

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017- 2018 #126 Petitioners: BILL FRITTS v. Respondents: CORRINE FOWLER AND REVEREND DR. ANNE M. RICE-JONES and Title Board: SUZANNE STAIERT; GLENN ROPER AND JULIE PELEGRIN.	▲ COURT USE ONLY ▲
<i>Attorneys for Respondents</i> Martha M. Tierney, No. 27521 Tierney Lawrence LLC 225 E.16 TH AVE, SUITE 350 Denver, CO 80203 Phone: (720) 242-7577 E-mail: mtierney@tierneylawrence.com	Case No.: 2018SA60
RESPONDENTS' OPENING BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 3,831 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.___, p.___), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent'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 and C.A.R. 32.

By: s/Martha M. Tierney

TABLE OF CONTENTS

	Page(s)
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	5
ARGUMENT	7
I. The Initiative's Abstract Is a Correct Estimate, Is Not Misleading or Prejudicial, and Meets the Requirements of Colorado Law.	7
A. Standard of Review	7
B. The Title Board Properly Set a Title and Was Not Authorized to Return the Abstract to Legislative Council.....	8
C. The Abstract Satisfies the Statutory Requirements.....	9
III. The Initiative's Title Correctly and Fairly Expresses the True Intent and Meaning of the Measure.....	12
A. Standard of Review.....	12
B. The Title and Submission Clauses Are Not Misleading and Do Not Contain a Catchphrase	12
1. The Title for Initiative #126 Does Not Contain a Catchphrase.....	12
2. The Title for Initiative #126 Is Not Misleading	16
CONCLUSION.....	18

TABLE OF AUTHORITIES

Page(s)

CASES

<i>In re Initiative for 2013-2014 #103</i> , 328 P.3d 127 (Colo. 2014)	7
<i>Smith v. Hayes (In re Initiative for 2017-2018 #4)</i> , 395 P.2d 318 (Colo. 2017).....	7, 10
<i>Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C.</i> , 95 P.3d 571 (Colo. 2004)	8
<i>In re 2000-2001 Dist. Grand Jury in and for First Judicial Dist.</i> , 97 P.3d 921 (Colo. 2004)	9
<i>Loonan v. Woodley</i> , 882 P.2d 1380 (Colo. 1994).....	11
<i>Fabec v. Beck</i> , 922 P.2d 330 (Colo. 1996)	11
<i>Committee for Better Health Care for All Colo. Citizens v. Meyer</i> , 830 P.2d 884 (Colo. 1992).....	11
<i>In re Initiative on "Trespass-Streams with Flowing Water"</i> , 910 P.2d 21 (Colo. 1996).....	11, 12
<i>Earnest v. Gorman (In re Initiative for 2009-2010 #45)</i> , 234 P.3d 642 (Colo. 2010).....	12, 13, 15
<i>In re Initiative for 2009-2010 #24</i> , 218 P.3d 350 (Colo. 2009)	12
<i>In re Initiative on Parental Notification of Abortions for Minors</i> , 794 P.2d 238 (Colo. 1990).....	12
<i>In re Initiative for 1999-2000 #258(a)</i> , 4 P.3d 1094 (Colo. 2000).....	13
<i>In re Initiative for 2007-2008 #62</i> , 184 P.3d 52 (Colo. 2008)	13
<i>Oasis Legal Fin. Grp., LLC v. Coffman</i> , 361 P.3d 400 (Colo. 2015)	16

State ex rel. Suthers v. Tulips Invs., LLC, 343 P.3d 977 (Colo. App. 2012), *aff'd*,
340 P.3d 1126 (Colo. 2015);16

State ex rel. Suthers v. Cash Advance, 205 P.3d 389 (Colo. App. 2008); *aff'd*
242 P.3d 1099 (Colo. 2010)16

Cordero v. Leahy (In re Initiative for 2013-2014 #90),
328 P.3d 155 (Colo. 2014).....17

In re Initiative for 1999-2000 #255, 4 P.3d 485 (Colo. 2000)17

In re Initiative Pertaining to the Casino Gaming Initiative Adopted on April 21,
1982, 649 P.2d 303 (Colo. 1982).....18

STATUTES

§ 1-40-105(1), C.R.S (2017).....2

§ 1-40-105(2), C.R.S (2017).....2

§ 1-40-105.5, C.R.S (2017).....7, 8

§ 1-40-105.5(2)(a), C.R.S (2017).....8

§ 1-40-105.5(3), C.R.S (2017).....1, 9

§ 1-40-106.5, C.R.S (2017).....2

§ 1-40-107, C.R.S (2017).....8

§ 1-40-107(1)(b), C.R.S (2017)8

§ 1-40-107(2), C.R.S. (2017)2

§ 2-2-322, C.R.S. (2017).....3, 9

§ 5-3.1-102, C.R.S. (2017)16

§ 5-3.1-105, C.R.S. (2017)16

§ 5-3.1-121, C.R.S. (2017)17

CONSTITUTIONAL PROVISIONS

Colo. Const. art. V, Section 1(5.5).....7

Colo. Const. art. V, Section 1(10)17

Corrine Fowler and Reverend Dr. Anne Rice-Jones (jointly “Proponents” or “Respondents”), registered Colorado electors, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause (jointly, the “Title”) that the Title Board set for Proposed Initiative 2017-2018 #126 (“Initiative #126”).

STATEMENT OF ISSUES PRESENTED FOR REVIEW¹

1. Whether the Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements.
2. Whether the measure’s abstract fails to comply with the requirements of C.R.S. §1-40-105.5(3), and is otherwise misleading and prejudicial.
3. Whether the title is misleading and includes an impermissible catch phrase.

STATEMENT OF THE CASE

This is an appeal from the Title Board’s setting of the Title for Initiative #126. On January 23, 2018, Proponents filed Initiative #126 with the directors of

¹ These issues are drawn, as best Respondents are able, from Petitioner’s “Issues Presented for Review” in his Petition for Review, dated March 14, 2018 (“Petition”), and from the positions asserted by Petitioner in his Motion for Rehearing.

the Legislative Council and the Office of Legislative Legal Services. Pursuant to C.R.S. 1-40-105(2), the Offices of Legislative Council and Legislative Legal Services conducted a review and comment hearing required by C.R.S. 1-40-105(1) on February 6, 2018.

Proponents filed Initiative #126 with the Secretary of State's office on February 9, 2018. At the Title Board hearing on February 21, 2018, the Title Board found that Initiative #126 contained a single subject, as required pursuant to article V, section 1(5.5) of the Colorado Constitution, and Section 1-40-106.5, C.R.S. (2017). The Title Board also found that the abstract met the statutory requirements and set the Title for Initiative #126.

On February 28, 2018, Petitioner Bill Fritts filed a Motion for Rehearing. On March 7, 2018, the Title Board denied the Motion for Rehearing in full. Petitioner filed an appeal, pursuant to Section 1-40-107(2), C.R.S. (2017), on March 14, 2018.

STATEMENT OF FACTS

Initiative #126 amends the Colorado Revised Statutes to place limitations on payday lenders by reducing allowable charges on new and renewed payday loans to an annual percentage rate of no more than thirty-six percent, contains a legislative declaration, and sets forth enforcement details describing the types of

behavior that is prohibited to evade the requirements of the thirty-six annual percentage rate limit. The Title follows Initiative #126's structure, using similar, and often identical, language.

At the rehearing for Initiative #126 on March 7, 2018, the Title Board heard testimony from counsel for Petitioner and counsel for Proponents, and from Natalie Mullis, fiscal director for the Legislative Council Staff. Ms. Mullis explained the information that her office considered when drafting the fiscal impact statement and abstract. She also explained how the initial fiscal impact statement must be in substantially similar form to the fiscal notes provided by Legislative Council of the General Assembly for legislative measures pursuant to section 2-2-322, C.R.S., indicate whether there is a fiscal impact for the initiated measure, and include an abstract. *Tr.*, 48:22-49:5.²

Ms. Mullis stated that it is always her office's "intention to provide numbers if we can," in the fiscal impact statement or abstract, but that "providing numbers for these kinds of analyses for the economic impacts generally requires a dynamic analysis, some kind of model" which requires an "assumption for how the economic inputs into those models will change as a result of a policy and then see

² A certified transcript from the Title Board rehearing on 2017-2018 Initiative #126 on March 7, 2018 is submitted herewith as Exhibit A. Proponents will cite to the transcript as "*Tr. page number:line number.*"

what the model says about that.” *Tr. 50:5-14*. Ms. Mullis explained that “because there are so many assumptions that must go into those models,” the Legislative Council Staff does not have the ability to “vet every single one of those assumptions.” *Tr. 51:2-5*. She noted that “it requires a lot of resources and a lot more time than we have to put these analyses together,” and pointed out that when the General Assembly passed HB15-1057, “we never interpreted that an estimate, which would require a dynamic analysis, would be required by the statute,” and if the statute “did require an estimate of an economic analysis, we would have asked for resources that we don’t have right now to do that.” *Tr. 51:6-14*.

Ms. Mullis made clear that “for the impact on state and local governments, if the estimate is indeterminate, then that’s what the estimate is.” *Tr. 51:23-52:1*. In response to questions from the Title Board on what the statute requires the Legislative Council to do, Ms. Mullis answered “what it requires is for us to do what we have been doing, to take into consideration our body of knowledge on the subject and take into consideration everything that is provided to us and summarize what we think the economic impact is on the economy.” *Tr. 52:8-13*.

After hearing from Ms. Mullis, the Title Board rejected Petitioner’s argument that it should remand the fiscal impact statement and abstract to the Legislative Council. *Tr. 63:9-66:10; 68:16-22*. The Title Board heard additional

arguments from Petitioner about how they should amend the abstract and the Title, but they ultimately declined to amend the abstract and the Title based on the information presented. *Tr. 68:16-22.*

The Title for Initiative #126 reads:

An amendment to the Colorado Revised Statutes concerning limitations on payday lenders, and, in connection therewith, reducing allowable charges on payday loans to an annual percentage rate of no more than thirty-six percent.

The fiscal abstract reads:

State and Local Government Impact. The measure is not expected to impact state or local government revenue or expenditures. Under current law, the Department of Law already licenses payday lenders, conducts compliance examinations of their loans, and establishes rules for their operation.

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.

SUMMARY OF ARGUMENT

The Title Board properly exercised its broad discretion in drafting the title and approving the fiscal abstract for Initiative #126.

The fiscal abstract for Initiative #126 complies with Colorado law and is neither prejudicial nor misleading. The Title Board did not seek, nor was it

authorized, to return the abstract to Legislative Council. The Title Board had jurisdiction to set a title for Initiative #126, and its jurisdiction was not impacted by the Legislative Council's decision to forgo inclusion of hard numbers in its fiscal impact estimate. The Title Board relied on testimony and evidence presented at the rehearing when it approved the fiscal abstract, and deferred to Legislative Council's judgment in the absence of a compelling reason that the abstract was inaccurate.

The Title satisfies Colorado law because it fairly and accurately sets forth the major features of Initiative #126 and is not misleading. The term "payday" in the Title is not a catchphrase because it does not work in favor of the measure without contributing to voter understanding. Absent the term "payday" in the Title, which is the term used by the industry itself, the General Assembly, the Executive Branch, and the Judiciary, voters would not understand the subject matter of the measure. Finally, the Title need not include enforcement details setting forth what behavior would violate the payday lender limitations established by the Initiative.

The Title Board is only obligated to fairly summarize the central points of a proposed measure, and need not refer to every nuance and feature of the proposed

measure. While a title must be fair, clear, accurate, and complete, it is not required to set out every detail of an initiative.

Accordingly, there is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

ARGUMENT

I. The Initiative's Abstract Is a Correct Estimate, Is Not Misleading or Prejudicial, and Meets the Requirements of Colorado Law.

A. Standard of Review.

When reviewing an abstract prepared and submitted to the Title Board pursuant to C.R.S. §1-40-105.5, this Court employs "all legitimate presumptions in favor of the propriety" of the Title Board's decisions and only overturns the Board's decision "in a clear case." *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 395 P.3d 318, 323 (Colo. 2017). The Court applies the same deferential standard in reviewing challenges to abstracts as it does in reviewing challenges to other Title Board decisions. *Id.* Whether the Title Board was authorized to return the fiscal impact statement and abstract to the Legislative Council is a question of law and is subject to de novo review. *See In re 2013-2014 Initiative #103*, 328 P.3d 127, 129 (Colo. 2014).

B. The Title Board Properly Set a Title and Was Not Authorized to Return the Abstract to Legislative Council.

First, Petitioner contends that the Title Board should have returned the Fiscal Abstract to the Legislative Council instead of setting a title because he contends that it failed to meet legal requirements. *Petition*, p.2. The Title Board determined that it did not have the authority to return the abstract to Legislative Council.³ *Tr. 63:7 – 68:22.*

Consistent with the Title Board’s interpretation, nothing in C.R.S. §1-40-105.5 or in §1-40-107 authorizes it to reject a fiscal impact statement or abstract and return it to the Legislative Council for modification. Instead, the statute allows the Title Board itself to “modify the abstract based on information presented at the rehearing.” §1-40-107(1)(b). Section 1-40-105.5(2)(a) states that “the director’s abstract that is included in the impact statement is final, unless modified in accordance with section 1-40-107.”

The plain language of §1-40-505.5 and §1-40-107 is clear. “If a statute is clear and unambiguous on its face, then [a reviewing court] need not look beyond the plain language,” *e.g., Garhart ex rel. Tinsman v. Columbia/HealthONE*,

³ The issue of whether the Title Board may return a fiscal abstract to the Legislative Council is presently before this Court in *In re Initiative 2017-2018 #97*, Case No. 2018SA31 (filed February 14, 2018).

L.L.C., 95 P.3d 571, 591 (Colo. 2004), and "must apply the statute as written," *In re 2000-2001 Dist. Grand Jury in and for First Judicial Dist.*, 97 P.3d 921, 924 (Colo. 2004). This Court should decline Petitioner's request to stray from the plain language of the statute.

C. The Abstract Satisfies the Statutory Requirements.

Petitioner next contends that the "fiscal abstract fails to comply with the requirements of §1-40-105.5(3), and is otherwise misleading and prejudicial." *Petition*, p. 2. Specifically, at the Rehearing, Petitioner complained that neither the fiscal impact statement nor the abstract contained information concerning the financial or economic impact to lenders who provide payday loans. *Tr. 27:17-29:4*.

Petitioner's argument fails for at least two reasons. First, it ignores Ms. Mullis' testimony, where she stated that her office met the statutory requirements, which require the fiscal impact statement to be substantially similar in form and content to the fiscal notes provided by the Legislative Council of the General Assembly for legislative measures pursuant to §2-2-322, indicate whether there is a fiscal impact for the initiated measure and include an abstract as described in the statute. *Tr. 48:15-49:5*. Second, Petitioner sidesteps the difficulty that Ms. Mullis

identified - namely that there is a lack of reliable information upon which her office could accurately calculate a numerical estimate for Initiative #126.

Ms. Mullis testified that it was not possible to provide specific estimates for the effects of Initiative #126 on the payday lending industry. *Tr. 47:22 – 58:10*. She also explained that Legislative Council did review the material submitted by Petitioner and by Proponents and took the information into consideration when drafting the fiscal impact statement and abstract for Initiative #126. *Tr. 47:22 – 51:14*. But, Ms. Mullis clarified that Legislative Council did not include references to that information because it came from biased sources and was not accurate for the purposes of a fiscal statement or abstract. *Tr. 55:5 – 56:11*. Ms. Mullis further explained the process that the Legislative Council used to arrive at the fiscal statement and abstract and why it meets the requirements of the statute. *Tr. 47:22 – 58:10*.

This Court has previously opined that the Title Board is in a better position to hear and consider information directly from the office that prepares abstracts. *Smith v. Hayes*, 395 P.3d at 324. The Title Board “holds public rehearings at which it may hear testimony, take evidence, and inquire into information presented by various sources.” *Id.* In this case, like the situation in *Smith v. Hayes* and *In re Initiative 2017-2018 #97*, after hearing from the Proponents, the

Petitioner, and from Legislative Council staff, and after weighing the merits of evidence regarding the abstract's accuracy, the Title Board unanimously approved the abstract as written by the Legislative Council. *Tr.* 63:7 – 68:22. The Title Board “need not explain the fiscal impact of a proposed initiative if the impact cannot be determined from materials submitted to the Title Board due to uncertainties or variables inherent in the particular issue.” *In re Proposed Initiative on Trespass-Streams with Flowing Waters*, 910 P.2d 21, 26 (Colo. 1996).

This Court “give[s] great deference to the Title Board's decisions regarding abstracts, and [] will not overturn its decision except in a clear case.” *Id.* In this case, the Title Board determined that it would not substitute its judgment for that of the fiscal analysts and would instead defer to their expertise. *Tr.* 52:14 –54:10.

Moreover, the right of initiative in Colorado is fundamental in character and self-executing. *See Colo. Const. art. V*, 1(10); *Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994). Legislation governing the initiative power must be liberally construed in favor of the right of the people to exercise that power. *See Fabec v. Beck*, 922 P.2d 330, 341 (Colo. 1996); *Committee for Better Health Care for All Colo. Citizens v. Meyer*, 830 P.2d 884, 893 (Colo. 1992).

The Title Board's decision to accept the abstract should be affirmed.

II. The Initiative's Title Correctly and Fairly Expresses the True Intent and Meaning of the Measure.

A. Standard of Review.

The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the central features of the proposed measure." *Trespass-Streams with Flowing Water*, 910 P.2d at 24. Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Initiative for 2009-2010 # 24*, 218 P.3d 350, 356 (Colo. 2009) (quoting *In re Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

B. The Title and Submission Clauses Are Not Misleading and Do Not Contain a Catchphrase.

1. The Title for Initiative #126 Does Not Contain a Catchphrase.

The Title for Initiative #126 is clear and does not contain a catchphrase. The Title Board must avoid using catchphrases when setting a title and ballot title and submission clause. *In re Initiative for 2009-2010 #45*, 234 P.3d 642, 649 (Colo. 2010). The purpose of this prohibition is to "prevent prejudicing voters in favor of

the proposed initiative merely by virtue of those words' appeal to emotion and to avoid distracting voters from consideration of the proposed initiative's merits." *Id.*

The term “payday loan” or “payday lender” is not a catchphrase.

Catch phrases are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase.

In re Initiative for 2007-2008 #62, 184 P.3d 52, 60 (Colo. 2008), quoting *In re Initiative for 1999-2000 #258(a)*, 4 P.3d 1094, 1100 (Colo. 2000). The terms “payday loan” and “payday lender” – drawn directly from the texts of the measure – describe precisely what each of these measures would do, *i.e.*, create limitations on a certain type of loan known commonly as a payday loan and offered by persons commonly understood to be payday lenders. Calling these loans by any other name would be less precise at best, and contribute less to voter understanding of the actual contents of the measure.

This case recalls the situation with two measures from the 2015-2016 cycle: Initiatives 2015-2016 #60 and #61. There, the Title Board set a title using the words “full-strength beer and wine.” In contrast, the statute used the terms “malt and vinous liquor,” and objectors argued that the title must use those terms because “full-strength beer and wine” constituted a catchphrase. The proponents in those

cases argued that using the words “full-strength beer and wine,” instead of the technical terms “malt and vinous liquors,” contributed to voter understanding, ensuring that the voters would know exactly what they were voting for or against—the sale of full-strength beer and wine in stores selling food. This Court agreed with the proponents and rejected the catchphrase argument in two separate unanimous affirmances without opinion on March 17, 2016.⁴

At the rehearing for Initiative #126, Petitioner argued that the term “payday loan” is a catchphrase because it is a pejorative term. In response, the Proponents submitted several documents to the Title Board indicating broad adoption of the term “payday loan” to describe these loans by the industry and the government. For example, Proponents offered documents from the payday loan industry demonstrating that it consistently uses the term “payday loan” or “payday lender” to describe its own activities, *see Exhibit B, packet of screenshots and pictures from around the state of Colorado depicting payday loan companies.*⁵ Proponents also introduced a report from the Administrator, Uniform Consumer Credit Code (the state agency charged with enforcing Colorado’s consumer credit laws)

⁴ Case number 2016SA30 concerned Initiative 2015-2016 #60, and case number 2016SA31 concerned Initiative 2015-2016 #61.

⁵ Exhibits B, C, and D, are copies of exhibits that Proponents submitted to the Title Board at the March 7, 2018 rehearing and that have been certified by the Secretary of State. The certification certificate is attached to the beginning of Exhibit B.

(*Exhibit C*), and a screenshot from the Colorado Attorney General’s Office website (*Exhibit D*). As these exhibits show, Colorado’s officials also use the terms “payday lending” or “payday loan” to describe these types of loans.

The Title Board rejected the Petitioner’s argument on two grounds. First, the Title Board agreed that voters and petition signers were not likely to know what a “deferred deposit loan” is, because the common term for these types of loans is “payday loans.” *Tr.* 81:9-15; 84:23-85:5. Thus, the Title Board found that the terms “payday loan” and “payday lender” contributed to voter understanding. *Id.*; *see also Exhibits B, C, D.*

Second, the Title Board rejected the claim that the term “payday loan” has a negative or pejorative connotation because the industry itself has adopted the term “payday loans” to describe this type of loan and uses the term almost exclusively in its marketing and communications efforts. *Tr.* 85:5-11; 23-25; 86:1-5; *see also Exhibits B, C, D.*

Here, rather than “provok[ing] emotion such that it impermissibly distracts voters from consideration of the initiative’s merits,” *In re Initiative for 2009-2010 #45*, 234 P.3d at 650, the phrase “payday loan” or “payday lender” is a descriptive term that presents the issue to voters in a manner that they will understand. What the initiative proposes is clear; there is no risk of voter confusion. *See id.*

And, the Title uses the term "payday loans" because that term is how these types of loans are almost universally referred to – by the industry (*Exhibit B*), the Legislature,⁶ government officials (Exhibits C, D), the Judiciary,⁷ and, importantly, the voters and petition signers. Indeed, Initiative #126 would amend aspects of Article 3.1 of the Uniform Consumer Credit Code, the article that, as this Court observed, “regulates payday loans.” *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d at 406. The term “payday” in the text of Initiative #126 was drawn directly from the existing text of the primary statute it seeks to modify, §5-3.1-105, and its inclusion in the title provides an accurate description of what the Initiative would do, namely, create limitations on "payday lenders" involving “payday loans.” The term “payday” neither evokes emotion nor engenders voter confusion, and thus, is not an impermissible catchphrase.

2. The Title for Initiative #126 Is Not Misleading.

The Title for Initiative #126 accurately captures the key features of the measure and is not likely to mislead voters or petition signers as to the Initiative's purpose or effect.

⁶ See C.R.S. §5-3.1-102, 105 (2017).

⁷ See e.g., *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d 400, 406 (Colo. 2015); *State ex rel. Suthers v. Tulips Invs., LLC*, 343 P.3d 977, 978 (Colo. App. 2012), *aff'd*, 340 P.3d 1126 (Colo. 2015); *State ex rel. Suthers v. Cash Advance*, 205 P.3d 389, 394, 401 (Colo. App. 2008); *aff'd* 242 P.3d 1099 (Colo. 2010).

At the rehearing, Petitioner sought inclusion in the Title of a reference to the changes to C.R.S. §5-3.1-121 that clarify what behavior would violate the limitations on payday lenders established by the proposed Initiative. The Title Board rejected including this level of detail. *Tr.85:6-22*. “While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative.” *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted).

Initiative #126 adds language to existing C.R.S. §5-3.1-121, titled “unfair or deceptive practices,” to make clear that “[n]o person may engage in any device, subterfuge, or pretense to evade” the requirements of the article, which include

making, offering, guaranteeing, assisting, or arranging a consumer to obtain a loan with a greater rate of interest, consideration, or charge than is permitted by this article through any method including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state.

These types of enforcement details are not required to be included in an initiative’s title. “The titles and summary are intended to alert the electorate to the salient characteristics of the proposed measure.” *In re Initiative for 1999-2000 #255*, 4 P.3d at 497.

Here, the Title of Initiative # 126 succinctly captures the key features of the measure, is not likely to mislead voters as to the initiative's purpose or effect, nor

does the title contain a catchphrase. Only in a clear case should a title prepared by the Title Board be held invalid. *In re Title, Ballot Title & Submission Clause Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo. 1982). This is not such a case.

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board regarding Proposed Initiative 2017-2018 #126.

Respectfully submitted this 3rd day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2018 a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

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SECRETARY OF STATE

TITLE SETTING BOARD HEARING

DATE FILED: April 3, 2018 3:21 PM
Exhibit A
2018SA60

Aspen Room

1700 Broadway Street

Denver, Colorado

March 7, 2018

9:35 a.m.

Re: 2017-2018 #126 "Payday Loans" (Rehearing)

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24 Also Present:

25 Corrine Fowler

Reverend Dr. Anne Rice-Jones

Natalie Mullis

Steve Ward

23

24

25

1 MS. STAIERT: All right. This is a meeting
2 of the Title Setting Board pursuant to Article 40 of
3 Title 1 C.R.S.

4 The time is 9:35. The date is Wednesday,
5 March 7th, 2018. We're meeting in the Secretary of
6 State's Aspen Room, 1700 Broadway, Denver, Colorado.

7 The Title Board today consists of myself,
8 Suzanne Staiert, Deputy Secretary of State on behalf
9 of Wayne Williams; Glenn Roper, Assistant Solicitor
10 General, designee of Attorney General Cynthia
11 Coffman; and Julie Pelegrin, designee of Office of
12 Legislative Legal Services.

13 Also to my far right is our Staff from the
14 Attorney General's Office, Matt Grove. And to my
15 far left is Steve Ward, the Title Board manager
16 extraordinaire. I don't know what your title is,
17 Steve, so sorry.

18 STEVE WARD: Clerk.

19 MS. STAIERT: Clerk. There are two Titles
20 for each measures. One is a statement and the other
21 is a statement in the form of a question.

22 Changes adopted by the Title Board to the
23 first Title in the Staff draft will be considered
24 adopted for the other Title.

25 For anyone who wishes to testify, there is

1 a sign-up sheet on the back table. This hearing is
2 broadcast over the internet from the Secretary of
3 State's website. And public restrooms are located
4 on this floor.

5 When the Title Board considers a proposed
6 initiative for the first time, the Board will follow
7 three steps.

8 First, the Board members may wish to ask
9 questions of the Proponents. This is to ensure the
10 Board understands the proposal.

11 Then the Board will determine if it has
12 jurisdiction to set a Title. In particular, the
13 Board must determine if the measure complies with
14 the single-subject rule prescribed in Article 5,
15 Section 1-5.5 of the Colorado Constitution and
16 Section 1-40-106.5, Colorado Revised Statutes.

17 This is because the Board is prohibited
18 from setting a Title for a measure that contains
19 more than one subject.

20 If the measure is a constitutional change,
21 the Board will consider under C.R.S. 1-40-106
22 whether the measure only repeals in whole or in part
23 a provision of the State Constitution.

24 Third, if the Board determines that it has
25 jurisdiction to set a Title, then the Board will use

1 a Staff-prepared draft for discussion purposes. A
2 copy of the Staff draft is on the table.

3 Generally, we take all testimony first.
4 Then the Board will discuss and vote after all
5 testimony is completed. A decision is reached by
6 two of the three members of the Board.

7 Please take note we are not concerned with
8 the merits of any proposal here. We are only
9 concerned with the setting of Titles.

10 Furthermore, we are not concerned with
11 legal or constitutional objections to the measures,
12 except to the extent that such objections relate to
13 the jurisdiction of the Board to set Titles or to
14 the correctness of the Titles and summaries
15 themselves.

16 Anyone who is dissatisfied with the
17 decision of the Title Board may file a motion for
18 rehearing with the Secretary of State within seven
19 calendar days.

20 The first item on the agenda today is
21 2017-2018 No. 126. This is a rehearing on "Payday
22 Loans."

23 And, Mr. Dunn, I believe you filed the
24 motion.

25 MR. DUNN: I did. Good morning, members of

1 the Board, manager extraordinaire, and Mr. Groves,
2 don't forget him. Thank you for your time today.

3 So you have our motion for rehearing. I'm
4 here on behalf of Bill Fritts, Objector. We have
5 generally four categories of objections: Initial
6 jurisdictional issue, single-subject objection,
7 concerns about the fiscal impact statement and
8 abstract, and then, should we get there, on the
9 Title as well.

10 So let me start with the initial
11 jurisdictional issue. And I believe you have in
12 your packets copies of the original amended and
13 final versions of the measure. If I could ask you
14 to turn to the original version, because it's a
15 little bit technical.

16 If you look at Section 4 of the measure,
17 this is 5-3.1-121. I'll give you a minute to get
18 there. And if you look at the changes -- well, in
19 the original version, let me read what it says in
20 the original version under 5-3.1-121(2).

21 It says: A person violates the
22 requirements of this article by engaging in any act
23 that limits or restricts the application of this
24 article -- and this is the important part -- comma,
25 including making loans disguised as personal

1 property, sale and leaseback transactions, et
2 cetera.

3 And that's the language I want to focus on.
4 So if you look at what the Proponents changed in
5 that, in their original version they -- on what I
6 think is line of that paragraph 1, 2, 3, 4, they
7 struck the "S" and the comma on sales as well as the
8 "S" on transactions.

9 In the review and comment memorandum,
10 Legislative Council raised the issue that, as a
11 technical matter, the preferred form is to strike an
12 entire word and then retype it in the singular in
13 small caps. That was raised at the hearing and they
14 said they would do that.

15 So, if you look at the final version of
16 what they submitted, they went beyond that. So what
17 it says now after that comma in line 3 -- they made
18 some changes prior to that that aren't relevant
19 here. It says: Including making loans disguised as
20 a personal property sale, comma, and leaseback
21 transaction.

22 Now what that does is change the type of
23 transactions that are subject to the unfair and
24 deceptive trade practice element of the Deferred
25 Deposit Loan Act.

1 Under the original version, a personal sale
2 and leaseback transaction is a term of art. It's a
3 very specific type of transaction. Essentially what
4 it is, is it is a transaction which a person -- they
5 don't physically bring a personal property, they
6 usually bring a serial number.

7 They go into a lender and they agree to
8 transfer ownership of an item to that lender by
9 giving them the serial number. And with that, they
10 give them usually a check that's postdated and along
11 with that a separate check that is a fee for leasing
12 back their own item that they didn't bring in in the
13 first place.

14 So say, for example, they need a \$200 loan,
15 they will write a \$200 check to the lender that's
16 held. They will also write a check for \$60, let's
17 say, that constitutes the lease on their own item
18 that they have transferred ownership to and then
19 lease back.

20 And then they have the right to repurchase
21 their consumer good at a given date, usually two
22 weeks out, for the price of the loan. So when they
23 come back in, they pay back the \$200 or they
24 repurchase the product. And then essentially the
25 interest is the \$60 that they paid for the leaseback

1 on the item.

2 So it's sort of a roundabout way of getting
3 a \$200 loan and paying \$60 for it. It's a very
4 specific thing that relates to consumer items in a
5 personal sale and leaseback transaction, which is
6 what the statute referred to.

7 Now it simply just says, it refers to loans
8 disguised as a personal property. I'm not quite
9 sure what that means. But then it says "sale," I'm
10 not really sure what that means, comma, and then
11 "and leaseback transaction." So a leaseback
12 transaction is different than a personal sale and
13 leaseback.

14 So it's changed the nature of what is
15 considered unfair and deceptive trade practices
16 under the Act, which by the Proponents' own
17 statement is the single subject of the measure --
18 and this ties into our single-subject argument --
19 but it's also changes that go beyond the review and
20 comment memo and what was discussed after review and
21 comment hearing.

22 So we think the Board lacks jurisdiction
23 based on the change, the substantive change that was
24 made. And it also constitutes a second subject.

