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FEATURE ARTICLES

Payday Loans: Big Interest Rates and Little Regulation

by Daniel A. Edelman

I. INTRODUCTION

"Payday loans" are short term, very high interest rate loans. The loans are typically two weeks in duration and carry annual percentage rates ("APRs") ranging from 200% to more than 2000%. At the end of the two-week term, the customer has the option of continuing the loan for an additional period by paying the interest. The loans are typically "rolled over" on multiple occasions. According to industry analysts, the average customer obtains eleven loans per year.¹ However, many consumers greatly exceed the average.² Another similar loan, a "title loan," is made on the security of automobile titles, generally for one-month terms.³

Payday loans are generally made to consumers facing financial emergencies. The "payday lender" does not run credit checks and this feature makes these loans attractive to those who have, or think they have, bad credit. Typically the loans are made to anyone who brings in a photo ID, a bank account statement, and a pay stub.⁴ Once a consumer obtains a

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payday loan, he or she will often be unable to pay it off, except from the proceeds of additional payday loans. "Instead of using a loan once in an emergency, borrowers tend to get on a treadmill of repeated loans they can't get off It's almost a pattern It really is people who are desperate for money."⁵ Frequently, the payday loan store is the last stop prior to bankruptcy court.⁶

Additionally, the number of payday loan establishments is increasing exponentially. There were no payday loan establishments in Illinois until 1997; now there are several hundred.⁷ There are at least 2,000 establishments in the United States that do nothing but make payday loans; many of the 6,000 check-cashing outlets also offer such loans.⁸

Many of the payday loan establishments are part of national chains. For example, *Check Into Cash* opened its first office in 1993 and now has 320 outlets, with \$21.4 million in revenue during 1997 and as much again during the first six months of 1998; it is planning to go public.⁹ Another payday lender, *Advance America Cash Centers*, has nearly 500 outlets.¹⁰ *Ace Cash Express*, a chain with over 800 outlets, collected \$10.1 million in payday loan fees during fiscal 1998.¹¹

One owner of a payday loan establishment attributed the sudden growth of cash advances to a cash-strapped, lower middle class. More and more people earning \$25,000 to \$30,000 with two or three children, a car payment and insurance payment, are living from payday to payday.¹² One informal survey indicated that the average customer is a white female earning between \$14,500 and \$20,000 per year, 28 years old, and employed in the service or healthcare industry.¹³ The second largest group of borrowers is African American.¹⁴

Typical payday loan and title loan rates in the Chicago area range from 101% to 912% depending on the lender; however, rates as high as 1875% are not unheard of;¹⁵ and an Indiana lender was charging 2,400%.¹⁶ The wide disparity among rates strongly suggests that there is little or no rate competition between payday lenders, and that the high rates are not cost-justified.

Generally, companies that make payday loans do not advertise the

annual percentage rates. Instead, they advertise that the loan cost a specific dollar amount. The consumer does not see the annual percentage rate until he or she is presented with the check.¹⁷ As this article will explain, such behavior violates the credit advertising provision of the Truth in Lending Act.

II. LEGAL CHALLENGES TO PAYDAY LOANS AND TITLE LOANS

A. Usury

In those states that still retain usury limits, payday and title lenders have been attempting to evade the law by claiming that they are engaging in "deferred deposit" transactions, not making loans. Such efforts have been successfully challenged.¹⁸ In the absence of a specific exemption, the charges for a payday loan or title loan constitute interest for usury purposes.¹⁹ In *Hamilton v. York*, the district court reviewed the substance of the transactions, rather than the form and ruled that "the transactions were nothing more than interest bearing loans."²⁰ Specifically, the store was not cashing the plaintiff's check, "but rather, it was giving them short-term loans that could be deferred for an additional 10% per week."²¹

According to a November 1998 survey by the Consumer Federation of America, eighteen states or territories set their small-loan rate low enough to make the payday loan business

unprofitable.²² Nineteen states and the District of Columbia allow the practice but regulate the terms of the loans.²³ Thirteen states, including Illinois, have no limits on interest or terms of payday loans.²⁴

