



## After 2017 Shortcomings, Advocates Prepare to Push for New Consumer Protections on Payday Loans

By Riley Snyder - October 22, 2018

For most people, taking out a loan with a 652 percent interest rate would be unthinkable.

But for thousands of Nevadans short on rent or needing cash, that's the average interest rate placed on loans granted at ubiquitous high-interest, short term lenders such as MoneyTree, Dollar Loan Center or TitleMax.

Nevada has approximately 95 licensed payday lenders with more than 300 branches, who report making a significant number of loans every year — more than 836,000 deferred deposit loans, nearly 516,000 title loans and up to 439,000 high-interest loans in 2016 alone. Nationwide, it's estimated that [11 percent of American adults](#) took out a payday loan within the last two years.

And of the 35 states that allow high interest loans without a rate cap, Nevadans pay the fifth highest on average interest rates at 652 percent, according to the [Center for Responsible Lending](#).

Stymied in their efforts to enact a slew of new and expanded consumer protections on high-interest loans — most notably a proposed payday loan database that died on the last day of the 2017 legislative session — advocates are looking to build a broader coalition, including the faith community, before the next Legislature kicks off in February.

At a recent forum hosted by the Legal Aid Center of Southern Nevada and a host of progressive groups at a church across the street from UNLV, the message was clear — greater awareness of the industry and how high-interest lending works is needed across all communities.

“They didn't read the contract, they didn't understand or whatever. But just from a Christian standpoint, that what's Jesus came to do, to help the lowly,” Robin Collins from Green Valley United Methodist Church said. “He came to help the sick, He didn't come to help the well. So we're supposed to take care of our brothers and sisters, take care of a widow, take care of an orphan.”

Members of the payday lending industry say they are unfairly stigmatized and provide much-needed access to quick credit that traditional banks or lending institutions do not. Their

arguments are bolstered by dozens of lobbyists and hundreds of thousands of dollars in campaign contributions to top candidates.

Still, it's been more than a decade since the last substantial changes to consumer protection laws on high-interest loans, and advocates — primarily general welfare groups like the Legal Aid of Southern Nevada, a cadre of progressive organizations and the faith-based coalition **Nevadans for the Common Good** — are looking to the 2019 Legislature as a chance to push for new consumer protections and limits on high-interest lenders.

Organizers said their efforts, including the September forum, are not about supporting a specific piece of legislation or concept, but more to raise awareness around the high-interest lending practices ahead of what will likely be a ferocious fight in 2019.

“A lot of people know what the storefronts are but have no idea what goes on inside,” Legal Aid policy director Bailey Bortolin said in an interview. “They can sing the jingle but they don’t understand the contract.”

### **Payday loans**

Though usually painted with a broad brush of “payday” lenders, Nevada law allows for several types of high-interest loans (defined as more than a [40 percent annual percentage interest rate](#)) to be offered to the public.

These range from [title loans](#), where the title of a car is put up as collateral for a loan, a [check-cashing service](#), a [tax income refund anticipation loan](#) and [deferred deposit](#) or “payday” loans, where individuals agree to transfer money to a lender at a later date in return for an upfront payment.

Each type of loan has various [restrictions and regulations](#), such as limiting the length of the loan period and the number of loan extensions. Nevada law also requires lenders offer a repayment plan if a customer defaults on a payment before repossessing a car or proceeding with a civil lawsuit.

Advance America executive Jamie Fuller, whose company operates nearly a dozen branches in Nevada, said that the industry when well-regulated gives people without access to traditional banking options the ability to access small amounts of money, which they otherwise would not be able to access or would obtain through loan sharks or other shady sources.

“If you regulate the industry out of business, you’ve done absolutely nothing to address the consumers need for small dollar credit,” he said.

Nevada’s law sets forth a slew of protections once a person defaults on a loan, including capping interest rates on outstanding balances owed and requiring companies give customers up to 90 days to make the payment.

But advocates, including Nevada Legal Aid Center attorney Tennille Pereira, say that customers often don’t take advantage of the protections offered by a default due to the social

stigma or because they've been led to believe they can extend the loans through "grace" periods or extensions, which don't contain the same protections and limits on interest rates. "What they don't understand is they just didn't get the consumer protections that are built into the system that allows them to get out of debt, reduce the interest rate, instead of just making this snowball bigger," she said.

