

**HISTORY REPEATS ITSELF:
A NEW GENERATION OF PAYDAY LENDERS EXPLOIT
A LEGAL LOOPHOLE TO PICK MINNESOTANS' POCKETS**



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Legal Services Advocacy Project is part of Legal Aid, serving low-income Minnesotans by engaging in legislative and administrative advocacy, conducting research and policy analysis and providing community education and training.



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EXECUTIVE SUMMARY

Payday lending, in its current form, is a modern iteration of an old practice called "salary lending." Even more ancient are laws restricting usurious lending. Throughout history, civilized societies have sought to rein in predatory lenders, only to see those efforts frustrated by new methods of circumvention. Laws are passed to close loopholes, and the evaders find new schemes to skirt the new laws. And on and on it goes.

This pattern is repeating itself today in Minnesota's payday lending industry. Three Minnesota payday lenders are misusing an old law intended to govern "Industrial Loan and Thrift" institutions to evade the Payday Lending Law, enacted in 1995 expressly to govern payday lending. As a result of this dubious practice, these lenders are reaping unjust and excessive fees that cost Minnesota families dearly.

To date, these "loophole lenders" have fleeced Minnesota families for nearly 6 million in excess fees.

To date, these "loophole lenders" have fleeced Minnesota families for nearly \$6 million in excess fees by subverting the basic purpose of the Industrial Loan and Thrift model, designed to provide home ownership opportunities and, during the Depression, to help stanch foreclosures. The circumvention of Payday Lending Law and its resultant loss of precious resources is particularly acute in the current economy, making financial stability even more tenuous for desperate families experiencing job loss and other economic disruptions.

Since 2003, when the loophole was first discovered and exploited, loophole lenders have made a total of more than 552,000 "loophole loans."

Three loophole lenders are currently active: Payday America, the Unloan Corporation, and ACE Cash Express. In 2008 (the most recent year for which statistics are available), Payday America made more than 142,000 loophole loans; the Unloan Corporation made 10,500 loophole loans; and ACE Cash Express made more than 8,300 loophole loans. Since 2003, when the loophole was first discovered and exploited,

loophole lenders have made a total of more than 552,000 loophole loans (accounting for almost half of all loans made during that period).

The three payday lenders are masquerading as Industrial Loan and Thrifts. They provide none of the financial services that the other 16 other licensed Industrial Loan and Thrifts provide. Conversely, the other Industrial Loan and Thrifts make not a single payday loan. This subterfuge raises substantial questions about the propriety of using a financial institution designation that is completely unrelated to payday lending. It has created an unfair and unlevel playing field for the other 25 licensed payday lenders playing by the rules and lending under the Payday Lending Law.

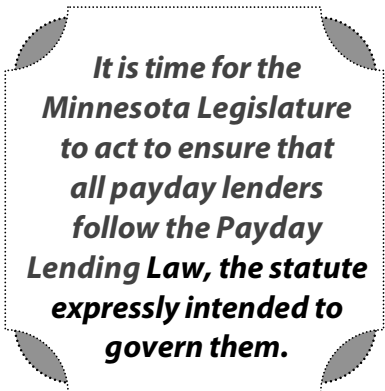
The loophole lenders protest that they will have to exit the market if they are required to follow Minnesota's Payday Lending Law, leaving cash-strapped borrowers who just need help with a one-time emergency without this source of credit. This threat rings hollow, and is unsupported by the facts:

***Three of the 28
payday lenders
doing business
in Minnesota are
masquerading
as industrial loan
and thrifts.***

- From 2000 to 2004, Payday America made *more than 384,000 payday loans under the Payday Lending Law* and in 2004 alone (the year before Payday America began exploiting the loophole) the company made *178,000 payday loans under the Payday Lending Law*.
- Cumulatively, loophole lenders made nearly *450,000 payday loans under the Payday Lending Law* between 1999 and 2004;
- ACE Cash Express, one of the loophole lenders, also owns another company (Bennett Ventures) that operates exclusively under the Payday Lending Law.
- Two other companies possess an Industrial Loan and Thrift license, but in 2008 they made loans exclusively under the Payday Lending Law.

A debate about the value and consequences of payday lending continues to rage in Minnesota and around the nation. Many states have banned payday lending altogether.

Regardless of where Minnesota legislators stand on banning payday lending, they should be opposed to allowing three lenders to circumvent the rules. In 2008, the Minnesota Legislature failed to close the loophole. It is time for the Minnesota Legislature to level the playing field and act to ensure that all payday lenders follow the Payday Lending Law, the statute expressly intended to govern them.



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INTRODUCTION

Making loans at usurious rates can be traced to Biblical times. As Charles Bruch relates, “[u]sury...has been a problem since the earliest recorded credit transactions.”¹ In the early part of the 20th Century, unregulated small cash loans in the style of payday loans were not uncommon. “Salary lenders” (or so-called “five for six boys”) would make small loans of \$5 for a week or two, and receive payment of \$6 when the loan came due.²

“Salary buyers” were also active.³ Under this model, a “buyer purchased a borrower's salary and provided immediate funds in exchange for the right to ‘buy’ the borrower's entire salary in the future.”⁴ For example, the buyer would advance \$22.50 on January 15th in exchange for the right to the borrower’s \$25 paycheck due January 28th.⁵

Interest rates ranging from 270% to 955% were reported, a precursor of the extraordinary rate levels associated with modern day payday lending.⁶

Small loan lenders in the early era attempted to avoid limits on interest rates imposed by state usury laws by characterizing the difference between the amount loaned and the amount repaid as fees, rather than interest.⁷ Small loan lenders also

¹ Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Rates Charged by Payday Lenders*, 69 U. CIN. L. REV. 1257, 1259 (2001). See also Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 Fla. L. Rev. 807, 851-2 (2003) (recounting “horror stories” of salary lending).

² See Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today’s Society*, 51 S.C. L. REV. 589, 618 (2000).

³ Drysdale & Keest, *supra* note 2, at 618-19.

⁴ Megan S. Knize, *Payday Lending in Louisiana, Mississippi, and Arkansas: Toward Effective Protections for Borrowers*, 69 La. L. Rev. 317, 322 (2009) (describing “salary buying”).

⁵ Drysdale & Keest, *supra* note 2, at 618-19.

⁶ *Id.*, at 619 (citing William Hays Simpson, *Costs of Loans Under Unregulated Lending*, 8 L. & CONTEMP. PROBS. 73, 74-5 (1941)).

⁷ Jackson R. Collins, *Evasion and Avoidance of Usury Laws*, 8 L. & CONTEMP. PROBS. 54, 55 (1941) (discussing salary lenders). See also Rolf Nugent, *The Loan-Shark Problem*, 8 L. & CONTEMP. PROBS. 3, 5-6 (1941) (describing tactics of salary lenders to evade rate restrictions). Compare similar language in the Payday Lending Law: rates allowed are characterized as being “[i]n lieu of the interest, finance charges, or fees.” Minn. Stat. § 47.60, subd. 2(a) (2009).

sought and found loopholes in state laws to justify the excessive rates they desired to charge.⁸

Public backlash against this abusive lending sparked a reform movement. Despite fierce opposition by the existing (and then-unlicensed) small loan industry,⁹ a Uniform Small Loan Law was developed in 1916 and eventually enacted in 25 states, including Minnesota.¹⁰

Eerily prescient of today's conditions in Minnesota, unscrupulous small lenders seeking to circumvent the Uniform Small Loan Law would lend under statutes meant to govern building and loan companies, industrial banking companies, or other types of financial entities, in order to avoid regulation under recently enacted small loan laws.¹¹

F.B. Hubacheck, in his 1941 treatise, "*The Development of Regulatory Small Loan Laws*," cited the "prostitution" of the Georgia building and loan acts as one of many egregious examples of inappropriate utilization of certain banking laws to elude restrictions on small loan laws.¹²

To curb illicit lending that emerged again in the early 1990's, the Minnesota Legislature enacted the Payday Lending Law (formally known as the Consumer Small

⁸ Nugent, *supra* note 7, at 10.

⁹ See Drysdale & Keest, *supra* note 2, at 620; see also William Trufant Foster, *The Personal Finance Business Under Regulation*, 8 L. & CONTEMP. PROBS. 154 (1941) (quoting a leader in the unlicensed small loan industry as saying: "We all know that such a law will put us all out of business.").