B. Unconscionability

An unconscionable bargain is “one which no man in his senses, not under delusion, would make, one the one hand, and which no fair and honest man would accept on the other.”²⁵ “a contract may be treated as unconscionable when it is improvident, oppressive, or totally onesided.”²⁶ Illinois courts “will relieve against hand and unconscionable contracts which have been procured by taking advantage of the condition, circumstances or necessity of the other parties.”²⁷

Other courts outside Illinois have stated that a contract is unconscionable where “the terms are so extreme as to appear unconscionable according to the mores and business practices of the time and place,”²⁸ or where the terms are “overly harsh.”²⁹ Courts find unconscionability in circumstances where one party has taken advantage of another’s condition, circumstances, or necessity to obtain a grossly excessive price.³⁰ Illinois, however, does not require that a transaction be both procedurally and substantively unconscionable. For example, one appellate court in Illinois noted that, “[u]nconscionability can be either procedural or substantive or a

combination of both.”³¹

Courts have found extraordinary interest rates to be unconscionable. In *Carboni v. Arrospide*, a 200% interest rate for a secured loan was held to be unconscionable.³² Other courts have also sustained complaints alleging that similar annual percentage rates were unconscionable.³³

Other specific features of payday loans and title loans that lead to the conclusion that they are unconscionable include: (1) the percentage of borrowers who default, which may be as high as 20-25%,³⁴ and the inability of the consumer to benefit from a transaction;³⁵ (2) an extremely high return on investment;³⁶ and, (3) failure to comply with disclosure requirements and other legal protections afforded borrowers.³⁷

C. Truth In Lending

Although the payday loan industry often attempts to characterize its transactions as something other than loans, any payday loan is a consumer credit transaction subject to the Truth in Lending Act and Regulation Z.³⁸ Violations of Truth in Lending requirements that have been alleged in connection with payday loans include:

- 1) complete failure to provide any disclosures;³⁹
- 2) exclusion from the finance charge of fees and charges which may not be excluded;⁴⁰
- 3) failure to make the finance charge and annual percentage rate

more conspicuous;⁴¹

4) failure to properly identify collateral;⁴²

5) requiring the borrower to post cash with (or give part of the loan proceeds back to) the lender as "cash collateral," thereby reducing the effective amount borrowed;⁴³

6) in states with limitations on the amount of a payday loan, splitting a transaction into two loans.⁴⁴

In addition, many payday lenders violate the credit advertising provisions of Truth in Lending, which are not privately actionable. The lenders advertise that a loan of a particular dollar amount includes a certain per week charge, without stating the annual percentage rate.⁴⁵ This violates 15 U.S.C. § 1664.⁴⁶ The city of Chicago has filed an administrative complaint against one payday lender alleging such violations.⁴⁷

D. Illegal Collection Practices

Illegal collection practices are often used to enforce payday loans. These include threatening criminal prosecution or civil penalties under bad check statutes.⁴⁸ Such threats exist in Illinois, even though the Illinois bad check statutes do not apply to a check issues in connection with a payday loan.⁴⁹ Another illegal collection practices involve unlawful wage assignments. Such wage assignments are not disclosed in the Truth in Lending statement.⁵⁰ Others do not provide that they are revocable at the will of the borrower, as required by the

FTC Credit Practices regulation.⁵¹

Specifically, some of the forms used violate the Illinois Wage Assignment Act.⁵²

Likewise, threatening to refer debts to outside attorneys when no outside attorney is involved is yet another illegal collection practice.⁵³

PROPOSED STATUTE REGULATING PAYDAY LOANS

"AN ACT to create the Short Term Loan Act"

Section 1. Short Title.

This Act may be known as the Short Term Loan Act.

Section 5. Definitions.

As used in this Act, unless the context requires otherwise:

"Amount financed" means the amount financed calculated in accordance with the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Federal Reserve Board Regulation Z, 12 C.F.R. part 226, as from time to time amended.

"Annual percentage rate" means the annual percentage rate calculated in accordance with the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Federal Reserve Board Regulation Z, 12 C.F.R. part 226, as from time to time amended.

"Check" means any personal check,

draft, money order, personal money order, traveler's check, other demand instrument for the transmission or payment of money.

"Consumer credit" has the same meaning as under the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Federal Reserve Board Regulation Z, 12 C.F.R. part 226, as from time to time amended.

"Department" means the department of Financial Institutions.

"Director" means the Director of Financial Institutions.