25 The stated single subject of the measure

1 was to change charges applicable under the Act, but
2 it goes beyond that because it changes the types of
3 transactions that will constitute unfair and
4 deceptive trade practices.

5 So that's both of our jurisdictional
6 arguments on both the review and comment memo and
7 the single-subject argument.

8 On the fiscal impact statement, I think you
9 have that. Do you want to pause there, or do you
10 want to keep going?

11 MS. STAIERT: Yeah, let's do the
12 jurisdictional part first, and then we'll go to --
13 if we get there, we'll go to the --

14 MS. TIERNEY: Thank you, Madam Chair,
15 members of the Title Board. Title manager
16 extraordinaire, I like that.

17 MS. STAIERT: Don't forget Mr. Grove.

18 MS. TIERNEY: Mr. Grove, Mr. Grove. Martha
19 Tierney on behalf of the Proponents who are both
20 present here, Corrine Fowler and Reverend Dr. Anne
21 Rice-Jones. And they have already signed their
22 affidavits at the original hearing.

23 I am not sure I understand Mr. Dunn's
24 argument because what I'm looking at, all we changed
25 was the plural to the singular and we took out

1 "personal" in the first version. So now it says "a
2 personal property sale," because there's no comma
3 after "property," that was taken out "and "leaseback
4 transaction."

5 So there are no substantive changes from
6 the original to the final. And the only changes
7 were to take out the plural there to clean it up a
8 little.

9 And we were told in review and comment that
10 the proper drafting technique was to not strike the
11 "S" but to strike the whole word.

12 And then, if you'll recall, Ms. Pelegrin at
13 our first hearing, pointed out that we didn't leave
14 the original language in there and it was again a
15 drafting issue that we fixed during the hearing.

16 So there are no substantive changes. So,
17 Mr. Dunn, maybe you could help me, I mean, look.

18 MR. DUNN: I will correct one thing. She's
19 right on the first comment there. It does say "a
20 personal property sale."

21 But then there's an extra comma in there
22 that changed it from a personal sale and leaseback
23 transaction to a sale, comma, and leaseback
24 transaction.

25 MS. TIERNEY: Leaseback transaction.

1 MR. ROPER: So is your argument, Mr. Dunn,
2 about the comma?

3 MR. DUNN: My comment is about the
4 substantive change that creates and that is beyond
5 the review and comment hearing.

6 MS. TIERNEY: But it is in the original
7 version.

8 MS. STAIERT: Well, the comma is not after
9 "sale," right, or no, it is.

10 MS. TIERNEY: Yes, it is.

11 MS. STAIERT: Yeah, it is.

12 MS. TIERNEY: There are no changes from the
13 original version on that point.

14 MR. ROPER: Well, when you say the
15 original, do you mean the statute?

16 MS. TIERNEY: No, the one that we submitted
17 to review and comments. Because your jurisdiction
18 is based on changes we might make between the
19 original and the final.

20 MR. ROPER: So, as I look at your original,
21 it strikes the word "S" and the comma in sales.

22 MS. STAIERT: And then your final doesn't
23 strike the comma.

24 MS. TIERNEY: Okay. I don't think that
25 first one was intended to be -- that first comma was

1 intended to be stricken. It was supposed to be
2 striking the "S."

3 But I would submit to you that that is not
4 a substantive change that would deprive this body of
5 jurisdiction.

6 MS. PELEGRIN: And so in looking at the
7 original, I mean, I can see why you may have
8 intended to strike the "S" because it would be
9 saying a personal property sale and a leaseback
10 transaction, which could be two things and you
11 wouldn't need a comma because you were getting rid
12 of the third.

13 Because the original, the statute is
14 personal property, comma, personal sales, comma, and
15 leaseback transactions.

16 And so in the original, if you were going
17 to a personal property sale and leaseback
18 transaction, that could be -- I mean, maybe it's
19 ambiguous as to whether that's one thing or two
20 things, but either way I agree that having a comma
21 after "sale" or not, I don't think substantively
22 changes the meaning.

23 Because then what we received as the final
24 is still going to say a personal sale, comma, and
25 leaseback transaction.

1 MS. TIERNEY: A personal property sale.

2 MS. PELEGRIN: I'm sorry, yes, personal
3 property sale.

4 MR. ROPER: Yeah, I don't know that it
5 changes it either. I just want to make sure that
6 the intent is to have the comma in the final.

7 MS. TIERNEY: The intent is to have the
8 comma, yep.

9 MR. ROPER: So that's not a scrivner's
10 error?

11 MS. TIERNEY: No.

12 MR. ROPER: The intent is to have the
13 comma.

14 MS. TIERNEY: Yes.

15 MS. STAIERT: And, Mr. Dunn, what are you
16 saying that that does that's different, to have the
17 comma there? Or are you just saying that was not in
18 response to the review and comment?

19 MR. DUNN: I'm saying it substantively
20 changes the type of a transaction that's now covered
21 by the unfair and deceptive trade practices
22 provision of the Act, which was not part of the
23 Proponents' stated single subject.

24 Because a personal sale and leaseback
25 transaction is a very specific term of art in the

1 lending world, and it's meant to cover a very
2 specific type of transaction. And this changes
3 that.

4 MR. ROPER: So in the statute without the
5 proposed amendment, it refers to just a leaseback
6 transaction, right?

7 MR. DUNN: Are you talking about as law
8 exists today?

9 MR. ROPER: Yes.

10 MR. DUNN: So it says, it refers to, I
11 believe, a personal property -- as personal
12 property, comma, sale and leaseback transactions.

13 MS. TIERNEY: Personal sales.

14 MS. STAIERT: I think the way it reads
15 right now, it's personal property, comma, personal
16 sales, comma, and leaseback transaction, right?

17 MR. DUNN: I'm sorry, you're correct, yes.

18 MS. TIERNEY: Yes.

19 MR. DUNN: Correct.

20 MS. STAIERT: So then I think if I'm
21 understanding the argument, it's that when they
22 submitted their original text, it was a personal
23 property sale and leaseback transaction.

24 So it was this one kind of thing that he's
25 saying is the specified thing. And then when you

1 changed it to the final version, it became a
2 separate thing instead of the same transaction,
3 right?

4 MS. TIERNEY: Well, I would characterize it
5 as an error in omitting a comma.

6 MS. STAIERT: In the original?

7 MS. TIERNEY: Yes.

8 MS. STAIERT: And is there something in
9 review and comment that would have allowed you to
10 make that change where you put the comma back in?

11 MS. TIERNEY: The review and comment is
12 addressing the plural and where we amended the
13 plural. There is no discussion in the review and
14 comment about whether that creates a separate item.

15 And I think based on what Mr. Dunn just
16 conceded, because the original language says
17 personal property, personal sale, comma, and
18 leaseback transaction, that we really aren't
19 changing that.

20 It wasn't in the original statute a
21 personal sale and leaseback transaction. It was a
22 personal sale, comma, and leaseback transaction.

23 MR. ROPER: So what would that mean if the
24 initiative were to pass just the phrase "making
25 loans disguised as a personal property sale, comma,

1 and leaseback transaction"?

2 Just grammatically, I'm not quite sure I
3 understand what that is saying. Is it saying loans
4 disguised as one thing or two things?

5 MS. TIERNEY: I think they could be two
6 things. So if you think of it in the -- oftentimes,
7 as I understand it, Payday lenders will accept a
8 piece of property as collateral, if you will, for
9 the loan and could be disguised in that way as not a
10 Payday loan but a personal property loan.

11 And then you lease it back, you can in some
12 situations lease back that property by paying
13 installments, which is a different type of loan, not
14 a Payday loan.

15 And so the measure is intended, and
16 originally also intended in the original statute, to
17 not allow people making Payday loans to not be
18 covered by this statute because they are couching
19 them as personal sale and/or leaseback transactions.

20 MR. ROPER: So a separate question: In the
21 final it doesn't seem to show the strikeout of the
22 "S" in "sales" and the "S" in "transactions."

23 MS. PELEGRIN: That's what we fixed last
24 time.

25 MS. TIERNEY: All right, we're going back

1 to this.

2 MR. ROPER: That's right, I recall that
3 now. I just want to --

4 MS. PELEGRIN: But we didn't fix -- I mean
5 we didn't do anything with the comma.

6 MR. ROPER: There was nothing with the
7 comma.

8 MS. PELEGRIN: Right.

9 MR. ROPER: Okay.

10 MS. STAIERT: What's the Proponents' intent
11 in taking out -- what's going to be the effective
12 change in the law by taking out that second
13 "personal"?

14 By instead of having "personal property"
15 and "personal sale" to just have "personal property
16 sale," what's the effect of that?

17 MS. TIERNEY: The language, as it is
18 written now, means the same thing. It is just a
19 clearer way to say it.

20 MS. STAIERT: So you're not intending any
21 substantive change?

22 MS. TIERNEY: No.

23 MR. ROPER: So Mr. Dunn indicated there may
24 be something called a sale and leaseback
25 transaction.

1 MS. TIERNEY: He did, but then he's
2 conceded that the original language has a comma
3 between "sale" and "leaseback transaction" so that
4 now this wouldn't change that.

5 If it originally meant sale, comma, and
6 leaseback transaction, it still means that.

7 MS. STAIERT: Well, and I think that would
8 be good for the single subject argument. But I
9 think his point is that you submitted something
10 different than what you did in your final version
11 because of that comma. I think that's --

12 MS. TIERNEY: And so our position is that
13 we didn't -- that it's not different in that sense
14 other than a comma. It has no substantive change.

15 MS. STAIERT: But doesn't it if there's
16 something that's called a sale and leaseback
17 transaction, right?

18 MS. TIERNEY: But if it was called that,
19 Madam Chair, in the original statute, it's still
20 that. It still has the same comma that it had.

21 MR. ROPER: Right. I guess the question
22 is: With your original, did you propose changing it
23 to something else called a sale and leaseback
24 transaction, which I don't know if there is such a
25 thing or not, and then with the final did you remove

1 that change and bring it back to be in line with the
2 statute as it currently stands? Do you understand
3 my question?

4 MS. TIERNEY: I do, but I'm going to
5 (inaudible), and I apologize. We did not intend to
6 make a substantive change to an item that I don't
7 know exists called a sale and leaseback transaction,
8 different from what was already in the statute,
9 sale, comma, and leaseback transaction.

10 MS. STAIERT: And, Mr. Dunn, you're saying
11 there's something specifically that's a sale and
12 leaseback transaction that's different than a sale,
13 comma, leaseback transaction?

14 MR. DUNN: Correct. And I probably should
15 have been more clear, right. So Mr. Roper said it
16 better than I did, that she's correct about the
17 comma in the original statute.

18 Then there was a change made in the
19 original version of the submittal, and then it was
20 changed back.

21 MS. STAIERT: And can you explain the
22 difference between -- and maybe you did and I didn't
23 get it then -- but the difference between a sale and
24 leaseback transaction versus a sale or a leaseback
25 transaction?

1 MR. DUNN: I think one is a subset of the
2 other. So a personal sale and leaseback transaction
3 relates to a consumer good. So it's, as I said,
4 it's when a person brings in, in theory, their
5 stereo or their TV in order to obtain a loan.

6 A leaseback transaction is a much broader
7 instrument that typically is used in the context of
8 real estate. So someone may sell their real estate
9 and then lease it back.

10 I think the State is pretty good at that
11 actually doing that. So it's a much more broad type
12 of transaction than personal sale and leaseback
13 transactions.

14 MS. STAIERT: All right. Does anyone have
15 any other questions on it?

16 MR. ROPER: No.

17 MS. PELEGRIN: Just to make sure I'm
18 understanding, the way the original came in, it
19 would have been a personal property sale and
20 leaseback transaction which is what you're saying is
21 one thing.

22 That's what the original says, without the
23 comma, it would be personal property sale and
24 leaseback transaction.

25 MR. DUNN: Correct. I think the original

1 version said loans disguised as a personal property
2 sale, yes, and leaseback transaction.

3 MS. PELEGRIN: So one just -- arguably one
4 thing, personal property sale and leaseback?

5 MR. DUNN: Correct.

6 MS. PELEGRIN: And so with the comma, now
7 it's arguably two things: Personal property sale
8 and a leaseback transaction? Although it still
9 sounds like it's a singular thing because it's a
10 personal property sale, even though there's a comma,
11 and leaseback transaction. It still sounds like
12 it's disguised as this one thing.

13 So I'm really struggling to figure out
14 whether a comma or not a comma is substantial.

15 MR. ROPER: Let me ask Ms. Tierney. If the
16 original had not been changed so that there was no
17 comma, could you have proposed that as a scrivener's
18 error to get the comma added back in, if that really
19 was the intent, before the Title Board?

20 Does that make sense?

21 MS. TIERNEY: Yes, I think we could have.

22 And I can propose it now, if you'd like.

23 MR. ROPER: Well, I don't think you need to
24 propose anything.

25 It's just if the intent was for there to be

1 a comma and the original accidentally omitted it,
2 and I guess I'm kind of thinking out loud here, that
3 seems like possibly the kind of thing we could have
4 dealt with here in Title Board which leads me to
5 think it's not a -- this isn't a substantive change
6 that would deprive us of jurisdiction.

7 I do have some concern about whether there
8 is this thing called a sale and leaseback
9 transaction. I looked through the review and
10 comment memo and I don't see anything discussing
11 that one way or another.

12 But my inclination would be to not consider
13 that, the change to the comma, to be a substantive
14 change not in response to review and comment that
15 would deprive us of jurisdiction.

16 MS. PELEGRIN: I agree.

17 MS. STAIERT: Okay.

18 MS. TIERNEY: Mr. Dunn -- excuse me, Madam
19 Chair, Mr. Dunn made some arguments on single
20 subject. Do you want me to go there, or do you want
21 to deal with this issue first?

22 MS. STAIERT: Yeah, let's do single subject
23 and then that way we can just do a motion on
24 jurisdiction.

25 MS. TIERNEY: Okay. The argument is that

1 the Section 4 language creates a separate subject.

2 And we would submit to you, first of all,
3 that the Title that was set eliminates that problem
4 if the Title now says that the single-subject clause
5 has limitations on the charges imposed by Payday
6 lenders.

7 So I don't -- oh, excuse me, that's the
8 Staff draft. Now it says limitations on Payday
9 lenders, which would include the Section 4 language.

10 But even without that, the Section 4
11 language is enforcement, implementation of the 36
12 percent cap.

13 It is directing -- it is how the measure
14 seeks to require Payday lenders to comply with the
15 subject of the measure. It is an implementation
16 enforcement element that flows directly from the
17 single subject of the measure.

18 But if the single subject of the measure,
19 as this Board has determined, is limitations on
20 Payday lenders, there is no single-subject problem
21 regardless.

22 The Section 4 language is: Implements the
23 cap by delineating what constitutes behavior
24 intended to evade the cap. It goes to
25 implementation and enforcement.

1 MR. STAIERT: Mr. Dunn, do you have any
2 response you want to make?

3 MR. DUNN: Thank you. I'd say two things.
4 One, as you all know, a title can't cure a
5 single-subject problem.

6 But, second, I would say that Section 4
7 goes beyond just enforcing the rate cap, right? It
8 talks about engaging -- the new language -- in
9 engaging in any device, subterfuge or pretense to
10 evade the requirements of this article, any
11 requirement of the article.

12 So it is much more broad than just
13 pertaining to the rate cap which is the supposed
14 single subject of the measure.

15 MR. ROPER: So the second subject you
16 listed in your motion is changing the types of loan
17 transactions that constitute unfair or deceptive
18 practices. Was that a reference to the sale and
19 leaseback transaction issue?

20 MR. DUNN: Well, it is, but also to the
21 previous language in the all caps language that
22 makes it applicable to not just the interest rate
23 but any type of action that would constitute a
24 violation of any of the provisions of the Deferred
25 Deposit Loan Act.

1 MS. STAIERT: Which include what other
2 types of things?

3 MR. DUNN: Disclosures, cancellation
4 rights. I'm sure there's others.

5 MS. STAIERT: All right. Any questions for
6 -- oh, go ahead.

7 MS. TIERNEY: Just on that point, though,
8 the disclosures and the cancellation rights all go
9 to the Payday loan. So it is all the same subject
10 about -- and what a Payday loan is, is a loan that
11 comes with fees associated with it.

12 So I think it is all -- and that article,
13 Title 5, Article 3.1, all it is about is Payday
14 loans. It's not broad or it doesn't have to do with
15 other types of loans or other types of financial
16 transactions.

17 MS. STAIERT: All right. Any comments?

18 BOARD MEMBERS: (No response.)

19 MS. STAIERT: Want to make a motion?

20 MR. ROPER: Yeah, I mean, my comment is, I
21 think that this still constitutes a single subject
22 and that the Section 4 is just talking about
23 enforcement.

24 And so, if we're ready for a motion, I move
25 that we deny the motion for rehearing on Initiative

1 2017-18, No. 126 with respect to Roman numerals I
2 and II talking about jurisdiction and the
3 single-subject requirement.

4 MS. PELEGRIN: Second.

5 MS. STAIERT: All right. And I actually
6 think it's actually kind of close on the first one
7 because I think if Mr. Dunn could demonstrate -- I
8 can't really find this specific type of loan, but if
9 really that is a subset of the other two, he may
10 have a pretty viable argument on that.

11 But given what I have in front of me, I'm
12 going to vote that we still have jurisdiction. So
13 all those in favor?

14 BOARD MEMBERS: Aye. (Unanimous.)

15 MS. STAIERT: All right. That takes us to
16 the fiscal note.

17 MR. DUNN: Thank you. So if you look at
18 Legislative Council's fiscal impact statement and,
19 more importantly, the abstract. I know I'm starting
20 to sound like a broken record in front of the Title
21 Board.

22 But if you look at the economic impact in
23 particular, which is both in the impact statement
24 and in the abstract, it says two things. It says:
25 The measure will result in smaller interest payments

1 paid by Payday borrowers and received by Payday
2 lenders.

3 And then, second, it says: To the degree
4 borrowers spend marginally more money than lenders
5 on goods and services, the measure may increase
6 spending in the economy.

7 So they're saying essentially two things
8 that, one, they're concluding that borrowers will
9 simply pay -- the result of this measure will be
10 payment of lower interest rates and, two, that
11 they'll spend that discretionary money in the
12 economy.

13 That's flawed for two reasons. First, if
14 you think about -- well, first, I'm not sure it
15 relies on anything that was submitted.

16 The information was posted on Legislative
17 Council's website, but there was information that
18 was posted about employers in Colorado in this
19 industry and the loans they provide.

20 What the fiscal impact doesn't take into
21 account, I think what the point of the statute is,
22 is to advise voters on what is the broader economic
23 impact of this measure. And the measure doesn't
24 discuss potential impacts to jobs.

25 I can tell you that a rate cap at this

1 level will have a devastating impact on the industry
2 in Colorado. Whether it will eliminate it
3 completely or not, I don't know. But certainly
4 there will be job losses as a result.

5 And a fair -- I was going to say fair and
6 balanced, but maybe I shouldn't use that phrase -- a
7 fair, comma, and balanced fiscal impact statement
8 would recognize that that has at least the potential
9 for that if not the definitive outcome of creating
10 potentially hundreds of job losses in Colorado
11 within the industry.

12 So that's number one. It fails to really
13 discuss the impact on the broader economy.

14 Second, it actually gets the result
15 backwards. The point of people getting loans under
16 the statute is that they can use that money to spend
17 in the economy. If they can't get a loan, there is
18 no money to spend.

19 What they will do is either bounce checks
20 or they will increase credit cards or they simply
21 won't spend.

22 So the net result, if there is truly a
23 decrease in the availability of this loan product,
24 then what you will have is less spending on the
25 economy and less a driver of the economy.

1 So the impact statement actually gets that
2 backwards.

3 I think more broadly again, and again I
4 sound like a broken record in front of the Title
5 Board, but this is literally -- is it two or three
6 sentences? It is a two-sentence economic impact
7 analysis.

8 And I would ask and I would contend that
9 the Title Board should expect more from Legislative
10 Council on something that I think has been looked at
11 nationally and is fairly easy to figure out on the
12 potential impacts of this type of rate cap.

13 And I know the issue on this Board's
14 jurisdiction was raised in another measure and is
15 currently being considered by the Supreme Court.

16 But I think what you can do, and I'm not
17 sure was fully evaluated in No. 97 when we talked
18 about this last time -- Ms. Pelegrin, I don't think
19 you were part of that one -- but I think you do have
20 the authority to simply hold over the measure to the
21 next hearing.

22 I recall you doing that in the past for
23 various reasons. And ask Legislative Council to
24 redo their analysis and to provide a true economic
25 impact study on what the impacts of this would be on

1 the industry and jobs and spending in Colorado.

2 And I suppose under your previous ruling --
3 we'll see what the Supreme Court says -- but I think
4 if Legislative Council then comes back to you and
5 says we're sticking with what we wrote, then you
6 have to make a decision.

7 But I think it's fully within your
8 jurisdiction to hold this over and ask them to
9 provide a more broad look at what the impacts of the
10 measure are. I'll pause there.

11 MS. TIERNEY: Thank you, members of the
12 Title Board, Madam Chair. The fiscal impact
13 statement, it seems like Petitioner has a couple of
14 different arguments.

15 One, I just want to point out that the
16 Petitioner did not include documentation in his
17 motion that supports a different estimate. And the
18 statute at 1-41-071(b) plainly states that is a
19 requirement.

20 To the extent that the argument is that
21 Legislative Council did not use the information
22 submitted by Petitioner in its fiscal estimate or
23 abstract, that is not what the law requires. The
24 law requires only that the Legislative Council take
25 the information submitted into consideration.

1 There are a number of reasons why that
2 information should not have been included in the
3 estimate or abstract, and I'll give you some. But I
4 see that Natalie Mullis is here and maybe she can
5 come forward and speak to that as well.

6 But let me give you a couple of points.
7 The data submitted predates significant reforms in
8 Payday lending practices adopted by the General
9 Assembly in 2010. That is the data submitted by the
10 Petitioner.

11 The information submitted by the Petitioner
12 relies on 2007 data. And I have some documents for
13 you here. State of Colorado, Department of Law 2007
14 report indicates that there were 1,766,120 loans in
15 2007, and the amount financed was 639,506,705.

16 And if you look to the year after the
17 significant reforms were enacted in 2010 -- I
18 shouldn't say significant -- somewhat significant
19 reforms, the number of loans went from 1.7 million
20 to 400,000. And the amount financed went from 639
21 million to 167 million.

22 So, if I might, I'm going to put these into
23 the record for you to have. So this is the 2011.
24 This is 2007.

25 And I also have a couple other years so you

1 can see how it has changed. 2008, 2009, and then
2 the most recent one 2016, there were 414,000 loans,
3 and the amount financed was 166 million.

4 What that indicates is the data that was
5 submitted by the Petitioner was not appropriately
6 included in the fiscal estimate or abstract because
7 it was so stale it wasn't relevant any longer.

8 To the contrary, the data that was
9 submitted by the Proponents, and I will also put a
10 copy of this into the record, it is a study by -- an
11 INSIGHT study, the Center for Community Economic
12 Development from March of 2013.

13 And what that study indicated was that --
14 it looked at both sides of the equation, the
15 reduction in earnings to the Payday lending industry
16 and the benefits for the consumers of having more
17 money in their pocket and paying less fees.

18 (Inaudible discussion.)

19 MS. TIERNEY: And just for the record, the
20 INSIGHT study and the 2011 and 2016 reports were
21 submitted to the Legislative Council. And I am
22 giving you a couple of additional reports so you can
23 just see today how those numbers have gone down over
24 time.

25 Notwithstanding all of that, I think

1 Petitioner gets wrong that the abstract does not
2 reference the impact on Payday lenders. If you see
3 the language under economic impact, it does so in
4 two places.

5 It says that the measure will result in
6 smaller interest payments paid by Payday borrowers
7 and received by Payday lenders.

8 It also says to the degree borrowers spend
9 marginally more money than lenders on goods and
10 services, the measure may increase spending in the
11 economy. So it acknowledges that lenders receive
12 money and spend in the economy from Payday loans.

13 So I think in two ways the abstract
14 addresses the concerns that the Petitioner raises.

15 MR. ROPER: So why doesn't it need to say
16 something about how lenders would be impacted by
17 this measure other than in a sentence where it
18 indicates they would receive smaller interest
19 payments?

20 MS. TIERNEY: Well, because I think that's
21 all it says for the borrower too. So it just has
22 one statement applying to each one.

23 There's two sentences, and both of those
24 sentences have a here's-how-it-impacts-the-lender,
25 here's-how-it-impacts-the-borrower provision.

1 And, again, the data submitted by the
2 Petitioner --

3 MR. ROPER: Well, I mean, I do have some
4 concern whether it adequately talks about impacts on
5 the borrower too because you just kind of have that
6 first sentence that -- I guess that is talking about
7 an impact because it shows they'd be paying smaller
8 interest payments by the borrowers and receiving
9 smaller interest payments by the lenders.

10 Why doesn't it need to say something about
11 how that could affect either borrowers on the whole
12 or lenders on the whole?

13 MS. TIERNEY: I think that the data that
14 was submitted by the Petitioners isn't accurate.
15 And I assume that Legislative Council decided there
16 wasn't accurate -- maybe there wasn't enough data
17 for them to put hard numbers in here.

18 And, again, maybe we should hear from
19 Legislative Council on that point.

20 MS. STAIERT: Let's go ahead and -- I mean,
21 I guess does anyone have questions for Legislative
22 Council?

23 MS. PELEGRIN: I would be happy to have her
24 talk about how they came to what they came to.

25 MR. DUNN: Madam Chair, before you do that,

1 can I make a couple comments?

2 MS. STAIERT: Sure, yeah.

3 MR. DUNN: So, A, I understand from Ms.
4 Tierney that several pieces of what you were just
5 given -- she didn't give me a copy so I don't have
6 it, but --

7 MS. TIERNEY: I do have extra ones that he
8 must have gotten. I apologize.

9 MR. DUNN: Okay. That's okay. Well,
10 taking what she said at face value to me on the side
11 was that most of that was the information that was
12 submitted to Legislative Council, but at least one
13 of them was not.

14 MS. STAIERT: Which one was it?

15 MR. DUNN: Well, and I think the important
16 point --

17 MS. STAIERT: I've got 7, 8, 9, 11 and 16.

18 MR. ROPER: The ones that show up on the
19 website are 2011 and 2016.

20 MS. TIERNEY: And the INSIGHT report.

21 MR. ROPER: Yes.

22 MS. TIERNEY: The others I just show you to
23 show how the data has changed over time.

24 MS. STAIERT: Okay.

25 MR. DUNN: So I would encourage you to

1 reject the submittal of additional information. I
2 think what that's asking you to do is to substitute
3 yourself for Legislative Council and make a new
4 determination.

5 But more importantly, I think my argument
6 is being misunderstood.

7 My argument is not -- so this body has a
8 statutory role that it can change the abstract if
9 based on information submitted with the review and
10 comment -- or, excuse me, with the motion for
11 rehearing that you feel that the numbers in the
12 abstract are not correct.

13 That's not what I'm saying. I'm saying
14 that Legislative Council simply didn't do its job.
15 Legislative Council has a statutory role to provide
16 an economic analysis.

17 It doesn't say provide an economic analysis
18 just based on what you receive from the Proponents
19 and maybe somebody in the public. It says go do an
20 economic analysis.

21 So my argument is they didn't do that.
22 They didn't ask anything of the industry. They
23 didn't, looks like, do any research to determine,
24 based on what's in the fiscal impact statement, do
25 any research on what the impact of jobs would be or

1 how lower interest rates play out around the
2 country.

3 So it's not simply based on, well, is the
4 information we submitted current or not current?
5 It's, did Legislative Council do any type of robust
6 fiscal impact analysis?

7 MS. PELEGRIN: So, Mr. Dunn, don't you feel
8 like -- I mean, you were around when we had the
9 debate on the housing measure. I mean, didn't the
10 Supreme Court basically give them a pass and say you
11 can just do nothing?

12 MR. DUNN: I would not read it quite that
13 broadly.

14 I think in that particular measure, that's
15 No. 4, what the Supreme Court said was we're
16 sympathetic that figuring out the economic impact of
17 a housing limitation that would require a future
18 vote of the public in most of the state as to
19 whether or not they would implement the housing
20 growth and at what rate, they said it was just too
21 nebulous and abstract and couldn't quite -- there
22 was no way to actually calculate a number on that.

23 And the Supreme Court said, okay, we buy
24 that argument. I don't think they said you don't
25 really have to follow the statute.

1 MS. PELEGRIN: But aren't they going to say
2 that here, that it's just nebulous about whether
3 somebody is -- maybe the lenders won't lend as much
4 and maybe the borrowers won't borrow as much; and if
5 they do or they don't, maybe they'll buy and maybe
6 they won't?

7 I mean, it just seems like we're kind of
8 back to the same place.

9 MR. DUNN: Well, I think, A, I think you
10 can figure that out. I mean, there's economic
11 analyses done all the time on the impact to jobs.

12 This is back to the oil and gas discussion
13 about it, you know, whether a setback would reduce
14 oil and gas employment, whether that should be
15 represented.

16 It's the same argument. And I think there
17 is empirical data to show that the impact on rate
18 reductions and the profitability and whether or not
19 it will affect the, you know, hundreds if not
20 thousands of people who are employed in the industry
21 in Colorado.

22 But to my knowledge in the fiscal impact
23 statement, it doesn't make any reference to any
24 attempt to try and figure out what that is.

25 And I think that's all we're asking for is

1 that they make some attempt at an economic analysis
2 to figure out what that impact is.

3 It doesn't have to be an exact number. I'm
4 not saying that's the requirement.

5 I'm saying they need to at least look at
6 the issue and then, two, discuss whether or not it's
7 determinable either in a broad sense that there
8 certainly will be some impact on jobs or concrete
9 and we think it will be given -- studies have shown
10 that the economic viability of the businesses at
11 this rate are not viable and, therefore, would
12 result in X number of jobs lost in Colorado.

13 I don't think the fiscal impact statement
14 references at all the number of people employed in
15 the industry. I don't think there was any effort to
16 reach out to the industry to get those numbers.

17 MS. STAIERT: But, I mean, how is it that
18 you think we could send something back and direct
19 them to do something, anymore than we could a
20 Proponent or an Opponent, that the Title Board could
21 direct them to go back and do X, Y, Z?

22 I mean, it seems like we have to just take
23 what we have and deal with it. I mean, they don't
24 work for the Title Board. The Court hasn't told us
25 you can send it back.

1 I just, I mean, I share your frustrations.
2 I feel like I don't know how I'm supposed to uphold
3 this provision when I get nothing.

4 Maybe I'm supposed to substitute my
5 judgment. Maybe I should start having our
6 controller sit on Title Board instead of me so that,
7 you know, someone can do a fiscal impact. I mean, I
8 just don't quite know what to do.

9 It seems like we're going to continue to
10 get, you know, impacts that really have no
11 informational impact.

12 MR. DUNN: Well, I would say a couple of
13 things. I think more broadly, A, I think
14 Legislative Council is susceptible to -- susceptible
15 is not the right word. I think they are influenced
16 by comments of the Title Board and what the Title
17 Board expects.

18 The statute says that Legislative Council
19 shall submit a fiscal impact statement and draft
20 abstract to you by the first Title Board.

21 MS. STAIERT: Well, apparently, they're not
22 influenced because we were frustrated last time, and
23 we got the same thing this time. So I just --

24 MR. DUNN: Well, if you're saying you
25 requested a more robust analysis from Legislative

1 Council, I don't know if that was made or not.

2 MS. STAIERT: No, I'm just saying at the
3 Board hearing, I didn't have any communications with
4 them outside of what happened at the Board.

5 But I mean, clearly, I think there were
6 some frustrations of the Board that we didn't have
7 anything to work with, and then we went through
8 that, you know, exercise in futility on fracking.
9 And here we are back again.