¹⁰ See Nugent, *supra* note 7, at 7 (discussing the enactment of the Uniform Small Loan Law in the various states and Hawaii before it became a state). See also Drysdale & Keest, *supra* note 2, at 619-20 and Leondel Calder, *Financing the American Dream* (Princeton: Princeton Univ. Press 1999), at 119-120.

¹⁰ Foster, *supra* note 9, at 167.

¹¹ Collins, *supra* note 7, at 65-6 (commenting that "The Industrial Banking Act. . . is currently becoming the haven for unscrupulous lenders of [small loans] for short terms and leads to repeated transactions covering a single continuous indebtedness"). See also F.B. Hubacheck, *The Development of Regulatory Small Loan Laws*, 8 L. & CONTEMP. PROBS. 108, 128 (1941) (citing the misuse of building and loan or industrial loan acts and "discount company acts" in California, Florida, and Missouri) and Nugent, *supra* note 7, at 10 (identifying the misuse of the Oregon Motor Vehicle Finance Act by small lenders to obtain "exorbitant rates of charge" and the "manipulation" of California's industrial banking act to produce excessive yields.)

¹² Hubacheck, *supra* note 11, at 128. Another contemporary commentator called the misuse of the Georgia building and loan act "a perversion." Nugent, *supra* note 7, at 10.

Loan Act) in 1995.¹³ It authorizes payday lending and limits loan amounts and interest rates.¹⁴

In 2003, the loophole lenders discovered that if they obtained regulatory licenses to operate as Industrial Loan and Thrift companies, they could charge rates significantly higher than the already high rates allowable under the Payday Lending Law.¹⁵ Soon after discovering the loophole, these lenders began exploiting it. Through 2008, more than 552,000 loophole loans have been made.¹⁶ Thus, the historical pattern of regulation and evasion, followed by new regulation and new evasion continues. It appears that philosopher George Santayana's immortal words –

¹³ 1995 Minn. Laws, ch. 202, art. 3, sec. 2 (codified at Minn. Stat. § 47.60 (2009)).

¹⁴ Id.

¹⁵ Compare the two rates structures. Under the Payday Lending Law, charges are limited to: (i) \$5.50 on any amount up to and including \$50; (ii) 10% of the loan proceeds plus a \$5 administrative charge on amounts in excess of \$50, but not more than \$100; (iii) 7% of the loan proceeds plus a \$5 administrative charge on amounts in excess of \$100, but not more than \$250; and (iv) 6% of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee on amounts in excess of \$250 up to the maximum of \$350. Minn. Stat. § 47.60, subd. 2a (2009). Loans of \$100, \$200, \$300, and \$350 translate into APR's of 391%, 248%, 200%, and 194%, respectively. The statute does not characterize the amount demanded in excess of the principal as interest, but rather as "a charge" which is "[i]n lieu of the interest, finance charges, or fees." Id. In contrast, Industrial Loan and Thrifts are governed under Minnesota Statutes, Chapter 53. As an Industrial Loan and Thrift, a licensee is authorized to make loans under Minnesota Statutes, Chapter 47. Minn. Stat. § 53.04, subd. 3a (2009) (providing the "right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted under chapters 47 and 334"). With respect to payday loans, Industrial Loan and Thrifts lend under authority of section 47.59. Under this authority, payday lenders may impose, in addition to interest at 33%: (i) on a closed-end loan transaction, a \$25 administrative fee; and (ii) on an open-end loan transaction, a \$30 charge for obtaining a cash advance and a \$50 annual fee, payable in advance. Minn. Stat. § 47.59, subd. 3(a)(2)(i) (2009) (permitting a "finance charge on the unpaid balance of the principal amount not to exceed... 33 percent per year on that part of the unpaid balance of the principal amount not exceeding \$750); § 47.59, subd. 6(d) (permitting on a closed-end loan transaction a "a onetime loan administrative fee not exceeding \$25); § 47.59, subd. 6(c)(4) (2009) (permitting a charge "for obtaining a cash advance in an amount not to exceed the service charge permitted in section 604.113," which, under section 604.113, subdivision 2(a), provides for "a service charge, not to exceed \$30); § 47.59, subd. 6(c)(1) (2009)(permitting annual charges, not to exceed \$50 per annum, payable in advance, for the privilege of opening and maintaining open-end credit"). For the same \$100, \$200, \$300, and \$350 loans, for example, these charges translate to APR's of: (i) for a closed-end loan transaction, 685%, 342%, 228%, and 194%, respectively; (ii) for an open-end loan transaction, 815%, 407%, 272%, and 256%, respectively; and (iii) for an open-end loan transaction with the full annual fee, 2,118%, 1,059%, 706%, and 629%, respectively.

¹⁶ In 2003, a total of 21 loans were made under the loophole. Those numbers increased to: 7,228 in 2004; 152,191 in 2005; 126,472 in 2006; 105,466 in 2007; and 161,031 in 2008. The total number of loophole loans made since 2003 is 552,414. Ron Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008* (St. Paul: Legal Services Advocacy Project, Summer 2009) (analyzing Minnesota Department of Commerce data concerning payday lending activity, compiled from filings required of and submitted by licensed payday lenders between the years of 2000 and 2009). See Chart 2, *infra*, for the evolution of lending made under the loophole.

“those who do not remember the past are condemned to repeat it” – ring as true today in Minnesota as when they were uttered in 1905.¹⁷

The cost to Minnesotans of the evasion of the laws expressly enacted to govern payday lending is high. Minnesota families have lost an estimated \$5.65 million as a result of the lending loophole.¹⁸

This report examines the exploitation of the loophole that allows some payday lenders to charge higher fees than are permitted under the Payday Lending Law, and estimates the cost that Minnesota payday loan borrowers have paid in excess fees because of this loophole. The report concludes that legislators should act to close this unjustifiable loophole that bleeds millions from borrowers.

In 2003 a handful of payday lenders discovered that if they obtained regulatory licenses to operate as industrial loan and thrift companies, they could charge rates significantly higher than the already high rates allowable under the Payday Lending Law.

¹⁷ George Santayana, *The Life of Reason*, The Project Gutenberg eBook; available at http://wikipremed.com/reading/philosophy/The_Life_of_Reason.pdf. See also Thomas Meany, *The Tragedy of Happiness*, WALL STREET JOURNAL, December 11, 2009; available at <http://online.wsj.com/article/SB10001424052748704240504574585981912442384.html> (reviewing the republishing of several books by Santayana and observing that the quote, “those who do not remember the past are condemned to repeat it,” is Santayana’s “most remembered”).

¹⁸ See Appendix A for a description of the methodology used to arrive at the estimate of excess fees paid.

PAYDAY LENDING IN MINNESOTA: EVOLUTION TOWARD EXPLOITATION

A. Uniform Small Loan Law

Responding to unconscionable loan sharking practices that saw interest rates on small loans soar in some cases beyond 1,000% APR,¹⁹ Minnesota joined many other states in 1939 by enacting the Uniform Small Loan Law.²⁰ Reportedly, once the Uniform Small Loan Law went into effect “the loan shark disappeared immediately.”²¹ Under the new law, interest rates were capped at 3% per month, or 36% APR²² (the same interest rate cap established by Congress in 1996 for payday loans made to military personnel and their families).²³

B. Consumer Small Loan Act

The success of the Uniform Small Loan Law turned out to be temporary. By the early 1990s, state regulators once again became alarmed about shadowy lenders “operating in the dark,” as well as out-of-state businesses making post-dated check loans in Minnesota at higher than allowable rates.²⁴

According to Jim Miller, former Deputy Commissioner of Financial Institutions at the Minnesota Department of Commerce, widely recognized as the architect of

¹⁹ Simpson, *supra* note 6, at 76-7 (noting that a study by the Minneapolis Legal Aid Society in 1937 found that interest rates on small loans in the state ranged from 224 % upwards of 1,000% APR).

²⁰ J.A.A. Burnquist, *A Regulatory Small Loan Law Solves Loan Shark Problem*, in THE LOAN SHARK PROBLEM TODAY (Durham: Duke University, 1954); available at <http://www.jstor.org/pss/1190402> (reporting that the law was passed “early in the 1939 legislative session and was signed by Governor Harold E. Stassen on February 15, 1939”).

²¹ Hubacheck, *supra* note 11, at 127. See also Burnquist, *supra* note 21 (noting that the passage of the law “marked the end of the ‘loan shark’ era”).

²² Foster, *supra* note 9, at 160.

