

## 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 annual rates at 36% for loan amounts up to \$3,000 and 24% for loan amounts over \$3,000 up to \$10,000. Lenders can 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 (AZ DIFI).

### 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>1</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>2</sup> The bill required a licensee to hold only unencumbered

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<sup>1</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>2</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>

certificates of title as security for Consumer Title Loans.<sup>3</sup> This legislation was opposed by the Attorney 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>4</sup>

### Arizona Attorney General Challenged Sale-Leaseback Lending

Following the defeat of legislation authorizing title loans, 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>5</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 term "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.

### "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>3</sup> HB 2390, House Engrossed version, <https://www.azleg.gov/legtext/43leg/2R/bills/hb2390h.pdf>

<sup>4</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>5</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>6</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>7</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>8</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>9</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>10</sup> Currently, DIFI still explains that a “title Loan” is “a personal loan against the **title of a motor vehicle**.”<sup>11</sup> (Emphasis added.)

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<sup>6</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>7</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>8</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>9</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>10</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>11</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 02/8/2023.

## 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 or change 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>12</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>13</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 or 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>12</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>13</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>14</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>15</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 who had 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>16</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>17</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.

### At Sunset, the Arizona Attorney General warned 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 offering sham title loans. **Attorney General Goddard issued a public warning to the industry and to**

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<sup>14</sup> Arizona Department of Financial Institutions, "Summary of Actions Report," July 2010 at: <https://azmemory.azlibrary.gov/digital/collection/statepubs/id/15908>

<sup>15</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>16</sup> Check Into Cash form letter to primary lienholder, June 11, 2010, on file with CEI.

<sup>17</sup> Arizona Credit Union League & Affiliates, "Auto Title Lending Update," July 19, 2010, on file with CEI.

**consumers about unsecured “title” loans.**<sup>18</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>19</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>20</sup> (Emphasis added.)

#### No Enforcement Actions Against Sham Title Loans

Following the 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>21</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>22</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

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<sup>18</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>19</sup> Arizona Attorney General’s Office Operation Sunset FAQs, June 2010, on file with CEI.

<sup>20</sup> AZ AG Letter to Payday Loan Industry, at:

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

<sup>21</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>22</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>

triple-digit rates for loans disguised as “retail installment sales transactions” using the sale of gift cards.<sup>23</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 “Secondary Motor Vehicle Finance Transaction” loans to Arizona consumers: title-secured loans and “registration” loans to consumers who do not hold a clear title to their 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>24</sup> In those 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

Many Sales Finance licensees’ 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.**

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>25</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.

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<sup>23</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>24</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)

<sup>25</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.

In 2015, Arizonans for Responsible Lending coalition members, including the Center for Economic Integrity (CEI), 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>26</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>27</sup>

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

As of the 2022-2023 cycle, 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 (\$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). **Despite losing the Prop 200 vote, licensed Sales finance lenders are being permitted to charge Arizona consumers higher rates than Prop 200 would have authorized.**

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

In 2022 CEI renewed efforts to nail down the official view of the Arizona Attorney General and the Department of Insurance and Financial Institutions on the form/s of security needed for a cash loan to be made as a Secondary Motor Vehicle Finance Transaction loan under Title 44, Chap. 2.1 instead of as a Consumer Lender loan subject to Title 6, Chap. 4. CEI had been told by the Superintendent of the Department of Financial Institutions in 2016 that 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>28</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.

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

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<sup>26</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>27</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.

<sup>28</sup> CEI Meeting with Superintendent, Arizona Department of Financial Institutions, Phoenix, AZ, July 19, 2016.



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>29</sup> As a result, the only OAG public information on the issue is former Attorney General Goddard’s 2010 warning to the industry not to use fake title loans to continue making payday loans.