"Finance charge" means the finance charge calculated in accordance with the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Federal Reserve Board Regulation Z, 12 C.F.R. part 226, as from time to time amended.

"Maker" means any person who writes a check and upon whose personal account the check is drawn.

"Licensee" means a person duly licensed by the Department to engage in the short term loan business pursuant to the provisions of this Act.

"Payor financial institution" means a financial institution upon which a check used in a short term land transaction is drawn.

"Renewal" means the termination of an existing short term loan agreement

solely by the payment of fees then due the licensee and the substitution of a new check drawn by the maker pursuant to a new short term loan agreement.

"Service fee" or "fee" means the fee authorized in Section 35 for the deferral of the presentment of a check pursuant to this Act.

"Short term loan transaction" means a consumer credit transaction made for a period of time not exceeding 31 days, and includes any transaction whereby a personal check is cashed by a person licensed under this Act and, by mutual agreement between the licensee and the maker of the check, its presentment or negotiation is deferred.

Section 10. Authority to transact business.

Except as provided in section 15, no person shall engage in the business of making short term loan transactions for a fee or other consideration without having first obtained a license from the Department. However, any person authorized (under current licensing provisions for small lenders in Illinois) may engage in the business of accepting short term loan transactions until the Department has acted upon his or her application for a license under this Act, provided the application is filed within 60 days of the effective date of this Act.

Section 15. Application.

This Act does not apply to a person principally engaged in the bona fide retail sale of goods or services who does not hold himself or herself out as being in the short term loan business who, either as an incident to or independently of a retail sale or service, from time to time cashes checks, drafts or money orders without a fee or other consideration.

Section 20. License.

An application for a license pursuant to this Act shall be made in compliance with and governed in all respects by the provisions of this Act. Notwithstanding any other law to the contrary, the business of short term loan services conducted in accordance with this Act shall not be subject to or controlled by any other statute governing the imposition of interest, fees, or loan charges.

Section 25. Records, annual reports.

(a) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the Department to determine (i) determine whether the licensee is complying with the provisions of this Act; and (ii) report on the licensee's return on an annual basis. The record keeping system of a licensee shall be sufficient if he or she make the required information reasonably available. The records need not be kept in the place of

business where short term loan agreements are made if the Department is given free access to the records wherever they are located. The record pertaining to any short term loan transaction need not be preserved for more than 3 years after making the final entry relating to the transaction.

(b) On or before April 15 of each year, a licensee shall file with the Department a composite annual report in the form prescribed by the Department relating to all short term loan transactions entered into by him or her. The Department shall consult with comparable officials in another state for the purposes of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may only be published in composite form.

(c) On or before July 1 of each year, the Department shall publish the average return on equity of all licensees under this Act.

Section 30. Examinations and Investigations

(a) The Department shall examine periodically, at intervals it deems appropriate, the business and records of every licensee. For these purposes, the Department shall have free and reasonable access to the offices, place of business, and records of the licensee.

(b) a licensee, at his or her option, shall

make them available to the Department at a convenient location within this State, or pay the reasonable and necessary expenses for the representative designated by the Department, which may include comparable officials of the State in which the records are located, to inspect them on its behalf.

(c) for the purposes of this Section, the Department may administer oaths or affirmations and, upon its own motion or upon the request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(d) upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Department may apply to a civil court for an order compelling compliance.

Section 35. Authorized fees and procedures

A licensee may engage in short term loan transactions, subject to the following:

1. No person not previously licensed by the Department to make loans shall engage in short term loan transactions without first obtaining a license under the provisions of this Act.

2. A licensee may charge one \$5 origination fee for a short term loan transaction. No additional origination fee may be charged for renewals of the short term loan transaction.

3. In addition to the origination fee, a licensee may charge finance charges on the amount finance of the short term loan transaction at an annual percentage rate not to exceed 40% over the prime rate on the first business day of the month prior to the month in which the short term loan transaction is made, as reported by the Federal Reserve Board.

4. No short term loan agreement shall be for a period of time in excess of thirty-one (31) days.

5. Makers who write a check for a short term loan transaction on an account that was closed on the date of the transaction are subject to all civil and criminal penalties available at law. If a check is returned to the licensee from a payor financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check and charges imposed on the licensee by the payor financial institution. Except as otherwise provided in this Act, an

individual who issues a personal check to a licensee under a short term loan agreement is not subject to criminal or civil penalties.