²³ John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, 120 Stat. 2266 (codified as 10 U.S.C.A. § 987).

²⁴ Telephone interview with James G. Miller, former Deputy Commissioner of Financial Institutions at the Minnesota Department of Commerce on January 12, 2010, notes on file with the authors. Mr. Miller retired in 1998 after 30 years of distinguished service at the department. Tom Bengston, *Miller closes long career at Commerce Department*, NORTHWESTERN FINANCIAL REVIEW, January 10, 1998; available at http://findarticles.com/p/articles/mi_qa3799/is_199801/ai_n8804691/?tag=content;coll

Minnesota's Payday Lending Law, consumers "needed protection" from these practices.²⁵ In May of 1995, a new law governing payday lending was enacted.²⁶

Reviewing key elements of the 1995 Payday Lending Law demonstrates the intent of the Legislature was to regulate all payday lending:

- The definition of a consumer small loan – "a short-term, unsecured loan to be repaid in a single installment [with] indebtedness evidenced by...[an] agreement to defer the presentation of a personal check for a fee" – precisely tracks the common description of the payday loan.²⁷
- Loan amounts regulated are small, capped at \$350.²⁸
- The loan term is short – it cannot exceed 30 days.²⁹
- "Rollovers" (i.e., paying only the interest when the loan is due and leaving the principal intact for another two weeks) are prohibited.³⁰

According to Miller, establishing a licensing regime and preventing rollovers were the primary rationales for the bill.³¹ On balance, Miller says, the benefits of regulation outweighed the admittedly "outrageous

Today, 28 payday lenders have licenses to offer payday loans. Of the 28, only three operate in whole or in part under the Industrial Loan and Thrift license.

²⁵ Id.

²⁶ 1995 Minn. Laws, ch. 202, art. 3, sec. 2 (codified at Minn. Stat. § 47.60 (2009)). Loans made under it are also sometimes referred to as "47.60" loans because of the section of the Minnesota Statutes in which the governing provisions are located.

²⁷ Minn. Stat. § 47.60, subd. 1(a) (2009). For example, this description matches that provided by the Seventh Circuit in a 2000 case holding a payday lender liable for violation of the Truth in Lending Act. See Brown v. Payday Check Advance, Inc., 202 F.3d 987, 989 (7th Cir. 2000) (describing payday loans as "short-term, high-interest, single-payment credit for which the lender requires a post-dated check that can be cashed after the borrower's next payday"). See also Elizabeth C. Yen & Timothy P. Meredith, *Truth in Lending Developments in 1999 Preparing for the New Millennium*, 55 BUS. LAW. 1261, 1268 (2000) (defining a payday loan as "a short-term cash advance...made to a consumer in exchange for the consumer's personal check, in the amount of the advance plus a fee, or in exchange for the consumer's authorization to debit the consumer's checking account, for the amount of the advance plus a fee"); Marcus M. Van Wey, *Community State Bank v. Strong*, 23 OHIO ST. J. ON DISP. RESOL. 429, 429 (2008) (characterizing payday loans as extensions of "small amounts of money [which] must be repaid within a few weeks"); and Patrick L. Hayes, *A Noose Around the Neck: Preventing Abusive Payday Lending Practices and Promoting Lower Cost Alternatives*, 35 WM. MITCHELL L. REV. 1134, 1137 (2009) (describing the characteristics of payday loans as "short-term cash loans" for small amounts with loan caps, secured by a postdated check "that includes the payday lender's fee" or "delayed automatic debit agreements," payment of which is deferred).

²⁸ Minn. Stat. § 47.60, subd. 1(a) (2009).

²⁹ Minn. Stat. § 47.60, subd. 2(b) (2009).

³⁰ Minn. Stat. § 47.60, subd. 2(f) (2009).

³¹ Telephone interview with James G. Miller, *supra* note 25.

interest rates" allowed, which caused legislators and proponents to "swallow hard" when they calculated the APR's under the bill.³²

C. The Market Today

Today, 28 payday lenders have licenses to offer payday loans.³³ Of the 28, only three operate in whole or in part under the Industrial Loan and Thrift license.³⁴

One company – Payday America – dominates the market so thoroughly as to dwarf all others. It controls more than 60% of market.³⁵ (The next closest lender controls only 10% of the market and none of the remaining 26 companies control more than 5% of the market.)³⁶

With 14 active licensed outlets in 2008, mostly in suburban centers,³⁷ Payday America made 142,000 loans and loaned nearly \$51 million.³⁸ Over the last ten years, Payday America has made more than 849,000 loans (60% of all loans made during that period).³⁹

³² Id.

³³ Minnesota Department of Commerce, *Small Lender List*, November 19, 2009; at <http://commerce.state.mn.us/FSLicensees/sl.html> and Minnesota Department of Commerce, *Industrial List*, November 19, 2009; at <http://www.commerce.state.mn.us/FSLicensees/il.html>. Minnesotans also obtain payday loans from Internet payday lenders. The volume is unknown. *See, e.g.*, Mark S. Schwartz & Chris Robinson, 'Payday Loans': *An Ethical and Socially Responsible Industry?* EIGHTH ALTERNATIVE PERSPECTIVES ON FINANCE CONFERENCE (August 6, 2006) (asserting that "Internet payday lending...continues to grow, although no studies on the actual extent of this activity appear to exist").

³⁴ Of the 28 lenders, two are licensed exclusively as Industrial Loan and Thrifts (Payday America and Unloan Corporation); two have a license to operate as an Industrial Loan and Thrift company, but in 2008 made loans exclusively under the Payday Lending Law (Cashwell and Neighborhood Financial Services); and one company with two outlets operated one under the Payday Lending Law and the other under the Industrial Loan and Thrift authority (ACE Cash Express operates under its own name as an Industrial Loan and Thrift and owns and operates Bennett Ventures, which operates under the Payday Lending Law). Elwood, *supra* note 16.

³⁵ Ron Elwood, "Payday Lending Activity in Minnesota: 2008" (St. Paul: Legal Services Advocacy Project, Summer 2009) (analyzing Minnesota Department of Commerce data concerning 2008 payday lending activity, compiled from filings required of and submitted by licensed payday lenders in 2009).

³⁶ Id.

³⁷ Five other locations were licensed but made no payday loans. Payday America has active suburban outlets in: Anoka, Bloomington, Burnsville (2), Coon Rapids, Fridley, Robbinsdale, and St. Louis Park. It has active Greater Minnesota in Duluth, Mankato, Rochester, and St. Cloud. It has active urban locations in Minneapolis and St. Paul. Id.

³⁸ Id.

³⁹ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008*, *supra* note 16. Payday America and Pawn America are owned by the same person. Sheryl Jean, *Pawnbroker to Banker?* PIONEER PRESS, April 2, 2006; available at <http://www.pawnamerica.com/press/banker.pdf>. Until 2003, they each made loans. In 2003, payday loans were made exclusively by Payday America. Elwood, "Payday Lending Activity in

D. The Loophole

In 1995, another banking statute governing Industrial Loan and Thrift companies (as well as other financial institutions) was enacted.⁴⁰ It established maximum rates that financial institutions could charge.⁴¹ Lenders operating as Industrial Loan and Thrifts were prohibited from making payday loans under any authority other than the new Payday Lending Law.⁴² The loophole was created the

following legislative session, when, accidentally or for other reasons unknown, the prohibition was removed.⁴³

More than 232,000 payday loans were made in the period prior to the discovery and exploitation of the loophole and to date, nearly 450,000 payday loans under the Payday Lending Law.

From 1999 through 2002, more than 232,000 payday loans were made in 30 Minnesota cities under the Payday Lending Law; zero payday loans were made under the Industrial Loan and Thrift authority⁴⁴ (and to date, nearly 450,000 payday loans under the Payday Lending Law).⁴⁵

Minnesota: 1999 – 2008, supra note 16. The 849,000 loans referenced encompass all the loans made by both companies since 2000.

⁴⁰ 1995 Minn. Laws, ch. 202, art. 3 sec. 1 (codified at Minn. Stat. § 47.59). Covered entities were “financial institutions,” which were defined thusly: “‘Financial institution’ means a state or federally chartered bank, a state or federally chartered bank and trust, a trust company with banking powers, a state or federally chartered saving bank, a state or federally chartered savings association, an industrial loan and thrift company, or a regulated lender.” *Id.* (codified at Minn. Stat. § 47.59, subd. 1(k)).

