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September 16, 2022

To: Rohit Chopra, Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

David Uejo, Associate Director  
Supervision, Enforcement & Fair Lending  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Cc: Eric Halperin, Sr. Advisor and Assistant  
Director, Enforcement  
Consumer Financial Protection Bureau

Dear Director Chopra and Mr. Uejo:

In May, the Center for Economic Integrity (CEI) shared our latest report on the title loan industry in Arizona.<sup>1</sup> We applaud the recent CFPB enforcement action against ACE Cash Express, the third largest title lender in Arizona, for payment violations and failure to honor its promise of free repayment plans. *We hope that the action results in compliance by all title lenders operating in Arizona with both federal electronic payment requirements and applicable industry free payment plan promises to consumers.*

**We write to urge the Consumer Financial Protection Bureau to investigate Arizona licensed Sales Finance companies that are making payday loan lookalike “registration” loans under the title loan law instead of as Consumer Lenders under Arizona’s usury law to determine compliance with the Consumer Financial Protection Act.**

Arizona Payday Lenders became Title Lenders to Evade the Consumer Lender Law Usury Cap

Following expiration of the payday loan law in mid-2010, the only remaining carve-out from Arizona’s 36% Consumer Lender usury law permits title lenders to charge up to 204% annual rates for “Secondary Motor Vehicle Finance Transaction” (SMVFT) loans “secured” by the borrower’s vehicle. In addition to making traditional title-secured loans, Arizona Sales Finance lenders make “registration” loans to consumers **who do not own their vehicles** free and clear under terms of Arizona’s title loan law (A.R.S. Title 44, Chap. 2.1) instead of as licensed Consumer Lenders in compliance with Arizona’s usury law (A.R.S. Title 6, Chap. 5). We view this as a blatant attempt to nullify the outcome of the

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<sup>1</sup> CEI, “2022 Update to: *Still Wrong: Wrecked by Debt / Title Lending in Arizona 2019*,” March 2022 at <https://nomoreloansharksaz.org/gallery/2022-03-22%20CEI%20CTL%20Update%20Brief%202022.pdf>  
Cited as “CEI 2022 Brief”.

NO vote on Prop 200 in 2008 that ended payday lending in 2010 and to evade Arizona’s 36% Consumer Lender usury cap.<sup>2</sup>

The Arizona Department of Insurance and Financial Institutions (DIFI) license cycle ending June 20, 2023, lists 19 of the 50 Arizona-licensed title loan companies with 332 of the total 412 licensed locations, **(81 percent of the total)**, that make loans “secured” by vehicles that **consumers do not own**, charging annual rates ranging from 204% for loans up to \$500 to 120% for loans of \$5,000 or more.

Almost half (45 percent) of the 412 licensed title loan locations are owned by companies that were payday lenders in Arizona prior to sunset of the payday loan law in 2010. *All companies that were payday lenders prior to sunset and that are now licensed as title lenders are making “registration” loans in Arizona.*

Lenders making “registration” loans in Arizona include TitleMax<sup>3</sup>; CCF’s Check into Cash<sup>4</sup>, CheckSmart, and Speedy Cash stores; ACE Cash Express<sup>5</sup>; Allied Cash Advance<sup>6</sup>; Fast Auto Loans<sup>7</sup>; and Checkmate Express<sup>8</sup>. “Registration” lenders typically require access to the borrower’s bank account which could be viewed as the true “security” for these loans. (See CEI 2022 Brief, p. 13-14)

#### Arizona Regulators Do Not Publicly Authorize “Registration” Loans

Title lenders are licensed by DIFI as Sales Finance companies (Title 44, Chap. 2.1), not as Consumer Lenders (Title 6, Chap. 5). There is no publicly available guidance by DIFI or by the Arizona Attorney General stating that a Sales Finance licensee can make cash loans “secured” by a vehicle with an encumbered title. (See Exhibit 2, p. 12, 15-16). There have been no Arizona enforcement actions to challenge lenders making these loans. Fake “registration” title lending has developed due to a weak law and lax enforcement.

After expiration of Arizona’s “deferred presentment” law, the Department of Financial Institutions (now DIFI) issued a Regulatory and Consumer Alert to reminded lenders that the payday loan law had expired and that all consumer lenders were required to be licensed as Consumer Lenders in

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<sup>2</sup> CEI, “Arizona Voters Said NO to Predatory Payday Lending,” January 2022 at <https://nomoreloansharksaz.org/gallery/2022%20AZ%20Factsheet%20Brief%201%20Prop%20200.pdf>

See also, “Arizona Voters Overwhelmingly Support 36% Cap,” January 2020 Poll, at: <https://nomoreloansharksaz.org/gallery/2020-02-26%20crl%20cei%20az%20polling%20on%20rate%20cap.pdf>

<sup>3</sup> <https://www.titlemax.com/arizona-title-loans/>

<sup>4</sup> <https://local.checkintocash.com/us/az/cottonwood/1100-s-state-route-260-suite-c4/> Viewed 08/22/2022.

Check Into Cash states “we no longer offer this loan in your state.” at: <https://checkintocash.com/arizona/arizona-registration-loans/> Viewed 08/22/2022. Cottonwood store clerk confirmed that registration loans are still available.

<sup>5</sup> <https://www.acecashexpress.com/title-loans/arizona/> Viewed 08/22/2022.

<sup>6</sup> <https://www.alliedcash.com/loan-services/installment-loans> Viewed 08/22/2022.

<sup>7</sup> <https://fastautoloansinc.com/registration-loans> Viewed 08/22/2022.