10 MR. DUNN: That's right. And I think, you
11 know, if you were to hold this over and ask
12 Legislative Council to do a more robust analysis,
13 maybe that will make the point that you expect more
14 and that you're going to hold measures over if
15 they're not at least providing a modicum of
16 analysis.

17 Particularly, when in this one, as I
18 argued, it's the exact opposite of what the impact
19 would be, saying that, well, people will simply just
20 get lower interest rates and they'll have more money
21 to spend and everybody's happy.

22 And that's simply not reality. And any
23 economic analysis of any kind would bear that out.

24 MR. ROPER: And there's not something in
25 the statute that authorizes us to hold it over or

1 give Legislative Council any direction.

2 You're just saying we have inherent
3 authority to hold over a measure, and then we could
4 just state that we were holding it over for the
5 purpose of giving Legislative Council an opportunity
6 to revise the fiscal impact statement and abstract
7 if they chose?

8 MR. DUNN: Correct. The Board has held
9 over measures for other reasons.

10 MS. STAIERT: But, I mean, maybe as to like
11 it was midnight. Yeah, or someone continues it. I
12 don't know that the Board has held over except that
13 just we weren't able to complete business.

14 MR. DUNN: I agree that you cannot instruct
15 or demand Legislative Council redo it. Like I said
16 earlier, they may submit the exact same thing back
17 to you.

18 But I think, from the big picture, I think
19 that sends the message that you would like more,
20 that you want to demand more, and that for you to be
21 able to do your job to draft or review an accurate
22 abstract that provides information to voters about
23 what the fiscal impacts of the measure are --
24 because that's what this is all about.

25 It's about educating the voters ahead of

1 time before the Blue Book process about what the
2 economic impacts of a measure are.

3 And simply asking Legislative Council to do
4 a better job in providing that information to you so
5 you can do your job in drafting the abstract.

6 MR. ROPER: And why isn't that a better
7 message coming from the Colorado Supreme Court or
8 from lobbying efforts to Legislative Council if you
9 have the ability to do that? I don't know.

10 MR. DUNN: I hope that the Supreme Court
11 does that. And they have that under review right
12 now. But I also think there's a role for the Title
13 Board in that because it is your job to review the
14 abstract.

15 MS. STAIERT: Well, I mean, I'm happy to
16 call her up here and ask her if she didn't get that
17 we were frustrated. But I bet she'll tell us that
18 she got it. I mean, I'm not -- I guess I just don't
19 think we can send it back and tell them what to do.

20 But, I mean, I'm happy to hear your
21 arguments about, you know -- I mean, I'm sympathetic
22 to it about maybe things you would want to see
23 struck or added or that kind of thing.

24 But I'm just not sure I can -- now maybe
25 the Board disagrees with me, but I don't at this

1 point --

2 MR. DUNN: I mean, I think that is -- I'm
3 not telling you all how to do your job as Title
4 Board members, but I think that's a slippery slope
5 for the Title Board if every fiscal impact review
6 turns into an evidentiary hearing.

7 We got into that in No. 97 where we had
8 Proponents testifying as sort of expert witnesses on
9 the health impacts of oil and gas development.

10 MS. STAIERT: It was awful.

11 MR. DUNN: It spun out of control a little
12 bit. And I think that if your only recourse is to
13 say to Opponents of a measure or even Proponents,
14 hey, if you want to provide us some evidence here so
15 that we amend the abstract, then we certainly
16 welcome that.

17 Because I think what you're then going to
18 get into is most Title Board hearings turning into
19 an evidentiary hearing with experts and documents
20 being passed out. And you thought drafting Titles
21 was bad, abstracts will become a whole lot worse.

22 MS. STAIERT: Well, my controller will be
23 here so --

24 MR. DUNN: And your economist.

25 MR. ROPER: Quick comment on, just kind of

1 a general, my understanding of the term "an
2 abstract," you know, if you have an abstract of a
3 scientific (sic) article or something --

4 MS. STAIERT: Scientifical?

5 MR. ROPER: Scientifical, yes.

6 MR. DUNN: You might want to check with
7 your lawyer on that term.

8 MR. ROPER: A scientific article. The
9 abstract is going to be a summary of the contents
10 or, you know, maybe put in hopefully a little easier
11 to understand language.

12 And I would think, and tell me if you
13 disagree with this, that maybe, although it is not
14 expressed in the statute, that we should consider
15 the abstract along those same lines.

16 Meaning, that if we were to amend the
17 abstract, I would think that our amendment should
18 generally relate to something in the body of the
19 fiscal impact statement as opposed to bringing in
20 something else that is not discussed in the
21 statement itself.

22 Do you have a comment on that?

23 MR. DUNN: I think in a perfect world,
24 that's exactly right, the statute does allow for at
25 least the Opponents to submit additional data in

1 challenging -- actually I believe the language is in
2 challenging the estimate.

3 So, in other words, if I think the number
4 -- I mean, the statute clearly contemplates a number
5 and if the Opponents believe that the number is
6 inaccurate, they can submit additional information
7 as to why that number is incorrect.

8 But to your point also, if you look at the
9 fiscal impact statement here, there's sort of a
10 summary of the measure and there's some background.

11 But if you look at the actual section that
12 is the economic impact of the estimate itself, not
13 the abstract but the estimate, it's the exact same
14 language. It's just two sentences.

15 So it's not really a summary of anything.
16 It's just verbatim, the same two sentences.

17 MS. STAIERT: Okay. Let's hear from
18 Legislative Services.

19 Go ahead and just introduce yourself and
20 tell us about how you reached your conclusion on the
21 abstract.

22 MS. MULLIS: Thank you, Madam Chair and
23 members of the Title Board. For the record, I'm
24 Natalie Mullis, Fiscal Director with Legislative
25 Council Staff.

1 We did not do a full-blown economic
2 analysis for this. We did consider and study the
3 materials that were given to us from both the
4 Proponents of the measure and other interested
5 persons.

6 And the materials that were given to us are
7 posted on our website. And we took all of that into
8 consideration.

9 The result of our economic impact statement
10 is what we believe is the briefest summary, given
11 that it's an abstract of the bottom line impact on
12 the economy where you consider that there will be
13 cost to the Payday lending industry and there will
14 be benefits to consumers.

15 We do believe that we met the statutory
16 requirements. And our interpretation of the statute
17 appears to be, based on what I've observed from Mr.
18 Dunn's explanations and presentations, very
19 different from his interpretation.

20 And I have the statute in front of me. And
21 I'd just like to, with your patience, read it.

22 The initial fiscal impact statement --
23 which is not the abstract -- must be substantially
24 similar in form and content to the fiscal notes
25 provided by the Legislative Council of the General

1 Assembly for legislative measures pursuant to
2 Section 2-2-322 C.R.S., indicate whether there is a
3 fiscal impact for the initiated measure and include
4 an abstract as described in said subsection 3 of
5 this section.

6 Subsection 3 says: The abstract must
7 include an estimate -- which to me indicates a
8 number, if we can get it -- of the effect the
9 measure will have on state and local government
10 revenues, expenditures, taxes and fiscal liabilities
11 if the measure is enacted; a statement of the
12 measure's economic benefits for all Coloradans --
13 not an estimate, a statement; an estimate of the
14 amount of any state and local government recurring
15 expenditures or fiscal liabilities if the measure is
16 enacted -- that is, of course, if we can get the
17 estimate -- and for any initiated measure that
18 modifies the state tax laws an estimate, if
19 feasible, of the impact to the average taxpayer if
20 the measure is enacted, and the following statement
21 which appears at the top of each of the abstracts.

22 To me, that tells me that we have complied
23 with the law; that we have provided a statement of
24 the economic benefits for all Coloradans to the best
25 of our ability and based on the economic knowledge

1 that we have in our consideration of the materials
2 that were presented to us and consideration of other
3 resources that we have in our body of knowledge.

4 I understand your frustration that you
5 would like to see some numbers. And, believe me, it
6 is always our intention to provide numbers if we
7 can.

8 The honest truth is that providing numbers
9 for these kinds of analyses for the economic impacts
10 generally requires a dynamic analysis, some kind of
11 model like MPlan or REMI where you make an
12 assumption for how the economic inputs into those
13 models will change as a result of a policy and then
14 see what the model says about that.

15 We have a lot of concerns about these
16 dynamic models. The biggest concern is that initial
17 estimate, that initial assumption that is the input
18 into the model. And we talked about that at a prior
19 Title Board hearing on Initiative 97.

20 The other concern we have about those
21 models is that we think that, although they are
22 excellent academic tools for answering many, many
23 different questions, for the purposes of a fiscal
24 note where we are able to say this is our best
25 analysis for what will actually happen, we don't

1 think that the standard is met.

2 Because there are so many assumptions that
3 must go into those models, and we don't have the
4 ability to, you know, to vet every single one of
5 those assumptions.

6 It requires a lot of resources and a lot
7 more time than we have to put these analyses
8 together.

9 So when this Bill was passed, we never
10 interpreted that an estimate, which would require a
11 dynamic analysis, would be required by the statute.

12 And if the statute did require an estimate
13 of an economic analysis, we would have asked for
14 resources that we don't have right now to do that.

15 MS. STAIERT: But what about the -- I mean,
16 it says you must have these things. And, I mean, we
17 don't have them. I mean, it says it must include an
18 estimate.

19 And then you -- you know, when you read
20 that part of it, you say, you know, if you can get
21 one. Well, the statute doesn't say if you can get
22 one. It says it must include.

23 MS. MULLIS: For the economic -- for the
24 impact on the state and local governments, if the
25 estimate is indeterminate, then that's what the

1 estimate is.

2 MS. STAIERT: And the other -- there's two
3 of them.

4 MR. ROPER: So how do you interpret the
5 phrase "a statement of the measure's economic
6 benefits for all Coloradans"? What does that
7 require the Legislative Council to do?

8 MS. MULLIS: What it requires is for us to
9 do what we have been doing, to take into
10 consideration our body of knowledge on the subject
11 and take into consideration everything that is
12 provided to us and summarize what we think the
13 economic impact is on the economy.

14 MS. PELEGRIN: Well, and it appears to me
15 that what we have does have -- where it specifically
16 asks for an estimate, it's with regard to the
17 governmental side. And it has that. It says it's
18 not expected to affect the governmental side.

19 As for the broader effect on the economy,
20 as you say, that's a statement. And the statute
21 isn't specific as to the level of analysis that the
22 fiscal analysts are to bring to it.

23 The only thing the statute is specific to
24 is taking into consideration information submitted
25 by Proponents or other interested persons.

1 And first, I am no fiscal analyst or
2 controller or accountant or even ever took
3 accounting.

4 So in looking at these, I mean, I don't see
5 how this is information that would specifically tell
6 somebody what is the effect of changing this
7 percentage rate.

8 I mean, this is very generalized
9 information and it doesn't appear that anything was
10 submitted as to what is the effect of limiting the
11 annual percentage rate to 36 percent. And I don't
12 know where that would come from.

13 And because I don't have that level, I do
14 not feel at all qualified to substitute my judgment
15 for that of the fiscal analysts in saying that this
16 could have been done better, should have been done
17 better.

18 I don't see any authority in the statute
19 for us to specifically ask the fiscal analysts to
20 reconsider. And I actually don't see any authority
21 for the fiscal analysts to submit an amended
22 abstract.

23 It says that they submit the initial
24 abstract and the initial fiscal analysis. And then,
25 if it's placed on the ballot, then they prepare new

1 estimates.

2 There's not a procedure for amendments or
3 changes to the initial one. The only procedure for
4 changes is the Title Board being able to change the
5 abstract based on information submitted to the Title
6 Board.

7 And, as I said, I don't think any of the
8 information that I've received is convincing or
9 compelling enough to give me the basis for
10 second-guessing what the fiscal analysts did.

11 MR. ROPER: I think when we talked to you
12 about 97, you had indicated that there had been some
13 prior proposed legislation that was similar and that
14 the initial fiscal impact statement you prepared
15 with respect to Initiative 97 was similar to the
16 fiscal notes for those.

17 Do you have anything like that here? Has
18 this ever been, you know, a reduction in Payday
19 lending interest rates ever been proposed as
20 legislation, and did you compare those fiscal notes
21 with the fiscal impact statement produced here?

22 MS. MULLIS: There have been legislation,
23 in particular in 2010, there was a lot of
24 legislation. And honestly, I did not go back and
25 look at those fiscal notes.

1 I'm sure that the analysts who wrote the
2 fiscal impact statement did, however. And I would
3 expect that they would be very similar in form and
4 content to what was produced at the time.

5 MR. ROPER: And then a second question I
6 have is: Did the Legislative Council, in producing
7 this initial fiscal impact statement, consider any
8 studies or analyses specifically addressing the
9 question of limiting, you know, reducing or limiting
10 interest rate to something anywhere near -- you
11 know, it wouldn't have to be exactly 36 percent, but
12 some sort of limitation as is proposed in the
13 initiative?

14 MS. MULLIS: Well, the report that was
15 given to us by the Proponents was an analysis, and
16 you have it in front of you. I don't have it in
17 front of me.

18 But it is a dynamic analysis that used an
19 MPlan model -- oh, thank you.

20 MR. ROPER: Are you referring to the
21 INSIGHT?

22 MS. MULLIS: Yes, the INSIGHT report.

23 MR. ROPER: Okay.

24 MS. MULLIS: And this is -- we would not
25 have used the numbers in this report in our

1 abstract. And the reason that we wouldn't have done
2 that is because it's from a biased source.

3 As nonpartisan staff, if we were going to
4 put numbers together, we would not use numbers from
5 a biased source. We would do our own analysis and
6 run our own model.

7 And, again, that's because we need to make
8 sure that all of the assumptions and all of the --
9 not only that initial assumption but every
10 assumption that's inherent in the model are
11 nonpartisan and unbiased.

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

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

22 And we know that the marginal propensity to
23 spend, or at least that part of every additional
24 dollar of income that a person or household gets, if
25 they are poor, they are going to spend a lot more of

1 that than a wealthier household or individual or
2 business.

3 MS. STAIERT: And did you consider what Mr.
4 Dunn said that perhaps these loans won't exist or
5 people won't be able to borrow money to then buy the
6 goods? I mean, the kinds of arguments that he
7 presented in coming up with this kind of a
8 statement?

9 Or did you assume everything would remain
10 as is? There would still be the same number of
11 lenders, same number of loans, and just people would
12 be paying less for them?

13 MS. MULLIS: Well, clearly incentives
14 matter. And if a price for a product falls, then
15 the amount of that product that is offered is going
16 to fall as well.

17 And so that is definitely part of the
18 qualitative analysis that we went through. I
19 wouldn't expect that it would completely dry up.

20 However, his concern about the principal of
21 the loans not being available for spending, that is
22 something we thought about as well.

23 And because that principal, it's a Payday
24 loan and the principal has to be repaid, you know,
25 that just moves money around over time.

1 And even if some of these are defaulted on,
2 it's money out of the pocket of the lender, not out
3 of the consumer. So, you know, that was less of an
4 impact on the margin than considering the fact that
5 the price has changed.

6 So now consumers have to pay less for these
7 loans and lenders get less. Their price is lower.

8 So it just moves income around in the
9 economy. It moves income from lenders to consumers,
10 to low-income consumers.

11 MS. STAIERT: Any other questions?

12 MS. PELEGRIN: No.

13 MS. STAIERT: All right. Thank you.

14 MS. MULLIS: Thank you.

15 MS. STAIERT: Mr. Dunn, do you want to say
16 anything in response to that? And then we'll hear
17 from Ms. Tierney, and then we can --

18 MR. DUNN: Yeah, I don't belabor it, but I
19 would say two things. One, what I just heard at the
20 end -- and I'm sympathetic to their position and I
21 said this last time, that they have a short time
22 window. They've been asked by the Legislature to do
23 this analysis.

24 But the law is the law. And the law says
25 that they need to do a fiscal impact analysis and

1 provide that to voters so they can be educated when
2 they're deciding whether to sign a petition.

3 Essentially what I heard her say at the end
4 was, we pretty much made it up. We didn't do any
5 extra research. We sort of just used our background
6 and knowledge, and we kind of made it up.

7 They didn't consider the stuff that we
8 submitted because it was biased. I would hope she
9 would say the same about the Proponents'
10 information.

11 So they disregarded everything that was
12 submitted. They didn't do any research and they
13 sort of just used abstract economic theory to come
14 up with something. I think that's the best
15 description of it.

16 Second, she did say one thing, and I should
17 have jotted it down because I would rather quote her
18 verbatim, but I believe she said, We concluded that
19 it would have an impact on the industry. Okay.

20 I don't know how they came to that
21 conclusion, but I agree with her on that statement
22 if that's what she said. That certainly is not
23 represented in the fiscal impact statement or the
24 abstract.

25 So that statement alone shows that the

1 abstract is not accurate. She said it will impact
2 the industry.

3 MR. ROPER: Do you have a view as to what
4 is required by the phrase in part B in the statute,
5 "A statement of the measure's economic benefits for
6 all Coloradans."

7 MR. DUNN: So we went through this a little
8 bit on 97, I think. That measure was added, I
9 believe, on the floor in the House of
10 Representatives as an amendment.

11 And the discussion at the time was really
12 about, well, okay, we have language in the statute
13 about an estimate of the impacts to state and local
14 government revenue.

15 I'm not really sure what the difference is
16 between the first one and the third one, but they
17 generally relate to estimates of impacts on state
18 and local government.

19 There was a discussion on the floor, well,
20 wait a minute, shouldn't we really be talking also
21 about how it affects Coloradans generally in the
22 economy and citizens and voters and employees of
23 industry that are affected by a particular
24 initiative? And that amendment was offered on the
25 floor.

1 I would submit that it's not particularly
2 artfully drafted. I think it was meant to be both
3 benefits and negative impacts, but it was done on
4 the fly on the House floor, I believe, and was
5 amended into the statute for that reason.

6 MS. TIERNEY: Thank you, members of the
7 Title Board, Madam Chair. Martha Tierney. I want
8 to respond to a couple of things.

9 First of all, with all due respect to Mr.
10 Dunn, I don't think he can be testifying about the
11 intent of the Legislature when it enacted that
12 amendment and what they intended or didn't intend.

13 We've got the plain language in front of
14 us, and it says a statement. The Legislative
15 Council testified here that what they provided you
16 is a statement.

17 And that statement does take into account
18 the impact on the lender where it says that smaller
19 interest payments paid by borrowers and received by
20 lenders.

21 MR. ROPER: Well, it's true that it says a
22 statement, but the whole thing is a statement,
23 right, an initial fiscal impact statement.

24 So I'm not sure how much we can read into
25 the use of that word as needing something less

1 analytical or less evaluative.

2 MS. TIERNEY: Well, but a plain reading
3 analysis would suggest that it does mean something
4 different because "estimate" is used in the other
5 two provisions.

6 And the estimate -- there is, as Ms. Mullis
7 testified, there is no real impact on state and
8 local revenue.

9 The Bill that keeps being referenced from
10 2010, it was House Bill 10-1351. On that Bill there
11 was no fiscal impact. The fiscal impact statement
12 said -- the fiscal note said no fiscal impact.

13 So it's consistent with what they did in
14 that legislation in 2010 and what was done here.

15 I want to make two other comments. One, I
16 think there is a lot of language in Smith versus
17 Hayes, which is that Initiative No. 4 from last
18 year, the Housing Authority, where the Court really
19 does talk about how this body can accept evidence
20 and hear testimony and make a decision.

21 So the suggestion that the only entity that
22 gets to provide you information is the Objector in
23 their motion for rehearing, we reject.

24 And the things that we have submitted here
25 today and will continue to submit in the latter half

1 of this hearing should be properly a part of the
2 record that you can consider.

3 I think that there's no ambiguity in the
4 Court's statement in that case about that.

5 MS. STAIERT: All right. Thank you.

6 MS. TIERNEY: Yeah, I think that's enough.

7 MS. STAIERT: All right. Any discussion by
8 the Board?

9 MR. ROPER: So I think the primary issue,
10 as I understand it, that we need to decide is
11 whether to do some sort of a hold or try to provide
12 some direction to Legislative Council on this as
13 opposed to actually amending the abstract.

14 And I don't see authority for us to do
15 that. You know, certainly I think we could put
16 something on hold if we wanted to, but I don't know
17 that that would have much effect.

18 And then, as Julie pointed out, I don't
19 know that the statute provides a way for Legislative
20 Council -- or it certainly doesn't expressly provide
21 an opportunity for them to amend the abstract.

22 So I think I would be inclined to deny the
23 motion for rehearing to the extent that it's asking
24 us to hold this over or try to get Legislative
25 Council to do something in addition.

1 I do want to express concerns about the
2 economic impact. You know, it certainly does just
3 say "a statement." It doesn't expressly require an
4 estimate there.

5 But I think the intent is to try to provide
6 some indication to voters and guidance and
7 information to voters in the abstract that would
8 enable them to understand how this could affect the
9 economy. And I'm not sure that this does.

10 I'm concerned both, as Mr. Dunn has pointed
11 out, about it not talking about how it would affect
12 lenders. I think it also doesn't indicate how it
13 would affect borrowers as far as availability of
14 these kinds of loans.

15 And, you know, certainly, obviously,
16 there's a reason that they get Payday loans, that
17 people get Payday loans. And to the extent that
18 this would dry up availability of those, that could
19 have a negative effect on them as well.

20 So, anyway, I don't think that's -- I guess
21 that's just an expression of concern I have about
22 the economic impact statements and abstracts that
23 we're getting. But I don't know that it changes my
24 view as to what we should do today as a Board.

25 MS. STAIERT: I agree. I don't think we

1 can send it back. I think we could change it, if we
2 wanted to, based on the guidance we got in that
3 case, and I know it's something we probably don't
4 want to do.

5 But on the other hand, it seems like
6 producing this -- the impact is also not something
7 Legislative Services wants to do. And I'm not sure
8 whether we want to or not is really relevant.

9 I do think that when it says, a statement
10 of the measure's economic benefits for all
11 Coloradans, I guess I tend to agree with Mr. Roper
12 that that has to mean something other than just, you
13 know, 20 words that don't really offer any numbers
14 or anything really definitive.

15 I mean, I read that to have meant a
16 statement which is part of the fiscal impact
17 statement. And the fiscal impact statement has to
18 do with the fiscal impact.

19 And so, I guess I believe that to mean a
20 little bit more than what we've been getting, but I
21 don't have any authority to tell anybody that. I
22 think that's, again, something the Supreme Court has
23 to do if that's what they want to do.

24 So at this point I'm inclined to deny the
25 motion for rehearing based on jurisdiction and based

1 on the abstract and move on to title.

2 MS. PELEGRIN: And I would just add that I
3 agree that if we had information that had been
4 provided by the Proponents, that would give us a
5 basis for having a reasoned, supportable, credible
6 change to the abstract, I would be willing to do it.

7 But I don't have that information. And so
8 without having that information, I don't know how I
9 would change the abstract. And I think that's our
10 only option, change it or don't change it.

11 MR. DUNN: May I comment on that point?

12 MS. STAIERT: Sure.

13 MR. DUNN: So based on what Ms. Mullis said
14 that it will have an impact on the industry, I would
15 request and ask you to consider amending the
16 abstract to say that the measure will or, to be
17 fair, may have an impact on the number of jobs in
18 the industry or something more artfully said than
19 that.

20 But I think based on what she said, you can
21 add to the abstract that it at least could have a
22 negative impact on the employment base in the
23 industry.

24 MS. TIERNEY: Can I respond to that?

25 MS. STAIERT: Sure.

1 MS. TIERNEY: Martha Tierney on behalf of
2 the Proponents. I don't think that what Natalie
3 Mullis said was that it had an impact on jobs. She
4 said that it had an impact on the industry.

5 And what you've got before you says that.
6 So you don't have anything before you that tells you
7 that it has a negative impact on jobs in any real
8 way and what 36 percent would have as a negative
9 impact on jobs, or if it would have a negative
10 impact on jobs.

11 MS. PELEGRIN: I'm inclined to agree. And
12 I think just as to whether it's really jobs or it's
13 the industry in some other way or it's the
14 availability of loans, again, I don't have the
15 information to feel comfortable making that
16 statement.

17 And to just make the general statement, it
18 may have a negative impact on the industry, I'm not
19 sure that that's helpful to voters because I don't
20 know what that means.

21 MS. STAIERT: Well, I mean, this other part
22 is not really helpful either.

23 MS. PELEGRIN: So two unhelpfuls.

24 MR. ROPER: So I guess I feel like if we
25 had a study that talked about reducing interest

1 rates and the effect that would have and if it
2 concluded -- made some substantive conclusions about
3 how that affects the industry, I'd be willing to
4 add, you know, maybe a comma after the first
5 sentence and say "which could," you know, fill in
6 something there.

7 But as I sit here right now, I'm not sure
8 that -- I just don't feel like I have anything like
9 that that would provide me sufficient confidence to
10 make that change.

11 MS. STAIERT: So, I guess, notice to
12 everyone to do their own economic impact. It's
13 going to make for some long Title hearings in April.

14 All right. So you want to make a motion
15 then?

16 MR. ROPER: Yeah. So I'll move that for
17 Initiative 2017-18, No. 126 that we deny the motion
18 for rehearing with respect to the statements on the
19 fiscal impact statement and the abstract.

20 MS. PELEGRIN: Second.

21 MS. STAIERT: All those in favor?

22 BOARD MEMBERS: Aye. (Unanimous.)

23 MS. STAIERT: All right. That takes us to
24 the Title, I think. Go ahead.

25 MR. DUNN: I thought this would be a short

1 hearing.

2 MS. PELEGRIN: I didn't.

3 MR. DUNN: So on the Title we have two
4 arguments. I think it will be a little more
5 straightforward.

6 One is, that we think the Title is
7 misleading because it doesn't reference the changes
8 to the unfair practices portion of the measure in
9 any way.

10 It simply references the limitations on the
11 lenders and changing the interest rate. So that's
12 number one.

13 But number two, we contend that the use of
14 the phrase "Payday lenders" and "Payday loans" are
15 catch phrases that are currently pejorative terms.

16 The statute, while it does include that
17 language, was only ironically added in, in 2010.
18 Prior to that, it didn't use that language at all.

19 The statute is captioned as the Deferred
20 Deposit Loan Act and throughout, the Act refers to
21 it as that.

22 So we would contend that those are catch
23 phrases that do nothing more than elicit voter
24 support for the measure without actually
25 understanding how the statute works or what the

1 measure does.

2 MS. STAIERT: So what would you, instead of
3 the word -- I had this concern last time, I think.
4 Instead of the word "Payday loans," what would your
5 -- I don't want to use that other whatever you just
6 said.

7 MR. DUNN: Well, I was going to say I think
8 there are two options. One is deferred deposit
9 loans. The problem is, I'm not sure they actually
10 are that.

11 MS. STAIERT: Yeah.

12 MR. DUNN: And the other is --

13 MS. STAIERT: Just loan? Personal --

14 MR. DUNN: Short-term installment loans.

15 MS. PELEGRIN: I'm sorry, short-term what?

16 MR. DUNN: Installment loans.

17 MS. STAIERT: Short-term installment loans.

18 MR. ROPER: How about as to your first
19 concern? What concept do you think needs to be
20 included from the change to the -- you know, Section
21 4 of the initiative?

22 MR. DUNN: I think that's a good question.
23 I think, given our prior discussion and the
24 uncertainty about what types of transactions it's
25 actually changing or referring to, I think probably

1 the easiest way to do it would be to simply say "and
2 amending the types of conduct and transactions
3 deemed unfair practices under the Act," something of
4 that nature.

5 MS. STAIERT: Ms. Tierney.

6 MS. TIERNEY: Thank you, Madam Chair,
7 members of the Title Board. So I have some more
8 documents for you on this topic, and I do have some
9 for Mr. Dunn. And I apologize, I had the other
10 documents for you too, but they went up into the
11 black hole.

12 Okay. I'm going to talk about the
13 catchphrase piece first. And I'd like to give you
14 three different documents.

15 One is an administrator of the Colorado
16 Consumer Credit Union staff report for Colorado on
17 Payday lending from July 2000 through December 2015.

18 Two is a packet of screenshots and pictures
19 depicting Payday lenders throughout the state of
20 Colorado.

21 And the fourth (sic) is a screenshot from
22 the Attorney General's Office, Colorado Uniform
23 Consumer Credit Code.

24 What these show you is that Payday loans
25 are what these loans are called. And the industry

1 themselves call themselves that. They don't call
2 themselves deferred deposit loans.

3 The document from the Attorney General's
4 Office that you have before you indicates that
5 Payday loans, which is what they call them as well,
6 are different from small installment loans. So you
7 can't call them small installment loans.

8 The statute itself, as Mr. Dunn
9 acknowledges, references the term "Payday loan."

10 MS. STAIERT: Why can't you call them
11 short-term installment loans?

12 MS. TIERNEY: Because there's another
13 animal that is a short-term installment loan. If
14 you look at this document, the Colorado Uniform
15 Consumer Credit Code general information screenshot
16 from the Colorado Attorney General's Office website,
17 it says small installment lender.

18 So if you call them small installment
19 loans, you're going to be confusing them with --
20 it's a different statutory provision.

21 MS. STAIERT: So we could call them
22 deferred deposit loans?

23 MS. TIERNEY: You could, but nobody will
24 know what you're talking about. So I want to
25 remind --

1 MR. ROPER: How about short-term
2 installment loans?

3 MS. STAIERT: Yeah, is that different?

4 MR. ROPER: Because this says small
5 installment lenders.

6 MS. TIERNEY: Well, I would submit to you
7 that no one is going to know what that is.

8 And I'll remind you of the measures from
9 2015-2016 regarding malt and vinous liquor which
10 went all the way up to the Supreme Court, that
11 full-strength beer and wine was a catchphrase.

12 And there the Court affirmed the Title
13 Board's use of the term full-strength wine and
14 liquor because nobody knows what malt and vinous
15 liquor is.

16 MS. STAIERT: But do you think people
17 really know what a -- I mean, Payday loans aren't
18 really Payday loans, are they? I mean they're not
19 necessarily loans that you just get until Payday,
20 right?

21 MS. TIERNEY: Well, they often are.

22 MS. STAIERT: Well, they can be. But you
23 can also -- it sounds like other kinds of
24 transactions fall into --

25 MS. TIERNEY: The point I think here, Madam

1 Chair, is that this is what they are called. The
2 industry themselves call them that. If you use a
3 different term, the voters are not going to know
4 what that is.

5 The packet of photos and screenshots is
6 from all over the state. You won't see one that
7 calls it a deferred deposit loan or a short-term
8 installment loan. The signs on the front of the
9 storefronts are Payday loans.

10 The law on catch phrases makes clear that
11 they are words that work in favor of a proposal
12 without contributing to voter understanding. Here,
13 if you take out that term, you won't have voter
14 understanding of what this measure is.

15 The Supreme Court has also held that catch
16 phrases which are not part of the text of a proposed
17 measure should be excised from a ballot title.

18 Here, and the Court in Henry v. Baker 354
19 P.2d 490, 1960, said that where the term is part of
20 the measure, that you don't have the same concerns
21 about catch phrases.

22 Here, the government uses that term in its
23 study which I just handed out to you. The statute
24 uses that term right now in Article 5 -- excuse me,
25 Title 5, Article 3.1.

1 Since 2010 that term is the term that is
2 used everywhere. So I don't think it falls into a
3 catchphrase.

4 Mr. Dunn indicates that that's a pejorative
5 term. But the industry itself uses that term to
6 describe themselves.

7 It's not as though -- we're not using the
8 term "loan shark" or something like that. I mean,
9 Payday loan is what these loans are now known as.

10 And I think the 2015-2016, Initiative 60
11 and 61 regarding the malt and vinous liquor
12 situation is very analogous here, where you can't
13 take out -- or include language, let's say, include
14 language that does not tell the voter what they're
15 voting on.