⁴¹ *Id.*

⁴² *Id.* Newly enacted section 47.59, sub. 2 read: “This section does not apply to loans and other extensions of credit or purchases of extensions of credit by financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, 47.60, 48.153, 48.185, 48.195, 59A.01, 168.66 to 168.77, 334.01, 334.011, 334.012, 334.06, and 334.061 to 334.19.”

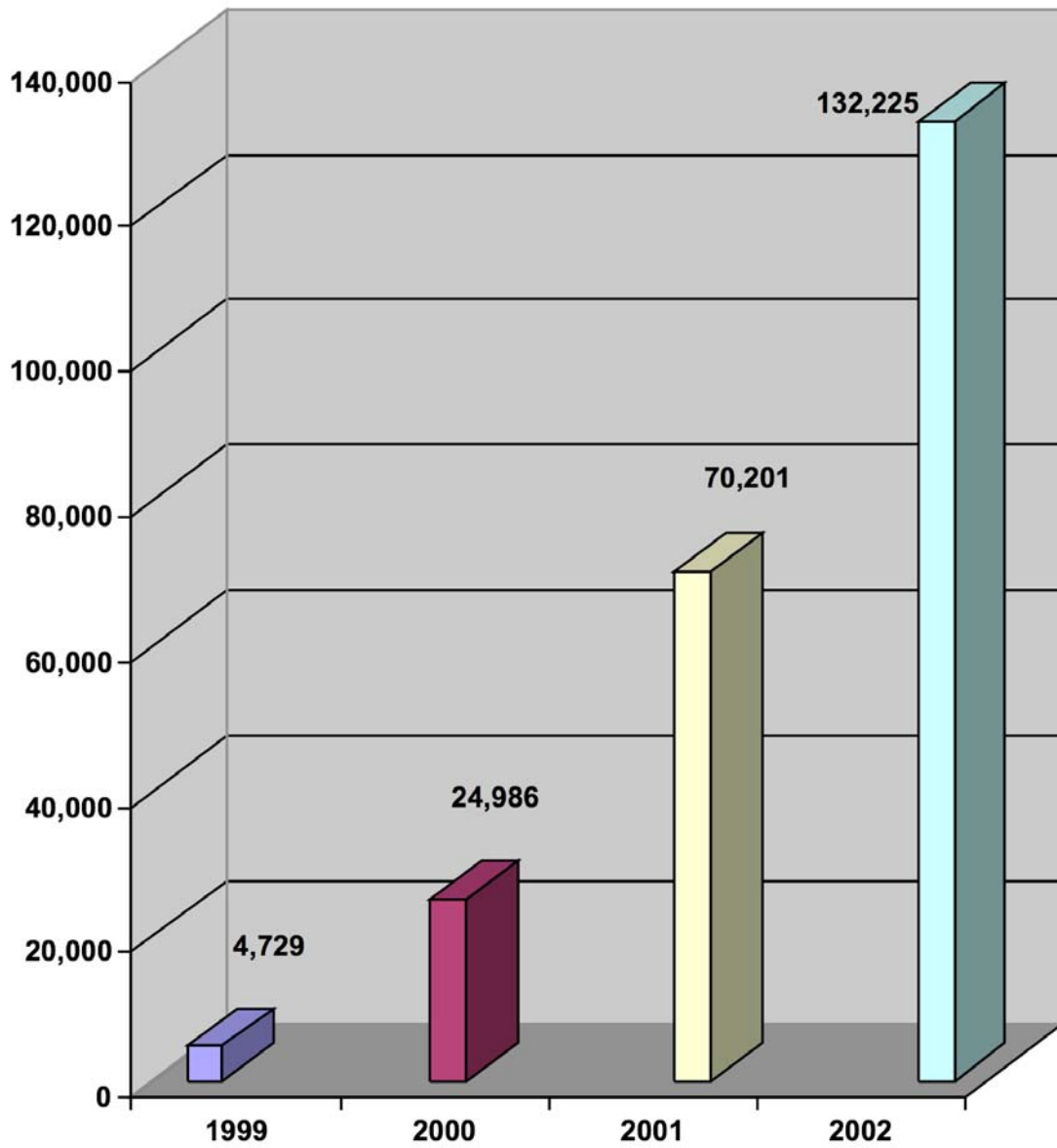
⁴³ 1996 Minn. Laws, ch. 414, art. 2, sec. 1 (codified at Minn. Stat. § 47.59, subd. 2) (providing that “lending may, *but need not*, be made according to” the Payday Lending Law and other sections of law “lieu of the authority set forth in this section”) (emphasis added). A review of legislative history – conducted by listening to all available audio tapes of committee hearings and floor sessions in the House and Senate during which the bill in which the amended language was contained was debated and considered – reveals no discussion of this provision or the reasons for making the change. One logical explanation for the creation of the loophole is that the amendment included a large list of enumerated statutes under which an Industrial Loan and Thrift could lend; likely, the inclusion of section 47.60 was inadvertently included since there is no other logical explanation for enacting a law that fences in payday lending one year, and blasts a hole in the fence the next.

⁴⁴ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008, supra* note 16.

⁴⁵ *Id.*

CHART 1

*PAYDAY LOANS MADE IN MINNESOTA UNDER PAYDAY LENDING LAW:
1999 - 2002*



Source: Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

The landscape changed in 2003, when The Money Center obtained an Industrial Loan and Thrift license and made the first loophole loans. That year, The Money Center made 21 loophole loans, totaling \$7,000.⁴⁶ In 2004, slightly more than 7,200 loophole loans were made, totaling more than \$2.1 million.⁴⁷ Although loophole loans dramatically increased from the previous year, they only represented 3% of the total loans made and 3.5% of the total dollars loaned, respectively, in 2004.⁴⁸

In 2005, loophole lending skyrocketed. Between 2005 and 2008, nearly 70% of all the loans and more than 72% of the dollars loaned have been made, not under the Payday Lending law, but rather under the auspices of the Industrial Loan and Thrift license.⁴⁹ The chart below illustrates the dramatic reversal.

⁴⁶ Id. The Money Center was subsequently acquired by ACE Cash Express, the first national lender to enter the Minnesota market.

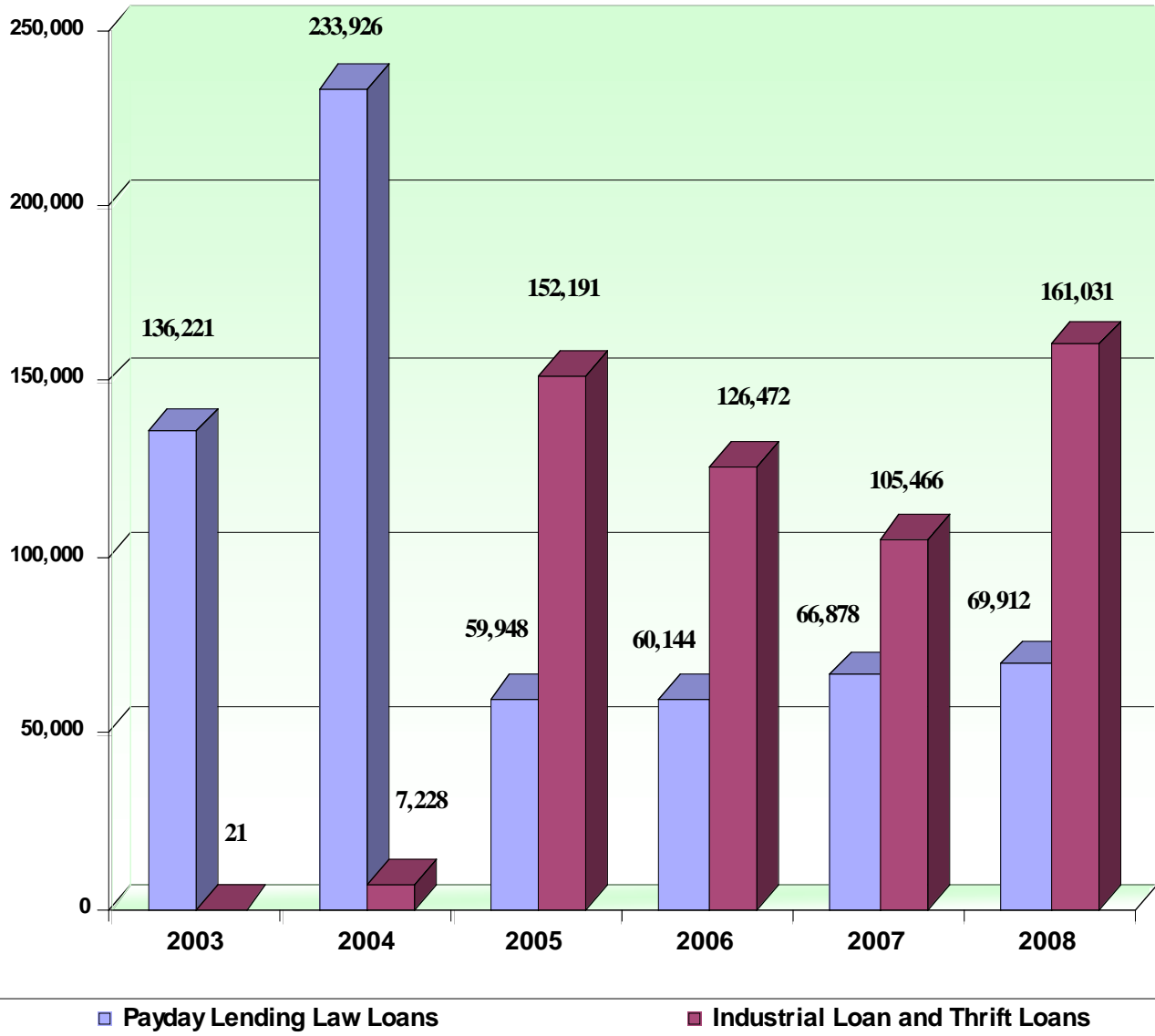
⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. See also Elwood, “*Payday Lending Activity in Minnesota: 2004* (St. Paul: Legal Services Advocacy Project, Summer 2005) (analyzing Minnesota Department of Commerce data concerning 2008 payday lending activity, compiled from filings required of and submitted by licensed payday lenders in 2009).