<sup>8</sup> <https://callcheckmate.com/loan-products/registration-loans/> Viewed 08/22/2022.

compliance with A.R.S. §§6-601 *et seq.* **The DFI Alert did not state that former payday lenders were permitted to obtain Sales Finance licenses to continue charging triple-digit rates for loans secured by the borrower’s check or bank account.**<sup>9</sup> The law authorizing securing loans with the borrower’s check expired in 2010 and the only form of security for loans authorized in the SMVFT law is “obtaining a security interest in or lien on a motor vehicle.”

The only public statements from the Arizona Attorney General on requirements for a loan to qualify as a SMVFT loan are the 2010 Operation Sunset press release, FAQs, and letter sent by the Attorney General to payday lenders warning against peddling sham auto title loans to evade expiration of the payday loan law, among other evasions. (See Exhibit 2, p. 11-12).

#### “Registration” Loans are Consumer Lender Loans

It appears that Sales Finance licensees charging triple-digit rates for “registration” loans that are not secured by the clear title to the borrower’s vehicle are making Consumer Lender loans without a Consumer Lender license in violation of the usury cap that applies to unsecured consumer loans up to \$10,000. Collection of these unlicensed loans should be viewed as a deceptive practice.

The Consumer Lender law anti-evasion provision states: “This chapter applies to any person who seeks to avoid its application by any device, subterfuge or pretense.”<sup>10</sup> The law also provides that “Any consumer lender loan that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void, and the person making that consumer lender loan has no right to collect, receive or retain any principal, finance charge or other fees in connection with that consumer lender loans.”<sup>11</sup>

CFPB has acted in the past to stop unlicensed lenders from collecting Consumer Lender loans made in violation of Arizona consumer protection laws. In CFPB v. Think Finance, LLC et al, the amended complaint detailed how loans made without complying with Arizona’s Consumer Lender law violated the federal CFPB.<sup>12</sup> CFPB alleged that “Think Finance Entities engaged in unfair, deceptive, and abusive acts and practices in violation of the Consumer Financial Protection Act in connection with the illegal collection of loans that were void in whole or in part under state laws governing interest rate caps, the licensing of lenders, or both.”<sup>13</sup>

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<sup>9</sup> Department of Insurance and Financial Institutions, “Regulator and Consumer Alert,” CL/CO-16-01, June 9, 2016 at: [https://difi.az.gov/sites/default/files/2021-08/FE-AD-PO-Regulatory\\_and\\_Consumer\\_Alert\\_CL\\_CO\\_06%2009-16-2016.pdf](https://difi.az.gov/sites/default/files/2021-08/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf)

<sup>10</sup> A.R.S. §6-603(B) at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/6/00603.htm>

<sup>11</sup> A.R.S. §6-613(B) at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/6/00613.htm>

<sup>12</sup> Consumer Financial Protection Bureau, First Amended Complaint, “Consumer Financial Protection Bureau, v. Think Finance, LLC, et al”, Case Number. 4:17-cv-00127-BMM, 03/28/2018, at: [https://files.consumerfinance.gov/f/documents/cfpb\\_think-finance\\_amended-complaint\\_032018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_think-finance_amended-complaint_032018.pdf)

<sup>13</sup> CFPB, Press Release, “Consumer Financial Protection Bureau Settles Lawsuit Against Think Finance Entities,” Feb. 5, 2020 at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-lawsuit-against-think-finance-entities/>

### CFPB Action Needed

Arizona consumers need the Consumer Financial Protection Bureau to investigate and take enforcement action due to inaction by Arizona consumer protection officials. CEI has repeatedly communicated our alarm over the evasion of Arizona's usury law by payday lenders operating as title lenders to both the Office of Attorney General and the Department of Insurance and Financial Institutions. Repeated legislative efforts to repeal or clarify the title loan law have failed. Since title/registration loan contracts contain mandatory arbitration clauses, consumers are constrained from going to court efficiently to protect themselves. Arizona consumers need your help.

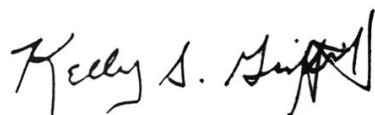
This request to investigate "registration" lending in Arizona is not precluded by the CFPB payday/title loan rule issued in 2017 which covered loans made to consumers without a clear title in Arizona. It is our view that CFPB made its expansive definition of "vehicle security" to comprehensively cover high-cost loans claimed to be secured by vehicles in any way, not as a ruling on the legality of individual state laws or enforcement positions.

### Conclusion

**We urgently request that CFPB investigate the Arizona title loan sector.** We believe that you will find that instead of making vehicle-secured loans as authorized by Title 44, Chap. 2.1, many licensed Sales Finance lenders in Arizona are charging triple-digit rates for fake title loans and that collection of illegal and unlicensed Consumer Lender loans violates the Consumer Financial Protection Act.

**We request to meet with you and staff that oversees payday lending to further detail our concerns about lending under Arizona's title loan law.** CEI has extensive files on lenders in Arizona and would be glad to share any information to assist your evaluation of this request. Attached is a sample contract from a lender that makes both title-secured and "registration" loans under terms of Title 44, Chap. 2.1. Please contact CEI to schedule a meeting and let us know if you would like to see further information in our possession.

Sincerely,



Kelly Griffith, Executive Director, Center for Economic Integrity

Ph: (520) 250-4461 Email: [kelly@economicintegrity.org](mailto:kelly@economicintegrity.org)

Jean Ann Fox, Advisor, Center for Economic Integrity

Enc.: Cash Time Title Loans, Inc., Redacted Arizona Contract dated March 7, 2022

# EXHIBIT 1

## Title 44, Chap. 2.1, Motor Vehicle Time Sales Disclosure Act<sup>14</sup>

### 44-281. Definitions

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12. "Secondary motor vehicle finance transaction":

(a) Means any contract that includes provisions for either:

(i) Obtaining a security interest in or lien on a motor vehicle other than in connection with the sale of that motor vehicle.