## **Regulation**

George Burns, who heads the Nevada Division of Financial Institutions, said the agency has seen an uptick in enforcement action over the last two years as part of their duties overseeing high-interest lenders.

But he downplayed the results of [an audit released in May](#) that found nearly a third of the state's payday lenders had received a less-than-satisfactory rating from state regulators over the past five years, saying that the numbers included minor technical violations and that about 95 percent of licenses lenders tried to comply with the law.

Still, Burns said he was frustrated with the five percent of non-compliant lenders, saying that they often employed delaying tactics, roadblocks and litigation if the department found something in violation of the law and sought to correct their action through cease and desist orders.

"The minute the lawyers get involved, the games start," he said. "Trying to extend the amount of time, not going straight to hearing, or wanted to do pre-hearing briefings and meetings, and trying to come to a settlement, going back and forth forever on that. Once the lawyers get involved, it's more about them running their clock, running their meter."

Burns said that the average adjudication time for the claims brought by the division took an average of six months, which he said was much too long for the small amounts of money at stake and because many of the people who took out the loans had moved on by the time the cases settled.

"As transitory as the population is, half the time the people can't be found after six months to do the reimbursement," he said. "So is that one of the objectives of the delay? I would not speculate on that, but it is a possibility."

Pereira said one her frustrations in representing clients with unpaid loan balances was that lending companies are usually happy to settle or send small-dollar cases to arbitration, especially if they were engaged in activity she believed violated or took advantage of ambiguities in the law. Both outcomes result in no case law being made and little legal recourse to prevent the companies from extending bad loans in the future.

"They're taking a risk that a few of those will get caught and we'll challenge them, and they just write off a few bad loans," she said. "And then they can continue to do business as usual, where they roll loans over and over that should not be rolled over, where they write loans that borrowers can not afford, repeatedly. And the borrowers just get caught in that trap, and can never get off. And then they sue them."

“It’s just not common for someone to take up a cause and fight it over a hundred dollars. If I wasn’t an attorney, I wouldn’t do it.”

### **Legislative efforts**

Multiple bills attempting to change laws affecting payday lending were proposed during the 2017 Legislature, but most ran into roadblocks. A [wide-ranging bill](#) by Democratic Assemblywoman Heidi Swank that aimed to cap interest rates, create a 30-day cooling off period between loans and requiring lenders to be at least 1,320 feet apart failed to make it out of committee, as did [a proposal to create a loan database](#) sponsored by Republican Treasurer Dan Schwartz.

Even an emergency measure introduced by Assembly Speaker Jason Frierson creating a loan database failed to advance, [stalling out in a Senate committee](#) after passing on a 30-11 vote in the Assembly.

The only high interest lending-related bill passed and approved by Gov. Brian Sandoval in 2017 was [AB163](#), which not only clarified law surrounding “grace” periods for loan repayments but also enshrined some seemingly common-sense provisions into law, such as requiring a title loan applicant to actually own the vehicle they were putting up as collateral, and requiring lenders to assess the ability of a person to pay back the loan before granting the loan. The bill was sponsored by Democratic Assemblyman Edgar Flores.

Burns said that while the final version of the bill gave regulators an additional tool to go after lenders, it was “undermined” by amendments weakening requirements for lenders to assess the ability to pay, instead just requiring them to sign an affidavit

“All of the rules that were put into place about determining ability to repay really is completely nullified by anybody who simply says ‘I need the money, here’s your affidavit, give me the loan,’” he said.

Although her bill wasn’t approved, Swank nonetheless still affected the state’s payday lending laws — she requested the Legislative Counsel Bureau reorganize the state law chapter dealing with high-interest loans to clump provisions dealing with certain types of loans under the same subsections. That seemingly minor change could help lawmakers target specific types of loans without drawing in other types, and assist regulators in enforcement actions.

“That disorganization was being abused by licensees to create an ambiguity that didn’t really exist if you knew how to connect the dots, but that’s what they used to argue their cases,” Burns said.

Fuller said he wasn’t aware of any changes that his company or others in the industry were seeking in the next legislative session, but wanted to make sure they had a seat at the table. “We look forward to being a relevant partner in discussions,” he said.