CHART 2

COMPARISON OF LOOPHOLE LOANS TO PAYDAY LENDING LAW LOANS: 2003 - 2008



Source: Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

The annual percentage rate that can be charged on these loophole loans depends on the type of loan provided. The loophole allows both “closed-end” and “open-end” loans. A closed-end loan is a one time transaction, with the balance payable on the due date. An open-end loan is structured as a line of credit that is continually accessible upon repayment of the initial amount borrowed.

The table below compares the allowable annual percentage rates⁵⁰ under both the Payday Lending Law and the Industrial Loan and Thrift loophole (which provides a variety of options for lenders) at various loan levels:

⁵⁰ A significant amount of attention is focused on the use of the annual percentage rate to signal the cost of a payday loan. The central criticism of the use of this mechanism to express the cost of the loan is that it is inappropriate to apply an annual rate to a two-week loan. Industry defender Aimee A. Minnich, for instance, succinctly summarizes the industry’s gripe, maintaining that using the APR “distorts the issue and serves only to inflame bias against lenders.” Aimee A. Minnich, *Rational Regulation of Payday Lending*, 16 KAN. J.L. & PUB. POL’Y 84, 91 (2006). If, in fact, borrowers only used payday loans infrequently, the lenders’ argument would have merit. But the vast majority of borrowers are in long-term relationships with payday lenders. As the Center for Responsible Lending data demonstrate, about one-quarter of payday loans are made to borrowers who visit payday lenders twice a month for more than 10 months of the year and six in ten are made to borrowers who visit payday lenders twice a month for more than six months. Uriah King & Leslie Parrish, *Springing the Debt Trap: Rate caps are only proven payday lending reform* (Durham: Center for Responsible Lending, 2007), at 3. See also Steven M. Graves & Christopher L. Peterson, *Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation*, 57 CATH. U. L. REV. 637, 642 (2008) (concluding that “[v]irtually every study or investigation that has explored the issue has found that payday loan borrowers consistently fall into recurring debt patterns, where unpaid loans compound for longer periods of time”). Given these facts, the application of an annual percentage rate calculation is perfectly appropriate to express the comparative cost of this financial product. Industry proponents further argue that, even if the APR is used for comparison, payday loans are cheaper than alternatives, including overdraft fees, bounced check fees and late payment fees. See e.g., Community Financial Services Association of America, *Myths vs. Reality of Payday Loans*, at http://www.cfsa.net/myth_vs_reality.html#1 (comparing the 391% APR for a \$100 payday loan to a 1,409% APR for a \$100 bounced check fee of \$54; a 965% APR for a \$100 credit card balance with a \$37 late fee; and a 1,203% APR for a \$100 utility bill with a \$46 late or reconnect fee) and Alan White, *Behavior and Contract*, 27 LAW & INEQ. 135, 159 (2009) (noting that payday lenders “compare the extremely high APR of a payday loan to the cost of bank overdraft fees”). This argument, however, is fatally flawed. As Michael Kenneth points out, the “high frequency of use” of payday loans undermines the comparison, making it not apples to apples, but rather apples to oranges. Michael Kenneth, *Payday Lending: Can “Reputable” Banks End Cycles of Debt?* 42 U.S.F. L. Rev. 659, 667 (2008). The fees (and associated APR’s) to which defenders of the industry compare payday loans are one-time occurrences, and therefore invalid for comparative purposes.

TABLE 1
COMPARISON OF APR'S

Amount of Loan	APR Under Payday Lending Law	APR Under Loophole (Closed-end Loan)	APR Under Loophole Line of Credit (Open-end Loan)	APR Under Loophole Line of Credit (Open-end Loan) With \$50 Annual Fee
\$100	391 %	685%	815%	2,118%
\$200	248 %	342 %	407%	1,059%
\$300	200 %	228 %	272%	706%
\$350	194%	219%	256%	629%

1. What is an "Industrial Loan and Thrift"?

In Frank Capra's timeless American classic, *"It's a Wonderful Life,"* the Bailey Savings & Loan, owned by the benevolent George Bailey, provides financing to the town's less well-off citizens so they too could participate in the American dream of home ownership. George Bailey never made – and never would make – a payday loan. Industrial Loans and Thrifts are akin to the Bailey Savings & Loan.

The United States Supreme Court, in a 1996 decision in *U.S. v. Winstar Corp.* offers a vivid explanation of the history and purpose of Industrial Loan and Thrifts:

[The] industry, which has been described as 'a federally-conceived and assisted system to provide citizens with affordable housing funds[,]'" traces its origins to the Great Depression, which brought default on 40 percent of the Nation's \$20 billion in home mortgages and the failure of some 1,700 of the Nation's approximately 12,000 savings institutions. In the course of the debacle, Congress passed three statutes meant to stabilize the thrift industry. The Federal Home Loan Bank Act created the Federal Home Loan Bank Board (Bank Board), which was authorized to channel funds to thrifts for loans on houses and for preventing foreclosures on them.⁵¹

⁵¹ *U.S. v. Winstar Corp.*, 518 U.S. 839, 884 (1996) (citations omitted).

They were first formally authorized in Minnesota in 1933.⁵² Minnesota's current law governing industrial loans and thrifts – Minnesota Statutes, Chapter 53 – is a direct descendant of the original law authorizing Industrial Loan and Thrift companies.

The original incarnation of the Industrial Loan and Thrift model was the "Morris Plan" bank (named after Virginia banker Arthur J. Morris).⁵³ The business model entailed "accept[ing] deposits and lending money on the security of pawns, endorsed notes and chattel mortgages at rate of interest though higher than the usual legal or contract rates, not out of line in comparison with the charges of other concerns extending credit to the masses."⁵⁴ The nature of the lending was traditional: obtain a lump sum and repay it in installments over time.⁵⁵

As Time Magazine reported in 1933, these institutions were "[f]ounded on a desire to provide the laboring man with a better source of credit than the fleecing loan shark"⁵⁶ Or, as one industry expert explained: "[A]n Industrial Loan and Thrift company serves a segment of the population who cannot borrow funds on a balance-sheet basis from commercial banks but who are deserving of credit at a much lower cost than 36 percent per annum."⁵⁷

⁵² 1933 Minn. Laws, ch. 246, sec. 1 (now codified at Minn. Stat. § 53.01 et seq. (2009)). The precursor statute was enacted in 1927. Mason's Minnesota Statues 1927 § 7774-25.