(ii) The sale or conditional sale of a motor vehicle and the seller's right to retain use of the motor vehicle after the sale or conditional sale.

(b) Includes any conditional sales contract or contract for the bailment or leasing of a motor vehicle in which the bailee or lessee agrees to pay for use of the motor vehicle and the bailee or lessee is required to become or has the option of becoming the owner of the vehicle for any or no compensation.

(c) Does not include any commercial transaction as defined in section 44-291.

### 44-289. Delinquent contract; recovery; transfer fees; blank spaces in contract.

...

B. In the event of default under a contract, a licensee shall comply with all provisions of title 47, chapter 9, article 6, and be subject to the penalties prescribed therein. All sales of repossessed vehicles shall be conducted in a commercially reasonable manner.

### 44-291. Computation of interest; prepayment rebate; additional charges; secondary motor vehicle finance transaction; definitions.

...

G. If the retail installment contract is a secondary motor vehicle finance transaction, the seller, bailor, lender or lessor shall determine the annual secondary motor vehicle finance rate and all charges relating to the sale, conditional sale, bailment or lease and repurchase of the vehicle. The seller, bailor, lender or lessor shall calculate the annual secondary motor vehicle finance rate by multiplying the monthly secondary motor vehicle finance rate by twelve. A retail installment contract that is a secondary motor vehicle finance transaction is subject to the following maximum finance rates on a secondary motor vehicle finance contract in the original principal amount of:

1. Five hundred dollars or less, a monthly finance rate of seventeen per cent.

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<sup>14</sup> Arizona Revised Statutes, Title 44 – Trade and Commerce, at <https://www.azleg.gov/arsDetail/?title=44>

2. More than five hundred dollars but not more than two thousand five hundred dollars, a monthly finance rate of fifteen per cent.
  3. More than two thousand five hundred dollars but not more than five thousand dollars, a monthly finance rate of thirteen per cent.
  4. More than five thousand dollars, a monthly finance rate of ten per cent.
- H. Except as the result of an accidental or bona fide error, if the licensee charges, contracts for or receives any amount in excess of the finance charges and other fees expressly permitted by this chapter, the secondary motor vehicle transaction is voidable and the licensee has no right to collect or receive any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction. Any secondary motor vehicle finance transaction that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void, and the person has no right to collect, receive or retain any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction.
- I. Section 44-287, subsection B does not apply to a secondary motor vehicle finance transaction if the contract complies with the disclosure requirements prescribed in federal law. The seller shall conspicuously disclose in the contract the annual secondary motor vehicle finance rate.

## EXHIBIT 2

### Center for Economic Integrity

#### History of Arizona’s Title Loan Law, the Sunset of Payday Lending, and the Emergence of Payday Loan Lookalike “Registration” Lending at Title Loan Rates

Separate laws enacted in 2000 by the Arizona legislature exempted two forms of predatory high-cost lending from protections of the Consumer Lender usury law: Deferred Presentments (payday loans) and Secondary Motor Vehicle Finance Transactions (title loans).

##### Consumer Lender Law Protections

The Arizona usury law that governs cash loans to consumers is the Consumer Lender law, A.R.S. § 6-601 to 6-638, which governs loans up to \$10,000 and caps rates at 36% for loan amounts up to \$3,000 and 24 percent for loan amounts over \$3,000 up to \$10,000. Lenders are permitted to also charge a five percent fee up to \$150. The Consumer Lender law prohibits balloon payment loans and provides other consumer protections. It applies to closed end and open-end credit, and to unsecured and secured cash loans. Consumer Lenders are licensed by the Arizona Department of Insurance and Financial Institutions.

##### Sale/Lease-Back Title Loan Transactions

Prior to 2000, “title loans” were made in Arizona as sale-leaseback transactions to evade the usury limits of the Consumer Lender law. The *Arizona Republic* newspaper<sup>15</sup> explained how sale/lease-back transactions worked, including a requirement that the customer have a car that is paid off to sell to the company for a fraction of its book value. The company kept the title, now signed over to it, along with a set of keys. *The sale/lease-back product required a vehicle owned free and clear by the consumer.*

##### Failed Attempt to Legalize Title Loans at Triple-digit Rates

In 1998, HB 2390 was introduced in the Arizona legislature, backed by the lender Title Loans of America, based in Atlanta, Georgia, to authorize loans secured by clear titles. HB 2390 amended the Consumer Lender law to add a single payment “Consumer Title Loan” product that cost 25% per month or 300% annually. The legislative Bill Summary for H.B. 2390 stated that “if a consumer owns an automobile, that person may take the certificate of title to a consumer title lender for the purposes of securing a 30-day consumer title loan.”<sup>16</sup> The bill required a licensee to hold only unencumbered certificates of title as security for Consumer Title Loans.<sup>17</sup> This legislation was opposed by the Attorney

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<sup>15</sup> Pat Kossan, “Borrowing Trouble? Quick Cash for Your Vehicle Title,” *Arizona Republic*, Feb. 14, 1999, p. 1. Archived article on file with CEI.

