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New Opinion from Texas Attorney General Opens Yet Another Predatory Lending Loophole

AUSTIN, Texas — An [opinion](#) issued by the Office of Texas Attorney General Ken Paxton on Nov. 1 opens a loophole that could allow payday and auto title loan businesses to offer uncapped loan products outside of existing state licensing regulations. The opinion came in response to an official request from Rep. Jim Murphy, Chair of the Texas House Committee on Pensions, Investments, and Financial Services.

The Texas Fair Lending Alliance and Texas Faith Leaders for Fair Lending are deeply concerned by this opinion. It appears to counter a 2011 law passed by the Texas Legislature, which requires licensing of payday and auto title loan businesses and establishes basic oversight and transparency requirements for these high-cost loans.

“This Attorney General opinion could open the floodgates for new uncapped lending with no state oversight, leaving Texans vulnerable to abusive lending practices,” said Ann Baddour, director of the Fair Financial Services project at Texas Appleseed. “Payday and auto title loan businesses already charge rates in excess of 500 percent APR. Texas needs to rein in abusive lending, not open more loopholes.”

In 2018, based on Texas Appleseed’s analysis of data reported to the Texas Office of Consumer Credit Commissioner, the average APRs for payday and auto title loans ranged from 204 percent to 523 percent — with borrowers repaying on average more than \$1,200 to borrow \$500. For single payment loans, which are loans due in full in one payment, refinances made up between 54 percent and 70 percent of all loan transactions. For installment loans, loans with a maximum of a 180-day loan term, refinances also made up a substantial portion of the loans — between 18 percent and 30 percent — indicating that many borrowers are kept in debt at exorbitant rates for one year or more.

“As a Pastor, I have met hundreds of people in my church and community who were trapped in these unaffordable loans, losing cars, homes, and their mental and emotional well-being. This new opinion will likely make things worse for our community members,” said Rev. Wes Helm, Faith in Formation Manager at Faith in Texas. “The faith communities in our network spend thousands of dollars annually getting people out of high-cost debt. This money should be going to help families with rent, food, and overall poverty alleviation, not to high-cost loan businesses.”

Texas payday and auto title loan businesses have attempted to create various loan products to skirt state licensing requirements. Some examples include an ACE Cash Express offering called the “Texas Flex” loan, with an 846 percent APR. Another loan product, called a “personal loan,” is offered at TitleMax, with a posted APR of 651 percent. Advance America was the subject of state regulatory action in 2018 for using a creative loan structure to assert that certain loans did not qualify as payday loans under Texas law.

Texans struggling to make ends meet are particularly vulnerable to these high-cost loans, as are Texas’ veterans in similar financial straits. A 2018 [survey of Texas veterans](#) found that

76 percent of those surveyed who had used a payday or auto title loan struggled to repay the loan when it came due, and 77 percent struggled to pay other bills because of the outstanding uncapped loans.

The new Attorney General opinion could also hurt Texas’ large military population. There are strong federal protections for military borrowers, but enforcement often falls on state regulators. This opinion could allow predatory lenders to hide out of sight from regulatory scrutiny and state enforcement of the Military Lending Act standards. The Military Lending Act establishes a 36 percent annual percentage rate cap for all loans to active duty military and dependents.

“Uncapped, predatory loans are undermining the financial well-being of our veterans, small business owners and our local economies,” said Stephanie O’Banion, CEO of United Way of Central Texas. “It is time for our elected officials to tackle this unjust lending.”

About the Texas Fair Lending Alliance and Texas Faith Leaders for Fair Lending

The Texas Fair Lending Alliance (TFLA) believes in a Texas market that encourages informed financial choices that are successful for both borrowers and lenders. TFLA is a coalition of over 60 organizations and individuals working to transform the Texas payday and auto title loan market from one based on a cycle of debt, to one that thrives on a cycle of success. Web: www.texasfairlending.org; Twitter: @TXFairLending

Texas Faith Leaders for Fair Lending is a coalition led by the Texas Catholic Conference of Bishops and the Christian Life Commission of the Baptist General Convention of Texas. The coalition, with active support from more than 200 faith leaders across Texas, works to reform abusive payday and auto title lending practices in Texas at the local, state and federal level, including advocating in municipalities across Texas in support of adopting the unified payday and auto title lending ordinance. faithleaders4fairlending.org

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