16 MS. STAIERT: Yeah, but you could just tell
17 the voter this is -- I mean, you could describe the
18 type of loan.

19 I mean, the problem with beer and wine was
20 that nobody would know what malt liquor was. I
21 mean, people would know what a short-term loan is.
22 Nobody would know what a vinous spirit is.

23 MS. TIERNEY: But this isn't a short-term
24 loan. This is different. This is a Payday loan.
25 This is a loan where you have to pledge something to

1 the lender, whether it's a check that is postdated,
2 whether it is an automatic bank withdrawal
3 authorization that goes on the date of pay, when you
4 get paid they take it out.

5 This is not -- if you use the term
6 "short-term installment loan," you will not be
7 telling the voters what these are.

8 MR. ROPER: And do you feel like that's
9 true with deferred deposit loan as well?

10 MS. TIERNEY: I think nobody knows what a
11 deferred deposit loan is.

12 MR. ROPER: That's the term used primarily
13 in the statute.

14 MS. TIERNEY: They're both used in the
15 statute.

16 MR. ROPER: In the definition it does add
17 Payday loan. It says deferred deposit loan or
18 Payday loan to define it. But throughout the rest
19 of the article, it just uses deferred deposit loan.

20 MS. TIERNEY: With all due respect, Mr.
21 Roper, it does not. It uses Payday loan in several
22 other places in the measure --

23 MR. ROPER: Okay.

24 MS. TIERNEY: -- from that 2010 statutory
25 change. And I'm trying to find the exact

1 references.

2 MS. STAIERT: In Section 5-3.1-104 --

3 MS. TIERNEY: 105.

4 MS. STAIERT: I even look at 104, the
5 notice to consumers that they have to post. It says
6 "deferred deposit loan."

7 MR. ROPER: So 105 does use the term Payday
8 loan.

9 MS. TIERNEY: Yes.

10 MR. ROPER: You're right.

11 MS. TIERNEY: 105 uses the term Payday
12 loan.

13 MR. ROPER: So it's in the definition and
14 then it's used in 105 and then not throughout the
15 rest of the 23 sections of the article.

16 And I'm not trying to say that settles it
17 one way or the other. But the statute primarily
18 refers to them as deferred deposit loans.

19 MS. TIERNEY: The statute was -- so what I
20 will submit to you is that as of 2010, when the
21 statute added that language, that term became the
22 predominantly used term. You'll see it in the
23 reports that I handed out earlier.

24 MR. ROPER: That term Payday loan?

25 MS. TIERNEY: Payday loan. The State uses

1 that term now in referencing these loans. You'll
2 see it on this document.

3 MR. ROPER: Which lists both, right,
4 deferred deposit, slash, Payday lenders?

5 MS. TIERNEY: Yes.

6 MS. PELEGRIN: Do you think it makes a
7 difference that the notice to consumers that they
8 have to place in a prominent place on each loan
9 agreement uses the term deferred deposit loan?

10 MS. TIERNEY: Do I think it makes a
11 difference for this Title?

12 MS. PELEGRIN: In terms of how much --
13 whether people know what a deferred deposit loan is.

14 MS. TIERNEY: Well, I think in the statute
15 the definitions use -- defines them interchangeably.

16 MS. PELEGRIN: I understand. But when I
17 get my loan documents, my loan documents clearly say
18 a deferred deposit loan is not intended to mean, a
19 deferred deposit loan should be used, renewing the
20 deferred deposit loan.

21 So my documents, when I get one of these,
22 apparently say deferred deposit loan.

23 MS. TIERNEY: Well, do --

24 MS. PELEGRIN: Do I read them? I don't
25 know, but that's what the document says.

1 MS. TIERNEY: Do you think the average
2 voter in Colorado would know what that is?

3 MS. PELEGRIN: It's on their document.
4 It's the loan they just got.

5 MS. TIERNEY: But do you think the average
6 voter in Colorado got a deferred deposit loan?

7 MS. PELEGRIN: I don't know.

8 MS. TIERNEY: I would submit that most
9 voters won't know what that is.

10 MR. ROPER: What's your thought about
11 adding something to the Title describing the Section
12 4 piece about the unfair practices?

13 MS. TIERNEY: So I believe that the unfair
14 practices section is an enforcement and
15 implementation portion of the measure which is not
16 required to be in the Title. The Title does not
17 have to have every single piece of the measure in
18 it.

19 It makes clear that the measure is about
20 limitations on Payday lenders and the enforcement
21 section is about how you can't engage in activity to
22 evade the limitations on Payday lenders. So I think
23 it's not necessary.

24 MR. ROPER: Would you be opposed to adding
25 language, or you just don't think it's needed?

1 MS. TIERNEY: We would oppose adding
2 language.

3 MR. ROPER: Okay.

4 MS. STAIERT: Discussion? I'm inclined to
5 go with deferred deposit. I think I was last time.

6 And in terms of the other issue with
7 describing the other kinds of practices, I think
8 they're all part of, you know, the loan.

9 I'm not sure it's really central to the
10 measure, but I'm willing to put something in about
11 that too, if we really want to go that way.

12 MS. PELEGRIN: As the newbie, can I ask,
13 do we ever or does it just call it out as a
14 catchphrase if you said, Limitations on deferred
15 deposit lenders and, in connection therewith,
16 reducing the charges on deferred deposit loans,
17 parentheses, commonly known as a Payday loan?

18 MS. STAIERT: Ms. Tierney.

19 MS. TIERNEY: I think you're going to
20 confuse all the voters on that. And if you insist
21 on putting that in, it's got to be in the first
22 phrase because people don't read that far. And
23 they're going to think it's some Wall Street thing.

24 MS. STAIERT: I mean, if the catchphrase is
25 a catchphrase, I don't think we should put it in the

1 Title.

2 I mean, it's one or the other. It either
3 goes in the single subject or it doesn't. Anyway,
4 go ahead.

5 MS. TIERNEY: I was just going to just
6 reiterate that it's already in the statute. It's
7 what the government calls these things. I don't see
8 how that can be seen as a catchphrase.

9 MS. PELEGRIN: Given that the Court
10 considers it phrases that, quote, work in favor of a
11 proposal without contributing to voter
12 understanding, leads me to lean toward go ahead and
13 use Payday, just because I do agree that I don't
14 think people will understand what it's talking about
15 if you don't.

16 MS. STAIERT: Yeah, my problem is I'm not
17 sure people know what a Payday loan is either. I
18 don't know that they really understand the types of
19 transactions that can go on with Payday loans or
20 whether they think it is simply someone who has a
21 job and then they pledge their check forward.

22 I mean, that's the problem with the phrase
23 to me is -- I mean, people will know what
24 storefronts we're describing. That I get. But I'm
25 not sure they'll know what that actually is.

1 MR. ROPER: How about "deferred deposit or
2 Payday lenders"?

3 MS. STAIERT: Yeah, I mean, it's just if
4 "Payday" is a catchphrase, then it's a catchphrase.
5 And I don't think we should use it in the Title.

6 If we want to use it in the Title because
7 we think it's not a catchphrase, then we should just
8 put it in the single subject and forget "deferred
9 deposit."

10 MR. ROPER: So where I am, I can see the
11 argument. I'm fine keeping "Payday" in the Title.

12 I do not think it's a -- or I'm not so
13 convinced that it's a catchphrase that I think we
14 have to make a change to what we did last time.

15 MS. STAIERT: Yeah, I mean, my problem with
16 it is when we say, well, this is how it's advertised
17 on the, you know, Attorney General's website, well,
18 yeah, it's under file a complaint, consumer alert.

19 I mean, being kind of advertised like this
20 is a bad thing in some ways. I mean, it's licensed
21 supervised lenders and their disciplinary history.
22 I mean, that's not a positive portrayal of a Payday
23 lender.

24 I'm not making a qualitative, you know, are
25 they good or are they bad. I'm just saying that the

1 way that it's referenced there is almost like a
2 consumer alert.

3 And the fact that it's on the storefronts,
4 I don't really think helps people understand what
5 they are.

6 And if the industry is here saying we think
7 you're using it as a catchphrase -- I mean, it's a
8 little different than what we had in alcohol where
9 the industry was saying that's what people think of
10 it as.

11 And here, we're having the Proponent -- I
12 don't know, it's just a little different in my mind.

13 Go ahead, Ms. Tierney.

14 MS. TIERNEY: I just wanted to -- thank
15 you, Madam Chair. Martha Tierney. I just wanted to
16 point out that I think that the page you're
17 referencing is a general information page about all
18 sorts of consumer credit.

19 And, yes, it does have a "file a complaint"
20 button. But the page is not about policing the
21 industry. It's providing information about these
22 different lenders.

23 MR. ROPER: Yeah, no, I think that's right.
24 I don't think the complaint button or the UCC
25 reference in the upper right is intended to go

1 specifically to that middle information.

2 I think the information at the top and on
3 the side kind of stay there regardless of which
4 pages you go to.

5 MS. PELEGRIN: And the idea that it's a
6 pejorative term, the fact that the industry itself
7 uses it all the time, the industry has adopted it so
8 they don't apparently feel like it's pejorative.

9 I think they know that there's a lot of
10 people that know the type of loans that are under
11 that name.

12 MS. STAIERT: Well, and they may be
13 marketing to a certain -- I mean, there's a lot of
14 examples of that where a certain profession has to
15 call itself that profession to capture the market.

16 But maybe the general population doesn't
17 approve of the profession.

18 Anyway, it sounds like --

19 MR. ROPER: Do you think it's a
20 catchphrase? Is that where you are?

21 MS. STAIERT: Yeah, I'm at catchphrase, but
22 it sounds like you two aren't. So I mean --

23 MR. ROPER: Yeah, I don't think I am,
24 although I can see the argument. But I think it's
25 used in the statute, used in the industry.

1 And I don't think that it is pejorative and
2 not providing information or, you know, works in
3 favor of a proposal without contributing to voter
4 understanding. So I do not think it's a
5 catchphrase.

6 MS. STAIERT: Okay. Do you want to add the
7 other, or do you not, or do you want to just leave
8 it the way it is?

9 MR. ROPER: I don't feel a need to add in
10 an additional phrase about that Section 4.

11 MS. PELEGRIN: Nor do I.

12 MS. STAIERT: Okay. Then just make a
13 motion to deny the rehearing.

14 MR. ROPER: Yeah, I'll make a motion for
15 Initiative 2017-18, No. 126 that we deny the motion
16 for rehearing in its entirety.

17 MS. PELEGRIN: Second.

18 MS. STAIERT: All those in favor?

19 MR. ROPER: Aye.

20 MS. PELEGRIN: Aye.

21 MS. STAIERT: And I'll oppose. So that
22 passes two to one.

23 (The portion of the hearing requested to be
24 transcribed regarding #126 on the agenda is
25 concluded.)



DATE FILED: April 3, 2018 3:21 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the exhibits submitted to the Title Board by the proponents for Proposed Initiative "2017-2018 #126 'Payday Loans'".....

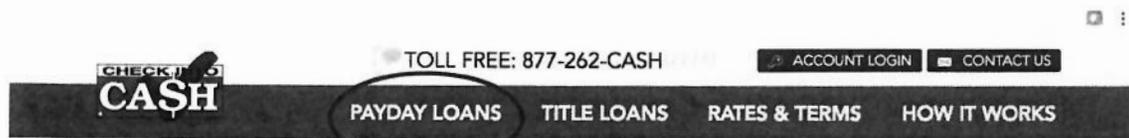
..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 20th day of March, 2018.

Wayne W. Williams
SECRETARY OF STATE

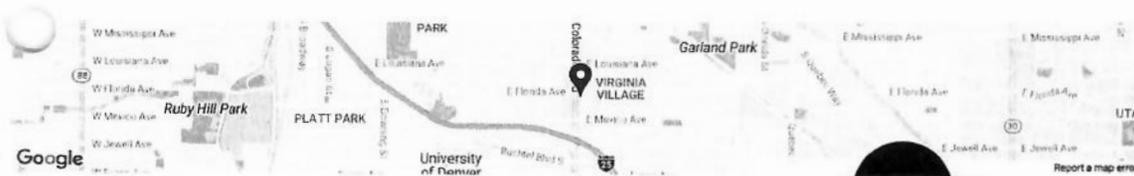


Submitted by proponents 3-7-18
#126

Check into Cash website accessed 2/27/2018



LOCATIONS > CO > DENVER > 1550 S COLORADO BLVD, UNIT 101



Check Into Cash Denver

Open until 6:00 PM

1550 S Colorado Blvd, Unit 101
Denver, CO 80222

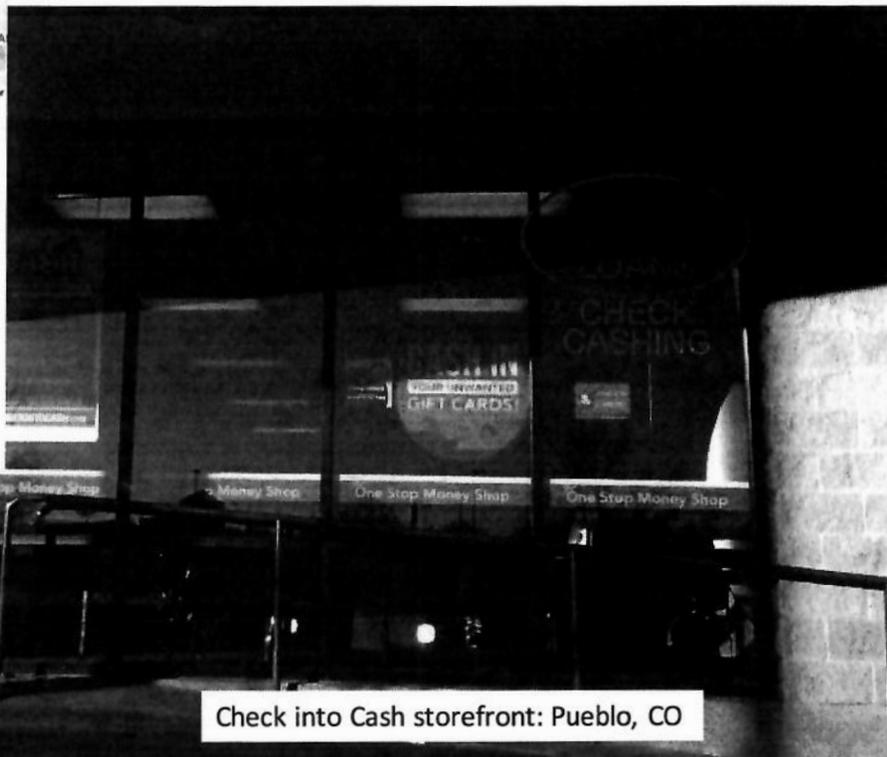
[Get Directions](#)

Local: (303) 759-4031

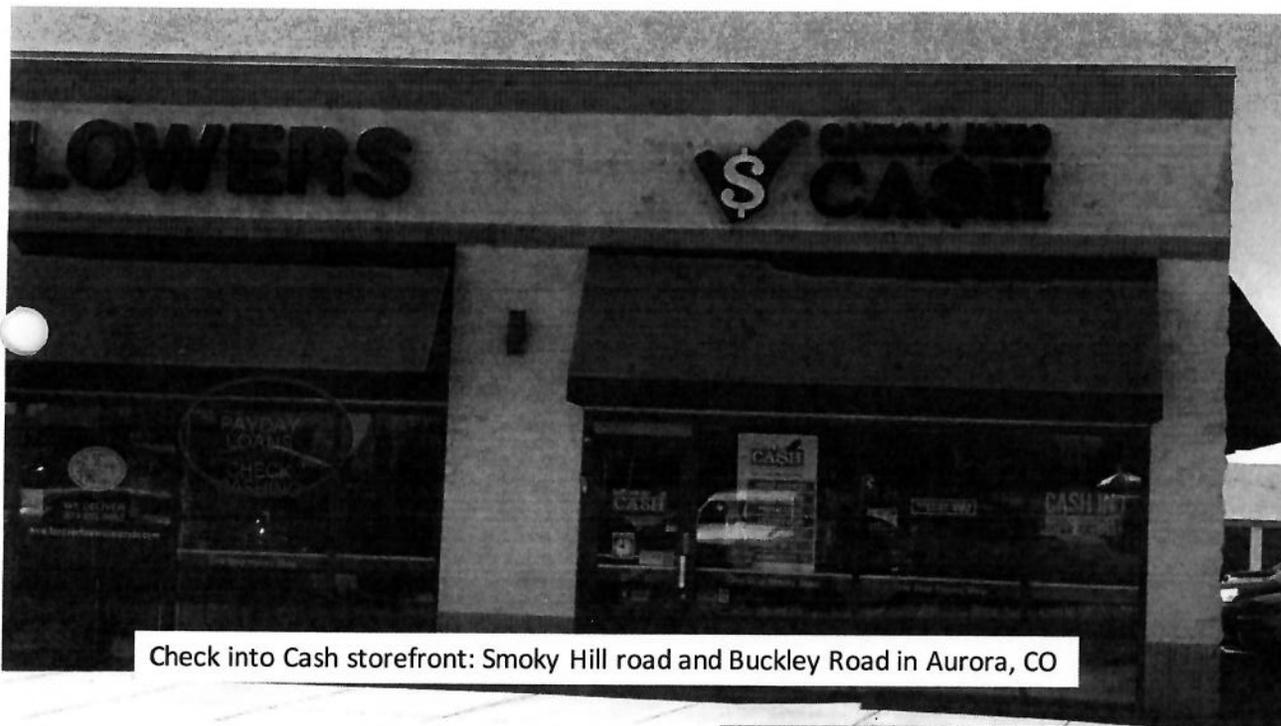
Call Toll Free: (877) 262-2274

Hours of Operation:

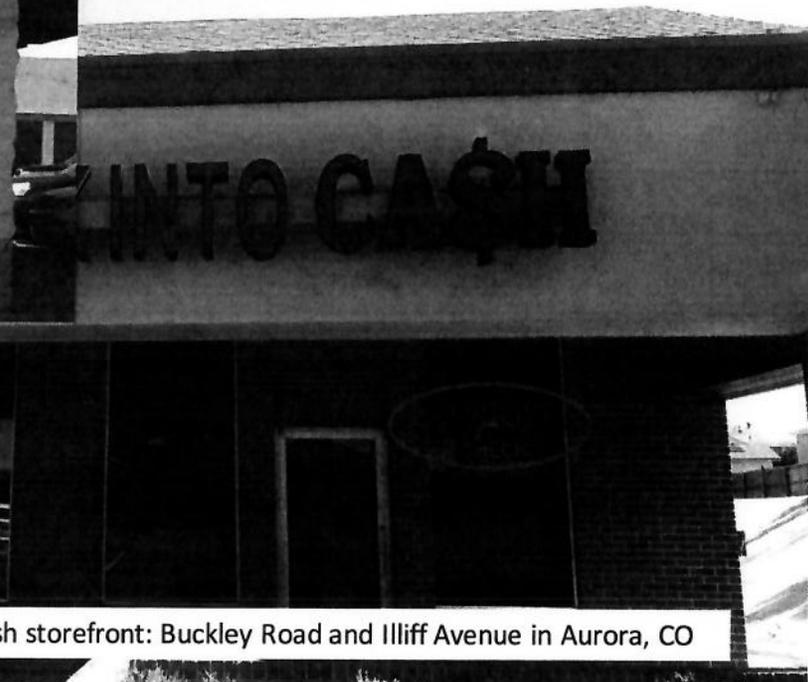
Monday	Open until 6:00 PM
Tuesday	10:00 AM - 6:00 PM
Wednesday	10:00 AM - 6:00 PM
Thursday	10:00 AM - 6:00 PM
Friday	10:00 AM - 6:00 PM
Saturday	10:00 AM - 3:00 PM
Sunday	Closed



Check into Cash storefront: Pueblo, CO



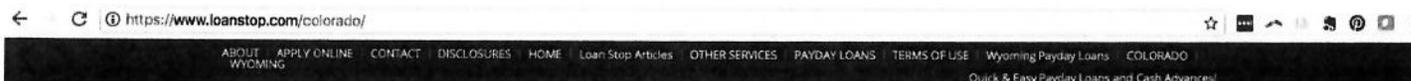
Check into Cash storefront: Smoky Hill road and Buckley Road in Aurora, CO



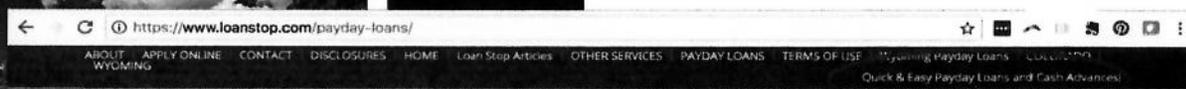
Check into Cash storefront: Buckley Road and Illiff Avenue in Aurora, CO

Speedy Cash website accessed 2/27/2018

The image is a screenshot of a web browser displaying the Speedy Cash website. At the top, there is a navigation bar with the Speedy Cash logo on the left and links for 'Available Loans', 'FAQs', 'Rates & Terms', 'Locations', 'Apply Now', and 'Security Center' on the right. Below the navigation bar, the main content area features a large banner for 'Colorado Payday Loans'. The banner includes the Speedy Cash logo, the text 'Colorado Payday Loans', and a sub-headline: 'Get a quick cash advance with a Speedy Cash installment payday loan up to \$400.' Below this text is an 'Apply Now' button. In the bottom left of the banner, there is a section titled 'Payday Loans Near Me' with the text 'Find a Speedy Cash location near you.' and an input field labeled 'Enter your location'. To the right of the main banner, there is a photograph of a Speedy Cash storefront at night. The storefront has a large sign that reads 'SPEEDY CASH PAYDAY LOANS CHECK CASHING'. Below the photograph, there is a caption: 'Speedy Cash storefront: Lakewood, CO'. The browser's address bar and search bar are visible at the top of the page.



Loan Stop website accessed 2/27/2018

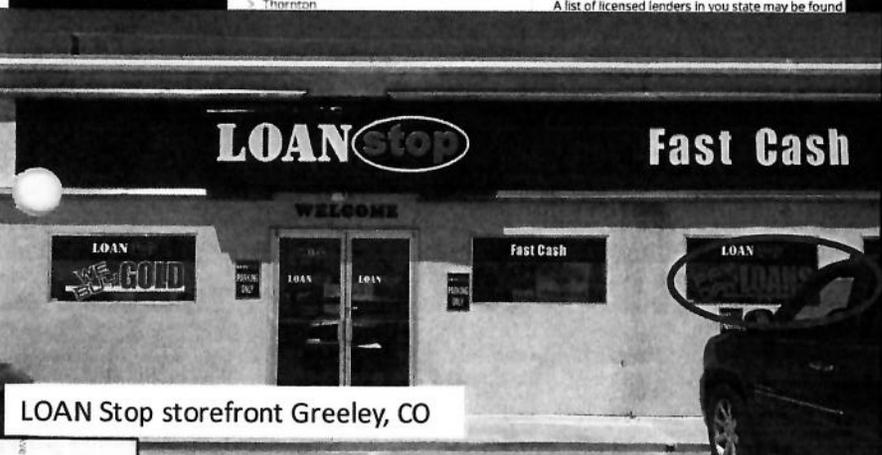


PAYDAY LOANS

Loan Payment Information:

Loan Stop is a registered business and holds a Superior Vehicle License in the State of Colorado and a First Class Check Cashing License in the State of Wyoming. All Colorado Loans are 6 month installment loans and all Wyoming Loans are payday loans due in 1 payment in one month or less. Payday loans in Wyoming will have an Annual Percentage Rate (APR) of 228.122% for a 14 day loan while installment loans in Colorado have an Annual Percentage Rate (APR) of 214.54% for a 6 month term. Nonpayment of a loan with Loan Stop can result in referring your account to collectors, garnishment of wages, and any other legal and equitable remedy as afforded by the law and additional fees may apply as detailed in the customer loan agreement. Collections efforts on past due accounts are conducted on a professional, fair and lawful manner in accordance with applicable state and federal laws. Loan Stop does not report to credit bureaus and all reports can be provided for a fee. A loan must be paid in full before a customer can re-apply for a new loan.

Loan Stop Payday Loan Requirements



LOAN Stop storefront Greeley, CO



Loans By Phone: (800) 404-0254

Live Chat
ONLINE

CUSTOMER LOGIN

ONLINE

STORE

SERVICES

FAQS

LOCATIONS

APPLY NOW

Check City >



Colorado Payday Loan Locations

If you need money fast, Check City is your source. Check City's Lakewood location is centrally located to serve the Denver area. Being located on the corner of Jewell Ave. and Wadsworth Blvd. makes it easy to find our Check City store and get the money you need when you're in a pinch. At Check City we understand that financial emergencies seem to always come up at the worst possible times and that is why we've made our Colorado Payday Loans application process so simple. To apply for payday loan in Denver with Check City simply stop by our Lakewood

 **Store Rates & Fees** [GO >](#)

Print the Store Application 

Aplicación en Español 

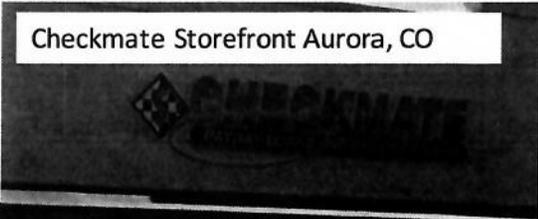
Check City website 2/27/2018 & Denver storefront picture

Online Chat



866-722-2274

Locations Registration/Title loan **Payday Loan** Installment Loan Check Cashing Make A Payment Find a Location



WELCOME TO CHECKMATE COLORADO SPRINGS

START YOUR LOAN APPLICATION



CHECKMATE (719) 219-3524
5746 Palmer Park Boulevard
Colorado Springs, CO, 80915
Hours: M-F:9:00-7:00; Sat:9:00-4:00; Sun:Closed
GET DIRECTIONS

CHECKMATE (719) 219-3592
1015 A Garden of the Gods Road
Colorado Springs, CO, 80907
Hours: M-F:9:00-7:00; Sat:10:00-3:00; Sun:Closed
GET DIRECTIONS



PAYDAY LOANS

LEARN MORE



CHECK CASHING

LEARN MORE

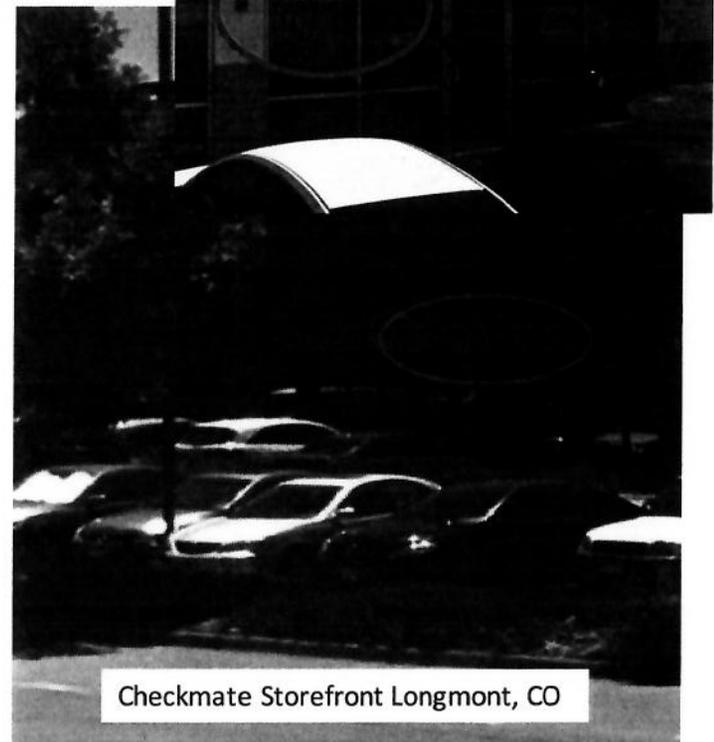


WESTERN UNION

FIND A LOCATION

SERVICES WE OFFER

- ✓ **Payday Loans - Get Up to \$500!**
Here's all you need to bring:
 - Proof of Open / Active Bank

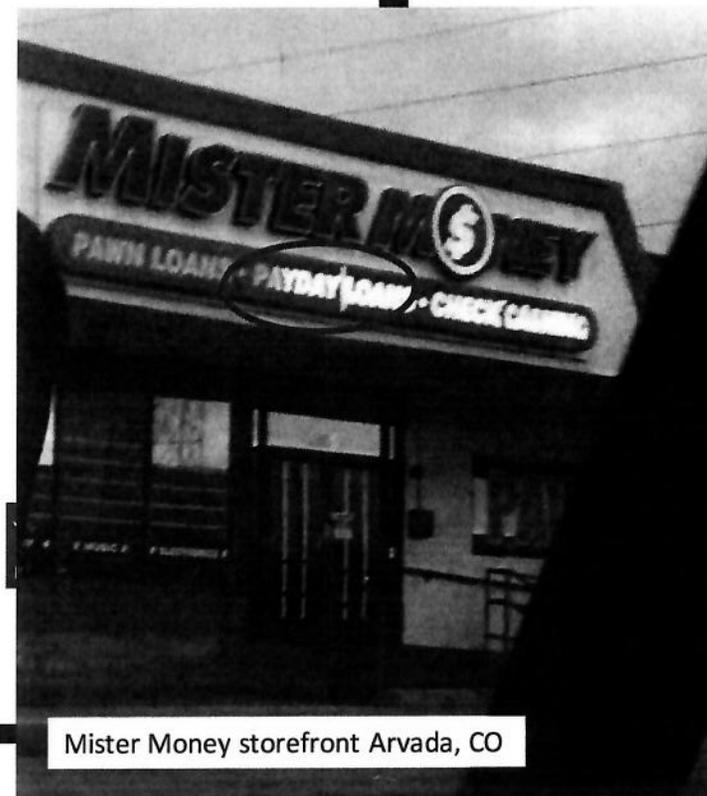


Checkmate Colorado website accessed 3/5/18

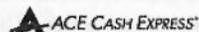
First Cash/Mister Money website accessed 3/5/2018

ww2.firstcash.com/store?num=376

The screenshot shows the First Cash website interface. At the top, there is a navigation menu with links for "About Us", "Investors", "Careers", and "Contact Us". Below this is a secondary menu with "LOAN PRODUCTS", "SERVICES", "HOWTO'S", and "LOCATIONS". The main content area features a map on the left showing the location of Mister Money #376 at 5300-A Sheridan Blvd, Arvada, CO. The map includes labels for "Sheridan Blvd", "Turn Bingo", "Zenobia St", "Yates St", "Danifer Boutique", "Hamburguesas Don Jesus", "U-Haul Neighborhood Dealer", "Dollar General", "Mister Money", "Detroit Transmission Specialists, Inc", and "W 53rd Pl". To the right of the map, the store details are listed: "Mister Money #376", "5300-A Sheridan Blvd", "Arvada, CO 80002", "Phone: 303-433-3482", "Fax: 303-433-3182", "Store hours: Monday-Friday: 9:00AM - 7:00PM, Saturday: 9:00AM - 5:30PM, Sunday: Closed - Closed", and "Services: Check Cashing, Retail & Layaway Sales, Pawn Loans, Payday Loans, Gold". The "Payday Loans" service is circled in red. At the bottom of the website, there is a footer with logos for "VALU+PAWN", "FirstCash Advance", "FIRST CASH PAWN", "KING PAWN", "Dan's DISCOUNT Jewelry & Pawn", "PIAZZA Jewelry & Pawn", "MISTER MONEY Pawn Loans Payday Loans U.S. Loans", and "Smart Pawn". A copyright notice "©2018 First Cash Financial Services" is visible in the bottom left corner.