<sup>16</sup> Arizona House of Representatives, 1998 Bill Summary for HB 2390, February 2, 2000, at: <https://www.azleg.gov/legtext/43leg/2r/summary/h.hb2390.bi.htm>

<sup>17</sup> HB 2390, House Engrossed version, <https://www.azleg.gov/legtext/43leg/2R/bills/hb2390h.pdf>

General and failed to pass. Later press coverage identified the backers of the 1998 bill as having ties to organized crime, which the bill's sponsors denied knowing.<sup>18</sup>

### Arizona Attorney General Challenged Sale-Leaseback Lending

Following defeat of authorizing title loan legislation, lenders continued to market sale-leaseback loans at triple-digit rates in Arizona. The Attorney General sued SAL Leasing, Inc. for charging 300% interest for sale-leaseback loans in violation of the Consumer Lender law usury cap. The trial court issued a declaratory judgment finding that the Consumer Lender Act, A.R.S. § 6-601 to 6-638 (1999) did not apply to SAL Leasing, Inc. and dismissed the Attorney General's counterclaim and denied its request for injunctive relief. That decision was appealed to the Court of Appeals which reversed the lower court decision on October 3, 2000.<sup>19</sup>

### Title Loan Industry Won Authorizing Legislation

While the Attorney General's challenge to sale-leaseback title lending was underway, the 2000 Arizona legislature enacted SB 1244 to amend Title 44, Chap. 2.1, the Motor Vehicle Time Sales law, which governed auto sales financing credit. The legislation was backed by the Arizona Title Loan Association. Likely seeking to avoid the politically toxic label "title loans," SB 1244 added a definition of "Secondary Motor Vehicle Finance Transactions" to the law that applied to financing of auto purchase loans, not to the Consumer Lender law that applies to cash loans.

SB 1244 amended sections 44-181, 44-289, and 44-291 of Arizona Revised Statutes. No changes have been made to this law since it was enacted in 2000. It is our view that the title "Secondary Motor Vehicle Finance Transaction" was chosen to avoid the stigma associated with "title loans," as well as to distinguish the cash loans authorized by this bill from the purchase money loans otherwise subject to the Motor Vehicle Time Sales law. There is nothing to indicate that the "Secondary" in this designation was intended to apply to loans where a lender would seek to obtain a second lien on the encumbered vehicle used to "secure" the loan.

### "Registration" Loans Were Not Authorized by SB 1244

**There is no legislative history that SB 1244 was intended to authorize "registration" loans to consumers who did not hold a clear title to the vehicle used to secure the loan.** The legislative fact sheet for S.B. 1244 described the intent of the bill to legalize sale-leaseback transactions, stating: "Secondary motor vehicle finance transactions, as defined in this bill, refer to short-term (usually three to four months), fairly small (average of \$800) loans that are secured with a motor vehicle. Because such transactions may require consumers to conditionally sell their vehicle to the lender and then lease it back (the lease payment reflects the monthly finance charge), such transactions are sometimes known as "sale-leaseback" agreements... To clarify how such a transaction works, the following

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<sup>18</sup> Pat, Kossan, "bill catered to figures accused of mob ties," Arizona Republic, Feb. 14, 1999, p. 25. Archived article on file with CEI.

<sup>19</sup> Decision, "SAL Leasing Inc. v State Napolitano", Court of Appeals of Arizona, Division 1, Department A, Case No. 1 CA-CV 99-0631, at: <http://caselaw.findlaw.com/az-court-of-appeals/1486069.html>



example is offered. A consumer who **owns a car free and clear of any liens** could obtain these funds from a secondary motor company. The lender and the consumer would execute a contract that could either require the consumer to sell the car and lease it back from the company or simply allow the company to take a secured interest in it... If the consumer failed to make the monthly payments, the lender **could repossess the vehicle** pursuant to the Uniform Commercial Code. ”<sup>20</sup> (Emphases added.)

### Secondary Motor Vehicle Finance Transaction (SMVFT) Loans are Title Loans

Despite the “secondary motor vehicle transaction” label, SB 1244 was understood at the time of passage as authorizing car title loans. “So-called car title loans... car owners sell their vehicles to a lender and then have to lease the car back.”<sup>21</sup> No mention was made in any Arizona legislative documents or news coverage at the time the law was enacted that Secondary Motor Vehicle Finance Transaction loans could be “secured” by an encumbered title for consumers who had a vehicle registration but not a clear title. Two years after the bill was enacted, press stories about title loans in Arizona noted that borrowers had to own clear titles to vehicles used to get loans.<sup>22</sup>

### Early SMVFT Lenders Made Title-Secured Loans

In 2005, the Arizona Consumers Council surveyed Arizona title lenders as part of a project by Consumer Federation of America. The Arizona survey covered seven title lenders and noted that all of them were making “title loans”, not sale-leaseback transactions. Those lenders charged lien fees (since prohibited by DIFI as not authorized by law)<sup>23</sup> which would only be needed for loans secured by clear titles and said that they repossessed cars when the borrower did not repay. “Registration” loans were not the product being offered in 2005.<sup>24</sup> Currently, DIFI still explains that a “title Loan” is “a personal loan against the title of a motor vehicle.”<sup>25</sup>

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<sup>20</sup> Arizona State Senate, Final Revised Fact Sheet for S.B. 1244, at:

[https://www.azleg.gov/legtext/44leg/2r/summary/s.1244fir\\_revised.doc.htm](https://www.azleg.gov/legtext/44leg/2r/summary/s.1244fir_revised.doc.htm)

<sup>21</sup> Tom Collins, “Legislature: Bill makes random gunfire a felony,” Tucson Citizen, Mar. 22, 2000. On file with CEI and paywalled at <https://tucson.newspapers.com/search/?query=%22Tom%20Collins%22&ynd=2000-03-22>

<sup>22</sup> Richard Bruner, “Driven to Debt: Trade your car title for quick cash, but if you’re not careful you’ll be running on empty,” Tucson Weekly, January 3, 2002, at:

<https://www.tucsonweekly.com/tucson/driven-to-debt/Content?oid=1069559>

<sup>23</sup> AZDFI, Regulatory Alert, “Allowable Charges for Auto Title Lenders and Document Preparation Fee Charges,” SF-13-01, May 24, 2013 at <https://dfi.az.gov/sites/default/files/DFI-FE-AD-Final%20Regulatory%20Alert%20Secondary%20Motor%20Vehicle%20Dealers%20SF13-01-%20052413.pdf>

<sup>24</sup> Jean Ann Fox and Elizabeth Guy, Consumer Federation of America, “Driven Into Debt: CFA Car Title Loan Store and Online Survey,” November 2005, p. 23 at:

[https://consumerfed.org/pdfs/Car\\_Title\\_Loan\\_Report\\_111705.pdf](https://consumerfed.org/pdfs/Car_Title_Loan_Report_111705.pdf)

<sup>25</sup> DIFI FAQ “What is a “Title Loan?”” at: [https://difi.az.gov/faq?field\\_faq\\_category\\_target\\_id=All&page=2](https://difi.az.gov/faq?field_faq_category_target_id=All&page=2)  
Viewed 08/18/2022.

