fund will be required.

In FY 2018-19, this bill will also require network modifications and security to facilitate vendor applications. These changes will require 1,300 hours at various rates, for a total of \$16,590, paid by General Fund.

*Access to electronic interface.* Beginning in FY 2019-20, workload will increase in the DOR to annually establish new accounts, process payments for searches performed, and maintain accounts for approved entities to access the DOR's electronic records to verify and contact a vehicle's owner or lienholder. Workload will also increase to provide training and update rules, forms, manuals, and websites to reflect this change. This workload can be accomplished within existing appropriations.

*Legal services.* To the extent that DOR engages in rulemaking to allow third-parties to complete title and registration activities, workload will increase in the Department of Law to provide legal services. This workload is expected to be minimal and can be accomplished within existing appropriations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, leased space, and supplemental employee retirement payments, are estimated to be \$35,331 in FY 2018-19 and \$37,985 in FY 2019-20.

**Local Government**

Under current law, a vendor fee is retained by counties to recover the costs of monitoring and processing the collection of state, Regional Transportation District (RTD), special district, county, and city taxes. Municipalities establish a contract with counties to set vendor fee rates, and these rates vary depending on the county. Under this bill, conditional upon DOR rulemaking, third-party providers will collect sales and use taxes, and therefore retain the vendor fee. In 2017, approximately \$967 million in sales and use taxes were collected by counties, which retained vendor fees of \$32.3 million. Allowing transactions to be completed by third-party providers is estimated to decrease the vendor fee collected by counties by approximately \$3.2 million in 2019.

County Clerk and Records offices will also experience a decrease in customers obtaining title and registration services at motor vehicle offices. While this bill is not expected to affect overall staff levels for county offices, it will increase the amount of time available for staff to perform other required duties and reduce annual growth for county offices.

**Effective Date**

The bill takes effect July 1, 2019, if no referendum petition is filed.

**State Appropriation**

In FY 2018-19, and conditional upon the Department of Revenue's adoption of rules allowing third-parties to complete title and registration activities, this bill requires a General Fund appropriation of \$1,171,407. Of this amount, \$16,590 is reappropriated to the Office of Information Technology.

**State and Local Government Contacts**

Counties  
Personnel  
Revenue

County Clerks  
Public Safety

Information Technology  
Regulatory Agencies



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1368

Exhibit 12

DATE FILED: April 23, 2018 4:33 PM

FISCAL NOTE

Drafting Number: LLS 18-0966 Date: April 12, 2018
Prime Sponsors: Rep. Danielson; Melton Bill Status: House Local Government
Sen. Merrifield; Moreno Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: LOCAL CONTROL OF MINIMUM WAGE

- Summary of Fiscal Impact: State Revenue (conditional), TABOR Refund (conditional), State Expenditure, Local Government (conditional), State Transfer, Statutory Public Entity

This bill permits a unit of local government to enact laws establishing the minimum wage within its jurisdiction. It will have a conditional impact on state revenue and local government revenue and expenditures.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

Current state law prevents local governments from enacting minimum wage laws separate from those of the state. This bill repeals that provision and allows units of local government to establish minimum wages for individuals performing work while physically present within their jurisdictions through their governing body, an initiative, or referendum.

Background

Colorado's minimum wage. Prior to 2007, Colorado's minimum wage law was set by federal law. In 2006, Colorado voters adopted an amendment to the state constitution that raised the minimum wage from \$5.15 per hour to \$6.85 per hour beginning in 2007, and from \$2.13 to \$3.02 less than the state minimum wage for tipped workers. In 2016, Colorado voters again amended the state constitution to increase the state minimum wage from \$8.31 to \$9.30 per hour beginning on January 1, 2017, after which it increases annually by \$0.90 per hour until it reaches \$12.00 per hour on January 1, 2020. Beginning January 1, 2021, it will be adjusted each year thereafter by the increase in the Consumer Price Index. The federal minimum wage is currently set at \$7.25 per hour, and \$2.13 for tipped workers.

Table 1 shows the Colorado minimum wage and tipped employee minimum wage from 2006 to 2020.

**Table 1**  
**Colorado State Minimum Wage, 2006-2020**

<b>Effective Year</b>	<b>Minimum Wage</b>	<b>Tipped Employee Minimum Wage</b>
2006	\$5.15	\$2.13
2007	\$6.85	\$3.83
2008	\$7.02	\$4.26
2009	\$7.28	\$4.26
2010	\$7.24	\$4.22
2011	\$7.36	\$4.34
2012	\$7.64	\$4.62
2013	\$7.78	\$4.76
2014	\$8.00	\$4.98
2015	\$8.23	\$5.21
2016	\$8.31	\$5.29
2017	\$9.30	\$6.28
2018	\$10.20	\$7.18
2019	\$11.10	\$8.08
2020	\$12.00	\$8.98

*Source: Colorado Department of Labor and Employment; Colo. Const. art. XVIII, § 15.*

### **Assumptions**

This fiscal notes assumes that the Division of Labor in the Colorado Department of Labor and Employment is not required to enforce local minimum wage laws or accompanying local workplace laws (e.g., overtime policies, meal and break policies, etc.) enacted by a local government under the permissive authority of the bill. For this reason, the bill is assessed as having no impact on the department.

The fiscal note also assumes that a unit of local government includes municipalities and counties only; however, a unit of local government may also include special districts, school districts, urban renewal boards, and other commissions.

### **State Revenue and TABOR Refund**

The bill potentially changes wages in local jurisdictions that choose to enact local minimum wage laws, which may affect state individual income taxes. Any impact on state income tax revenue and the TABOR refund amount is conditional, dependent on future decisions made by local governments. This fiscal note does not estimate how the measure will conditionally affect individuals' wages and the subsequent impact on tax collections, nor does it estimate the overall impact to businesses and the economy. Such an estimate would rely on many secondary factors outside the scope of this analysis.

**Local Government Impact**

Any impact on local government revenue or expenditures is conditional upon future decisions made by those local governments.

**Revenue.** A local government's revenue from sales taxes may be impacted by changing the income of individuals or the expenses of business. This fiscal impact estimate would rely on many secondary factors outside the scope of this analysis.

**Expenditures.** A municipality or county that changes local law to require a unique minimum wage will change the expenses of that government in order to pay their employees a different wage amount. Additionally, each municipality or county that enacts a unique minimum wage must also create an enforcement mechanism where none currently exists, increasing local government costs. In the event that a minimum wage change is brought through an initiative or referendum, increased election costs will also be incurred.

**Effective Date**

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

**State and Local Government Contacts**

Counties	County Assessors	County Clerks
County Coroners	District Attorneys	Fire Chiefs
Governor	Labor	Law
Local Affairs	Municipalities	Public Trustees
Revenue	School Districts	Sheriffs
Special Districts		