⁵³ Louis N. Robinson, *The Morris Plan*, THE AMERICAN ECONOMIC REVIEW, 21 (June 1931), at 222 (describing the founding, in March 1910 by Arthur J. Morris, of the Fidelity Savings and Trust Company in Norfolk, Virginia, the "progenitor...of all Morris plan companies and banks") available at <http://www.jstor.org/pss/1827870>. By 1933, there were "Morris Plan banks" in 150 U.S. cities. *Business: The New Morris Plan*, TIME, November 13, 1933.

⁵⁴ *Id.*

⁵⁵ M.R. Neifield, *Institutional Organization of Consumer Credit*, 8 L. & CONTEMP. PROBS. 23, 23 (1941) (explaining that industrial banks operate by "selling a borrower an investment certificate to be paid off by a series of equal payments spaced periodically over the life of the loan").

⁵⁶ *Business: The New Morris Plan*, *supra* note 53.

⁵⁷ *State ex rel. Duluth Clearing House Ass'n v. Department of Commerce*, 245 Minn. 529, 530, 73 N.W.2d 790, 792 (Minn. 1955) (citing the testimony of Stanley A. Nelson, vice-president of Industrial Credit Plan, Inc., which was rejected for a license to operate as an Industrial Loan and Thrift by the Minnesota Department of Commerce). That rate today, assuming a 3% inflation rate per year, is still only 59.4%, eleven times lower than the APR allowable on a \$100 closed-end loophole payday loan.

2. *Payday Lenders Masquerading as Industrial Loans and Thrifts*

The three payday lenders using the lending authority provided under the banking statute governing Industrial Loan and Thrifts are pretending to be what they are not. They neither carry out the fundamental purpose of an Industrial Loan and Thrift nor provide any of the financial services that an Industrial Loan and Thrift provides.⁵⁸

The other Industrial Loan and Thrifts – like Citifinancial, with 32 locations across the state – offer a variety of financial products, including auto loans and mortgage loans, but do not offer payday loans.⁵⁹ Other examples include: Wells Fargo Financial Minnesota, Inc., which offers debt consolidation loans, auto loans, credit cards and mortgage loans;⁶⁰ Riverside Finance, Inc., which offers consumer, real estate, automobile and personal loans;⁶¹ and Minnesota-based Minnesota First Credit and Savings, Incorporated, which offers savings accounts, certificates of deposit, mortgages, home equity loans and auto and recreational vehicle loans.⁶²

According to Jim Miller, the Industrial Loan and Thrift lending authority was never intended to be used to make payday loans.⁶³ He recalls that when the Payday Lending Law was enacted, it was intended as “a stand-alone law,” separate and apart from the Industrial Loan and Thrift statute.⁶⁴ There is no justification for three payday lenders to pervert the purpose for which Chapter 53 (the Industrial Loan and Thrift chapter) was intended. As analyst F.B. Hubacheck warned in his 1941 treatise

⁵⁸ Currently, there are 15 licensed Industrial Loan and Thrift companies. Minnesota Department of Commerce, *Industrial List*, *supra* note 34.

⁵⁹ Citifinancial, *Types of Loans*, at <http://www.citifinancial.com/USCFA/loans.do> (accessed on January 4, 2010).

⁶⁰ Wells Fargo Financial, *Home Page*, at <http://financial.wellsfargo.com/index.html> (accessed January 4, 2010).

⁶¹ Riverside Finance, *Riverside Finance Products & Services*, at <http://www.riversidefinance.com/products> (accessed January 4, 2010).

⁶² Minnesota First, *Home Page*, at <https://www.minnesota-first.com> (accessed January 4, 2010). Other Industrial Loan and Thrifts offering similar products include: B & B Financial Services, Inc.; Cornerstone Mortgage Lending Corp.; General Mortgage Home Equity Corporation; Century Capital Group; Great Northern Financial Group, Inc. of Minnesota; and Morgan Stanley Credit Corporation of Minnesota. Minnesota Department of Commerce, *Industrial List*, *supra* note 34.

⁶³ Telephone interview with James G. Miller, *supra* note 25.

⁶⁴ *Id.*

on small loan lending, *The Development of Regulatory Small Loan Laws*, “[i]n a business heavily tinged with the public interest, such as one extending credit to consumers, no loopholes can be left, or in due time, whenever pressures are sufficient, the unscrupulous will find and use them.”⁶⁵

3. *The Cost to Minnesotans of the Loophole*

The loophole lenders circumventing the law governing payday lending are reaping unjust and excessive fees that cost Minnesota families dearly. The loophole has permitted those who have milked it to bleed borrowers for as much as 32% more in fees per loan than they are otherwise allowed under the Payday Lending Law.⁶⁶ Through 2008, more than 552,000 loophole loans have been made, costing Minnesotans \$5.65 million in excess fees.⁶⁷

The potential exists for even greater exploitation. Loophole lenders typically charge less than the maximum allowable for open-ended (credit line) transactions. If they imposed the maximum allowable charges,⁶⁸ the total of excess charges would total \$8.4 million.⁶⁹

4. *Loophole Lenders Fight to Remain Renegades*

Payday America has been the most vociferous opponent of efforts to force the renegade payday lenders back under the Payday

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Lending Law***

⁶⁵ Hubacheck, *supra* note 11.

⁶⁶ The finding is based on the differential between the charges allowed and imposed by loophole lenders using Industrial Loan and Thrift lending authority compared with charges allowed and imposed under the Payday Lending Law. See Appendix A for a description of the methodology used to determine the excess fees paid.

⁶⁷ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008*, *supra* note 16. See Appendix A for a description of the methodology used to determine the excess fees paid.

⁶⁸ Under the lending authority enjoyed by Industrial Loan and Thrifts, the maximum allowable charge for “obtaining a cash advance” on each open-end (credit line) transaction is \$30, with an additional one-time fee of \$50 “for the privilege of opening and maintaining open-end credit.” Minn. Stat. § 47.59, subd. 6(c)(4) (2009) (charge for obtaining a cash advance); Minn. Stat. § 47.59, subd. 6(c)(1) (2009) (fee for the “privilege of opening and maintaining open-end credit”). Loophole lenders typically charge \$25 for obtaining a loan and do not impose the maximum allowed one-time opening and maintenance fee. See Payday America, *Fees*, at <http://paydayamerica.com/>; accessed October 9, 2009.

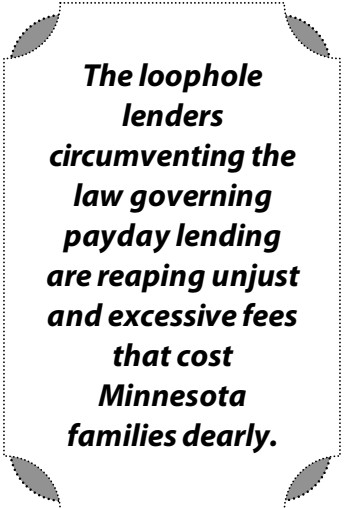
⁶⁹ See Appendix A for a description of the methodology used to determine the excess fees paid. .

Lending Law. The company's primary argument is that it would be unable to continue to offer payday loans if required to lend under the Payday Lending Law.⁷⁰ The company also defends its actions by suggesting that critics should be comforted by the fact that, as an Industrial Loan and Thrift, it is subject to greater regulatory oversight. Another myth commonly repeated is that the high rates – whether under the Payday Lending Law or with respect to the even higher rates allowed under the Industrial Loan and Thrift authority – are justified by risk.

None of these arguments are supported by the facts. Hundreds of thousands of payday loans were made under the Payday Lending Law, before discovery of the loophole; greater scrutiny does not equate to greater protection; and there is no correlation between rates and risk. The weakness of the loophole lenders' arguments are explored in greater detail below.

