Approved 2-4-92
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL & COMMERCIAL INSTITUTIONS.

The meeting was called to order by Representative Delbert L. Gross at
Chairperson

3:30 ~~a.m.~~/p.m. on January 30, 1992 in room 527-S of the Capitol.

All members were present except:

Committee staff present: Bill Wolff, Legislative Research Branch
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: William F. Caton, Consumer Credit Commissioner
Stanley L. Lind, Kansas Association of Financial Services
James W. Parrish, Securities Commissioner
Steve Dockins, President, Bar D Financial
La Tannia Fair, Office Manager, Payday Cash Checking Store
Amber Barry, Payday Cash Checking Store Customer
Nancy L. Ulrich, Assistant Attorney General

The Chairperson called the meeting to order at 3:30 P.M. and opened the hearings on HB 2751.
William F. Caton, Consumer Credit Commissioner, testified in support of HB 2751 stating the bill proposes changes to the uniform consumer credit code that would define an administrator's interpretation of the code and limit punitive action against those who properly conduct themselves consistent with the interpretation. The only limitation this change creates is that penalties will not be levied on someone who has acted properly at the direction of the administrator. (See Attachment 1).

Stanley L. Lind, Kansas Association of Financial Services, testified in support of HB 2751, stating that HB 2751 would insure that if one acts in good faith, by seeking a written opinion or follows a certain course of action as a result of an examination or other directive of the Commissioner's office, that he will not be penalized if that written opinion or directive is subsequently found by a court to be incorrect. (See Attachment 2).

Tom Robison, Beneficial Management Corporation of America, Jefferson City, Missouri, testified in favor of HB 2751.

The hearing was closed on HB 2751.

James W. Parrish, Securities Commissioner, requested a committee bill amending K.S.A. 17-1252. (See Attachment 3).

Representative Graeber moved and Representative Johnson seconded the requested bill amending K.S.A. 17-1252 be introduced as a committee bill.

The Chairman opened the hearing on HB 2748.

William F. Caton, Consumer Credit Commissioner, stated in 1981 the Kansas Legislature enacted the Kansas Investment Certificate Guaranty Fund Act to provide a limited guarantee to certificate holders on Investment Certificate Corporations that have been regulated since 1961 and in existence long before that.

Presently, there are only two Investment Certificate Corporations in existence and both are owned by the same stockholder and are presently

in Chapter 11 Bankruptcy. The value of the assets of the bankrupt companies plus the Guaranty Fund money (approximately $498,000) appears to be short in paying the $8,900,000 of investment certificates off in full.

The amendments discontinue any reference to the Kansas Investment Certificate Guaranty Fund Act. This would eliminate the possibility of a new Investment Certificate Company from seeking the Guarantee Fund to guarantee its investment certificates. Once Chapter 11 Bankruptcy proceedings are completed and the Guaranty Fund Corporation is liquidated and dissolved, the entire Guarantee Fund Act should be repealed to end this era legislation sponsored investment certificate guaranteeing. (See Attachment 4).

After discussion the hearing was closed on HB 2748.

The Chairperson opened the hearing on HB 2749.

William F. Caton, Consumer Credit Commissioner, testified in support of HB 2749, testifying there are two relatively new financial services in the finance industry that are small, extremely short term loan contracts. Kansas usury laws were developed before that concept of these services.

Both of these new financial services are 5 to 25 day loans. These financial services require fees higher than Kansas Usury Laws permit to be profitable to the lender. (See Attachment 5).

Steve Dockins, President, Bar D. Financial Inc., stated he has been in the check cashing business in other states since October, 1983 and testifies there is a demand for this type of service as well as the need to regulate it. The regulation would allow legitimate companies to operate, prevent dishonest people and companies and would serve the public. (See Attachment 6).

La Tannia Fair, Office Manager for Payday Check Cashing Store, testified the store opened in September, 1991, and there is a definite need in the community for this service (See Attachment 7).

Amber Barry, testified that she was a customer of Payday Check Cashing Store and this type of operation is necessary for the community. (See Attachment 8).

Nancy L. Ulrich, Assistant Attorney General, testified is support of HB 2749. Because of the strong public interest in short-term, personal check loans, the potential abuses under the current laws and the need for uniform enforcement and regulation, it is felt passage of this bill is important. Check cashing companies have continued to operate in Kansas despite the usury provisions of the Consumer Credit Code. (See Attachment 9).