## Title Loan Law Not Amended to Authorize “Registration” Loans

Despite reform legislation introduced repeatedly in subsequent legislative sessions, the 2000 law to carve title loans out of the Consumer Lender law has not been amended to make any changes, including any industry effort to add explicit authority to “secure” loans with vehicle registrations or to secure loans with access to borrowers’ bank accounts. The Arizona Attorney General and the Department of Insurance and Financial Institutions (previously DFI) have not sponsored or supported any legislation to repeal the title loan law outright or to clarify the “security” requirement of Title 44, Chap. 2.1.

## Payday Loans (Deferred Presentments) Authorized in 2000

The same year that title loans were legalized, the Arizona legislature also enacted the “deferred presentment” law to permit payday loans at triple-digit rates secured by a paper check held for future deposit. SB 1266 in 2000 created a product termed “deferred presentments” (payday loans) defined as “a transaction pursuant to a written agreement in which the licensee accepts a check and agrees to hold the check for at least five days before presentment for payment or deposit.”<sup>26</sup> This law had a sunset provision and was eventually terminated June 30, 2010 following failure of the industry to win legislation extending the law or to enact a ballot initiative to enshrine payday lending in the Arizona constitution as Prop 200 in 2008 would have done.

Prop 200’s proposed payday loan product<sup>27</sup> was a single payment cash loan of \$50 to \$500, costing \$15 per \$100 (390% APR for a 14-day payday loan) and secured by a check held for future deposit with the definition of “check” expanded to include “an electronic debit agreement that complies with title 44, Chapter 26,” for a term of five days up to thirty-five days. The Prop 200 ballot text listed as a prohibited practice to “require a customer to provide **security for the transaction, other than the presented check...**” In other words, Arizona’s Deferred Presentment law and the Prop 200 ballot initiative stated that payday loans were secured by direct access to the borrower’s bank account, either with the borrower’s check held for deposit and by the “electronic debit agreement” added by Prop 200. **When Prop 200 was defeated and the payday loan law sunset in mid-2010, the authorization to “secure” a loan with the borrower’s check held for deposit expired as well. Arizona lenders were never authorized to secure a payday loan with electronic access to the borrower’s bank account.**

## Sunset of Payday Lending/Licensees Switch to Title Loan Licenses

In the run up to the expiration of the payday loan law in 2010, many licensed deferred presentment companies obtained Sales Finance licenses to begin offering title loans at triple-digit rates. On the expiration date of the payday loan law in 2010, all remaining payday lender outlets surrendered their

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<sup>26</sup> Arizona SB 1266 Chaptered Version, signed by the Governor April 4, 2000, at: <https://www.azleg.gov/legtext/44leg/2R/laws/0141.pdf>

<sup>27</sup> Arizona Secretary of State 2008 Election Information at: <https://apps.azsos.gov/election/2008/info/PubPamphlet/english/Prop200.htm>

licenses. The Arizona Department of Financial Institutions' July 2010 report listed 41 deferred deposit companies that closed 518 branch stores.<sup>28</sup>

### Title Lenders Cannot Unilaterally Add a Second Lien to the Borrower's Vehicle

Arizona is a title holding state as of January 2003 when HB 2052 enacted in 2001 took effect.<sup>29</sup> As a result, the lender holds the title until the lien is satisfied at which point the title passes on to the owner or the next title holder. A second lien cannot be filed on a vehicle without consent of the primary lienholder. When the payday loan law sunset, lenders could not add a "second" lien without cooperation by the first lienholder.

In 2010, former payday lender Check Into Cash of Arizona, Inc. began offering Secondary Motor Vehicle finance Transaction loans to consumers with an encumbered title and started the practice of sending letters to first lien holders to ask for permission to file a second lien on vehicles to "secure" registration loans. A Check Into Cash letter to the "Primary Lien Holder" stated "The customer named above has entered into a transaction at Check into Cash in which they gave us a security interest and lien on the motor vehicle identified above. We understand that you have a primary or superior lien on the vehicle and that our lien will be subordinate to your lien. In order to meet the requirements of Arizona law and to allow us to perfect our subordinate lien, please sign below indicating your consent that Check into Cash... may take all steps necessary to note our subordinate lien on this vehicle title."<sup>30</sup>

Without permission from the bank, credit union or finance company holding the first lien on the borrower's vehicle, Check Into Cash could not perfect its second lien in order to demonstrate that its loan was "secured" by the borrower's vehicle. First lienholders have no incentive to permit a high-cost lender to add debt to their security for a purchase money vehicle loan. The Arizona Credit Union League noted that the decision was up to each credit union, but suggested to its members that they send a response letter denying consent to a subordinate lien being added to the title and to keep a copy in their files.<sup>31</sup> Even with a second lien, a creditor can only recover defaulted debt if the first lienholder repossesses the vehicle and if there is sufficient value left to claim after the first lien is satisfied. Traditional title lenders often offer to pay off the remaining balance on a vehicle loan to then make a title-secured new loan.