### **Database**

At least two lawmakers, Swank and Democratic state Sen. Yvanna Cancela, say they plan to bring a payday lending-related bill forward in the next legislative session.

Although both said they were still working out the details, it's likely the concept of a loan database will be included in any introduced legislation. At least 14 states use such a database, which is paid for by nominal fees (\$0.49 to \$1.24 in other states) charged to all high-interest loans, and tracks information such as the amount of the loan, any fees assessed to the consumer and the interest rates charged on the loans.

Burns said that the only tool regulators have to check if loans and practices are compliant with state law is a yearly examination of high-interest lenders and complaints submitted by the public. A database would give the division the ability to better enforce difficult-to-follow laws including one requiring individuals to not take out loans exceeding 25 percent of their income that the current system makes almost impossible to enforce.

"Right now, we are reactive in the fact that we react from complaints, or pick things up in examinations once a year," Burns said. "By that time, the vast majority of loans we've been looking at have been closed for quite some time. The average payday loan is two weeks. So if you come in a year later and you're looking at that — those loans have come and gone for quite some time."

Swank, who acknowledged her bills had a "rough ride" in the 2017 session, said she believed the concept of a database had more "momentum" after being introduced last session, and that the concept would be easier for lawmakers to engage with after "I feel like it would help us get our arms around it," she said. "There's probably areas in that industry that don't need any fixes, that are doing just fine. Knowing how payday loans are used would allow us to know that this works and this is not working."

Lenders do operate in states with databases, but Advance America executive Jamie Fullmer said the industry has concerns about data security associated with financial information being kept in a central location by the state and questioned if their consumers were comfortable with the government keeping their data secure.

"There are privacy issues associated with that type of regulatory remedy," he said.

### **Political juice**

Relative to their size, payday lending companies have become major players both in the halls of the Legislature and as regular funders of campaigns for elected officials of both parties up and down the ballot.

A review of campaign finance records indicates that between 2015 and the last required reporting deadline in October, payday lending companies contributed nearly \$537,000 to legislative, local and judicial candidates in Nevada, including to individuals, political action committees and parties.

Contributions have flowed to 65 individual legislative candidates, a Supreme Court justice, city council members in North Las Vegas and Henderson, lawmakers fighting a recall effort and to both men currently running for governor.

Since 2015, Republican Attorney General Adam Laxalt's campaign account has received \$58,500 from high interest loan lenders and their executives — more than any other candidate or political group over that time frame. Nearly half of the donations to Laxalt came from Dollar Loan Center, which contributed \$20,000 through its parent companies and \$5,000 from the company's founder, Charles Brennan.

Democratic gubernatorial candidate Steve Sisolak also brought in a significant amount from payday lenders — \$26,000 since 2015, including \$18,000 since announcing his gubernatorial bid last year.

Other top recipients include primarily legislative leaders, including Assembly Speaker Jason Frierson (\$35,000), Democratic state Senate Majority Leader and attorney general hopeful Aaron Ford (\$34,250), Republican attorney general candidate Wes Duncan (\$22,000), former Republican Assembly leader Paul Anderson (\$21,500) and two Republican state senators — James Settelmeyer (\$19,500) and Ben Kieckhefer (\$15,000).

Their influence isn't limited to campaign contributions — payday lending companies in total reported hiring 22 individuals — including former lawmakers John Ocegüera, Marcus Conklin and William Horne — to lobby for them during the 2017 legislative session.

### **Policies**

In an emailed statement, Sisolak's campaign said he would "consider" signing a payday lending database bill, and wanted to ensure the state protects families through the use of "consumer protections" from short-term lenders and for-profit colleges. He also floated the idea of placing a cap on interest rates.

"Nevada has the fourth highest payday loan rates in the nation, and there's no doubt we need to do something (about) it," he said in an email. "And right now, we're among just a handful of states with no cap, making Nevada one of the most expensive states to take out a payday loan. That's unacceptable, and I look forward to working with the legislature to find a solution."

A spokesman for Laxalt's campaign didn't return an email seeking comment if he would sign a payday loan database bill or any other measures related to the industry.

*Disclosure: Several donors to The Nevada Independent are mentioned in this story. You can see [a full list of donors here](#).*