The hearing was closed on HB 2749.

Representative Watson and Representative Johnson seconded the minutes of January 28 be approved. The motion carried.

The meeting adjourned at 4:45 P.M. and the next meeting will be February 4, 1992.

Date: 1/30/92

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Stan Lrnd	Kans. Assn. of Financial Services	K. C. Ks.
Jim Maag	KBA	Topeka
Kathy Olsen	"	"
Mel Bartlett	Consumer Credit Comm.	"
Tom Robison	Beneficial Mgmt.	Jefferson City, Mo
Kris McCaleb	KS Assn. of Financial Services	Mpls, MN
George Barbee	"	Topeka Ks
Amber L. Barry	Payday	418½ W. 14th Junction City 66441
LaTanna Atair	Payday	6809-4 Meade Ft Riley KS 66442
Steve Dockins	Payday	520 Vernon Ct C/S CO 80910
Bill Cotton	Consumer Co-Com	Topeka
Jerel Wright	Ks Credit Union Assn	Topeka
John Peterson	Fourth Financial Corp	Tyro Ks

THE STATE OF KANSAS

OFFICE OF **Consumer Credit Commissioner**

JOAN FINNEY
Governor

WM. F. CATON
Commissioner

January 30, 1992

TESTIMONY FOR HOUSE BILL # 2751 BY BILL CATON

House bill # 2751 proposes changes to the uniform consumer credit code that would define an administrator's interpretation of the code and limit punitive action against those who properly conduct themselves consistent with the interpretation.

The need for this change is brought about by recent court action in other states that has possibly set precedence by assessment of penalties on a financial institution that correctly followed written administrative interpretations of an administrator that subsequently were reversed by the court.

The administrator does not and should not make law or regulation. However, the administrator is required to interpret the law or regulation when the public has questions that may or may not be clear in the law or regulation. If the public act in good faith on these interpretations, it should be deemed proper whether it is correct or not.

This change does not give the administrator any more authority than he has now. It merely disallows a penalty if the administrator's interpretation is overturned by a new administrator, the legislative process, or court action. Any and all proper refunds of overcharges would still be applicable. Nor does this change add weight to the interpretation.

An entity should not be penalized when acting in good faith upon rules or interpretations of an administrator charged with upholding a certain set of laws and regulations.

Again, the ONLY limitation this change creates is that PENALTIES will not be levied on someone who has acted properly at the direction of the administrator. With the current judicial climate this change is needed to avoid unjust penalties.

After introduction and printing of the bill, Bill Wolff suggested that the bill include provisions for review by the Attorney General's office and publication in the Kansas Registry when adopted which I feel are excellent and necessary revisions to the current bill you have before you.

LANDON STATE OFFICE BUILDING, 900 JACKSON, ROOM 352 • TOPEKA, KANSAS 66612 • (913) 296-3151

CF&I
1-30-92
Atch #1

Statement of Stanley L. Lind,
Counsel & Secretary of the
Kansas Association of Financial Services
Before the House Commercial & Financial
Institutions Committee
on 29 January 1991, in Support of H.B. 2751

Mr. Chairman -and- Members of the Committee. I am Stanley L. Lind, Counsel & Secretary of the Kansas Association of Financial Services, the state trade association of the consumer finance companies in Kansas. We appear here in support of H.B. 2751.

Before getting into the problem which gives rise to the need for H.B. 2751, I would like to give the committee a little background on the Uniform Consumer Credit Code as it relates to H.B. 2751

Section 16a-5-201 is a long section devoted to all of the penalties for violating the provisions of the Code. The violation of any section, has some penalty attached to it. Its just that some have more than others.

However, the Kansas Uniform Consumer Credit Code does provide at 16a-6-104(4) that if a lender acts in compliance with a regulation issued by the Consumer Credit Commissioner, that if that regulation is subsequently overturned by a court, that while the lender will have to refund any excess charges, the lender will not be assessed any penalties.

The provisions of H.B. 2751, goes one step further, to provide that if a lender acts pursuant to a written interpretation or opinion of the Commissioner, which interpretation or opinion is subsequently overruled by a court, the lender will not be required to pay any penalties.