### At Sunset, Arizona Attorney General warns Industry and Consumers Against Sham Title Loans

In 2010, advocates warned the Department of Financial Institutions and the Arizona Attorney General that title lenders with Sales Finance licenses would try to evade the Consumer Lender law usury cap following the sunset of payday lending by using a variety of tactics seen in other states, including

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<sup>28</sup> Arizona Department of Financial Institutions, "Summary of Actions Report," July 2010 at: <https://azmemory.azlibrary.gov/digital/collection/statepubs/id/15908>

<sup>29</sup> Title 28, Chapter 7, Article 4. H.B. 2052 (2001) deleted the provision that permitted a vehicle owner to hold the certificate of title containing a lien or encumbrance. Arizona became a "title-holding" state in 2003.

<sup>30</sup> Check Into Cash form letter to primary lienholder, June 11, 2010, on file with CEI.

<sup>31</sup> Arizona Credit Union League & Affiliates, "Auto Title Lending Update," July 19, 2010, on file with CEI.

offering sham title loans. **Attorney General Goddard issued a public warning to the industry and to consumers about unsecured “title” loans.**<sup>32</sup> The Attorney General’s press release noted tactics used in other states to evade limits on payday lending, including “auto loans.” The Attorney General also warned against “business models or arrangements that, as seen in other states, perpetuate payday lending practices in another guise.” The Arizona Attorney General’s Operation Sunset FAQs stated “Auto title loans are generally given only if you own the vehicle that is securing the loan. If a lender says that ownership of the vehicle or its value don’t really matter, consider those warning signs and report the lender to the Attorney General’s Office.”<sup>33</sup>

As noted in the 2010 press release, Attorney General Goddard sent a letter to payday lenders and warned against tactics to continue making illegal high-cost payday loans, including lenders that “offered sham auto title loans.” The letter warned “We will also be watching for business models or arrangements that, as seen in other states, perpetuate payday lending practices in another guise. When evaluating complaints at a post July 1 business transaction is really a payday loan, I will look at the substance of the transaction, not its name.”<sup>34</sup>

#### CEI Public Records Request to OAG and DIFI Produced No Additional Information

A public records request for all information on “registration” loans filed with the Office of Attorney General April 18, 2022, resulted in no written records in addition to the Office of Attorney General’s 2010 Operation Sunset FAQs, press release and letter to payday lenders cited in this brief. The Office of Attorney General has apparently communicated with the Department of Insurance and Financial Institutions on the issue of what is required for a loan to be “secured” by the borrower’s vehicle for a loan to qualify as a Secondary Motor Vehicle Finance Transaction loan, but those documents were not provided in response to the public records request due to “attorney-client privilege” and “work-product privilege.”<sup>35</sup>

A similar public records request to the Department of Insurance and Financial Institutions submitted July 26, 2022 has not resulted in a substantive response as of September 14, 2022.

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<sup>32</sup> Press Release, “Goddard to Aggressively Enforce Payday Loan Ban with ‘Operation Sunset,’” Arizona Office of Attorney General, June 9, 2010 at:

<https://www.azag.gov/press-release/goddard-aggressively-enforce-payday-loan-ban-operation-sunset>

See also, AZ AG Letter to Payday Loan Industry, at:

<https://www.azag.gov/sites/default/files/2018-10/lettertolender.pdf>

<sup>33</sup> Arizona Attorney General’s Office Operation Sunset FAQs, June 2010, on file with CEI.

<sup>34</sup> AZ AG Letter to Payday Loan Industry, at:

<https://www.azag.gov/sites/default/files/2018-10/lettertolender.pdf>

<sup>35</sup> Electronic communication from Rachel Lump, Executive Assistant, Office of the Attorney General, July 20, 2022, on file with CEI.

## No Enforcement Actions Against Sham Title Loans

Following sunset of the payday loan law, the Office of Attorney General did not back up their warnings against fake title loans with any enforcement actions. Attorney General Goddard's term ended when Tom Horne became the Attorney General in 2011.

Attorney General Horn did take action to enforce the sunset of the payday loan law. In 2011, Attorney General Horne warned consumers about collection call scams for payday loans and reminded consumers that payday loans were illegal in Arizona as of June 30, 2010. The OAG press release noted that internet loans are subject to Arizona credit laws and that simply applying for a loan online provided personal financial information being misused by debt collectors.<sup>36</sup> The Attorney General also settled with Double C's, LLC doing business as Lowrate.com to stop soliciting Arizona consumers for applications for payday loans.<sup>37</sup> Both the Office of Attorney General and the Department of Financial Institutions took action in 2012 to stop Cash 1, an unlicensed lender, from charging Arizona consumers triple-digit rates for loans disguised as "retail installment sales transactions" using the sale of gift cards.<sup>38</sup>

## Former Payday Lenders Misuse the Title Loan Law

As a result of the failure to enforce the 2010 Attorney General warning against using "fake title loans" to continue making payday loans, a growing segment of licensed title lenders now market two types of loans to Arizona consumers: title-secured loans and "registration" loans to consumers who do not hold a clear title to their vehicle. Many lenders' registration loans require borrowers to have a bank account and to provide access to that account to enable debt collection. **In our view Sales Finance licensees without legal authorization are using bank accounts to "secure" these loans, not the borrower's vehicle.**

In 2013 the Department of Financial Institutions issued a regulatory alert that warned former payday lenders of the requirement to be **licensed as Consumer Lenders** and to comply with the usury limits and protections of the Consumer Lender law. This Alert was updated and reissued in 2016.<sup>39</sup> In those

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<sup>36</sup> Arizona Attorney General, Press Release, "Consumer Alert: payday Loans and Collection Calls," May 13, 2011 at <https://www.azag.gov/press-release/consumer-alert-payday-loans-and-collection-calls>

<sup>37</sup> Arizona Attorney General, Press Release, "Horne: Scottsdale Company Barred From Soliciting Loan Services to Arizona Consumers," July 30, 2012 at <https://www.azag.gov/press-release/horne-scottsdale-company-barred-soliciting-loan-services-arizona-consumers>