Loans Proliferated Prior to the Loophole

The argument that loophole lenders will exit the market if they must lend under the Payday Lending Law lacks credibility in light of the fact that nearly 450,000 payday loans have been made under the Payday Lending Law (with Payday America alone making more than 384,000 of them).⁷¹



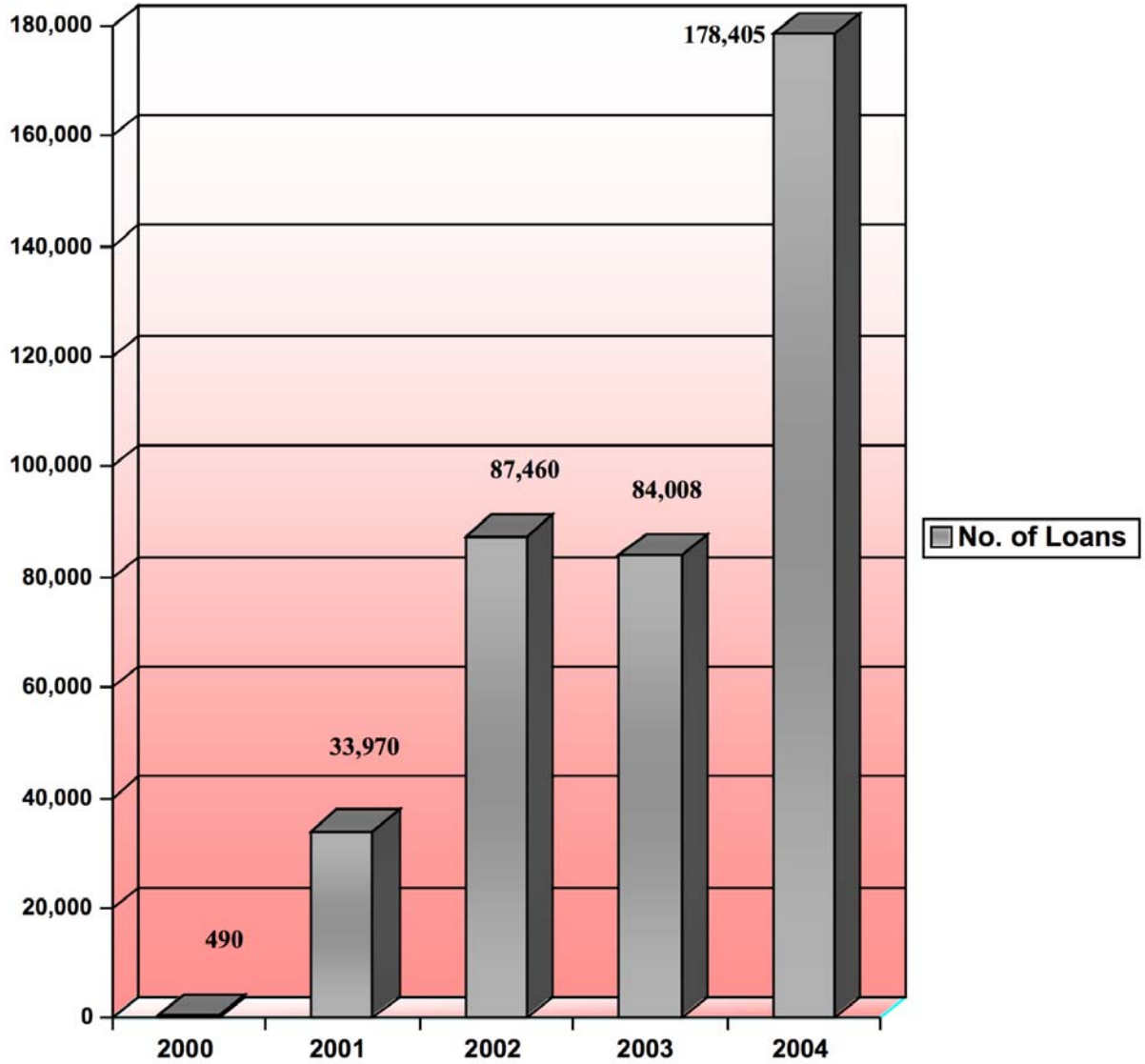
The loophole lenders circumventing the law governing payday lending are reaping unjust and excessive fees that cost Minnesota families dearly.

⁷⁰ Another opponent, the Unloan Company, proffered the same argument. It should be noted that the Unloan Company began operations under the Industrial Loan and Thrift umbrella and never made loans under the Payday Lending Law.

⁷¹ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008*, *supra* note 16.

CHART 3

Payday America Loans Before Exploiting Loophole: 2000 - 2004⁷²

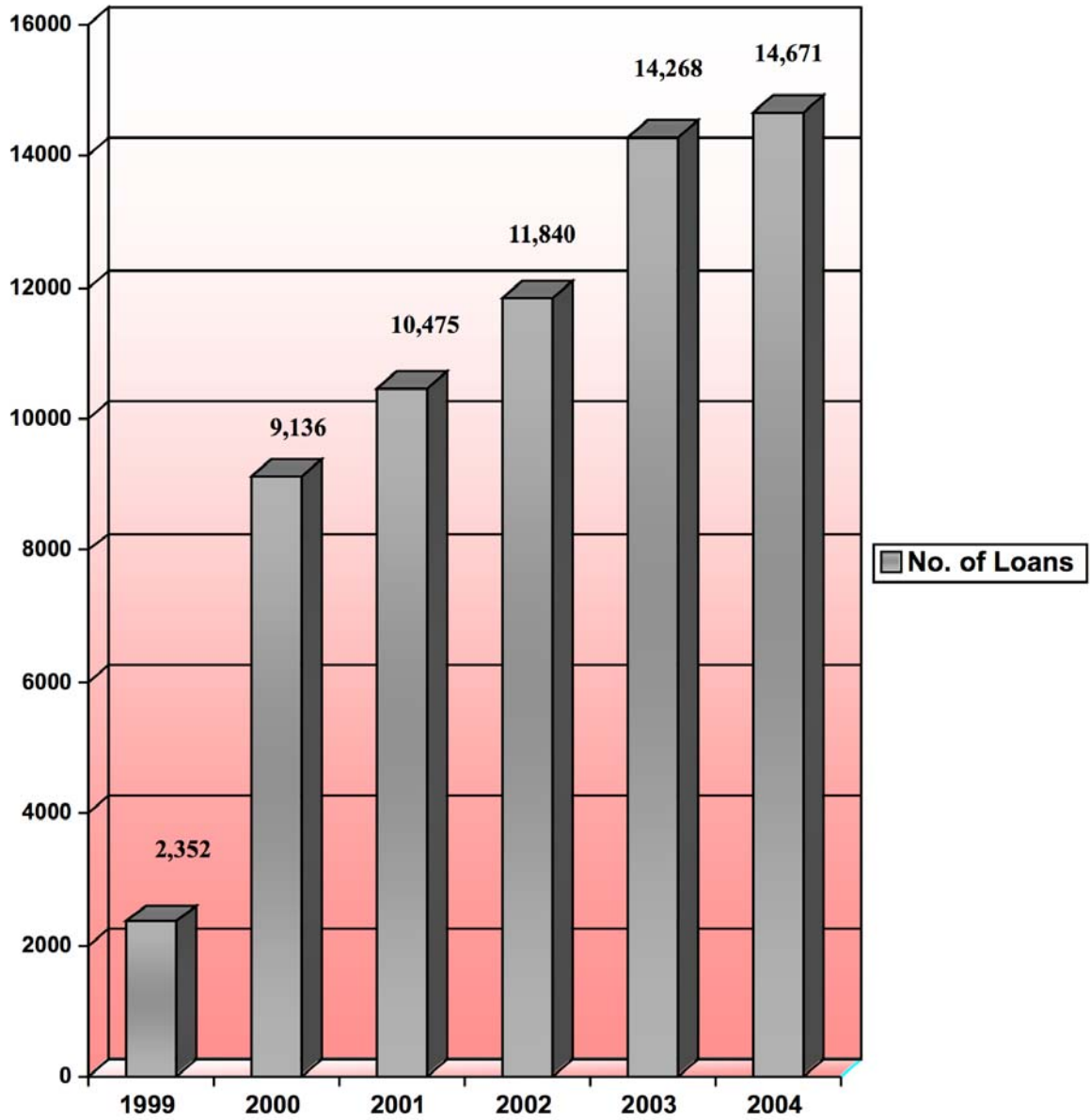


Source: Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

⁷² Includes loans made by both Pawn America and Payday America for the years 2001 and 2002.

CHART 4

The Money Center Loans Before Exploiting Loophole: 2000 - 2004



Source: Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

In addition, these other facts render the “we’ll be forced out of business” protestation absurd.

- In 2008, only three of the 28 payday lenders used the loophole.
- ACE Cash Express, one of the loophole lenders, also owns another company (Bennett Ventures) that operates exclusively under the Payday Lending Law.
- Even though two other companies possess an Industrial Loan and Thrift license, in 2008 they made loans exclusively under the Payday Lending Law.