Mister Money storefront Arvada, CO



Store Locator: 80210 GO

Payday Loans | Installment Loans | Fare Account | Prepaid Cards | Check Cashing | Other Services | About ACE | Marketplace | ACE Cash Express | Services in

Home > Locations > Colorado

Payday Loans in Colorado

[View In-Store Rates](#)

Any of the Colorado locations of ACE Cash Express make it quick and painless to get the cash you need. ACE has locations to serve you across the state including Denver, Colorado Springs and Aurora. Count on ACE for online Prepaid Debit Cards plus a complete range of financial services at our local offices.



To find an ACE Cash Express near you, enter your City and State or ZIP Code:

Find a store

Colorado In-Store Services

Installment Loans

An installment loan allows you to repay the loan in scheduled payments. At ACE, an installment loan can be repaid early, which may save you interest.

- Repay over time, not all at once.
- Fast cash available.¹

Prepaid Debit Cards

The prepaid debit card gives you the power to manage your money. You can direct deposit to your card and easily withdraw cash in-store.

- No hidden fees.
- No minimum balance.
- No confusing fee plans.

Check Cashing

Turn your check into cash without a bank account. ACE is one of the largest check cashing services in the United States. Our convenient process does not require a bank account. We make it easy!

- No credit check necessary.
- No waiting. Get your funds today.
- Most types of checks accepted.

Bill Payments

We can help you pay your bills accurately and quickly. All types of bills can be paid, including electricity, gas, water, cell phone, cable, satellite, insurance, credit card, and more!

- Multiple payment methods accepted.
- Over 13,000 available merchants.
- Bills are paid using MoneyGram.

Business Services

ACE Business Select makes it easy for you to manage your business finances. We offer business check cashing, and we cash most types of checks. No need to worry about pending transactions. Get your funds fast. Plus, there are over 950 ACE locations that are open extended hours and weekends to serve your business needs.

- ACE is open extended hours and weekends



Colorado Locations

Alamosa
Brighton
Castle Rock
Denver
Fort Collins
Lakewood
Sterling

Aurora
Broomfield
Colorado Springs
Englewood
Fountain
Longmont
Thomton

Other States »

Boulder
Canon City
Commerce City
Federal Heights
Greeley
Pueblo
Westminster



Money Tree storefront Westminster, CO



Money Tree storefront Denver, CO

Submitted by proponents 3-7-18

#126

Exhibit C
2018SA60

DATE FILED: April 3, 2018 3:21 PM

**COLORADO PAYDAY LENDING – DEMOGRAPHIC AND STATISTICAL
INFORMATION**

JULY 2000 THROUGH DECEMBER 2015

Summary Information from the Ongoing
Colorado UCCC Study of Payday Lenders, Payday Loans, and Borrowing
Consumers

Prepared by the Staff of the
Administrator of the Colorado Consumer Credit Unit (CCU)
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO, 80203
Tel: (720) 508-6012 Fax: (720) 508-6033 E-mail: uccc@coag.gov

INTRODUCTION

Colorado's Uniform Consumer Credit Code (UCCC) and Deferred Deposit Loan Act (DDLA) require the Administrator to perform periodic examinations of the loans, lending practices, and records of licensed supervised lenders, including deferred deposit loan lenders. Since 2000, when the DDLA was enacted, compliance examiners with the Administrator's office have gathered information from supervised lenders for an ongoing study on deferred deposit loans, deferred deposit loan lenders, and deferred deposit loan consumers¹ in Colorado. In 2010, with the enactment of HB10-1351, extensive changes were made to the DDLA and the manner in which deferred deposit loans were transacted.

This report, our third since HB10-1351 became law, presents lending data from 2000 to 2015. Our previous reports were issued on April 10, 2014, (including data through the end of calendar year 2012), and October 1, 2012 (including data through the end of calendar year 2011). Most of the data was pulled from calendar year 2015, the most recent year for which information is available. These 2015 figures are intended to help give a perspective on the most current practices and trends.^{2 3}

NOTE: The term "2010*" is used in this report to indicate information from January 2010 through August 10, 2010, or the DDLA prior to the enactment of HB10-1351.

August 22, 2016

Julie Ann Meade, Administrator
Uniform Consumer Credit Code
Colorado Department of Law

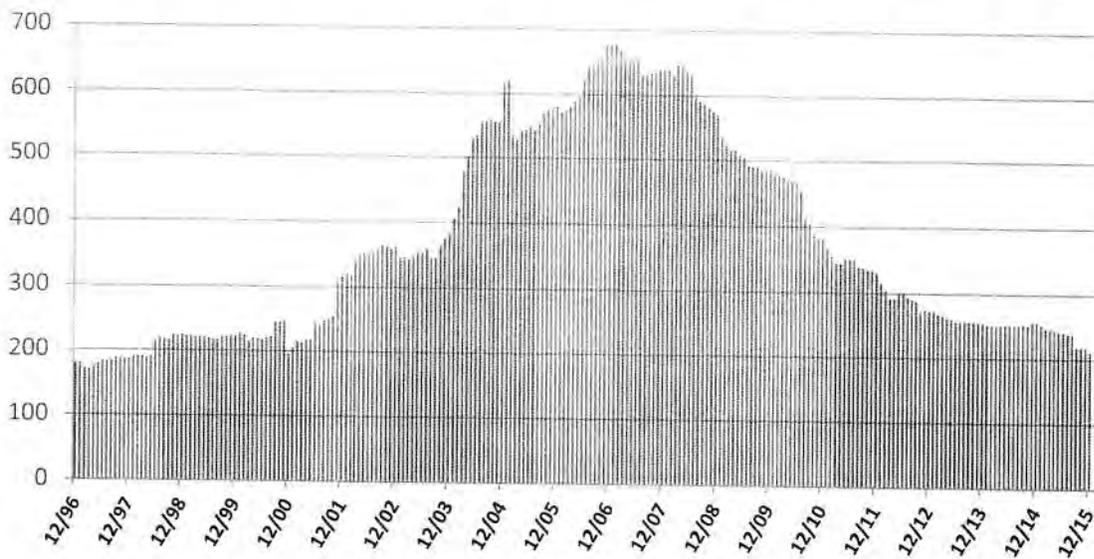
¹ The terms "consumer" and "borrower" are used interchangeably in this report. Further, a "deferred deposit loan" and a "payday loan" are also known as a "DDLA loan".

² 2011 is the first full calendar year for which data from Colorado's most recent DDLA lending statute revisions (contained in HB10-1351) are available. Because of the significant changes in Colorado's DDLA lending practices brought about by the enactment of HB10-1351, this report separates much of the pre-HB10-1351 data (i.e., between July 1, 2000, and August 10, 2010) from the data reflecting the most current legislation (i.e., after August 10, 2010).

³ Occasional references are made to "Annual Report" data. This is the calendar-year report, required by law, that all licensed lenders must file. C.R.S. § 5-2-304(2). Each calendar-year report is due the following July, and a composite report is issued in the fall. Annual report data for 2015 has been included in this report.

I. Industry Overview -- The Lenders

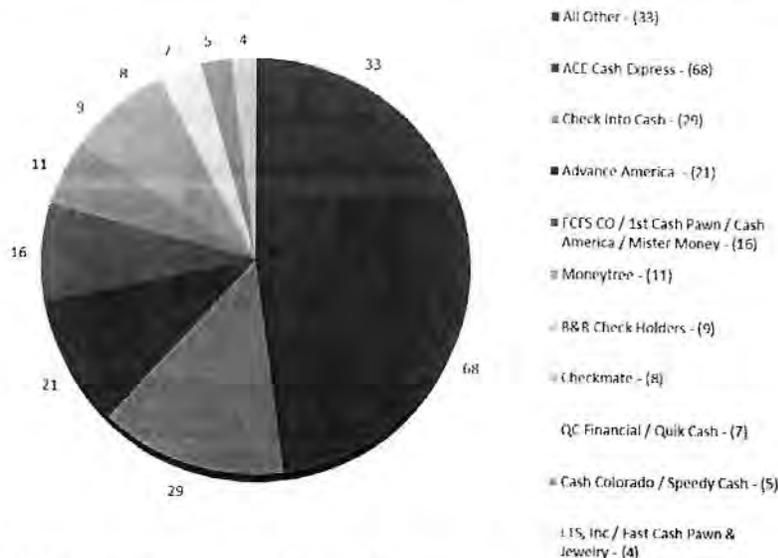
Number of UCCC Licensees Making DDLA Loans (November 1996 - December 2015)



The graph above illustrates the number of Colorado licensees making DDLA loans over the past 20 years.

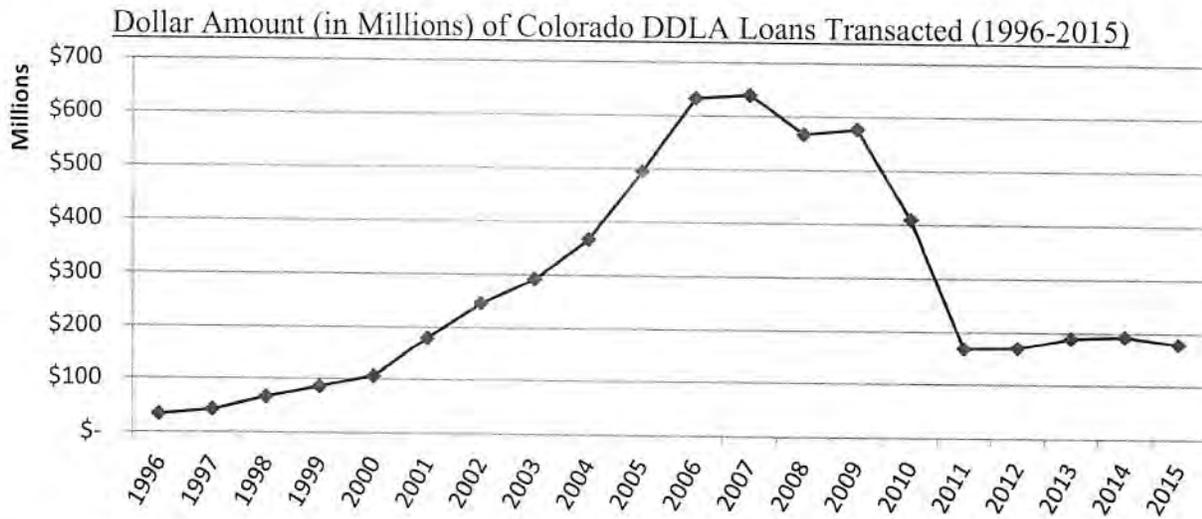
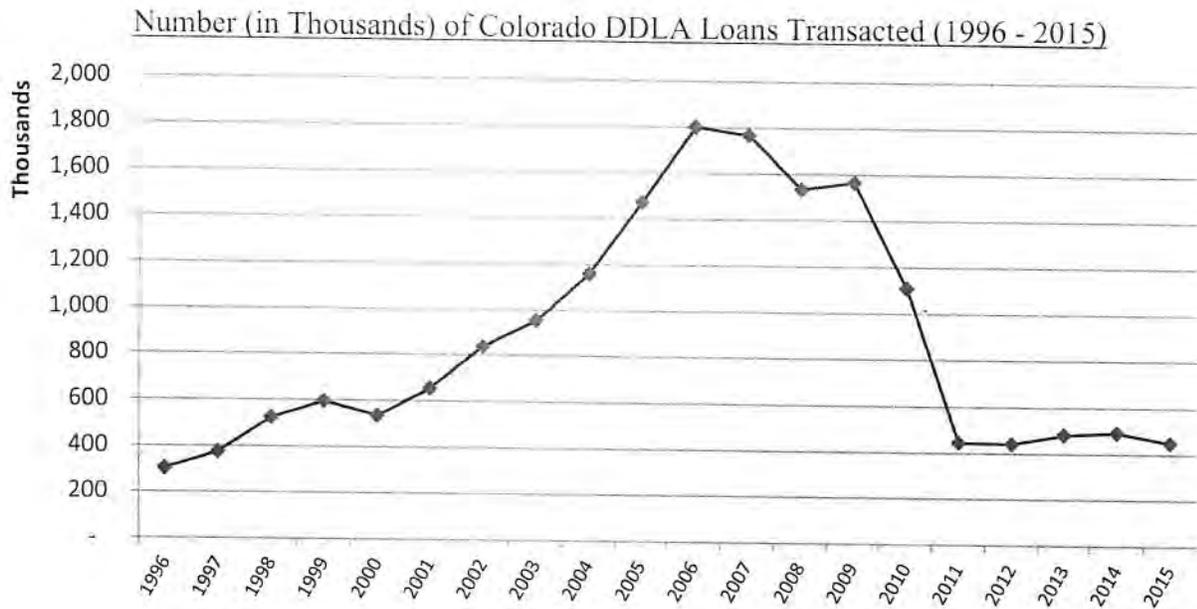
Of the 211 DDLA loan locations licensed in Colorado as of December 31, 2015, the 10 largest companies (178 total locations) accounted for 84% of the UCCC license locations making DDLA loans.

The Ten Largest Companies* Licensed to Make DDLA Loans -- Number of UCCC License Locations as of 12/31/2015 – by numbers of Colorado UCCC licenses held



The remaining 33 DDLA loan licenses (“All Other” in the pie chart) were held by 25 different entities.

The overall trend in the number of UCCC licensees is presented in the following graphs, which show the number and the total dollar amounts of DDLA loans, written between 1996 and 2015 (as reported by DDLA loan licensees who filed Annual Reports).

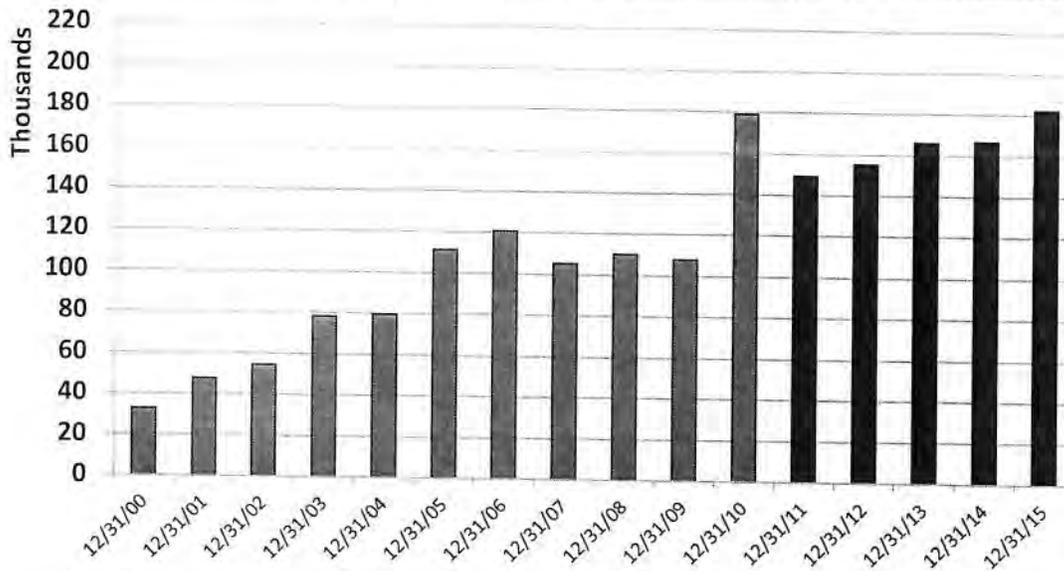


The preceding two graphs show the substantial decline in the number and dollar volume of DDLA loans transacted after HB10-1351 was enacted.

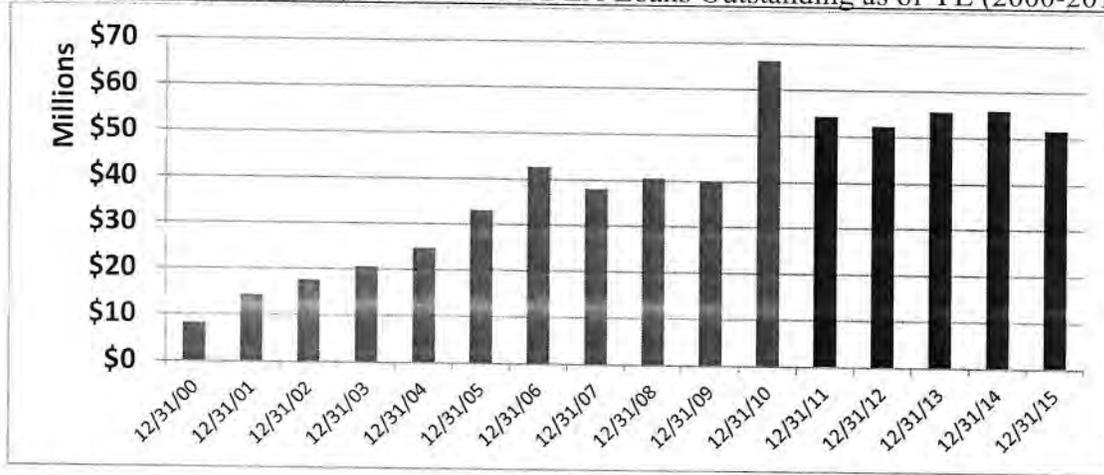
The following two graphs show the year-end DDLA loans-outstanding information (reported on 12/31/yyyy by DDLA loan licensees who filed Annual Reports).

The difference between trends in volume and loans-outstanding is due to the changes in borrowing frequency that occurred after HB10-1351 was enacted.

Number (in Thousands) of Colorado DDLA Loans Outstanding as of YE (2000 - 2015)



Dollar Amount (in Millions) of Colorado DDLA Loans Outstanding as of YE (2000-2015)



II. DDLA Consumer Demographics -- The Borrowers

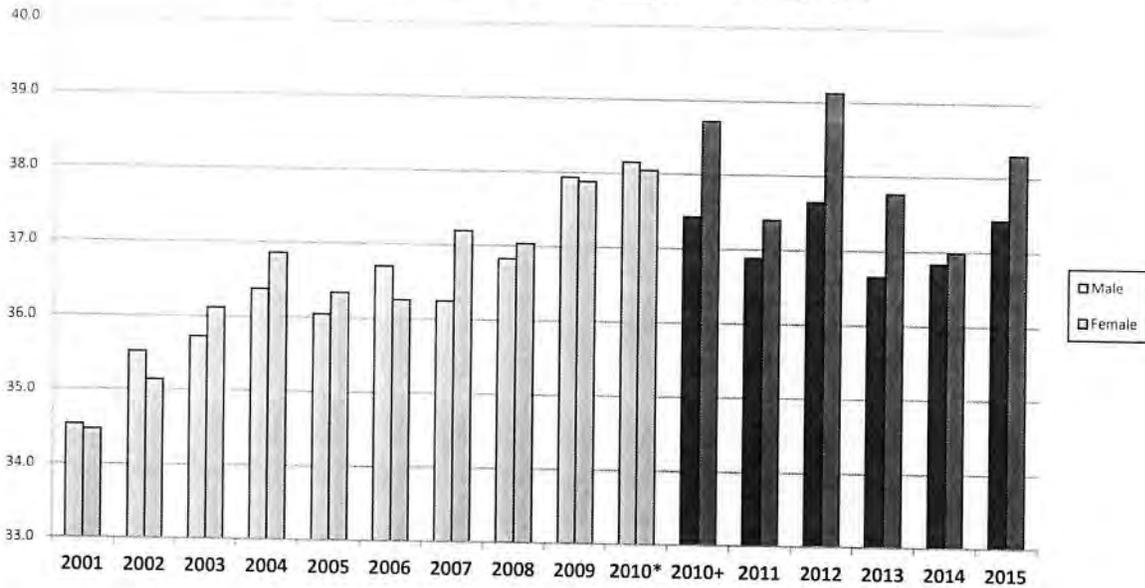
Our office began gathering demographic information from DDLA loan applications in 2001. After HB10-1351 was enacted in August 2010, we continued to gather this same demographic information.

As of December 31, 2015, our combined demographics databases consisted of information on 45,197 DDLA loan consumers.⁴ This information was gathered during 2,978 examinations.⁵

⁴ 34,512 entries from 2001 to August 10, 2010, and 10,685 entries from August 11, 2010, through the end of 2015.

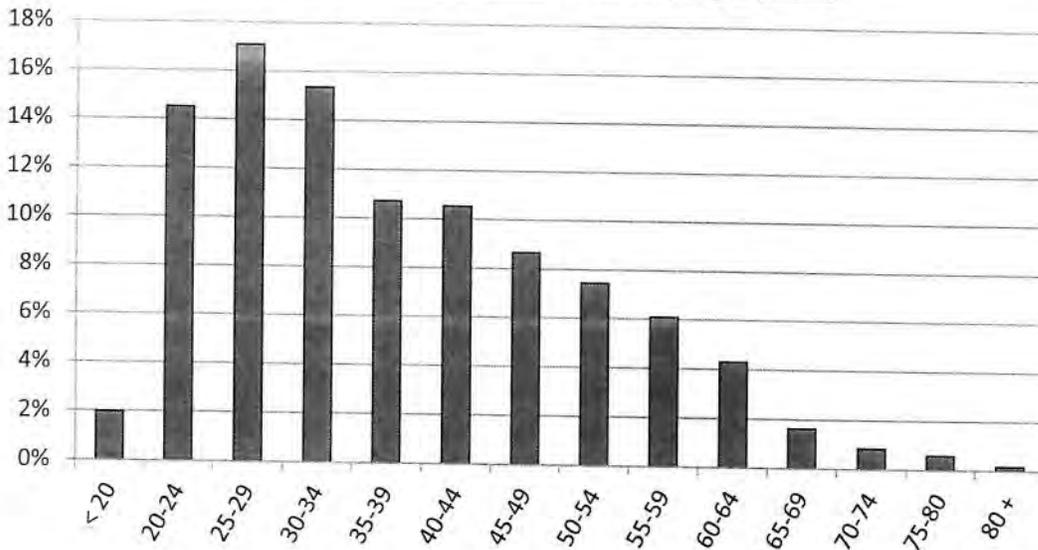
⁵ 2,326 examinations from 2001 to August 10, 2010, and 652 examinations from August 11, 2010, through the end of 2015.

DDLA Consumers' Average Age (2001 – 2015)

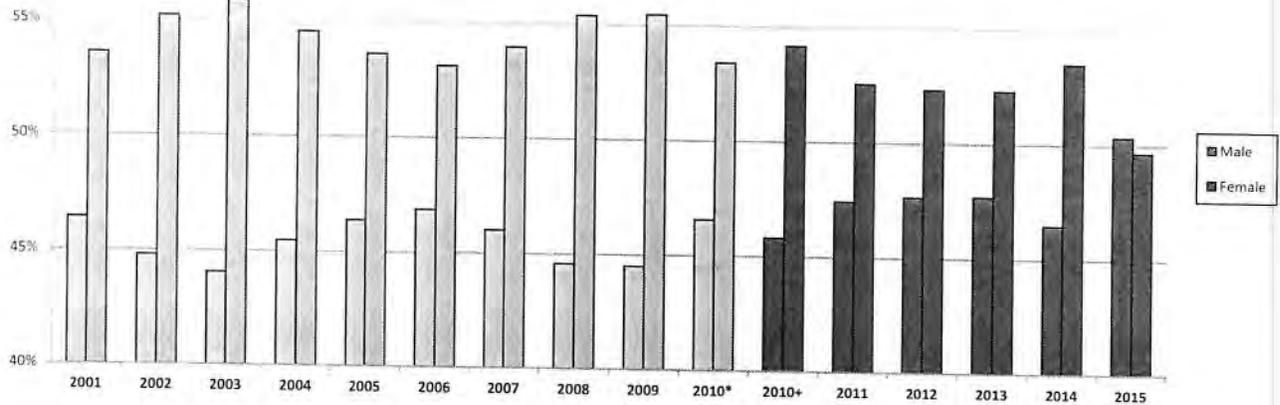


In 2015, the average age of a DDLA borrower was almost 38 years, the majority of DDLA loan borrowers were between the ages of 20 and 39. This group comprised 57.685% of all borrowers. Borrowers over the age of 55 comprised 13.65% of all borrowers in 2015, with 3.26% aged 65 or older.

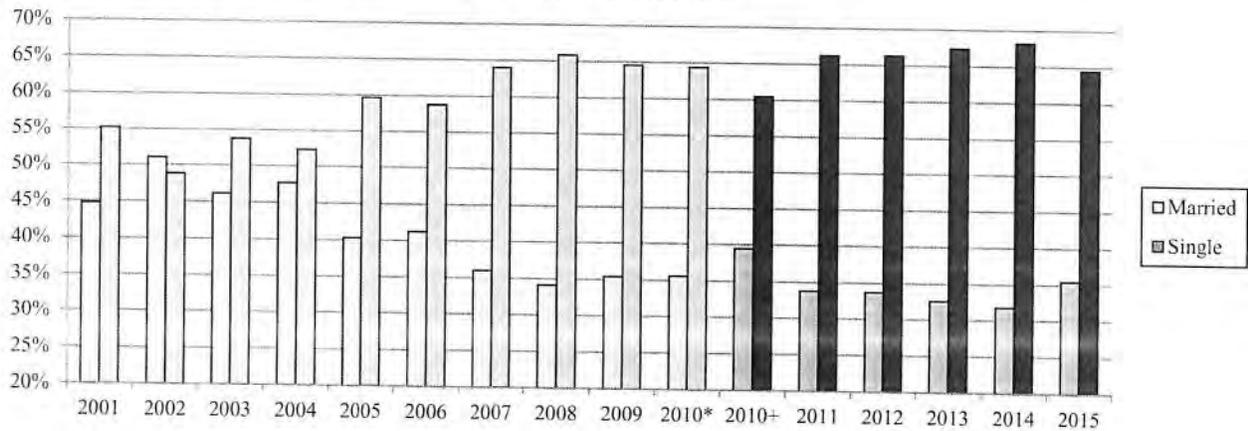
DDLA Consumers' Distribution by Age (2015)



In every year except 2015, women significantly outnumbered men as DDLA loan consumers.

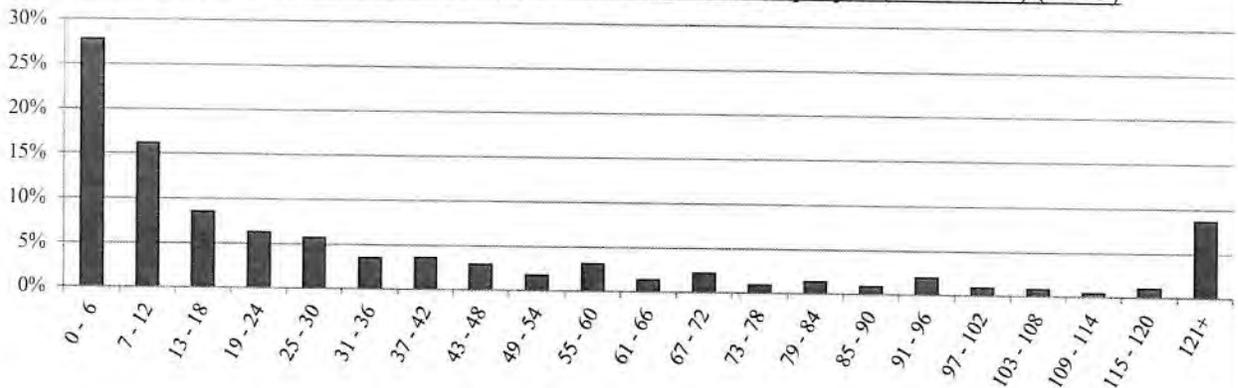


Single borrowers markedly outnumber married borrowers.

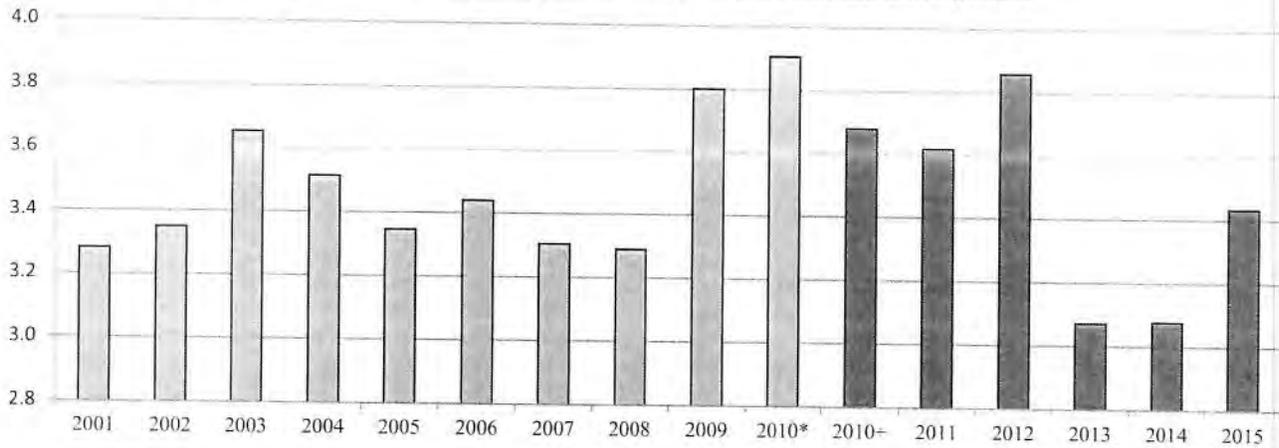


In 2015, DDLA loan consumers had been at their current jobs on average for 3.43 years; 27.73% of those consumers had been at their current jobs for 6 months or less.

DDLA Consumers' Distribution by Time at Current Employer (in months) (2015)

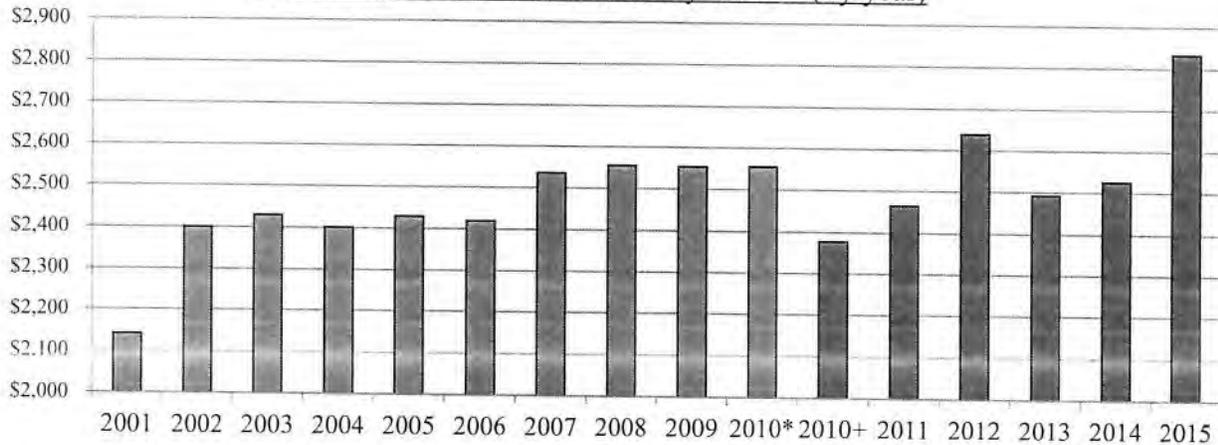


DDLA Consumers' Average Time at Current Employer (in years)



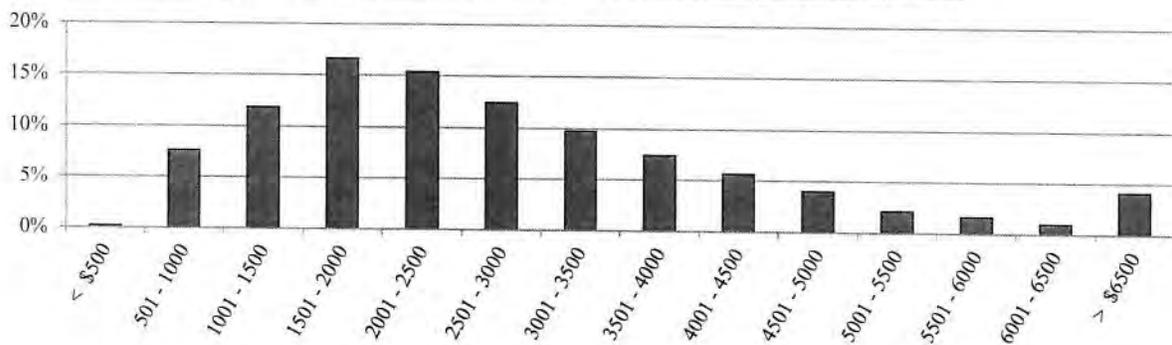
In 2015, the mean gross income of all consumers was \$2,833 per month.