<sup>38</sup> Arizona Attorney General, Press Release, "Horne Announces Consent Judgment in Company Using Alleged Gift Card Scheme," April 6, 2012, at <https://www.azag.gov/press-release/horne-announces-consent-judgment-company-using-alleged-gift-card-scheme> For DFI Consent Order, In the Matter of the Unlicensed Activity of Cash 1, L.L.C., January 4, 2012, see [https://difi.az.gov/sites/default/files/Cash%201%20LLC%20ULA\\_Consent.pdf](https://difi.az.gov/sites/default/files/Cash%201%20LLC%20ULA_Consent.pdf)

<sup>39</sup> AZ DFI, Regulatory and Consumer Alert, CL-CO-16-01, "Unlicensed Consumer Lending Transactions," June 9, 2016 (Updated from previous CL/CO-13-01) at: [https://difi.az.gov/sites/default/files/2021-08/FE-AD-PO-Regulatory\\_and\\_Consumer\\_Alert\\_CL\\_CO\\_06%2009-16-2016.pdf](https://difi.az.gov/sites/default/files/2021-08/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf)

**Alerts, DFI did not instruct former payday lenders to obtain a Sales Finance license to continue to make payday loans disguised as “registration” loans under the title loan law.**

### Arizona Regulators Take No Action to Stop Sales Finance Licensees from Securing Loans with Bank Account Access

The Arizona law authorizing high-cost loans to be secured with the borrower’s check expired June 30, 2010. Advocates wrote the Department of Financial Institutions in 2013 regarding some title lenders’ requirements that borrowers provide a blank check, bank account routing numbers or other devices to permit lenders to withdraw payments in case borrowers failed to make payments on these “registration” loans. No action was taken to stop this practice. The Director of the Department of Financial Institutions later informed Arizona advocates that the law “did not prohibit” lenders from requiring the borrower’s check, therefore, no action was deemed necessary.<sup>40</sup> There is no policy directive available to the public from the Department that confers authority on licensed Sales Finance companies to secure a loan with the borrower’s check or access to the borrower’s bank account.

In 2015, Arizonans for Responsible Lending coalition members, including the Center for Economic Integrity, met with staff from the Arizona Office of Attorney General regarding tactics used by title loan licensees to evade the usury law. The Consumer Federation of America Senior Fellow explained the expansion of loans made to consumers without a clear title to secure loans and the requirement that borrowers provide access to their bank accounts to obtain “registration loans.” Advocates urged enforcement action, stating that “Any small consumer loan that is not secured by a lien on a vehicle or a title should be subject to the Consumer Lender law.”<sup>41</sup> No action resulted.

The Center for Economic Integrity has met with and sent updated reports and briefs to both the Office of Attorney General and to the Department of Insurance and Financial Institutions to alert officials to tactics used by Sales Finance licensees to evade Arizona’s usury law.<sup>42</sup>

### Licensed Sales Finance Companies Charge Higher Rates than Prop 200 Payday Loans

As of 2022, licensed Sales Finance lenders making Secondary Motor Vehicle Finance Transaction (title) loans, including all the remaining companies that were payday lenders prior to the 2010 sunset, are making loans at even higher rates than would have been enshrined in the Arizona constitution if Prop 200 had passed. A \$500 one-month SMVFT loan can cost 204 percent APR with an \$85 finance charge

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<sup>40</sup> Meeting with Director, Arizona Department of Financial Institutions, Phoenix, /AZ, July 19, 2016. At that meeting, Mr. Charlton also stated that Sales Finance licensees were permitted to make SMVFT loans despite no clear title to secure loans, based on verbal advice from the Office of Attorney General.

<sup>41</sup> Presentation Notes, Jean Ann Fox, Consumer Federation of America, Meeting with Arizona Attorney General Staff, October 13, 2015, Phoenix, AZ, “Title Lending in Arizona,” on file with CEI.

<sup>42</sup> CEI Briefs posted at Arizonans for Responsible Lending <https://nomoreloansharksaz.org/> and with CEI Research Reports at <https://economicintegrity.org/?cat=6> Letters to Arizona Attorney General and Department of Financial Institutions on file with CEI.

(\$17/\$100 per month x 5) while the maximum rate for the same size and term payday loan under Prop 200 would have been 180 percent APR with a \$75 finance charge (\$15/\$100 per month x 5).

### DIFI Public Information on Sales Finance Licenses and SMVFT (Title) Loans

According to the Superintendent of the Department of Financial Institutions in 2016, an informal opinion was obtained from the Attorney General's office that a loan qualified under the Secondary Motor Vehicle Finance Transaction section of the Arizona Code as long as the loan note stated that the loan was secured by a vehicle.<sup>43</sup> There is no policy statement or public information to that effect from either DIFI or the Office of Attorney General available to Arizona consumers.

The Arizona Department of Insurance and Financial Institutions which licenses Sales Finance companies making SMVFT title loans provides scant information about this product for consumers.

### *Consumer Information*

DIFI FAQ "What is a Title Loan"

DIFI currently answers "A Title loan is a personal loan against the title of a motor vehicle. There are caps for the loan amount. Please see A.R.S. §44-291 for cap information"

Other Qs are "What is the maximum interest rate for auto title loans?" which lists the statutory maximum finance rates as a monthly finance rate. The following Q is "How would I calculate my annual percentage rate (APR) for my auto title loan?" The answer spells out how to compute the annual rate by multiplying the monthly rate by 12.<sup>44</sup>

There is no DIFI FAQ on "Secondary Motor Vehicle Finance Transactions or on "registration" loans.