A similar public records request to the Department of Insurance and Financial Institutions was submitted July 26, 2022. Specifically, CEI requested:

“All writings from the Department of Insurance and Financial Institutions (or Department of Financial Institutions) on the form/s of security required or permitted for a cash loan to qualify as a “Secondary Motor Vehicle Finance Transaction” title loan as defined by A.R.S. § 44-281.12 for the period 2009 through the present. This request includes, but is not limited to, (1) whether qualifying loans must be secured by a clear title to the vehicle owned by the borrower and/or that a first lien must be filed on the vehicle by the Sales Finance licensee; (2) whether qualifying loans may be secured with the vehicle registration held by a borrower who does not hold a clear title to the vehicle (typically called a “registration” loan); and (3) whether a Sales Finance licensee may require that the borrower authorize access to the borrower’s bank account to collect payment as a condition of extending credit including by requiring a bank account number and routing number, blank check, Automated Clearing House or demand draft authorization, or debit card.”

The records request applied to DFI/DIFI communications with the title loan industry trade association, individual loan companies, or Sales Finance licensees; to DFI/DIFI staff in conducting examinations or investigating complaints; to public interest organizations or individuals; to members of the Arizona legislature or legislative committees; and public communications such as press releases and consumer brochures.”<sup>30</sup>

Initially DIFI responded that records requested are confidential pursuant to A.R.S. § 6-129 and “therefore the Department cannot produce any responsive records” regarding our request.<sup>31</sup> The Center for Economic Integrity appealed the decision noting that Sales Finance licensees are classified as Financial Enterprises and are also subject to A.R.S. § 6.129.01 which provides that some records are

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<sup>29</sup> Electronic communication from Rachel Lump, Executive Assistant, Office of the Attorney General, July 20, 2022, on file with CEI.

<sup>30</sup> CEI Public Records Request to DIFI, July 26, 2022. On file with CEI.

<sup>31</sup> Electronic communication from Gioconda A. Espinosa, Regulatory Legal Affairs Officer, DIFI, August 5, 2022. On file with CEI.

public. DIFI subsequently denied the public records request based on both provisions of law.<sup>32</sup> The only public statement from DIFI on payday loans made by licensed lenders remains the 2013/2016 Alert that instructs payday lenders to comply with the Consumer Lender law. (See footnote 24.)

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

The Arizona Department of Insurance and Financial Institutions which licenses Sales Finance companies making SMVFT title loans provides the following information about this product for consumers or companies applying for a Sales Finance license.

#### *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>33</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>34</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>35</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>32</sup> Electronic communication from Gioconda A. Espinosa, Regulatory Legal Affairs Officer, DIFI, September 14, 2022. On file with CEI.

<sup>33</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>34</sup> Financial Services Consumer Credit and Loans at <https://difi.az.gov/consumer/f/consumer-loans> Viewed 08/18/2022.

<sup>35</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>36</sup>

*Arizona Administrative Code Title 20*

Not Applicable to Sales Finance licensees.<sup>37</sup>

### *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>38</sup>

### *Substantive Policy Statements*

DFI posts no “Substantive Policy Statements” for Sales Finance licensees, including no policy statement authorizing SMVFT loans to be based on a vehicle registration or access to the borrower’s bank account.<sup>39</sup>

### *Enforcement Actions*

DFI posts no enforcement actions addressing the forms of security necessary for a loan to qualify as a Secondary Motor Vehicle Finance Transaction.<sup>40</sup> The agency website lists six enforcement actions against Sales Finance licensees as of February 2023. Of those, three involve companies making SMVFT (title) loans, but none addressed the form of security required or permitted for loans.

**Summary:** In 2000, the Arizona legislature enacted two laws creating 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 the borrower’s check held for future deposit. **The title loan law did not authorize loans secured by encumbered vehicles and did not authorize licensed Sales Finance 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>36</sup> Note that this description does not match DFI’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>37</sup> [Sales Finance Companies - DFI | DIFI \(az.gov\)](#)

<sup>38</sup> AZ DFI, Regulatory Alert SF-13-0, Re: “Allowable Charges for Auto Title Lenders and Document Preparation Fee Charges,” May 24, 2013.

<sup>39</sup> [Substantive Policy Statements | Arizona Department of Financial Institutions \(test-az-dfi.pantheonsite.io\)](#) viewed 02/8/23

<sup>40</sup> DFI Enforcement Actions, select ‘Sales Finance,’ [Enforcement Actions | DIFI \(az.gov\)](#) viewed 02/8/23