DDLA Consumers' Gross Monthly Income (by year)

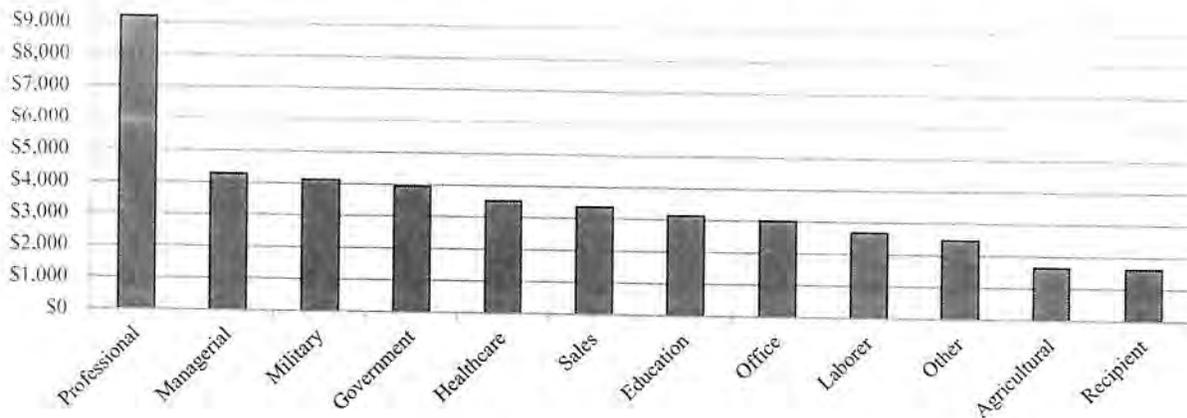


Borrowers earning \$2,500 gross monthly, or less, accounted for 51.67% of all borrowers.

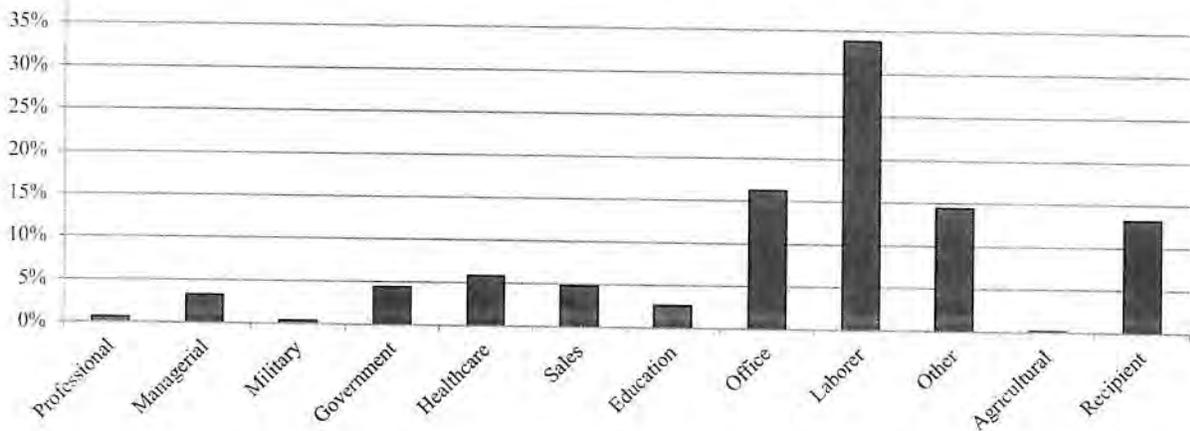
DDLA Consumers' Distribution by Gross Monthly Income (2015)



DDLA Consumers' Average Gross Monthly Incomes by Occupation⁶ (2015)



DDLA Consumers' Distribution by Occupation⁷ (2015)



⁶ *Loans to Military Members (and their dependents)*: There were no military DDLA loan consumers during calendar year 2008, 2009 or 2010 (up through August 10, 2010) due to a 2007 federal law and DOD regulations (commonly referred to as the “Military Lending Act” -- MLA) that, in part, capped interest rates at no more than 36% military annual percentage rate (MAPR) for DDLA loans, auto title loans, and tax refund anticipation loans made to active-duty military service members and their dependents. Beginning October 2007, Colorado licensed DDLA lenders did not make DDLA loans to military service members because they did not want their loans subject to federal interest-rate caps.

Colorado DDLA Loans have been written with a minimum loan term of “six months” since the August 11, 2010 effective date of HB10-1351. Because the MLA in part defined “payday loans” as loans having terms of “91 days or less,” the prohibitions and interest rate caps of that Act regarding DDLA loans to military service members and their dependents did not apply to Colorado DDLA loans written since August 11, 2010.

In July 2015, the DOD passed changes and significantly expanded the MLA regulations and coverages. Compliance with the portion of these changes that will encompass Colorado’s post-HB10-1351 DDLA loans will become mandatory on October 3, 2016.

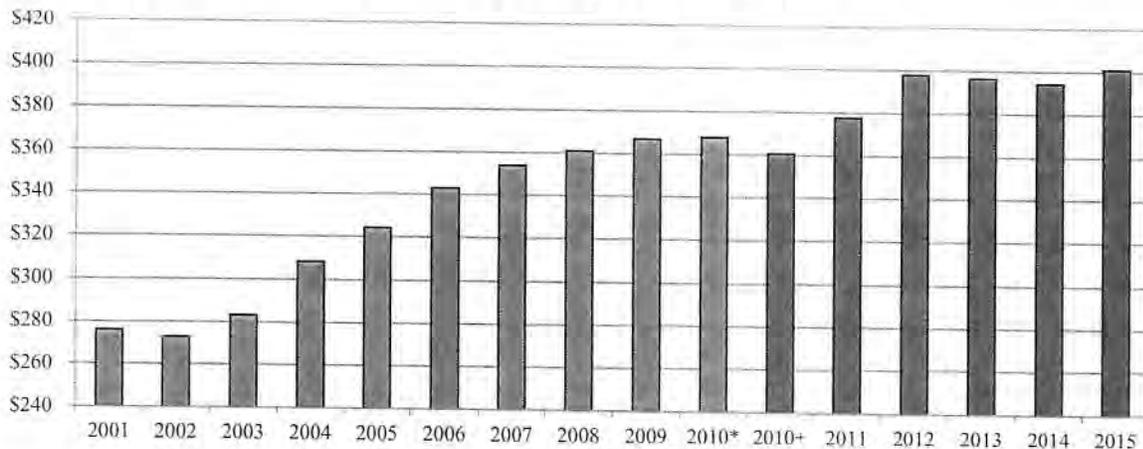
⁷ Total sample size for 2015 = 1100 consumers. By category: Professional* (7); Managerial (36); Military* (4); Government (49); Healthcare (65); Sales (53); Education (29); Office (179); Laborer (372); Other (159); Agricultural* (2); Recipient (145). (*Based on the 2015 sampling size and distribution, the accuracy of the “Average Gross Monthly Income” information is statistically uncertain for the three smallest categories (Professional, Military, and Agricultural).

III. DDLA Statistical Information -- The Loans

Our office began gathering statistical information with the enactment of the DDLA in July 2000. After HB10-1351 was enacted in August 2010, we have continued to gather statistical information. Because of the structural changes contained in HB10-1351, however, some of information presented in this report is markedly different from information that appeared in earlier reports.

As of December 31, 2015, our combined statistical databases consisted of information from 92,298 DDLA loan transactions.⁸ This information was gathered during 3,154 examinations.⁹

The average amount financed (borrowed) during 2015 was \$401.



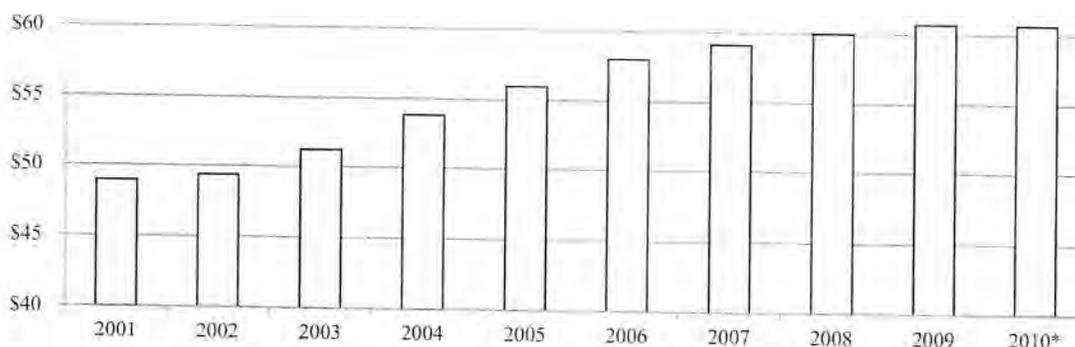
Before the enactment of HB10-1351, the DDLA permitted a single finance charge that depended solely on the loan amount financed.¹⁰ Loans were permitted to be written for any dollar amount up to a maximum of \$500. So, for example, on a loan of \$100, the maximum permitted finance charge was \$20; on a loan of \$200, a maximum of \$40; on a loan of \$300, a maximum of \$60; on a loan of \$400, a maximum of \$67.50; and on a loan of \$500, a maximum of \$75.

⁸ 72,735 transactions from July 2000 to August 10, 2010; and 19,563 transactions from August 11, 2010 through the end of 2015.

⁹ 2,495 examinations from July 2000 to August 10, 2010; and 659 examinations from August 11, 2010 through the end of 2015.

¹⁰ C.R.S. § 5-3.1-105. Authorized finance charge. (pre-HB10-1351): "A lender may charge a finance charge for each deferred deposit loan that may not exceed twenty percent of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan."

The average finance charge contracted for DDLA loans written before August 10, 2010, was:



Prior to the enactment of HB10-1351, the finance charge contracted was a close measure of the amount of actual earnings for DDLA loans because this finance charge was either:

- a. fully earned by the lender at inception and nonrefundable, even in the event of prepayment, or
- b. partially rebated on a pro-rata basis, over the typically short term of these loans (having an average contracted loan term of only about 17 days) if the loan was directly refinanced *before* maturity¹¹.

Since the enactment of HB10-1351, the total finance charge amount contracted on a DDLA loan consists of 3 components:¹²

1. A finance charge¹³, that uses the same finance charge formula used for calculating charges on pre-HB10-1351 loans,
2. An interest rate¹⁴, of a maximum of forty-five percent per annum (upon the amount financed), and

¹¹ 25.78% of all pre-HB10-1351 DDLA loans written were directly refinanced. Only a portion of those direct refinances were refinanced at some point prior to maturity, requiring any rebate.

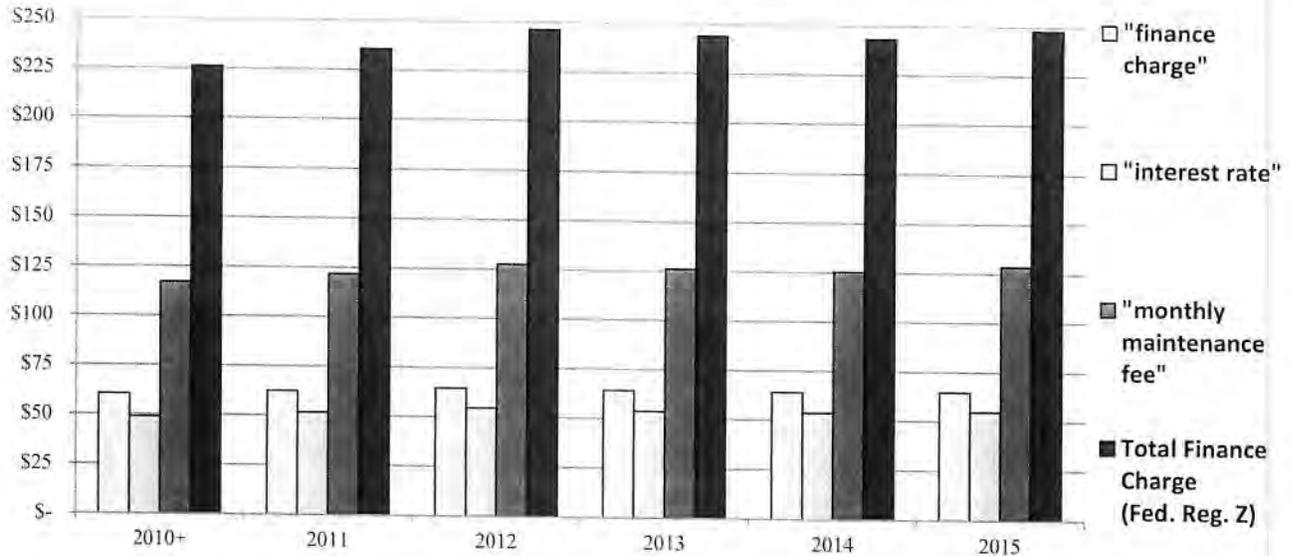
¹² C.R.S. § 5-3.1-105. Authorized finance charge (post HB10-1351) "A lender may charge a finance charge for each deferred deposit loan or payday loan that may not exceed twenty percent of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender may also charge an interest rate of forty-five percent per annum for each deferred deposit loan or payday loan. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based upon the ratio of time left before maturity to the loan term. In addition, the lender may charge a monthly maintenance fee for each outstanding deferred deposit loan, not to exceed seven dollars and fifty cents per one hundred dollars loaned, up to thirty dollars per month. The monthly maintenance fee may be charged for each month the loan is outstanding thirty days after the date of the original loan transaction. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan." (Emphasis added).

¹³ This finance charge component of the total (federal Regulation Z) finance charge contracted is often commonly referred to by DDLA lenders as an origination charge or an origination fee. Regardless of the terminology, this charge is but one component of the total (federal Regulation Z) finance charge amount contracted on a DDLA loan.

¹⁴ This forty-five percent per annum interest rate is one of three components of the total (federal Regulation Z) finance charge contracted for HB-1351 loans, and is not the required Annual Percentage Rate (APR) disclosure prescribed by federal Regulation Z, Truth-In-Lending.

3. A monthly maintenance fee, dependent upon the original amount financed.¹⁵

The average finance charge contracted for DDLA loans written since August 10, 2010, is (by each component charge):



For 2015, those average component charge numbers were:

Finance Charge	\$ 64.75
Interest Rate	\$ 54.91
Monthly Maintenance Fee	<u>\$ 128.50</u>
Total Finance Charge	\$ 248.16

The post-HB10-1351 finance charge amount contracted *should not* be used as a measure of the actual earnings from post-HB10-1351 loans or lending activity. Both the finance charge and the interest rate of every post-HB10-1351 DDLA loan are required to be refunded on a pro-rata basis,¹⁶ and any monthly maintenance fee is earned after each month the loan is outstanding thirty days after the date of the original loan transaction. C.R.S. § 5-3-1-105.

To illustrate, consider a \$500 (amount financed) loan: The loan, written on May 1, 2015, has the minimum required 6-month loan term¹⁷ and will reach maturity on November 1, 2015 (a period

¹⁵ For loans amounts (amount financed) between \$100.00 and \$199.99 the maximum permitted monthly maintenance fee is \$7.50/month; for loan amounts between \$200.00 and \$299.99, \$15.00/month; for loan amounts between \$300.00 and \$399.99, \$22.50/month; and, for loan amounts over \$400.00 (up to and including the maximum permitted DDLA loan amount of \$500.00), \$30.00/month.

¹⁶ C.R.S. § 5-3-1-105. Authorized finance charge. (since HB10-1351): "If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based upon the ratio of time left before maturity to the loan term."

C.R.S. § 5-3-1-102. Definitions (since HB10-1351): "(1.5) "Annual percentage rate" means an annual percentage rate as determined pursuant to section 107 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq. *All finance charges shall be included in the calculation of the annual percentage rate.*" (Emphasis added)

¹⁷ C.R.S. § 5-3-1-103. Written agreement requirements (since HB10-1351): "There shall be no maximum loan term or minimum finance charge. The minimum loan term shall be six months from the loan transaction date."

of 184 days). The loan is scheduled for repayment in 6 monthly installments due on the first of each month, beginning with the first installment on June 1, 2015. This \$500.00 loan has the following permitted (and disclosed) component charges:

Finance Charge	\$ 75.00	(20% of \$300, plus 7.5% of \$200)
Interest Rate	\$ 68.21	(45% per annum)
Monthly Maintenance Fee	\$ <u>150.00</u>	(5 monthly fees of \$30.00 each)
Total Finance Charge	\$ 293.21	

The required federal Regulation Z, Truth-In-Lending disclosures for this loan would be, in part:

Annual Percentage Rate (APR):	180.28 %
Finance Charge	\$ 293.21
Amount Financed	<u>\$ 500.00</u>
Total of Payments	\$ 793.21

Payment Schedule

5 monthly payments of	\$132.20	beginning on June 1, 2015, and
1 final payment of	\$132.21	due on November 1, 2015

If this \$500 loan went to its full term maturity, and *if* each payment were made on time as scheduled, the DDLA lender would earn the full amount of the \$293.21 finance charge over the 6 month term of the loan.

If, however, the consumer prepays the loan in full on May 16, the lender would be allowed to retain no more than 15 days' worth (May 1 to May 16) of the originally contracted earnings (of the 184-day loan), or:

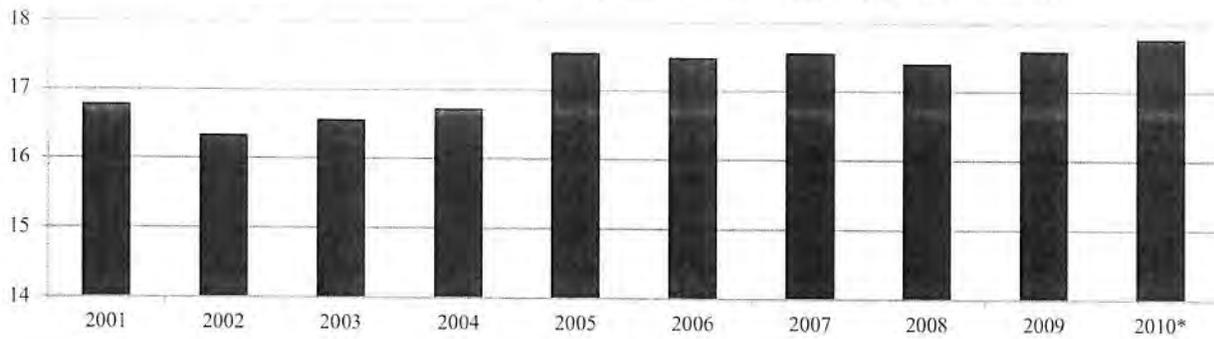
Finance Charge	\$ 6.11 (15/184 ^{ths} of \$75.00)
Interest Rate	\$ 5.56 (15/184 ^{ths} of \$68.21)
Monthly Maintenance Fee	\$ <u>0.00</u> (0 full months after first 30 days at \$30 each)
Total Finance Charge	\$ 11.67

In brief, the earnings on any particular post-HB10-1351 loan are highly dependent upon how long a consumer keeps that loan open,¹⁸ and are not particularly foreseeable at the time the loan is transacted.

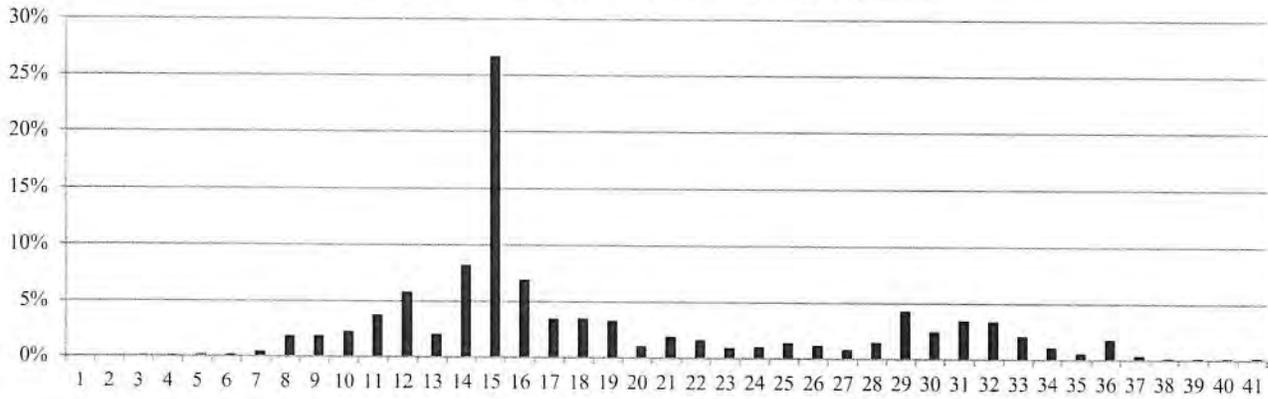
Before HB10-1351 was enacted, the maximum loan term permitted to be contracted on any DDLA loan was 40 days. Since the enactment of HB10-1351, DDLA loans have a minimum permitted contractual loan term of 6 months, and there is no maximum loan term.¹⁹

¹⁸ See Appendix 1, pages 26 – 29, for a table showing the total cumulative permitted earnings, by day, for each day of the loan term of the \$500 loan.

Average Contracted Loan Term (Number of days) – pre-HB10-1351

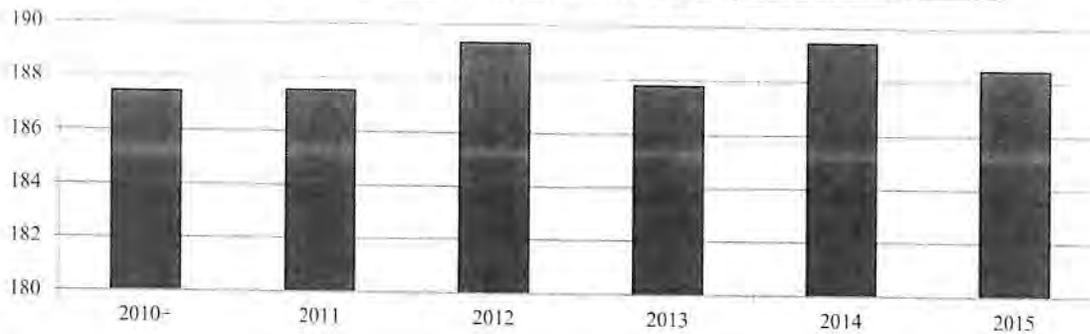


Distribution by Loan Term (Number of days) (2010*)



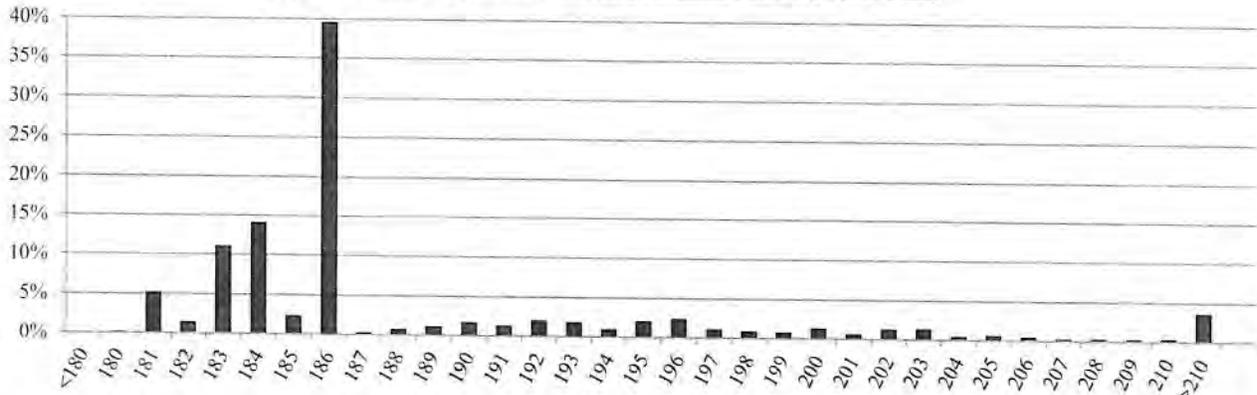
¹⁹ C.R.S. § 5-3.1-103. Written agreement requirements (since HB10-1351): There shall be no maximum loan term or minimum finance charge. The minimum loan term shall be six months from the loan transaction date.”

Average Contracted Loan Term (Number of days) (Post-HB10-1351)



In 2015, the vast majority of all DDLA loans, nearly 83%, were written for repayment in monthly payments of 6 or 7 months.

Distribution by Loan Term (Number of days) (2015)



Although the statutory minimum contractual loan term for DDLA loans written since the enactment of HB10-1351 is simply six months, there is no statutory requirement as to how these loans must be structured for repayment (i.e., single payment or multiple installments).

While single-payment loans are permitted, 99.96% of all post-HB10-1351 loans have been scheduled to be repaid in regular installments.²⁰

²⁰ C.R.S. § 5-2-308. Regular schedule of payments – Maximum loan term.

“(1) Supervised loans not made pursuant to a revolving credit account and in which the principal is three thousand dollars or less shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and:

- (a) Over a period of not more than thirty-seven months if the principal is more than one thousand dollars; or
- (b) Over a period of not more than twenty-five months if the principal is one thousand dollars or less.”

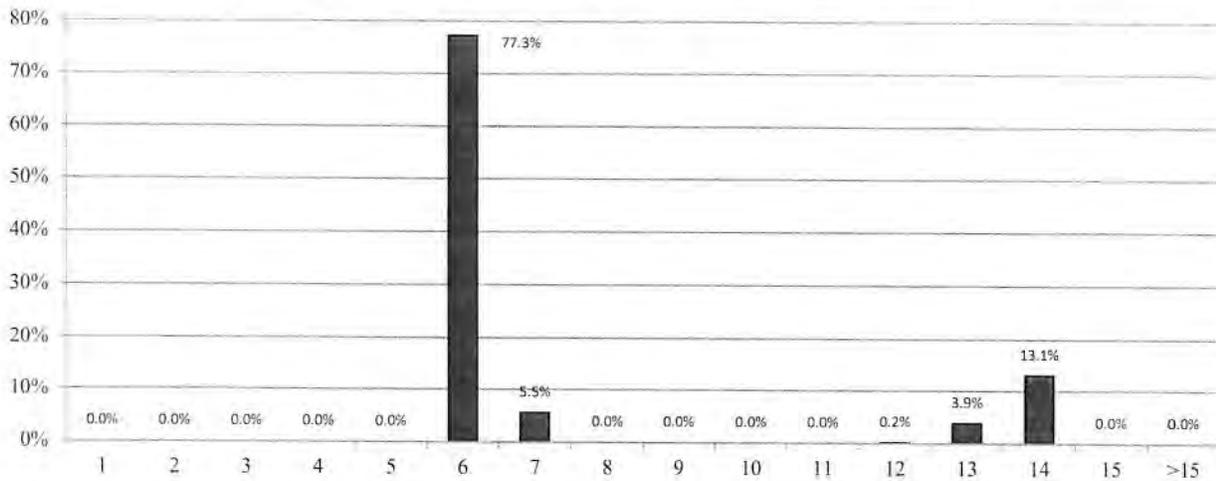
Also, UCCC Administrator’s Rule 17, Deferred Deposit/Payday Loans:

“(B) Installments

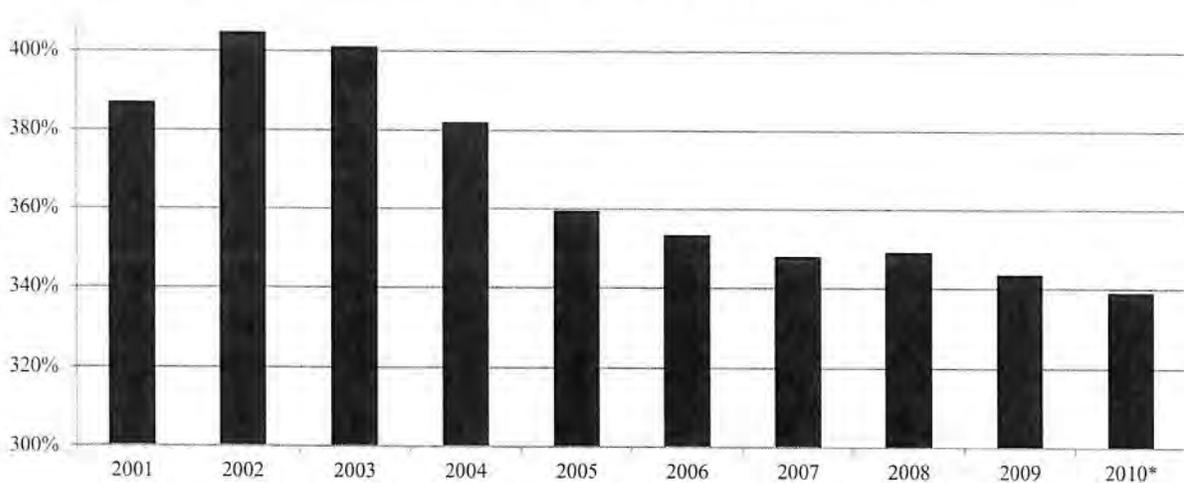
1. The lender and consumer may contract for payments to be made in a single installment or multiple installments of substantially equal amounts due at equal periodic intervals.
2. All applications for payday loans and payday loan agreements shall clearly and conspicuously disclose that under Colorado law, loans may be structured to be repaid in a single installment or multiple installments. If a lender does not offer both installment options, it shall also clearly and conspicuously disclose in its applications and loan agreements the option it provides.”

DDLA lenders are free to choose the repayment terms, and have variously written their loans for monthly payments, semi-monthly payments, or bi-weekly payments. The actual number of installment payments on any particular loan depends on the contractual loan term and the repayment schedule selected by the lender and/or consumer. Some lenders have chosen to write their loans for the range of installment scheduling options (monthly, semi-monthly, or bi-weekly installments) depending upon when and how often the individual consumer receives a paycheck or other income. Other lenders simply write all of the loans they transact for a single repayment schedule option (e.g., all of their loans are written to be repayable in 6 monthly installments).

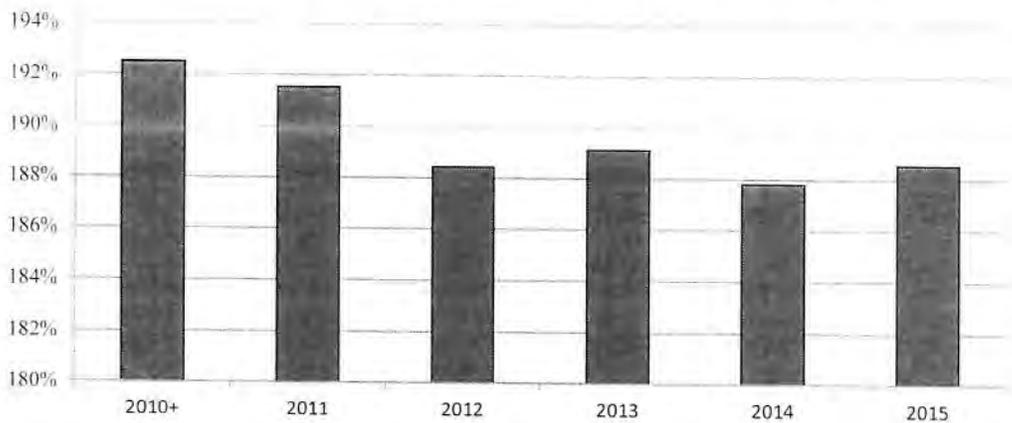
Distribution by Number of Contractual Installment Payments (2015)



In 2010*, the average contracted APR for Colorado DDLA loans was 338.90%.