Information on credit and loan topics provides links to federal agencies, but no information on consumer protections from Arizona laws or regulations.<sup>45</sup>

### *Licensing Requirements*

The blurb linked from the Department of Insurance and Financial Institutions website page regarding companies required to obtain licenses as Sales Finance companies<sup>46</sup>:

#### **Sales Finance Companies**

This License is required of any person who is engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. This License is also required of any person whom is engaged, in whole or in part, in the business of creating or holding motor vehicle retail installment contracts exceeding a total aggregate outstanding indebtedness of

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<sup>43</sup> CEI Meeting with Superintendent, Arizona Department of Financial Institutions, Phoenix, AZ, July 19, 2016.

<sup>44</sup> DIFI FAQs for Consumers at [https://difi.az.gov/faq?field\\_faq\\_category\\_target\\_id=1006](https://difi.az.gov/faq?field_faq_category_target_id=1006) Viewed 08/18/2022.

<sup>45</sup> Financial Services Consumer Credit and Loans at <https://difi.az.gov/consumer/f/consumer-loans> Viewed 08/18/2022.

<sup>46</sup> NMLS Resource Center : State Licensing Requirements, Arizona, Sales Finance License, at <https://mortgage.nationwidelicencingsystem.org/slr/Pages/DynamicLicenses.aspx?StateID=AZ>



**\$50,000. This License also includes any company commonly known as a title lender that allows consumers to borrow money based on the equity in their automobiles. (Emphasis added.)**<sup>47</sup>

### *Licensee Information*

DIFI does not post on its website the full roster of licensed Sales Finance companies which can only be obtained by public records request. The public can look up the license status by company name only. DIFI does not make public a list of all licensed Sales Finance companies that make Secondary Motor Vehicle Finance Transactions (title) loans. Since the law does not require it, DIFI collects no annual report information from Sales Finance licensees and publishes no information on the volume of loans made, loan terms, defaults and repossession data or any other information on the title loan industry.

### *Regulatory Alerts*

In 2013, the Department of Financial Institutions issued a regulatory alert to companies licensed under the Motor Vehicle time Sales Disclosure Act that make SMVFT (auto title) loans concerning fees that could be charged by title lenders. DFI and the Office of Attorney General stated that document preparation fees were not expressly allowed by law and would no longer be allowed to be charged by lenders on or after July 1, 2013.<sup>48</sup>

### *Enforcement Actions*

The Department of Insurance and Financial Institutions lists six enforcement actions against Sales Finance licensees on its website as of August 2022. Of those, three involve companies making SMVFT (title) loans.

Kathleen Marie Mason d/b/a Advance Cash was found in violation of law for charging rates greater than the law permitted, among other violations. The Consent Order identified the product offered as a “title” loan, not as a “registration” loan. There is no mention in the 2012 order whether Advance Cash offered loans secured by a clear title or whether loans were made to borrowers who did not own their vehicles.<sup>49</sup> Currently, Advance Cash in Yuma only makes “registration” loans.

DFI cited two title lenders in 2014 that were owned by the same company for violating the Arizona law’s annual loan cost disclosure requirement. A Speedy Cash Title Loans, LLC<sup>50</sup> and Todd Car Title, Inc.

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<sup>47</sup> Note that this description does not match DIFI’s FAQ on Title Loans and does not accurately reflect the legal definition of a Secondary Motor Vehicle Finance Transaction as a “Obtaining a security interest in or lien on a motor vehicle other than in connection with the sale of that motor vehicle.” A.R.S. 44-281(12)(a)(i)

<sup>48</sup> AZ DFI, Regulatory Alert SF-13-0, Re: “Allowable Charges for Auto Title Lenders and Document Preparation Fee Charges,” May 24, 2013.

<sup>49</sup> DFI Consent Order No. 12F-BD005-BNK, Signed January 6, 2012 at [https://difi.az.gov/sites/default/files/Kathleen%20Mason%20non%20ULA%20signed\\_Consent.pdf](https://difi.az.gov/sites/default/files/Kathleen%20Mason%20non%20ULA%20signed_Consent.pdf)

<sup>50</sup> DFI Consent Order No. 15F-BD026-ABD, Signed December 31, 2014 at [https://difi.az.gov/sites/default/files/Speedy%20Cash\\_Consent.pdf](https://difi.az.gov/sites/default/files/Speedy%20Cash_Consent.pdf)



d/b/a A Speedy Cash Car Title Loans<sup>51</sup> were cited for failing to disclose the cost of loans as an “annual secondary motor vehicle finance rate as the product of the monthly secondary motor vehicle finance rate multiplied by 12.” Both companies were disclosing only the federally required Annual Percentage Rate under the Truth in Lending Act. Neither consent order mentions whether loans were secured by a clear title to the borrower’s vehicle.

DIFI has posted no enforcement actions against Sales Finance licensees including those making title loans since 2014.<sup>52</sup>

**Summary:** In 2000, the Arizona legislature enacted two exceptions to the Consumer Lender usury law protections, permitting **title lenders** to make loans secured by the borrower’s vehicle or a lien on the vehicle and **payday lenders** to make loans secured by a check held for future deposit. **The title loan law did not authorize loans secured by encumbered vehicles and did not authorize licensed title lenders to secure loans with access to the borrower’s bank account.** Sunset of the payday loan law in mid-2010 terminated authorization to charge triple-digit rates for loans secured by the borrower’s check held for future deposit.

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<sup>51</sup> DFI Consent Order No. 15F-BD027-SBD, signed December 31, 2014 at [https://difi.az.gov/sites/default/files/Todd%20Car%20Title\\_Consent.pdf](https://difi.az.gov/sites/default/files/Todd%20Car%20Title_Consent.pdf)

<sup>52</sup> [https://difi.az.gov/enforcement-actions?title=&body\\_value=&field\\_license\\_category\\_target\\_id%5B%5D=1224](https://difi.az.gov/enforcement-actions?title=&body_value=&field_license_category_target_id%5B%5D=1224)  
Viewed 08/15/2022.