In essence, it provides - that if the lender acts in good faith - he will not be penalized.

Now - how does this problem arise? Nothing has happened in Kansas that has caused this bill to be requested. But - there have been several cases which have been decided around the country which have given rise for H.B. 2751 to be requested.

One of the facts of life -is- that notwithstanding the complexities found in the Uniform Consumer Credit Code -and- the regulations issued thereunder, that there are very few Kansas court cases in which the UCCC has been involved from the standpoint of interpretation or misunderstanding as to what the law is.

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1-30-92
Attach #2

This is attributable to the fact that it is:

1) a Uniform Act;
2) that the legislature took much time in studying it before it was enacted;
3) that regulations have been issued to clarify possible problem areas;
4) the industry as a whole is well trained as to the meaning of the Code;
5) that the Commissioner examines every licensee at least once a year; and -
6) the industry invariably discusses and seeks counsel of the Commissioner's office before embarking on any new type of business or project to insure that it is in compliance before acting on a matter.

Notwithstanding all of these precautions, some companies have become involved in problems in other states not of their choosing. I am going to describe one such problem which arose in Illinois. While I will only describe the Illinois case, similar situations have arisen in Minnesota, Iowa and North Carolina.

The Illinois case is known as Fidelity Finance -v- Hicks, #1-89-1115, 1st District Appellate Court, decided April 8, 1991. The facts are:

1) The 7th Federal Circuit Court ruled that an Illinois statute limiting charges made in addition to interest had been repealed by a subsequent Illinois statute by implication.

2) Fidelity Finance brought this case to the attention of the Director of the Illinois Dept. of Financial Institutions asking what the ruling of the department would be in regard to whether the limitations section had been repealed. In effect they asked for a ruling by the Director as to whether the legislature had removed the limitations on charges made on real estate loans.

3) The Director issued a written opinion stating that it was the position of the department that the limitations on additional charges had been removed and that future examinations of the department would be on that basis.

4) Fidelity Finance subsequently made a loan in which the additional charges were greater than that provided for under the statute which they thought had been repealed.

5) In time, Fidelity had to foreclose on its mortgage -and- when it did, the debtor counterclaimed for overcharges and penalties based on the statute limiting Additional Charges.

6) Fidelity replied that that statute had been repealed by implication -and- that they had acted under the Director's written opinion as to charges.

7) The Illinois Appellate Court ruled that it was not bound by the 7th Circuit Federal Court nor the Illinois Director's opinion letter, which it is submitted, is universally agreed to be the law.

8) The Illinois Court concluded by holding that the Illinois statute placing a limitation on Additional Charges had not been repealed -and- therefore the opinion of the Illinois Director was incorrect.

9) As a consequence of this ruling, Fidelity Finance not only had to refund the overcharges -but- was also required to pay statutory penalties, notwithstanding that it had acted in good faith by asking the Illinois Director for a written opinion before making its loan.

No one questions the right of the Courts to overturn a regulation or opinion of the Consumer Credit Commissioner.

No one questions that any overcharges made would have to be returned in the event that a regulation or opinion of the Commissioner is overturned -but-

What is questioned is the fairness in requiring a creditor to have to pay penalties in a matter where the lender in good faith seeks an opinion from the Commissioner prior to engaging in a certain course of action before making any such loans -or- engaging in certain practices.

What H.B. 2751 would do -is- insure that if one acts in good faith, by seeking a written opinion or follows a certain course of action as a result of an examination or other directive of the Commissioner's office, that he will not be penalized if that written opinion or directive is subsequently found by a court to be incorrect.

17-1252. Definitions. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 17-1270, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by subsections (a), (b), (c), (f), (i), (j), (l) or (p) of K.S.A. 17-1261, and amendments thereto. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(f) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

The issuer of a certificate of interest in an oil and gas royalty, lease, or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.

CEH 1-30-92 Attach 5

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(h) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(5) A purported gift of assessable stock is considered to involve an offer and sale of such stock.

(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a

lump sum or periodically for life or some other specified period.