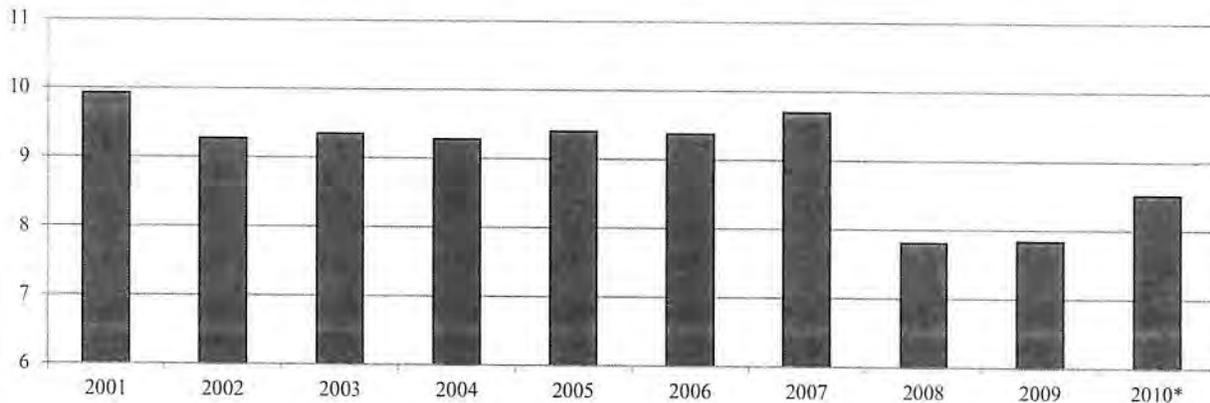
In 2015, the average contracted APR for Colorado DDLA loans was 188.57%.



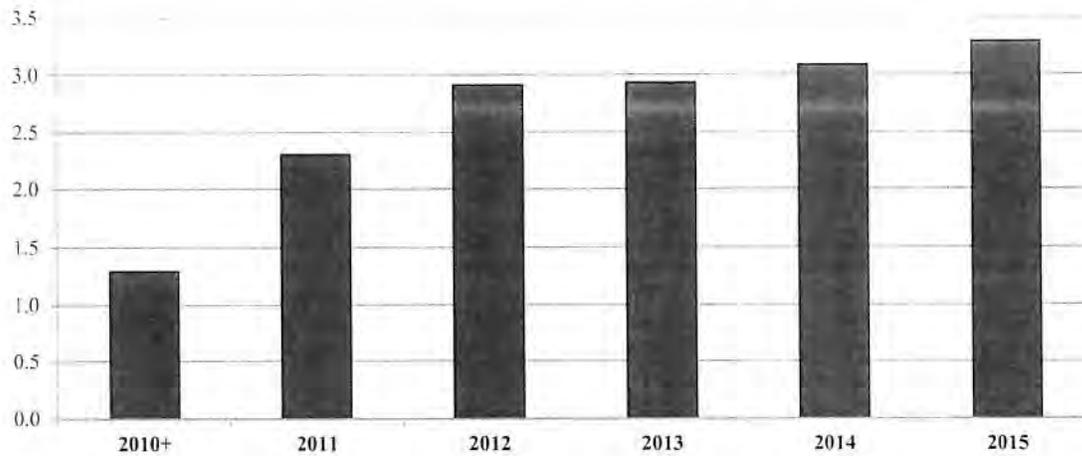
This APR is provided to consumers on their loan documents as prescribed by federal Regulation Z, Truth-In-Lending. The APR is based upon the amount financed, total finance charge, and the repayment terms of each loan; it presupposes repayment of the loan as scheduled according to the repayment terms contracted over the full term.

Just as the finance charge disclosures are *not* necessarily an indicator of the actual earnings on any particular loan, likewise the APR disclosures are *not* necessarily an indicator of a lender's earnings or yields from these loans.

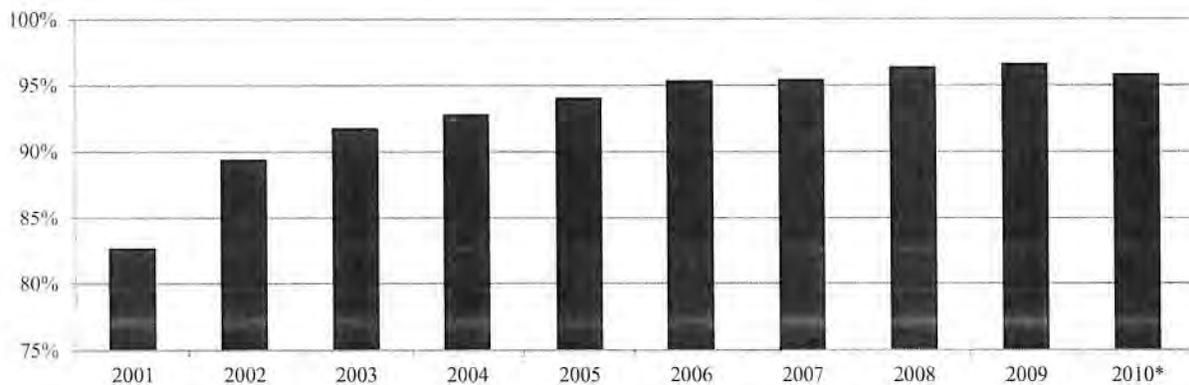
In 2010*, consumers transacted on average 8.53 loans from the same lender during the previous 12 months.



In 2015, consumers transacted, on average, 3.29 loans from the same lender during the previous 12 months.



In 2010*, 95.80% of DDLA loans were contracted at the maximum finance charge permitted.



Since the enactment of HB10-1351, the UCCC no longer has any maximum permitted finance charge for any allowed DDLA loan amount. Because there is no maximum term limitation for these loans, the total dollar amounts of the interest rate and monthly maintenance fee of the total finance charge are dependent on the loan's contractual term as agreed upon by the lender and the consumer.

In 2011, our office began gathering information on the length of time DDLA loans remained open before paying in full. As of December 31, 2015, we had gathered time-until-payout information from 16,062 loans during 537 UCCC lender examinations.

72.28% of all DDLA loans transacted in 2015 were paid in full within the 6 month time period after having been transacted. The average time-until-payout for this group of DDLA loans was 95.49 days.

18.35% of all DDLA loans transacted in 2015 remained open at the 6 month mark after having been transacted.

4.47% of all DDLA loans transacted in 2015 had been charged-off* by the 6 month mark after having been transacted.

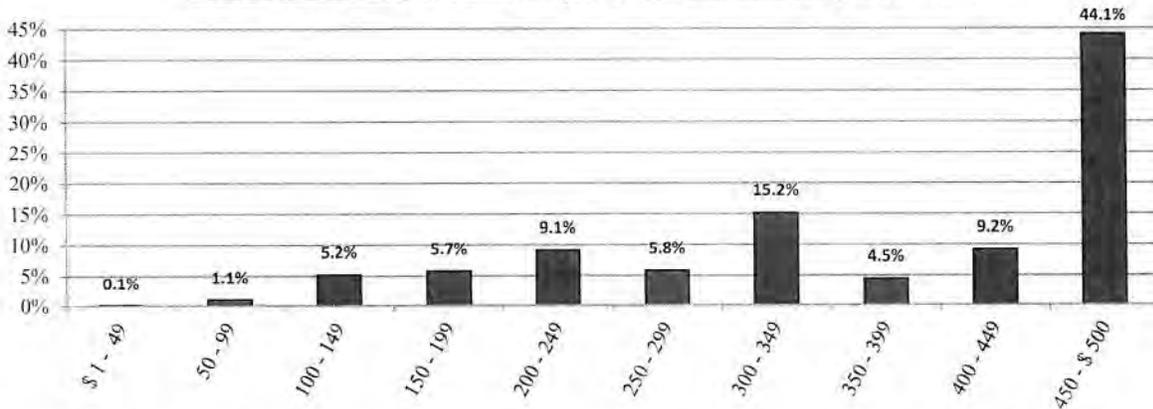
4.90% of all DDLA loans transacted in 2015 remained open, in some state of delinquency* by the 6 month mark after having been transacted.

***NOTE:** The specific charge-off practices, and delinquency policies, of DDLA lenders vary widely from lender to lender and company to company.)

The distribution of loan amounts written is mostly towards the larger dollar-amounts permitted for loans under the DDLA.

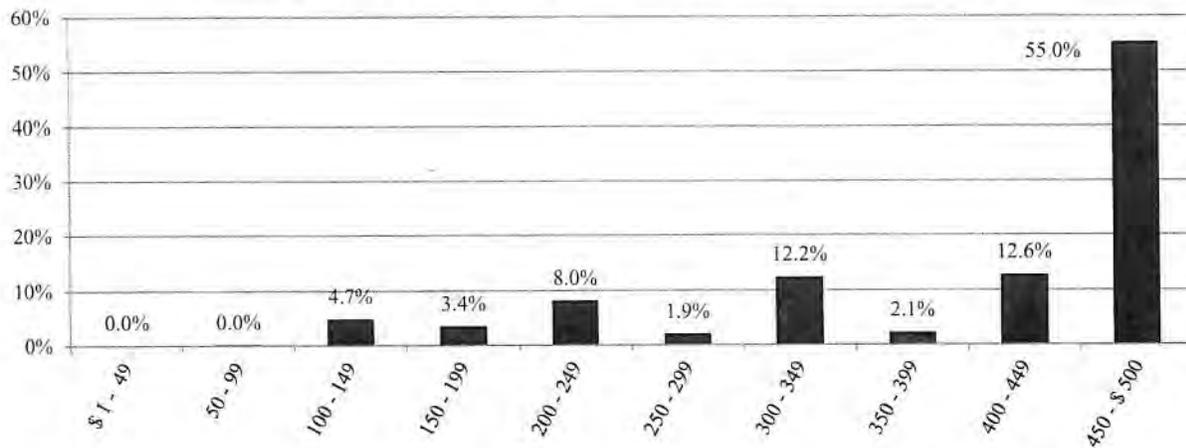
During 2010* loans of \$400 or more accounted for 53.33% of the deferred deposit loans written in Colorado, with the maximum loan amount permitted (of \$500) accounting for 40.45% of those loans written.

DDLA Loans Distribution -by- Loan Amount Ranges (2010*)



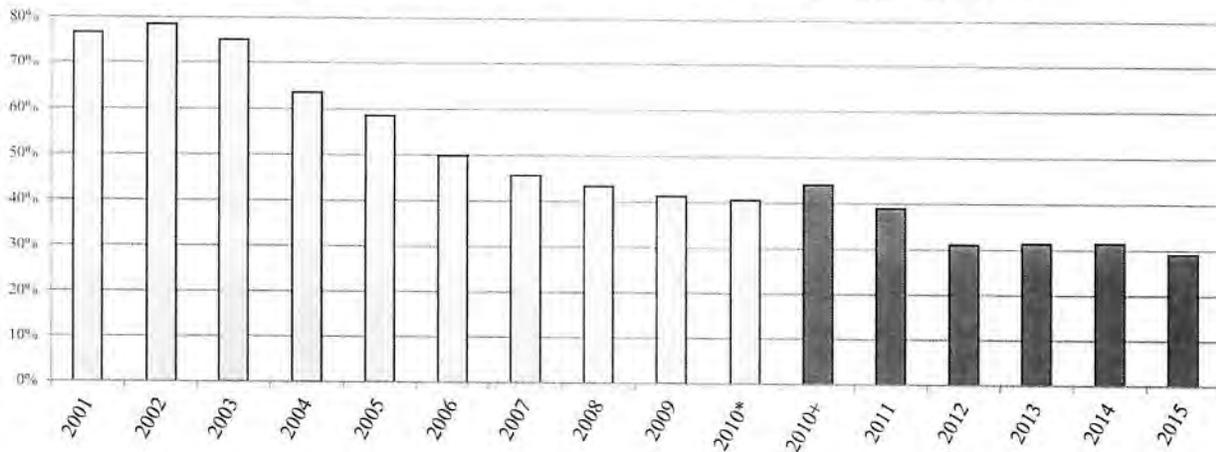
During 2015 loans of \$400 or more accounted for 67.65% of the deferred deposit loans written in Colorado, with the maximum loan amount permitted (of \$500) accounting for 50.97% of those loans written.

DDLA Loans, Distribution -by- Loan Amount Ranges (2015)



Over the entire course of our study period, the smaller loans (i.e., loan amounts of \$300 or less) that were once the predominant loan amounts have steadily diminished in prevalence, and the larger loan amounts (i.e., loan amounts of \$400 or more) have been written with increasing frequency.

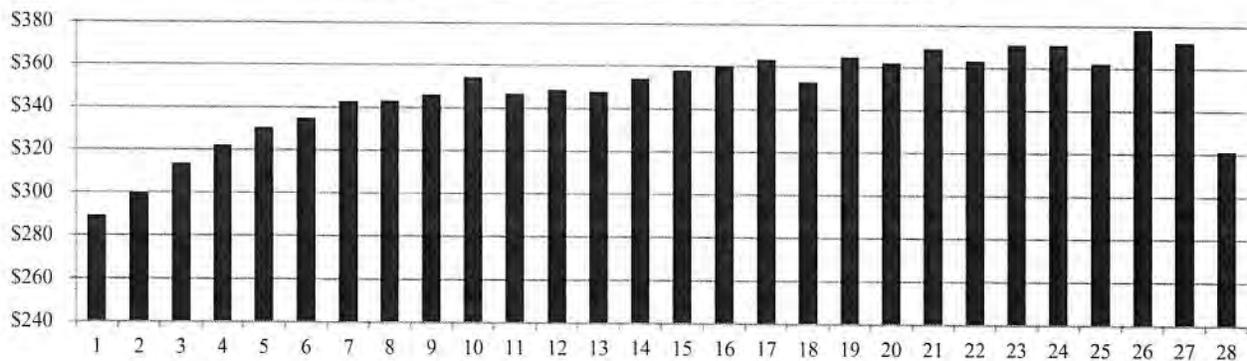
Percentage of all DDLA Loans Written for \$300 or Less -by- Year



IIIa. DDLA Statistical Information -- Loan Frequency

Prior to the enactment of HB10-1351, consumers who borrowed most frequently from any particular payday lender received, on average, larger loans in comparison to those consumers who borrowed less frequently.

Average Amounts Financed -vs.- Consumer Frequency (Number of Loans Transacted) During the Prior 12 Months (7/1/2000 through 08/10/2010)



Consumer Frequency (Number of Loans Transacted) Over the Prior 12 Months -vs.- Loan Amount and Cost (7/1/2000 through 08/10/2010)

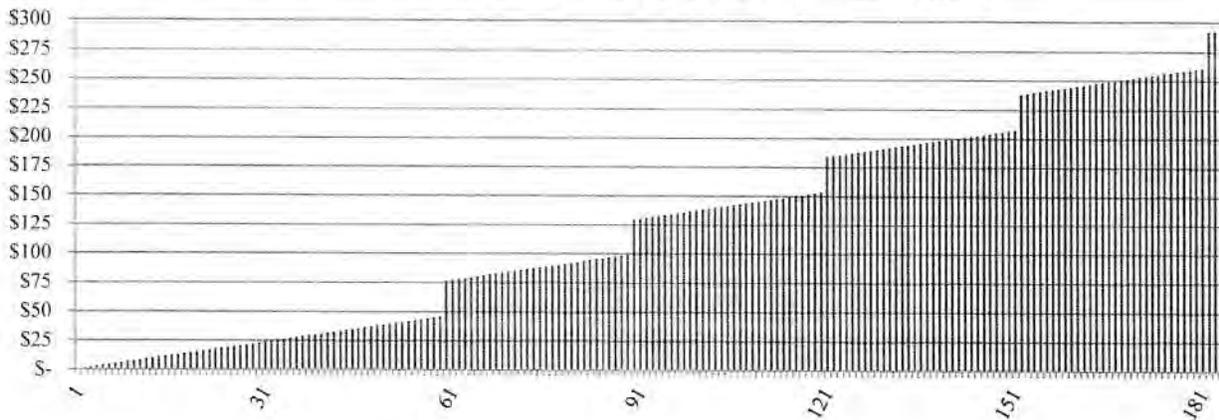
<u># of Loans Prior 12 Months</u>	<u># of All Borrowers</u>	<u>Average Amount Financed (\$)</u>	<u>Average Finance Charge (\$)</u>
1 – 5 Loans	28,804	307.24	53.35
6 – 10 Loans	18,680	343.43	58.18
11 – 25 Loans	13,367	349.59	58.90
16 – 20 Loans	5,987	360.15	59.94
21 – 25 Loans	4,204	367.03	60.81
26+ Loans	1,693	337.97	55.92

Appendix 3 contains some of our information regarding how borrowing frequency and continuous indebtedness impacted consumers transacting DDLA loans prior to HB10-1351.

With the enactment of HB10-1351 and its changed structural provisions, borrowing frequency, continuous indebtedness, and those impacts upon consumers are significantly different.

To illustrate, consider our example \$500 loan, please return to page 13 (and/or see also Appendix 1) for details. This \$500 loan, with a total maximum-permitted finance charge of \$293.21 is contracted to be repaid over a 184-day loan term. The cumulative total finance charge earnings for this loan (provided numerically in table form in Appendix 1) are, in chart form:

Total Cumulative Permitted Finance Charge Earnings (in dollars) by Day
(\$500 Amt. Fin. Loan / \$293.21 Fin. Chg. / 184-day term)



Prior to the enactment of HB10-1351, loan frequency (as measured by the number of loans a consumer transacted over any twelve-month period) correlated directly with, and was roughly indicative of, the amount of money a consumer would pay in combined loan charges over that same period. This loan-frequency/dollar-cost correlation no longer holds for post-HB10-1351 DDLA loans.

To illustrate this point further, consider two hypothetical post-HB10-1351 DDLA loan consumers, *Mr. Smith* and *Ms. Jones*, who remain continuously indebted to a DDLA lender over every day of a one-year period. Both consumers are borrowing \$500, and both consumers are transacting our report's example loan (\$500 Amount Financed, \$293.21 total Finance Charge, 184-day term -- the details for which have been provided on Page 13 and in Appendix 1 of this report) each time they borrow.

Consumer #1: *Mr. Smith* transacts only *two loans* over his one-year period of unbroken continuous indebtedness. He takes out his first loan which he repays according to the loan schedule, making each of the loan's scheduled installment payments on the due date exactly as contracted. 184 days after that first loan was initiated it is completely paid in full, and *Mr. Smith* immediately transacts his second 184-day loan which he also repays entirely according to the loan schedule.

At the end of one year (368 days), *Mr. Smith* would have paid a total of \$586.42 in combined total loan Finance Charges. ($2 \times \$293.21 = \586.42) for his two \$500.00 loans.

Consumer #2: *Ms. Jones* transacts *twelve loans* over her one-year period of unbroken continuous indebtedness. She takes out the first loan which she repays in full at the end of just thirty days. She then transacts her second loan immediately, which she again repays in full at the end of the next thirty days. Her third loan is transacted immediately and again repaid in full in another thirty days . . . and, so on and so forth for a total of twelve consecutive loan transactions each occurring every thirty days for one year. (For simplicity, in these illustrations "one year" can equal two-times-184 days, or it can equal twelve-times-thirty days.)

Each time when *Ms. Jones* repays her loan at the end of thirty days, she pays the DDLA lender \$523.34 -- the \$500 amount financed (or principal) that she borrowed, plus the combined \$23.34 in component finance charges (finance charge and interest rate) that are due at thirty days.

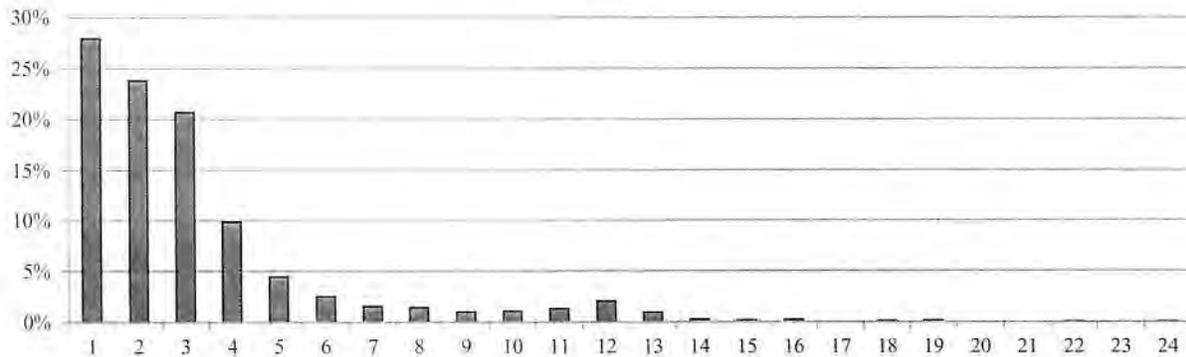
At the end of one year (12×30 days), *Ms. Jones* would have paid a total of \$280.08 in combined finance charges ($12 \times \$23.34 = \280.08), or less than half the amount of *Mr. Smith* for his two loans -- saving by comparison over \$300.00, for her twelve \$500.00 loan transactions.

As shown by these two illustrations, there is no longer a certain measurable direct correlation between borrowing frequency and consumer total borrowing costs. This, we can say:

- In 2015, DDLA loan consumers in our study transacted an average of 3.29 loans over the preceding 12 months.
- 27.94% of the 2015 DDLA loan consumers transacted only 1 loan in the prior 12 months.
- 23.84% of 2015 DDLA loan consumers transacted 2 loans in the prior 12 months.

- 13.17% of 2015 DDLA loan consumers transacted 6 or more loans in the prior 12 months.
- 6.52% of 2015 DDLA loan consumers transacted 10 or more loan in the prior 12 months.

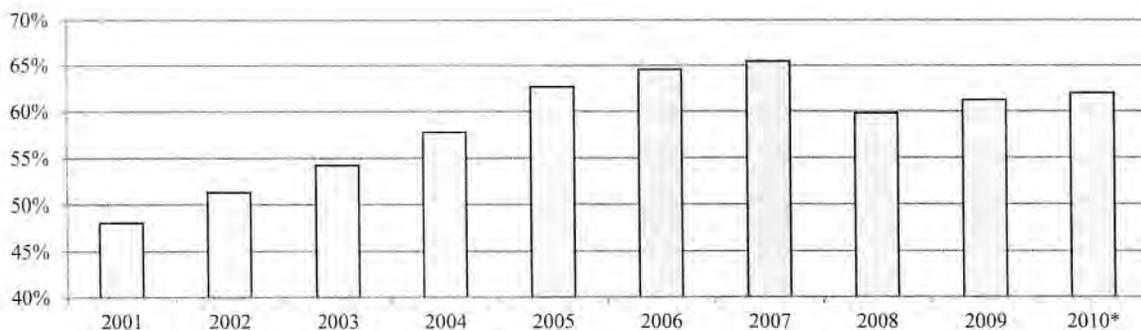
Consumer Borrowing Frequency (Number of loans transacted during the prior twelve months)
(2015)



IIIb. DDLA Statistical Information -- Refinancing

In 2010*, 30.06% of all payday loan transactions were *true* refinances (i.e., loans made to directly refinance and payoff a previous loan), while an additional 31.87% of all payday loan transactions were *same-day-as-payoff* loans (that is, loans made by the very same lender, on the very same day that these same consumers paid a previous loan in full). Same-day-as-payoff loans functionally similar to true refinance transactions in so far as the financial impact to consumers and lenders was concerned. The combination of true refinance loans and same-day-as-payoff loans means that, in 2010*, 61.93% of all payday loans written were refinance-type transactions where the consumers remained indebted to the lender.

Percentage of Pre-HB10-1351 DDLA Loans that were Refinance-Type Transactions



HB10-1351 does permit direct refinancing (one time) of a DDLA loan into another DDLA loan.²¹ C.R.S. § 5-3.1-108(2) limits the Finance Charge on any directly refinanced (renewed)

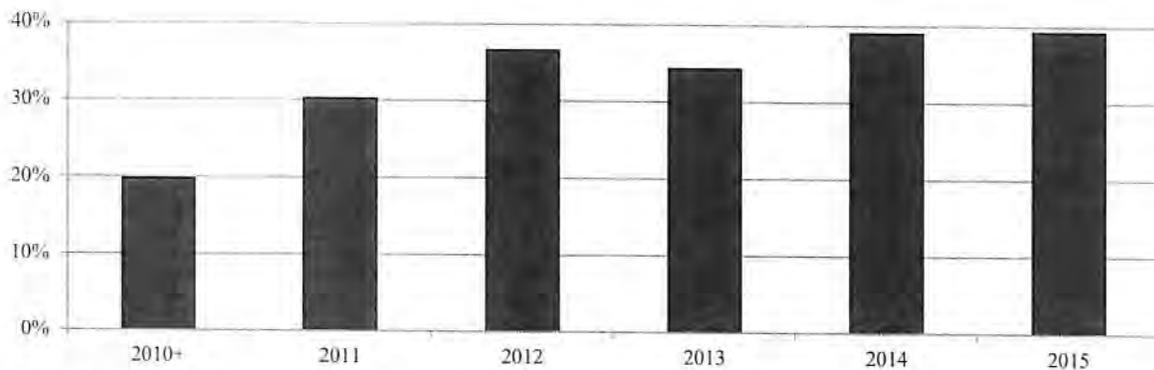
²¹ C.R.S. § 5-3.1-108. Renewal-new loan-consecutive loans-payment plan-definitions. (since HB10-1351)

“(1) A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer’s instrument.

DDLA loan to “an annual percentage of forty-five [percent].” On any refinanced loans the component finance charge and the component monthly maintenance fees that were permitted on the original loan are not permitted again on the renewal loans. As a result, there are virtually no post-HB10-1351 lenders that directly refinance (renew) any DDLA loan into another refinanced DDLA loan.

The practice of same-day-as-payoff loans has continued since the enactment of HB10-1351. Consumers still payoff loans and reborrow funds on the very same day, although the financial impact of paying off early and reborrowing on the very same day is cheaper than before. In 2015, 39.27% of all DDLA were same-day-as-payoff loans (made by the very same lender, on the very same day that these same consumers paid a previous loan in full).

Percentage of Post-HB10-1351 DDLA Loans that were Same-Day-As-Payoff Transactions



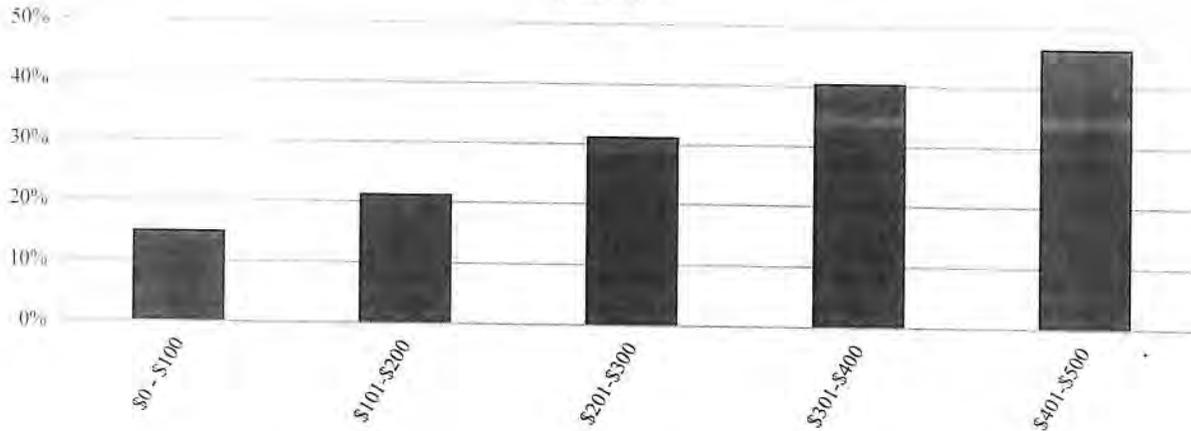
Prior to the enactment of HB10-1351 there was a direct correlation between the amount borrowed and the chances that a loan would be refinanced. Larger DDLA loans were much more likely to be refinanced than smaller loans.

Percentage of DDLA Loans that were Refinance-Type Transactions, by Amount Financed (1/1/2001 – 08/10/2010)



Since the enactment of HB10-1351, a similar correlation continues to exist between the amount borrowed and the chances that a loan will be a same-day-as-payoff transaction. Post HB10-1351, larger loans are still more likely to be re-transacted again immediately than smaller loans.

Percentage of DDLA Loans that were Same-Day-As-Payoff Transactions, by Amount Financed (2015)

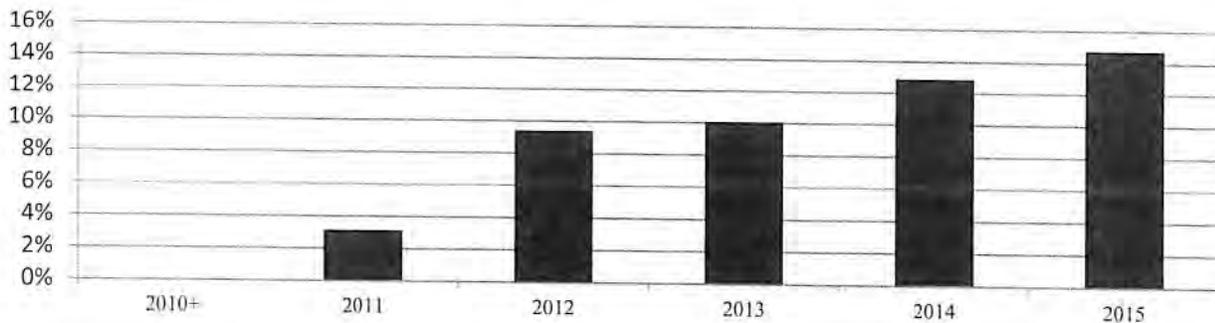


IIIc. DDLA Statistical Information -- Long-term Continuous Indebtedness

Appendix 3 of this report contains findings and data from our study pre-HB10-1351 and those loans and the frequency with which consumers were continually indebted (to the same lender) every day over a period of at least six months.

We have looked at consumers post-HB10-1351 who have remained indebted to the same lender for every day for one year or more. These would in nearly all circumstances be consumers who have transacted multiple loans (at least two, and usually more) in unbroken succession, and who owed the same lender for every day of at least one year or more.

Percentage of Post-HB 10-1351 Loans Written to Consumers Indebted (to the Lender Being Examined) Every Day for the Prior 12 Months or More



In 2015, 14.69% of DDLA loans were written to consumers who had been indebted to the same lender for every day for at least the previous 12 months (1 year) unbroken. This group of consumers transacted on average 6.54 loans in that 12 month period, and in doing so are also borrowing in such a way that this extended indebtedness is less expensive (i.e., 6 loans per year) than if it occurred over fewer consecutive loans paid over the period contracted (i.e., 2 loans per year). Please see cost comparison on page 22.

Appendix 1.

