



# The Commonwealth of Massachusetts

Office of the Commissioner of Banks  
One South Station  
Boston, Massachusetts 02110

MITT ROMNEY  
GOVERNOR

June 26, 2006

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OFFICE OF CONSUMER AFFAIRS AND  
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STEVEN L. ANTONAKES  
COMMISSIONER OF BANKS

Mr. Thomas A. Kane  
President  
Magnum Cash Advance, Inc.  
1403 Foulk Road, Suite 203, Foulkstone Plaza  
Wilmington, Delaware 19803

Dear Mr. Kane,

This letter is in response to your correspondence of June 5, 2006 to the Division of Banks (the "Division") relating to the application and statutory language of the Commonwealth's small loan laws under Chapter 140, Section 96 of the Massachusetts General Laws. Loans under \$6,000 with an annual percentage rate of 12 percent or more are considered to be small loans, as defined by Section 96. Your letter stated that Magnum Cash Advance, Inc. is a licensed lender under Delaware law, and is in the business of providing loans through its Internet website, [magnumcashadvance.com](http://magnumcashadvance.com).

Section 96 states, in pertinent part:

No person shall directly or indirectly engage in the business of making loans of six thousand dollars or less, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the sum loaned, without first obtaining from the commissioner of banks, in section ninety-six to one hundred and fourteen, inclusive, called the commissioner, a license to carry on said business in the town where the business is to be transacted.

Section 96 further provides that any person directly or indirectly engaging for a fee, commission, bonus or other consideration in the business of negotiating, arranging, aiding or assisting the borrower or lender in procuring or making a small loan, so-called, whether such loans are actually made by Magnum Cash Advance, Inc., or by another party shall be deemed to be engaged in the business of making small loans and shall be subject to sections 96 to 112, inclusive of said chapter 140. The Division considers loans made to Massachusetts consumers by lenders, either directly or indirectly, regardless of whether they are made at a branch office or through the Internet subject to the cited statute.

The next sentence of section 96 provides:

"[w]hen an application for a loan or for an endorsement or guarantee or for the purchase of a note is made by any person within this commonwealth, and the

money is advanced or the endorsement or guarantee is made or furnished by any person without this commonwealth, the transaction shall be deemed a loan made within this commonwealth, and such a loan and the parties making it shall be subject to sections ninety-six to one hundred and thirteen, inclusive.”

Based on this specific and unambiguous language, it is irrelevant whether the lender maintains an office or conducts any of its operations in Massachusetts, or actively and specifically solicits for potential Massachusetts borrowers. Accordingly, it is the position of the Division that, to the extent the loan application is completed, electronically or in any other format, by a Massachusetts resident in Massachusetts, it is a loan application “made” in Massachusetts within the meaning of section 96.

Magnum Cash Advance, Inc. is a licensed lender in Delaware and appears to be principally located in Delaware. However, magnumcashadvance.com does enter into contracts with Massachusetts consumers. By reaching beyond the borders of Delaware and entering into contracts with Massachusetts consumers, Magnum Cash Advance, Inc. brings itself within the jurisdictional requirements of Massachusetts law. Different results should not apply for an Internet company than for a company with a branch office in the state. The intent of the statute is the same: to protect Massachusetts consumers from unlicensed small loan providers. The remedial nature of the statute requires enforcement that encompasses all small loan activity. Consequently, the nature and quality of the contacts Magnum Cash Advance, Inc. knowingly and repeatedly enters into requires it to adhere to the laws and the regulations of the Commonwealth.

Magnum Cash Advance, Inc. cannot simply claim they are involved solely in interstate commerce with no intrastate activity in the Commonwealth to evade the small loan consumer protection laws. The licensure statutes apply to both interstate and intrastate lending activity. Your corporation is actively engaged in business in the state and it solicits business through its Internet website to other states, including the Commonwealth of Massachusetts. The Commonwealth has the power to regulate and license businesses doing the same business as your Internet website. As a result, Magnum Cash Advance, Inc. will not evade state regulation merely because it is engaged in interstate commerce.

Courts have held that lenders should not be allowed to escape state regulation merely because it is also engaged in interstate commerce. “Traditionally, when an entity intentionally reaches beyond its boundaries to conduct business with foreign residents, the exercise of jurisdiction is proper. Different results should not be reached simply because business is conducted over the Internet.” See People v. Fairfax Family Fund, Inc., 235 Cal. App. 2d 881 (Cal. Ct. App. 1964); Zippo Manufacturing Company v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (W.D. Penn. 1997).

The Division also notes that several states have initiated enforcement actions against various payday lenders operating over the Internet for violations of state usury and other laws. See e.g. New York, North Carolina, Kansas, and Colorado.

Please be advised that any further lending activities in Massachusetts by Magnum Cash Advance, Inc. will be considered by the Division to be in violation of section 96, and subject to

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referral to the Office of the Attorney General. As an unauthorized lender, any website must include a prominent disclosure that loans are not available to Massachusetts residents and consumers.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Leonard, Jr." The signature is written in dark ink and is positioned above the typed name.

Joseph A. Leonard, Jr.  
Deputy Commissioner of Banks  
and General Counsel

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