(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

(1) A bank, savings and loan association, credit union, or trust company;

(2) a lawyer, accountant, engineer, management consultant or teacher whose performance of these services is solely incidental to the practice of the individual's profession;

(3) a broker-dealer whose performance of these services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(5) a person who has no place of business in this state if (A) such person's only clients in this state are other investment advisers, broker-dealers, banks, savings and loan associations, credit unions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months such person does not direct business communications into this state in any manner to more than five clients other than those specified in subsection (l)(5)(A), whether or not such person or any of the persons to whom the communications are directed is then present in this state; or

(6) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

History: L. 1957, ch. 145, § 1; L. 1961, ch. 117, § 1; L. 1963, ch. 137, § 1; L. 1967, ch. 121, § 1; L. 1968, ch. 386, § 1; L. 1969, ch. 117, § 1; L. 1977, ch. 73, § 1; L. 1979, ch. 61, § 1; L. 1981, ch. 98, § 1; L. 1985, ch. 55, § 1; July 1.

17-1254. Registration required for broker-dealer, agent, investment adviser; bond; register; fees; termination, denial, suspension, revocation or cancellation of registration; central registration repository. (a) It is unlawful for any person to engage in business in this state as a broker-dealer, except in transactions exempt under K.S.A. 17-1262 and amendments thereto, unless such person is registered as a broker-dealer under this section. It is unlawful for any person to engage in business in this state as an agent, except in transactions exempt under K.S.A. 17-1262 and amendments thereto, unless such person is registered under this section as an agent for a specified broker-dealer registered under this section or for a specified issuer. It is unlawful for any person to transact business in this state as an investment adviser unless such person is registered under this section as an investment adviser or as a broker-dealer or such person's only clients in this state are investment companies, as defined in the federal investment company act of 1940, or insurance companies.

(b) A broker-dealer, agent or investment adviser may be registered after filing with the commissioner, or the commissioner's designee as permitted by subsection (j), a written application containing such relevant information and in such form as the commissioner may require. The applicant shall be registered if the commissioner finds that the applicant and, if applicable, the officers, directors or partners are of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is suitable to engage in the business, that the applicant has supplied all information required by the commissioner and that the applicant has paid the necessary fee. The commissioner may require as a condition of registration that the applicant and any officers, directors or partners or, in the case of an investment adviser, any persons who represent or will represent the investment adviser in doing or performing any acts or functions which make such person an investment adviser pass a written examination as evidence of

knowledge of the securities business. In determining the character and reputation of the applicant, the commissioner shall take into consideration any felony conviction of such person, but such a conviction shall not automatically operate as a bar to registration.

(c) Before registering any broker-dealer, agent or investment adviser, the commissioner may by rules and regulations require such broker-dealer, agent or investment adviser to enter into and file in the office of the commissioner a bond in a sum of not less than $5,000 and not more than $25,000 and may determine its conditions. No bond shall be required of any investment adviser who does not maintain custody of customers' moneys, securities or property, or any registrant whose net capital, which shall be defined by rules and regulations, exceeds $100,000, nor shall a bond be required of any agent of such registrant. Any bond required shall run to the state of Kansas, insuring the faithful compliance with the provisions of this act by the broker-dealer, agent or investment adviser, such bond to be executed as surety by a surety company authorized to do business in this state. Such bond may be so drawn as to cover the original registration and any renewal thereof. Every bond shall provide for suit thereon by any person who has a cause of action under K.S.A. 17-1268 and amendments thereto and, if the commissioner by rules and regulations requires, by any person who has a cause of action not arising under this act the total liability of the surety to all persons shall not exceed the amount specified in the bond. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

(d) The names and addresses of all persons approved for registration as broker-dealers, agents or investment advisers and all of the orders in respect thereto shall be recorded in a "register of broker-dealers and agents" kept in the office of the commissioner. Unless the commissioner has designated alternative registration expiration dates as permitted by subsection (j), every registration under this section shall expire on the first day of January in each

year, but any registration for the succeeding year shall be renewed upon written application and payment of the fee as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Unless the commissioner has designated alternative registration renewal dates as permitted by subsection (j), application for renewals must be made not later than December 31 in each year; otherwise, they shall be treated as original applications.

(e) When a registered agent terminates the agent's connection with the issuer or registered broker-dealer specified in the application of such agent, the registration of such agent shall terminate immediately and the specified issuer or registered broker-dealer shall promptly notify the commissioner. When changes in the personnel of a partnership or in the principals, copartners, officers or directors of any broker-dealer involve a majority of the capital of such broker-dealer, the commissioner shall be promptly notified of such changes; but when such changes involve less than a majority of the capital of such broker-dealer, the commissioner shall be notified of such changes by not later than the next annual renewal of registration of such broker-dealer.