6. No licensee shall threaten or state that it has remedies that it does not have.

7. Proceeds to the maker in a short term loan transaction may be made in the form of a licensee's business check, money order, or cash; provided, however, that no additional fee may be charged by a licensee for chasing the licensee's check.

8. No licensee may renew any short term loan transaction more than two consecutive times, after which the short term loan check must be paid off in cash or its equivalent by the maker or deposited by the licensee.

9. The maker of the check shall have the right to redeem the check from the licensee at any time prior to the negotiation or presentment of the check, and to receive a credit for unearned finance charges, computed according to the actuarial method.

10. After a transaction has been renewed twice, the licensee may not engage in another short term loan transaction with the same customer or a member of the customer's household for ninety (90) days.

11. The face amount of a check

taken for a short term loan may not exceed \$500, exclusive of the fees and other finance charges allowed under this Act.

12. The Department shall maintain a computerized central registry of customers. Any licensee engaging in a short term loan transaction shall report it to the registry within one hour. No licensee may engage in a short term loan transaction with anyone who currently has a short term loan transaction with another licensee.

13. Each short term loan transaction must be documented by a written agreement. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed as both a dollar amount as its effective annual percentage rate. The written agreement must authorize the licensee to defer presentment or negotiation of the check until a specific date, not later than thirty-one (31) days from the date the check is accepted by the licensee.

14. If a short term loan transaction is not paid when due, the licensee: (a) may recover actual costs of collection, including attorney's fees; (b) may not recover any late charge; (c) may not continue to impose finance charges for any period after the due date of the short term loan transaction

of renewal thereof.

15. No wage assignment or other security may be taken. No licensee may require a deposit of cash or withhold any portion of the amount financed of the proceeds of the transaction.

16. All media and point of sale advertising of a licensee must state the annual percentage rate or range of annual percentage rates charged with the same prominence as the licensee's name and address.

17. A licensee under this Act shall charge only those fees specifically authorized in this Section.

Section 40. Conduct of Business Other Than Making Loans.

A licensee may not carry on other business at a location where he or she engages in short term loan transaction.

Section 45. Violations; Suspensions or Revocations of Licenses.

(a) The Director may, upon ten (10) days notice to the licensee by the United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefore, and upon reasonable opportunity to be heard prior to such action, fine suspend or revoke any license issued hereunder if he or she finds that :

1. the licensee has failed to pay the annual license fee or to comply with any order, decision, or finding of the Director made pursuant to this Act;

2. the licensee has violated any provision of this Act or any regulation or decision made by the Director under this Act;

3. any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Director in refusing the issuance of the license;

4. the licensee has not operated the short term loan business at the location licensed for a period of sixty (60) consecutive days, unless the licensee was prevented from operating during such period by reason of events or acts beyond the licensee's control.

(b) Prior to suspension or revocation of a license issued under this Act, the Director may fine the licensee up to a maximum of \$100 per day.

(c) The Director may fine, suspend or revoke only the particular licenses for particular places of business or locations with respect to which grounds for revocation may occur or exist; except that if he or she finds that such grounds for revocation are of general application to all places of business or locations, or that such grounds for fines, suspension, or revocation have occurred or exist with

respect to a substantial number of places of business or locations, he or she may fine, suspend, or revoke all of the licenses issued to the licensee.

(d) A licensee may surrender any license by delivering to the Director written notice that he or she thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for act committed prior to such surrender or entitle such licensee to a return of any part of the annual license fee or fees.

(e) Every license issued under this Act shall remain in force until expires, or is surrendered, suspended, or revoked in accordance with this Act, but the Director may on his or her own motion issue a new license to a licensee whose license was revoked if no fact or condition then exists that clearly would have warranted the Director in refusing originally the issuance of the license under this Act.

(f) No license shall be revoked until the licensee has had a notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Director shall within twenty (20) days thereafter, prepare and keep on file in his or her office a written order or decision of revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five (5) days after the filing in his or her office of such order, finding, or decision. A

review of any such order, finding, or decision may be had in the same manner as provided in Section 22.01 of the Currency Exchange Act.