Greater Scrutiny Does Not Offer Greater Protection

The “greater oversight” argument is an attempt at misdirection. The enhanced supervision the Minnesota Department of Commerce exercises does nothing to enhance consumer protections. Its supervision over Industrial Loan and Thrifts addresses their fiscal stability. Since payday lenders are not depository institutions, closer scrutiny of a company’s books has no impact on a payday borrower. Under current law, the Department of Commerce possesses sufficient oversight authority to enforce rate violations and other transgressions – a power far more meaningful to consumers.

Rates and Risk are Unrelated

A common, though unsupported, justification for the high rates payday loans carry is degree of risk in offering payday loans to justify their extraordinarily high APR’s.⁷³ In fact, as one commentator has observed:

There is no correlation between rates and risk.

⁷³ See e.g., Minnich, *supra* 18, at 84 (arguing that payday borrowers “are considered too high a credit risk for mainstream financial institutions” and consequently payday “loans are riskier”). See also Chad A. Cicconi, *A Role for Payday Lenders*, 123 BANKING L.J. 235, 235 (2006) (stating that payday lending is “inherently risky” because it is premised “on providing unsecured credit to consumers with poor credit history”).

payday loans are “[n]ot high risk, [merely] high cost.”⁷⁴

Even industry supporters agree. Two of them, Ronald J. Mann and Jim Hawkins, acknowledge that the “overwhelming majority of payday lending transactions do not result in default.”⁷⁵

In Minnesota, the default rate on payday loans not only is declining, but also is substantially lower than for other forms of credit, such as credit cards.⁷⁶ From its high of 3.0% in 2005, the default rate (as a percentage of dollars loaned) dropped by 10%, to 2.7% in 2008.⁷⁷ The cumulative payday loan default rate from 2000 through 2008 is even lower: 2.4%.⁷⁸ Payday America’s own testimony confirms that defaults are low and there is no correlation between rates and risk. According the President of Payday America, “less than 2% of all Payday America loans go to collections.”⁷⁹

By contrast, data from the Federal Reserve show that, over the past four years the default rate on credit cards averaged 4.58 % per year.⁸⁰ By comparison, the average default rate on Minnesota payday loans during that same period was 2.7%.⁸¹

⁷⁴ Michael Kenneth, *Payday Lending: Can “Reputable” Banks End Cycles of Debt?* 42 U.S.F. L. Rev. 659, 688 (2008).

⁷⁵ Ronald J. Mann & Jim Hawkins, *Just Until Payday*, 54 UCLA L. REV. 855, 885 (2007).

⁷⁶ According to the Federal Reserve, credit default rates averaged: 4.84% for 2005; 4% for 2006; 3.99% for 2007; 5.52% for 2008; and 9.16 for the first three quarters of 2009. The Federal Reserve Board, *Charge-off rate on credit card loans; All commercial banks*, November 16, 2009; available at <http://www.federalreserve.gov/datadownload/Review.aspx?rel=CHGDEL&series=3d98142c67e9a402d0b6e8a1e5c1bf64&lastObs=&from=&to=&filetype=csv&label=include&layout=seriescolumn&type=package> See also Matt Phillips, *Credit Card Update: Bank of America Leads in Default Rate Rise*, WALL STREET JOURNAL MARKET BEAT, June 16, 2009 (reporting that “[c]redit card default rates continued to rise in May, reaching 10.1%” and forecasting “a peak of 11.25% in mid-2010”); and Stephen Bernard, *Moody's reports increase of nearly 50 percent, and expects trend to continue*. SYRACUSE ONLINE, October 18, 2008 (reporting that the August 2007 and August 2008 credit card charge off rates were 4.61% and 6.82%, respectively).

⁷⁷ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008*, *supra* note 16.

⁷⁸ *Id.* Defaults in dollars were not reported in 1999. See Table 5, *infra*, for the historical payday loan default rate in Minnesota.

⁷⁹ Testimony of Brad Rixmann, Founder and CEO of Payday America, on H.F. 3533, Before Comm. on Commerce and Labor, Labor and Consumer Protection Div., 85th Leg. (February 29, 2008) (audio available at: <http://www.house.leg.state.mn.us/audio/ls85/labor022908.asx>).

⁸⁰ The Federal Reserve Board, *supra* note 109. Data is from 2005 through the first three quarters of 2009.

⁸¹ Elwood, *Payday Lending Activity in Minnesota: 1999 – 2008*, *supra* note 16.

TABLE 2**DEFAULT RATES ON MINNESOTA PAYDAY LOANS: 2000 -2008**

Year	Percentage of Total Dollars Loaned
1999	Not reported
2000	0.8%
2001	1.1%
2002	1.7%
2003	2.1%
2004	2.1%
2005	2.3%
2006	3.0%
2007	2.9%
2008	2.7%

Source: Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

TABLE 3**COMPARISON OF CREDIT CARD AND MINNESOTA PAYDAY LOAN DEFAULT RATES: 2005 - 2008**

Year	Default Rate for Credit Cards	Default Rate for Minnesota Payday Loans (as a Percentage of Dollars Loaned)
2005	4.84%	2.3%
2006	4.0%	3.0%
2007	3.99%	2.9%
2008	5.52%	2.7%

Sources: The Federal Reserve Board, Charge-off rate on credit card loans; All commercial banks (November 16, 2009); at <http://www.federalreserve.gov/datadownload/Review.aspx?rel=CHGDEL&series=3d98142c67e9a402d0b6e8a1e5c1bf64&lastObs=&from=&to=&filetype=csv&label=include&layout=seriescolumn&type=package>
 Legal Services Advocacy Project analysis of Minnesota Department of Commerce data submitted by licensed lenders.

In addition, a number of Minnesota payday lenders make a substantial number of loans (at one or sometimes all of their locations) and report not a single default. Fifteen companies have loaned more than \$10 million since 2000 without one default.⁸²

In sum, as Bruch emphatically asserts, there is simply a “lack of [a] quantifiable, risk-based justification” for the excessively high rates payday lenders charge.⁸³

⁸² Calculated from default statistics compiled in the following reports: Ron Elwood, *Payday Lending Activity in Minnesota: 2000* (St. Paul: Legal Services Advocacy Project, 2001); Ron Elwood, *Payday Lending Activity in Minnesota: 2001* (St. Paul: Legal Services Advocacy Project, 2002); Ron Elwood, *Payday Lending Activity in Minnesota: 2002* (St. Paul: Legal Services Advocacy Project, 2003); Ron Elwood, *Payday Lending Activity in Minnesota: 2003* (St. Paul: Legal Services Advocacy Project, 2004); Ron Elwood, *Payday Lending Activity in Minnesota: 2004*, *supra* note 46; Ron Elwood, *Payday Lending Activity in Minnesota: 2005* (St. Paul: Legal Services Advocacy Project, 2006); Ron Elwood, *Payday Lending Activity in Minnesota: 2006* (St. Paul: Legal Services Advocacy Project, 2007); and Ron Elwood, *Payday Lending Activity in Minnesota: 2008*, *supra* note 36.

⁸³ Bruch, *supra* note 1, at 1280. *But see* Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* 1 (FDIC Center for Financial Research Working Paper, Paper No. 2005/09, 2005) (finding that high operating costs and default rates justify payday lending rates).

CONCLUSION

The circumvention of laws designed to protect borrowers from predatory payday lending practices is not new. This pattern of evasion has emerged in the form of three payday lenders that are exploiting a loophole to circumvent Minnesota's Payday Lending Law and reaping unjust and excessive fees have cost Minnesota families nearly \$6 million in excess fees.

In 1995, the Minnesota Legislature enacted the Payday Lending Law to govern payday lending. Today, three loophole lenders are circumventing the Payday Lending Law and are masquerading as Industrial Loan and Thrifts, a type of financial institution whose original purpose was to provide homeownership opportunities.

Using the authority granted to Industrial Loan and Thrifts, these loophole lenders are able to charge what lenders using the Payday Loan Act are prohibited from charging. There is no justification whatsoever for legally allowing three payday lenders, under the cloak of the Industrial Loan and Thrift statute, to evade the Payday Lending Law. This subterfuge is making financial stability even more tenuous for desperate families experiencing job loss and other economic disruptions.

If it quacks like a payday loan, it is a payday loan – and should be treated like one. Minnesota legislators must put an immediate stop to the blatant evasion by the three loophole lenders of the law designed to govern payday lending. At nearly \$6 million in excess fees (and counting), the cost of inaction to financially vulnerable Minnesotans is simply too great.

There is simply no justification whatsoever for legally allowing three payday lenders, under the cloak of the Industrial Loan and Thrift statute, to evade the Payday Lending Law.