Example Loan Information and Earnings Schedule
(post-HB10-1351)

Pages 27 – 29 provide a chart listing the maximum (cumulative) total permitted earnings, by day, for each day of the 184-day loan term for the following (\$500.00 Amount Financed) example loan:

Loan Date: May 1, 2015
Maturity (Final Payment) Date: November 1, 2015

Federal regulation Z, Truth-In-Lending Disclosure Information

- Annual Percentage Rate (APR): 180.28 %
- Finance Charge: \$ 293.21

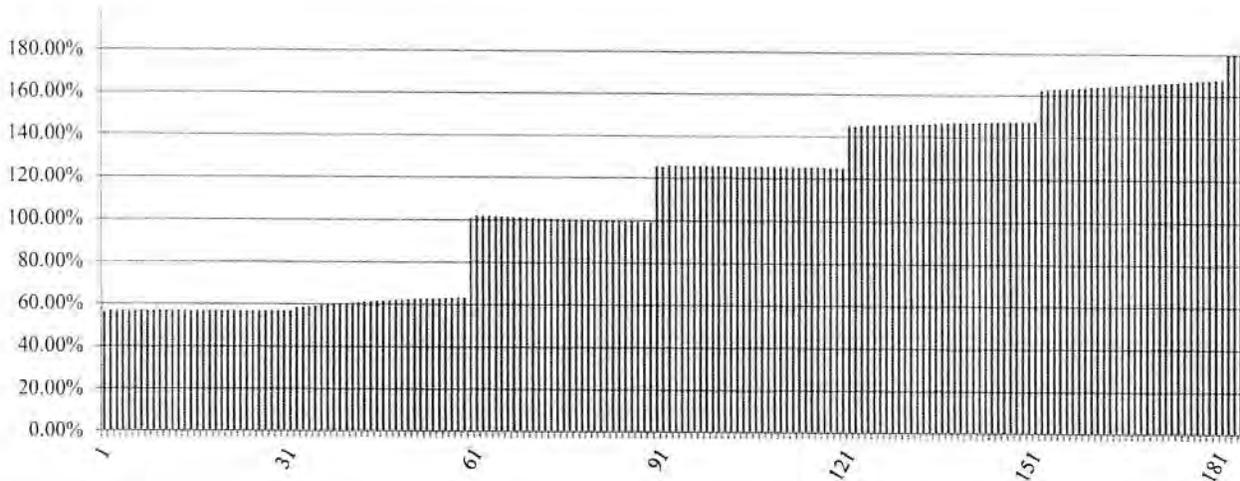
(HB10-1351 Component Charges of the total Finance Charge)

“finance charge”	75.00
“interest rate”	68.21
“monthly maintenance fees”	150.00

- Amount Financed: \$ 500.00
- Total of Payments: \$ 793.21

- Payment Schedule: 5 monthly payments of \$132.20 beginning on June 1, 2015, and 1 monthly payment of \$132.21 due on November 1, 2015.

Annualized Earnings Percent (“Yields”) for Appendix 1 Example Loan (by Each Day of the Loan Term)



Date	Day	"finance charge"	"interest rate"	"Monthly Maintenance"	Total to date	Annualized Yield
2-May	1	\$ 0.40	\$ 0.37	\$ -	\$ 0.77	56.21%
3-May	2	0.81	0.74	0.00	1.55	56.58%
4-May	3	1.22	1.11	0.00	2.33	56.70%
5-May	4	1.63	1.48	0.00	3.11	56.76%
6-May	5	2.03	1.85	0.00	3.88	56.65%
7-May	6	2.44	2.22	0.00	4.66	56.70%
8-May	7	2.85	2.59	0.00	5.44	56.73%
9-May	8	3.26	2.96	0.00	6.22	56.76%
10-May	9	3.66	3.33	0.00	6.99	56.70%
11-May	10	4.07	3.70	0.00	7.77	56.72%
12-May	11	4.48	4.07	0.00	8.55	56.74%
13-May	12	4.89	4.44	0.00	9.33	56.76%
14-May	13	5.29	4.81	0.00	10.10	56.72%
15-May	14	5.70	5.18	0.00	10.88	56.73%
16-May	15	6.11	5.56	0.00	11.67	56.79%
17-May	16	6.52	5.93	0.00	12.45	56.80%
18-May	17	6.92	6.30	0.00	13.22	56.77%
19-May	18	7.33	6.67	0.00	14.00	56.78%
20-May	19	7.74	7.04	0.00	14.78	56.79%
21-May	20	8.15	7.41	0.00	15.56	56.79%
22-May	21	8.55	7.78	0.00	16.33	56.77%
23-May	22	8.96	8.15	0.00	17.11	56.77%
24-May	23	9.37	8.52	0.00	17.89	56.78%
25-May	24	9.78	8.89	0.00	18.67	56.79%
26-May	25	10.19	9.26	0.00	19.45	56.79%
27-May	26	10.59	9.63	0.00	20.22	56.77%
28-May	27	11.00	10.00	0.00	21.00	56.78%
29-May	28	11.41	10.37	0.00	21.78	56.78%
30-May	29	11.82	10.75	0.00	22.57	56.81%
31-May	30	12.22	11.12	0.00	23.34	56.79%
1-Jun	31	12.63	11.49	0.00	24.12	56.80%
2-Jun	32	13.04	11.86	0.00	24.90	58.24%
3-Jun	33	13.45	12.23	0.00	25.68	58.57%
4-Jun	34	13.85	12.60	0.00	26.45	58.86%
5-Jun	35	14.26	12.97	0.00	27.23	59.16%
6-Jun	36	14.67	13.34	0.00	28.01	59.45%
7-Jun	37	15.08	13.71	0.00	28.79	59.72%
8-Jun	38	15.48	14.08	0.00	29.56	59.95%
9-Jun	39	15.89	14.45	0.00	30.34	60.20%
10-Jun	40	16.30	14.82	0.00	31.12	60.44%
11-Jun	41	16.71	15.19	0.00	31.90	60.66%
12-Jun	42	17.11	15.56	0.00	32.67	60.86%
13-Jun	43	17.52	15.94	0.00	33.46	61.09%
14-Jun	44	17.93	16.31	0.00	34.24	61.28%
15-Jun	45	18.34	16.68	0.00	35.02	61.48%
16-Jun	46	18.75	17.05	0.00	35.80	61.66%
17-Jun	47	19.15	17.42	0.00	36.57	61.82%
18-Jun	48	19.56	17.79	0.00	37.35	61.99%
19-Jun	49	19.97	18.16	0.00	38.13	62.15%
20-Jun	50	20.38	18.53	0.00	38.91	62.31%
21-Jun	51	20.78	18.90	0.00	39.68	62.44%
22-Jun	52	21.19	19.27	0.00	40.46	62.59%
23-Jun	53	21.60	19.64	0.00	41.24	62.73%
24-Jun	54	22.01	20.01	0.00	42.02	62.87%
25-Jun	55	22.41	20.38	0.00	42.79	62.99%
26-Jun	56	22.82	20.75	0.00	43.57	63.11%
27-Jun	57	23.23	21.13	0.00	44.36	63.25%
28-Jun	58	23.64	21.50	0.00	45.14	63.37%
29-Jun	59	24.04	21.87	0.00	45.91	63.47%

Date	Day	"finance charge"	"interest rate"	"Monthly Maintenance"	Total to date	Annualized Yield
30-Jun	60	\$ 24.45	\$ 22.24	\$ 30.00	\$ 76.69	101.14%
1-Jul	61	24.86	22.61	30.00	77.47	102.12%
2-Jul	62	25.27	22.98	30.00	78.25	101.98%
3-Jul	63	25.67	23.35	30.00	79.02	101.84%
4-Jul	64	26.08	23.72	30.00	79.80	101.71%
5-Jul	65	26.49	24.09	30.00	80.58	101.59%
6-Jul	66	26.90	24.46	30.00	81.36	101.47%
7-Jul	67	27.30	24.83	30.00	82.13	101.34%
8-Jul	68	27.71	25.20	30.00	82.91	101.23%
9-Jul	69	28.12	25.57	30.00	83.69	101.12%
10-Jul	70	28.53	25.94	30.00	84.47	101.01%
11-Jul	71	28.94	26.32	30.00	85.26	100.91%
12-Jul	72	29.34	26.69	30.00	86.03	100.80%
13-Jul	73	29.75	27.06	30.00	86.81	100.69%
14-Jul	74	30.16	27.43	30.00	87.59	100.60%
15-Jul	75	30.57	27.80	30.00	88.37	100.50%
16-Jul	76	30.97	28.17	30.00	89.14	100.39%
17-Jul	77	31.38	28.54	30.00	89.92	100.30%
18-Jul	78	31.79	28.91	30.00	90.70	100.21%
19-Jul	79	32.20	29.28	30.00	91.48	100.12%
20-Jul	80	32.60	29.65	30.00	92.25	100.03%
21-Jul	81	33.01	30.02	30.00	93.03	99.94%
22-Jul	82	33.42	30.39	30.00	93.81	99.86%
23-Jul	83	33.83	30.76	30.00	94.59	99.78%
24-Jul	84	34.23	31.13	30.00	95.36	99.69%
25-Jul	85	34.64	31.51	30.00	96.15	99.62%
26-Jul	86	35.05	31.88	30.00	96.93	99.55%
27-Jul	87	35.46	32.25	30.00	97.71	99.47%
28-Jul	88	35.86	32.62	30.00	98.48	99.40%
29-Jul	89	36.27	32.99	30.00	99.26	99.32%
30-Jul	90	36.68	33.36	60.00	130.04	125.73%
31-Jul	91	37.09	33.73	60.00	130.82	125.41%
1-Aug	92	37.50	34.10	60.00	131.60	126.07%
2-Aug	93	37.90	34.47	60.00	132.37	126.03%
3-Aug	94	38.31	34.84	60.00	133.15	125.99%
4-Aug	95	38.72	35.21	60.00	133.93	125.96%
5-Aug	96	39.13	35.58	60.00	134.71	125.92%
6-Aug	97	39.53	35.95	60.00	135.48	125.88%
7-Aug	98	39.94	36.32	60.00	136.26	125.85%
8-Aug	99	40.35	36.69	60.00	137.04	125.81%
9-Aug	100	40.76	37.07	60.00	137.83	125.79%
10-Aug	101	41.16	37.44	60.00	138.60	125.75%
11-Aug	102	41.57	37.81	60.00	139.38	125.72%
12-Aug	103	41.98	38.18	60.00	140.16	125.69%
13-Aug	104	42.39	38.55	60.00	140.94	125.66%
14-Aug	105	42.79	38.92	60.00	141.71	125.62%
15-Aug	106	43.20	39.29	60.00	142.49	125.59%
16-Aug	107	43.61	39.66	60.00	143.27	125.57%
17-Aug	108	44.02	40.03	60.00	144.05	125.54%
18-Aug	109	44.42	40.40	60.00	144.82	125.50%
19-Aug	110	44.83	40.77	60.00	145.60	125.48%
20-Aug	111	45.24	41.14	60.00	146.38	125.45%
21-Aug	112	45.65	41.51	60.00	147.16	125.42%
22-Aug	113	46.05	41.88	60.00	147.93	125.39%
23-Aug	114	46.46	42.26	60.00	148.72	125.37%
24-Aug	115	46.87	42.63	60.00	149.50	125.35%
25-Aug	116	47.28	43.00	60.00	150.28	125.32%
26-Aug	117	47.69	43.37	60.00	151.06	125.30%
27-Aug	118	48.09	43.74	60.00	151.83	125.27%
28-Aug	119	48.50	44.11	60.00	152.61	125.24%
29-Aug	120	48.91	44.48	60.00	153.39	125.22%

Date	Day	"finance charge"	"interest rate"	"Monthly Maintenance"	Total to date	Annualized Yield
30-Aug	121	\$ 49.32	\$ 44.85	\$ 90.00	\$ 184.17	144.94%
31-Aug	122	49.72	45.22	90.00	184.94	144.77%
1-Sep	123	50.13	45.59	90.00	185.72	145.26%
2-Sep	124	50.54	45.96	90.00	186.50	145.34%
3-Sep	125	50.95	46.33	90.00	187.28	145.45%
4-Sep	126	51.35	46.70	90.00	188.05	145.53%
5-Sep	127	51.76	47.07	90.00	188.83	145.62%
6-Sep	128	52.17	47.45	90.00	189.62	145.71%
7-Sep	129	52.58	47.82	90.00	190.40	145.80%
8-Sep	130	52.98	48.19	90.00	191.17	145.88%
9-Sep	131	53.39	48.56	90.00	191.95	145.96%
10-Sep	132	53.80	48.93	90.00	192.73	146.05%
11-Sep	133	54.21	49.30	90.00	193.51	146.13%
12-Sep	134	54.61	49.67	90.00	194.28	146.20%
13-Sep	135	55.02	50.04	90.00	195.06	146.28%
14-Sep	136	55.43	50.41	90.00	195.84	146.36%
15-Sep	137	55.84	50.78	90.00	196.62	146.44%
16-Sep	138	56.25	51.15	90.00	197.40	146.52%
17-Sep	139	56.65	51.52	90.00	198.17	146.59%
18-Sep	140	57.06	51.89	90.00	198.95	146.66%
19-Sep	141	57.47	52.26	90.00	199.73	146.74%
20-Sep	142	57.88	52.64	90.00	200.52	146.82%
21-Sep	143	58.28	53.01	90.00	201.29	146.88%
22-Sep	144	58.69	53.38	90.00	202.07	146.95%
23-Sep	145	59.10	53.75	90.00	202.85	147.02%
24-Sep	146	59.51	54.12	90.00	203.63	147.09%
25-Sep	147	59.91	54.49	90.00	204.40	147.12%
26-Sep	148	60.32	54.86	90.00	205.18	147.23%
27-Sep	149	60.73	55.23	90.00	205.96	147.29%
28-Sep	150	61.14	55.60	90.00	206.74	147.36%
29-Sep	151	61.54	55.97	90.00	207.51	147.42%
30-Sep	152	61.95	56.34	120.00	238.29	162.37%
1-Oct	153	62.36	56.71	120.00	239.07	162.75%
2-Oct	154	62.77	57.08	120.00	239.85	162.96%
3-Oct	155	63.17	57.45	120.00	240.62	163.16%
4-Oct	156	63.58	57.83	120.00	241.41	163.37%
5-Oct	157	63.99	58.20	120.00	242.19	163.57%
6-Oct	158	64.40	58.57	120.00	242.97	163.77%
7-Oct	159	64.80	58.94	120.00	243.74	163.96%
8-Oct	160	65.21	59.31	120.00	244.52	164.16%
9-Oct	161	65.62	59.68	120.00	245.30	164.35%
10-Oct	162	66.03	60.05	120.00	246.08	164.54%
11-Oct	163	66.44	60.42	120.00	246.86	164.73%
12-Oct	164	66.84	60.79	120.00	247.63	164.91%
13-Oct	165	67.25	61.16	120.00	248.41	165.09%
14-Oct	166	67.66	61.53	120.00	249.19	165.27%
15-Oct	167	68.07	61.90	120.00	249.97	165.45%
16-Oct	168	68.47	62.27	120.00	250.74	165.63%
17-Oct	169	68.88	62.64	120.00	251.52	165.80%
18-Oct	170	69.29	63.02	120.00	252.31	165.98%
19-Oct	171	69.70	63.39	120.00	253.09	166.15%
20-Oct	172	70.10	63.76	120.00	253.86	166.32%
21-Oct	173	70.51	64.13	120.00	254.64	166.48%
22-Oct	174	70.92	64.50	120.00	255.42	166.65%
23-Oct	175	71.33	64.87	120.00	256.20	166.81%
24-Oct	176	71.73	65.24	120.00	256.97	166.97%
25-Oct	177	72.14	65.61	120.00	257.75	167.13%
26-Oct	178	72.55	65.98	120.00	258.53	167.29%
27-Oct	179	72.96	66.35	120.00	259.31	167.45%
28-Oct	180	73.36	66.72	120.00	260.08	167.60%
29-Oct	181	73.77	67.09	120.00	260.86	167.75%
30-Oct	182	74.18	67.46	150.00	291.64	179.89%
31-Oct	183	74.59	67.83	150.00	292.42	179.97%
1-Nov	184	75.00	68.21	150.00	293.21	180.28%

Appendix 2.

DDLA Statistical Information – Payment Plans (July 2007 – August 10, 2010)

NOTE: The 2010 legislation, HB10-1351, removed the requirements for payment plans from the UCCC. (Since the enactment of HB10-1351 consumers must be allowed to repay their deferred deposit loans over a minimum term of “six months.”)

Beginning in 2007, Colorado payday lenders were required to offer consumers extended repayment plans on certain payday loans. That new law, section 5-3.1-108(5), C.R.S., contained in HB07-1261, took effect July 1, 2007. It required payday lenders to provide consumers with a written offer to repay their single installment payday loan in multiple installments. The written offer was required at the time of a fourth, or subsequent, consecutive payday loan. If the consumer elected a payment plan, the loan balance was repaid in at least six equal installments that coincided with the consumer’s periodic pay dates. No additional fees were permitted to be charged for a payment plan.

Lenders were prohibited from engaging in collection activities while consumers made payments in accordance with a payment plan. Lenders, and their affiliates, were also prohibited from making any additional deferred deposit loans to consumers prior to completion of the payment plan.

Due to the payment plan legislation’s effective date and the four-consecutive-loan trigger, payment plan offers were generally required no earlier than September 1, 2007. Calendar year 2008 was, therefore, the first year in which the impact of HB07-1261 could be measured.

The payment plan law resulted in significant changes to the policies and procedures of most payday lenders in Colorado. Many payday lenders implemented new operating policies including “cooling-off” or “waiting” periods after a third consecutive payday loan or after every payday loan. Those policies restricted consumers from reaching the required four-consecutive-loans trigger before a payment plan was required to be offered. Other lenders required a cooling-off period upon completion of a payment plan, or limited or prohibited entirely new loans after a consumer chose a payment plan.

Because of the changes in the law and lender’s operating policies, the statistics beginning with 2008 were markedly different than those from previous years. (See also Appendix 3, pages 32 – 35.)

For example, the percentage of consumers indebted to the lender being examined every day of the prior 6 months, which had been increasing every year over the study, dropped substantially in 2008, and fell a bit more in 2009 before rising in 2010*. Other measures of long-term indebtedness were also been similarly impacted (e.g., “refinance type” transactions, percentage of consumers transacting more than 12 or 16 loans during the calendar year, average number of loans transacted, etc., etc.).

Payment plan data from compliance examinations in 2010* shows:²²

- 38.69% of all payday loans written by Colorado payday lenders were eligible for a payment plan (i.e. were a fourth or greater consecutive loan)
- 11.63% of those eligible loans were converted into payment plans
- 4.50% of all payday loans made by Colorado payday lenders were converted into payment plans
- 24.84% of all payday loan consumers elected to convert one or more payday loans into payment plans
- 9.04% of all payday loan consumers elected to convert two or more payday loans into payment plans

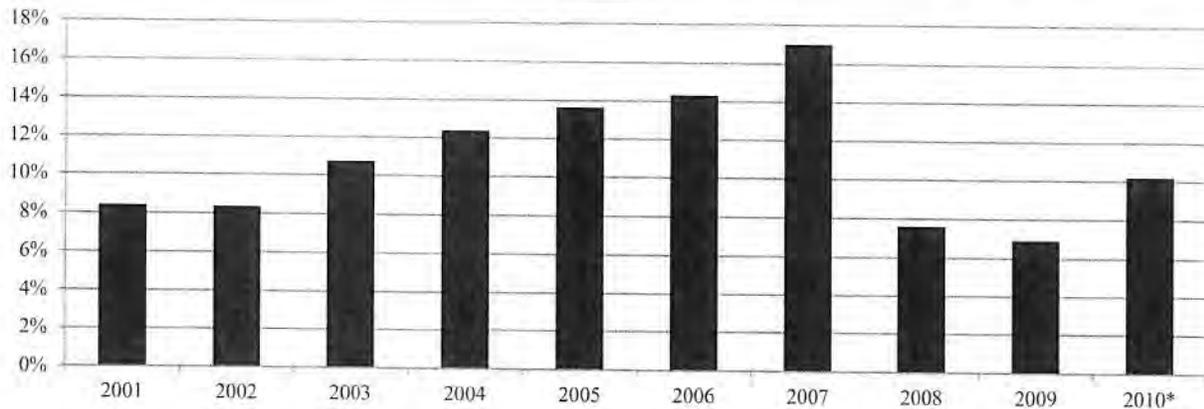
²² Data gathered from compliance examinations is similar to the annual report data. Examination data include only payment plans required by section 5-3.1-108, C.R.S. Payment plans offered when not required by then state law, such as those offered in compliance with best practices of industry trade associations, are not included.

Appendix 3.

DDLA Statistical Information – Loan Frequency and Continuous Indebtedness
Pre-HB10-1351 (2001 – August 10, 2010)

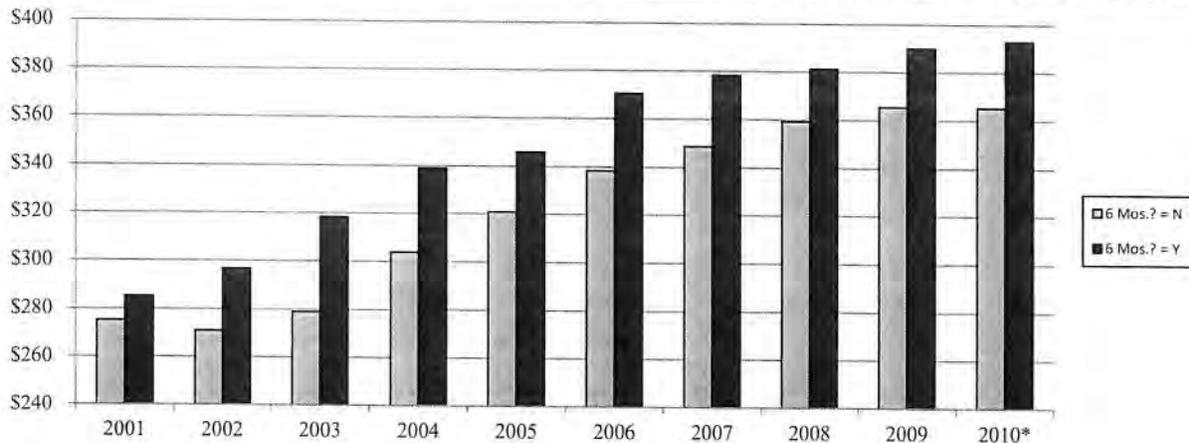
In 2010*, 10.15% of all payday lending consumers were in debt to the same lender every day of the preceding six months. These consumers accounted for 18.18% of the total payday loan unit volume (written during the prior twelve months).

Percentage of Consumers Indebted (to the lender being examined) Every Day of the Prior 6 Months

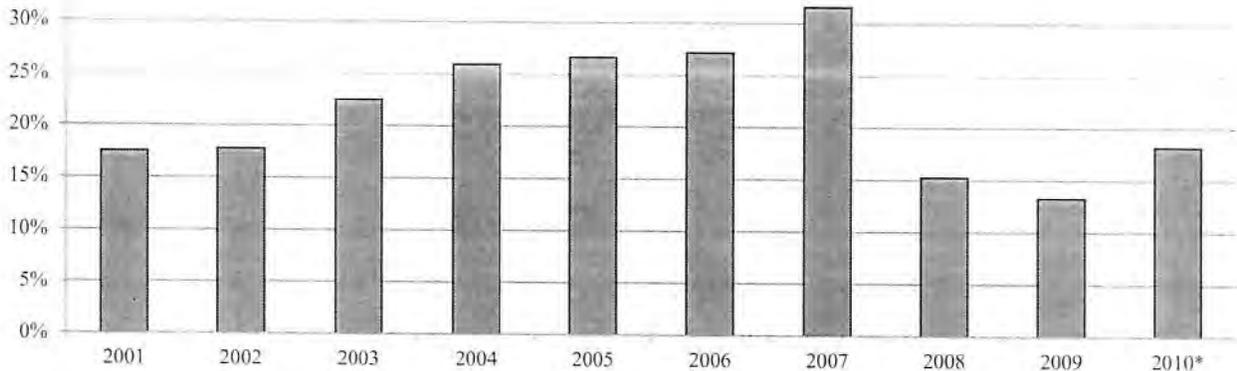


In 2010*, consumers who were indebted every day of the prior six months transacted, on average, 15.27 separate loans during the previous twelve months with that same payday lender. Those consumers also transacted, on average, significantly larger loans (\$392.77 average Amount Financed -versus- \$365.18 average amount financed) than those consumers who had not been indebted every day of the prior six months.

Average Amount Financed of Consumers Indebted Every Day of the Prior 6 Months
versus Average Amount Financed of Consumers Not Indebted Every Day of the Prior 6 Months

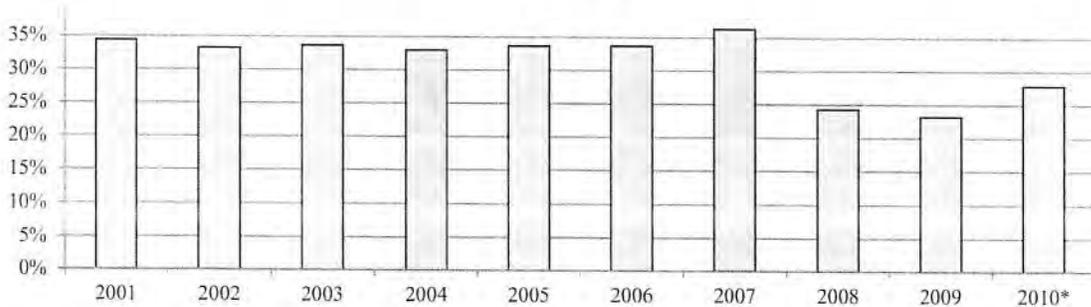


Percentage of Total DDLA Loan Volume Attributable to Consumers Indebted Every Day of the Prior 6 Months

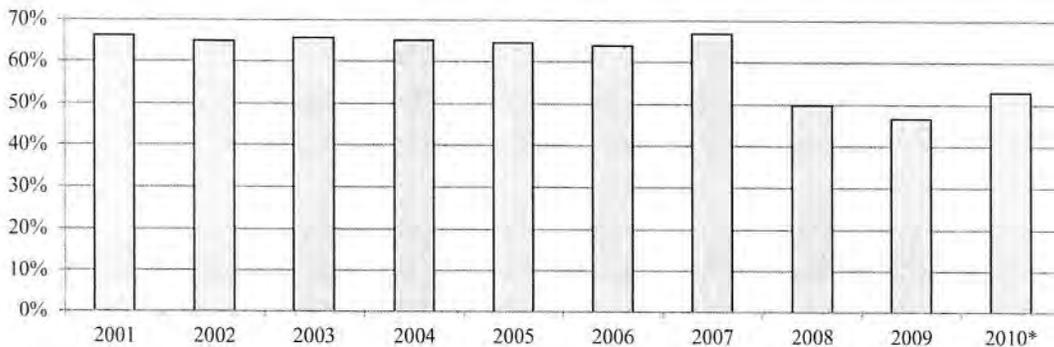


In 2010*, consumers with 12 or more loans in the preceding twelve months accounted for 53.01% of the total payday loan (unit) volume; consumers with 16 or more loans accounted for 29.66% of the total payday loan volume.

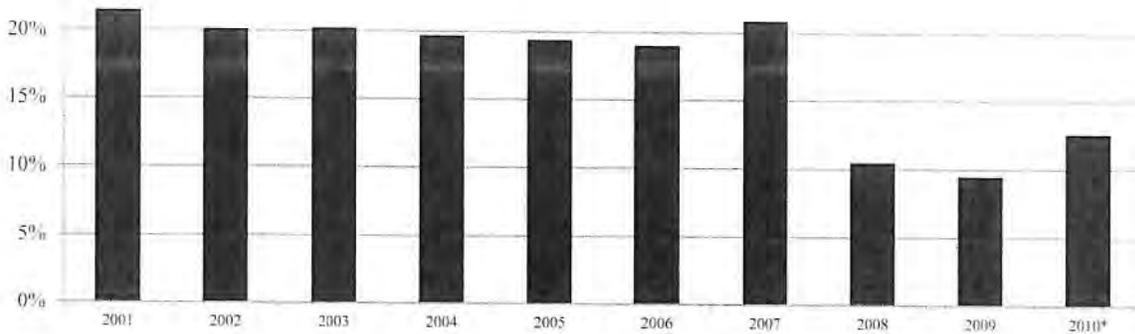
Percentage of Payday Loan Consumers Transacting 12 or More Loans During the Prior 12 Months



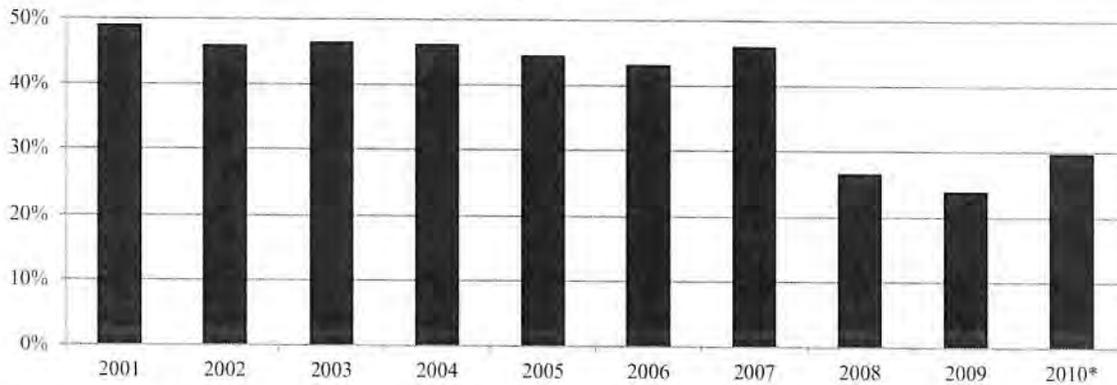
DDLA Loan Volume Attributable to Consumers Transacting 12 or More Loans During the Prior 12 Months



Percentage of Payday Loan Consumers Transacting 16 or More Loans During the Prior 12 Months

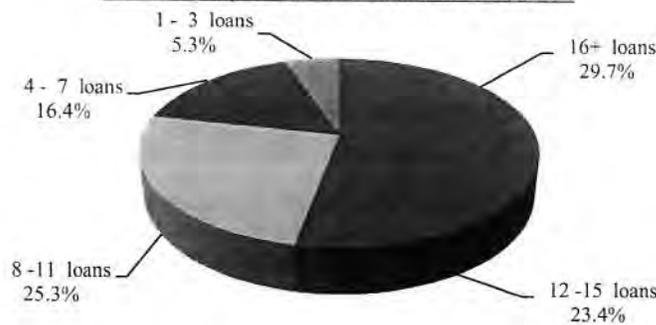


DDLA Loan Volume Attributable to Consumers Transacting 16 or More Loans During the Prior 12 Months



Prior to 2008 nearly half of the total annual payday loan volume was attributable to consumers who transacted sixteen or more loans with the same lender during the previous twelve months. Consumers who borrowed twelve or more times a year accounted for nearly two-thirds of the typical payday lender’s unit volume. Beginning in 2008 and continuing in 2009 and 2010* these proportions were significantly smaller, primarily due to the impact of “payment plans” (discussed in Appendix 2, pages 30 – 31, of this report).

(2010*) Percentage of Total DDLA Loan Unit Volume by Consumer Frequency (# of loans transacted) Over the Prior 12 Months



DDLA Loan Unit Volume by Consumer Frequency (# of loans transacted) Over the Prior 12 Months (study-to-date: 2001 – 08/10/2010)

<u># of Loans, Prior 12 Months</u>	<u># of All Borrowers</u>	<u>Total # of all Loans Transacted During Prior 12 months</u>
1 – 5 Loans	28,804	77,493
6 – 10 Loans	18,680	147,350
11 – 25 Loans	13,367	169,199
16 – 20 Loans	5,987	106,881
21 – 25 Loans	4,204	96,305
26+ Loans	1,693	48,902

Note: The data contained in this Appendix 3 comes from consumer records at the lender location being examined. Neither the UCCC nor the DDLA prohibits or limits loans to the same consumer from different lenders. The data regarding consumer frequency does not capture information pertaining to consumers who may frequent more than one lender.



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Administrator's Interpretations and Opinion Letters

Please note: Interpretations and Opinions may not be applicable due to changes in the law or renumbering of statutes.

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