Section 50. Enforcement

(a) The remedies provided herein are cumulative and apply to licensees and unlicensed persons to whom this Act applies and who failed to obtain a license.

(b) Any violation of the Illinois Consumer Fraud and deceptive Business Practices Act, 815 ILCS 505/1 et seq., in connection with a short term loan transaction constitutes a violation of this Act.

(c) Any violation of this Act constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq.

(d) The violation of any provision of the Act, or regulation thereunder, except as the result of accidental or bona fide error of computation, renders the short term loan transaction void, and the person shall have no right to collect, receive or retain any principle, interest, or other charges whatsoever with respect to the short term loan transaction.

(e) Any person found to have violated this Act shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of \$1000 for each violation, plus costs, and

attorney's fees.

(f) A consumer may sue for injunctive relief and other appropriate equitable relief to stop any person from violating any provisions of this Act.

(g) The remedies provided in this Section are not intended to be the exclusive remedies available to a consumer, nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

A1; payday loans are common among consumers filing bankruptcy petitions.

⁷ See Robert Manor, *Payday Lenders Draw Regulators' Attention*, CHICAGO SUN-TIMES, Nov. 10, 1998, 48.

⁸ See John Hendren, *High-interest Payday Loans Make Inroads*, ASHEVILLE CITIZEN-TIMES, Jan. 10, 1999, B8.

⁹ See *id.*; see also Jim Meyers, *Paycheck Advance Firms Attack Void Left by Banks*, SACRAMENTO BUSINESS JOURNAL, Oct. 23, 1998, 26; H. Timmons, *Fast-Growing Payday Loan Business: Convenience or Legal Loan Sharking*, AMERICAN BANKER, Mar. 10, 1999, 6.

¹⁰ AP Dispatch, Jan. 9, 1999, 10.57.

¹¹ See Helen Huntley, *Short Loans, High Rates, Regulator Questions*, ST. PETERSBURG TIMES, Oct. 25, 1998, 1H.

Endnotes

¹ See Chet Dembeck, *Check-cashing Fees Bleeding Customers*, THE CAPITAL, Mar. 7, 1999, B1.

² See *e.g.*, Complaint, *Smith v. Short Term Loans, LLC*, 99 C 1288 (N.D. Ill), listing 26 loans obtained by a husband and wife at rates of between 342% and 421%.

³ See C. Trevison, *Oregon Bills Would Put Brakes on Car-title Lenders*, THE OREGONIAN, Feb. 15, 1999.

⁴ See Helen Huntley, *How a Payday Loan Works*, ST. PETERSBURG TIMES, Oct. 25, 1998, 2H.

⁵ Mark Barrett, *Critics Call Payday Loans Scam; Local Business Owners Disagree*, ASHEVILLE CITIZEN-TIMES, Jan. 10, 1999, B8.

⁶ See Chris O'Malley, *Payday Lenders Profit from Loophole*, INDIANAPOLIS STAR, Feb. 21, 1999,

¹² See Dembeck, *supra* note 1.

¹³ See Danielle Herubin, *Some Check-Cashers Charging Interest That Can Reach 520%*, PALM BEACH POST, Nov. 11, 1998, 6B.

¹⁴ See *id.*

¹⁵ See Manor, *supra* note 7.

¹⁶ See O'Malley, *supra* note 6.

¹⁷ See Huntley, *Short Loans*, *supra* note 11; Manor, *City Sues Payday Loan Firm*, CHICAGO SUNTIMES, Feb. 19, 1999, 52.

¹⁸ See Bill Poovey, *Alabama Group Hits High Interest Rates*, CHATTANOOGA FREE PRESS, Dec. 27, 1998, B10; Helen Huntley, *State Gets Tough on Payday Lenders*, ST. PETERSBURG TIMES, Jan. 8, 1999, 1E; Huntley, *Short Loans*, *supra* note 11.

¹⁹ See *Hamilton v. York*, 987 F.Supp. 953 (E.D.Ky. 1997); *In re Miller*, 215 B.R. 970 (Bankr. E.D.Ky. 1997).

²⁰ *Hamilton*, 987 F.Supp. at 956.

²¹ *Id.*

²² These states and territories and their maximum rates are as follows: Alabama, 36%; Alaska, 36%; Arizona, 36%; Arkansas, 17%; Connecticut, 28.52%; Georgia, 57.68%; Hawaii, 24%; Maine, 30%; Maryland, 33%; Massachusetts, 39.86%; Michigan, 25%; New Hampshire, 24%; Pennsylvania, 23.57%; Puerto Rico, 25%; Rhode Island, 36%; Texas, 31.65%; Vermont, 24%; Virginia, 36%; Virgin Islands, 26%; West Virginia, 31%.

²³ These jurisdictions have special payday loan laws that exempt payday lenders from state usury laws. The fees permitted, expressed as a dollar fee or percentage of the loan amount and also as an annual percentage rate for a 14-day loan, are as follows: California, 15% and 391%; Colorado, 25% or \$25 and 625%; District of Columbia, 10% plus up to \$20 fee and 391%; Florida, 10% or \$5 and 261%; Iowa, 15% for first \$100 then 10% and 391%; Kansas, sliding scale from \$5.50 for up to \$50 loan to 6% plus \$5 for \$250 loan and 391%; Kentucky, 15% and 391%; Louisiana, sliding scale from \$5 to \$15 and 261%; Minnesota, sliding scale from \$5.50 for up to \$50 to 6% plus \$5 for 250 loan and 391%; Mississippi, 18% and 469%; Missouri, 15% and 391%; Nebraska, 15% and 391%; Nevada, to be set by administrative regulation; North Carolina, 15% and 391%; Ohio, 5% per month and 391%; Oklahoma, 20% and 521%; South Carolina, 15% and 391%; Tennessee, 15% or \$30 and 391%; Washington, 15% and 391%; Wyoming, 20% or \$30 and 521%.

²⁴ Twelve states do not set limits on small loan interest rates and permit payday loans

by omission: Delaware, Idaho, Illinois, Montana, New Jersey, New Mexico, New York, North Dakota, Oregon, South Dakota, Utah and Wisconsin. Indiana sets a maximum APR of 36% but allows payday lending by setting a minimum finance charge of \$33, which amounts to 1,716% APR on a \$100 loan.

²⁵ *In re Carlson*, 101 Ill. App. 3d 924, 428 N.E. 2d 1005, 1010 (1st Dist. 1981), *citing*, *Hume v. United States*, 132 U.S. 406, 410 (1889).

²⁶ *Ahern v. Knect*, 563 N.E.2d 787, 792 (2nd Dist. 1990).

²⁷ *Id.*

²⁸ *Williams v. Walker Thomas Furniture Co.*, 121 U.S.App.D.C. 315, 350 F.2d 445, 450 (1965).

²⁹ *Carboni v. Arrospide*, 2 Cal. App. 4th 76, 83, 2 Cal. Rptr. 2d 845 (1991).

³⁰ See *Ahern*, 563 N.E.2d at 792.

³¹ *Frank's Maintenance & Engineering, Inc. v. C.A. Roberts Co.*, 408 N.E.2d 403, 409-10 (1st Dist. 1980).

³² See *Carboni*, 2 Cal. App. 4th at 78, 2 Cal. Rptr. 2d at 847.

³³ See *Brown v. C.I.L., Inc.*, 1996 U.S. Dist. LEXIS 4053 (N.D.Ill., Mar. 29, 1996), *adopting* 1996 U.S. Dist. LEXIS 4917 (N.D.Ill., Jan. 28 1996) (motion to dismiss); *Cobb v. Monarch Finance Corp.*, 1996 U.S. Dist. LEXIS 2814 (N.D.Ill., Mar. 8, 1996), later opinion 1996 U.S. Dist. LEXIS 776 (N.D.Ill., June 4, 1996), later opinion 1997 U.S. Dist. LEXIS 754 (N.D.Ill. 1997); *In re Miller*, 215 B.R. 970 (Bankr. E.D.Ky. 1997). See generally, Steven W. Bender, *Rate Regulation at the Crossroads of Usury and Unconscionability: The Case for*

Regulating Abusive Commercial and Consumer Interest Rates Under the Unconscionability Standard, 31 Hous. L. Rev. 721 (Fall, 1994).

³⁴ See Huntley, *Short Loans*, *supra* note 11.

³⁵ See *In re Davis*, 169 B.R. 285, 304 (E.D.N.Y. 1994).

³⁶ See *Ahern*, 563 N.E.2d at 790.

³⁷ See *American Buyers Club v. Grayling*, 53 Ill. App. 3d 611, 368 N.E.2d 1057 (5th Dist. 1977).

³⁸ See *Turner v. E-Z Check Cashing of Cookeville, TN, Inc.*, 1999 U.S. Dist. LEXIS 2045 (M.D. Tenn. Jan. 26, 1999); *Hamilton v. York*, 987 F.Supp. 953 (E.D.Ky. 1997); *In re Miller*, 215 B.R. 970 (Bankr. E.D.Ky. 1997); *In re Brigance*, 219 B.R. 486 (Bankr. W.D. Tenn. 1998).

³⁹ See *Chris O'Malley, Audit by State Shows Record of Overcharging by Firms*, INDIANAPOLIS STAR, Feb. 21, 1999, E2; *see also*, *Hamilton v. York*, 987 F.Supp. 953 (E.D.Ky. 1997); *In re Miller*, 215 B.R. 970 (Bankr. E.D.Ky. 1997).

⁴⁰ See *Turner*, 1999 U.S. Dist. LEXIS at 2045.

⁴¹ See *Complaint, Anderson v. Short Term Loans*, 98 C 4949 (N.D.Ill. 1998).

⁴² See *Complaint, Smith v. One Iron Ventures*, 99 C 1561 (N.D.Ill. 1999).

⁴³ See *Complaint, Reed v. Chartwell Financial Services*, 98 C 6965 (N.D.Ill. 1998).

⁴⁴ See *T. Sharp, House Sends Payday Loan Extension to Governor's Desk*, AP Dispatch, Mar. 4, 1999.

⁴⁵ See Huntley, *Short Loans*, *supra* note 11.

⁴⁶ Section 1664 provides:

Advertising of credit other than open end plans [TILA § 144]

. . . (c) Rate of finance charge expressed as annual percentage rate

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement

If any advertisement to which this section applies states the amount of the downpayment, if

any, the amount of any installment payment, the dollar amount of a finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

- (1) the downpayment, if any;
- (2) the terms of the repayment;
- (3) the rate of the finance charge expressed as an annual percentage rate.

Regulation Z, 12 C.F.R. § 226.2(a)(2), defines "advertisement" to mean "a commercial message in any medium that promotes, directly or indirectly, a credit transaction."

⁴⁷ See *Robert Manor, City Sues Payday Loan Firm*, Chicago Sun Times, Feb. 19, 1999, 52.

⁴⁸ See Huntley, *Short Loans*, *supra* note 11; John Hendren, *Despite Gripes, More States Allow Triple Digit Loan Rates*, Chattanooga Free Press, Jan. 10, 1999, J6; *see also*, *Turner*, 1999 U.S. Dist. LEXIS at 2045; *Brigance*, 219 B.R. at 486.

⁴⁹ The deceptive practice statute, 720 ILCS 5/17-1(B), provides that:

[a] person commits a deceptive practice when, with intent to defraud:

(d) with intent to obtain control over

property or to pay for property, labor or service of another, or in satisfaction of an obligation for payment of tax under the Retailers' Occupation Tax Act [35 ILCS 120/1 et seq.] or any other tax due to the State of Illinois, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository. Failure to have sufficient funds or credit with the depository when the check or other order is issued or delivered, or when such check or other order is presented for payment and dishonored on each of 2 occasions at least 7 days apart, is prima facie evidence that the offender knows that it will not be paid by the depository, and that he has the intent to defraud. (e) he issues or delivers a check or other order upon a real or fictitious depository in an amount exceeding \$150 in payment of an amount owed on any credit transaction for property, labor services, or in payment of the entire amount owed

on any credit transaction property, labor or services, knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check or order within seven days of receiving actual notice from the depository or payee of the dishonor of the check or order.

It follows that issuing a bad check in payment of preexisting obligations not involving the procurement of property, labor or services, and not involving a tax obligation, is not covered.

⁵⁰ See complaint, *Smith v. One Iron Ventures*, 99 C 1561 (N.D.Ill. 1999).

⁵¹ See 16 C.F.R. part 444.

⁵² See 740 ILCS 170/1 et seq.

⁵³ See *Avila v Rubin*, 84 F.3d 222 (7th Cir. 1996).