For purposes of this subsection, notices received by the commissioner from any designee selected pursuant to subsection (j) shall constitute notice from the issuer or registered broker-dealer to the commissioner.

(f) The fee for original registration of each broker-dealer shall be not more than $300 and the fee for renewal of each broker-dealer registration shall be not more than $300. The fee for original registration of each investment adviser, other than an individual investment adviser who does not have custody of customers' moneys, securities or other property, shall be not more than $300 and the fee for renewal of each such investment adviser registration shall be not more than $300. The fee for original registration of an agent shall be not more than $50 and the fee for renewal of any agent's registration shall be not more than $50. The fee for original registration of an individual investment adviser who does not have custody

of customers' moneys, securities or other property shall be not more than $50, and the fee for renewal of the registration of any individual investment adviser who does not have custody of customers' moneys, securities or other property shall be not more than $50. Each fee for original registration shall be payable with the application for original registration and each fee for renewal of registration shall be payable with the application for renewal and, in either case, the fee shall not be returned if the application is withdrawn. The commissioner shall establish such fees by rules and regulations.

(g) The commissioner may by order deny, suspend or revoke the registration of any broker-dealer, agent or investment adviser if the commissioner finds that such an order is in the public interest and that the applicant or registrant, or, in the case of a broker-dealer or investment adviser, any partner, officer or director or any person occupying a similar status or performing similar functions:

(1) Has filed an application for registration which as of its effective date (or as of any date after filing in the case of an order denying effectiveness) was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule and regulation or order under this act or a predecessor act;

(3) has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business or of any felony, if the commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice ~~involving any aspect of the securities business;~~

as an investment adviser, broker-dealer, or as an affiliated person or employee of an investment company, depository institution, insurance company, or involving any aspect of the securities business or commodities investment business;

(5) is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking registration as a broker-dealer, agent or investment adviser (or the substantial equivalent of those terms as defined in this act), or is the subject of an order of the securities and exchange commission suspending or expelling the person from a national securities exchange or national securities association registered under the federal securities exchange act of 1934, or is the subject of an order by the Commodities Futures Trading Commission denying, suspending or revoking registration under the Commodities Exchange Act, or is the subject of an order suspending or expelling from membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodities Exchange Act, or is the subject of a United States post office fraud order; but the commissioner may not enter any order under this clause on the basis of an order under any other state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business;

(8) in the case of a broker-dealer or investment adviser, is insolvent, either in the sense that such person's liabilities exceed such person's assets or in the sense that such person cannot meet such person's obligations as they mature;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, but the commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(10) is failing to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business;

(11) has failed to pay the proper registration fee; but the commissioner may not enter a revocation order under this clause, and the commissioner shall vacate any denial order entered under this clause when the deficiency has been corrected; or

(12) has failed reasonably to supervise the ~~person's agents if the person is a broker-dealer or the person's employees if the person is an investment adviser.~~ sales representative or employees; or

(13) has willfully failed to comply with a request for information by the commissioner or person designated by the commissioner in conducting investigations or or examinations under this act.

(h) The commissioner may by emergency order suspend registration pending final determination of any proceeding under this section. Upon the entry of any order under this section, the commissioner shall promptly notify the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent) that it has been entered and of the reasons therefor and that, upon written request, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(i) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, is an adjudged incapacitated person, or cannot be located after reasonable search, the commissioner may cancel the registration or application in accordance with the provisions of the Kansas administrative procedure act.

(j) (1) The commissioner may participate, in whole or in part, with any national securities association or national securities exchange registered with the United States securities and exchange commission under the federal securities exchange act of 1934 or with any association of state securities administrators in a central registration depository where the broker-dealer, agent and investment adviser registrations required by subsection (b) may be centrally or simultaneously effected and the accompanying registration fees may be centrally collected for all states that require the registration of such persons and participate in such a central registration depository.

(2) If the commissioner finds that participation in such a central registration depository is in the public interest, the commissioner may by rule and regulation or by order require that:

(A) Applications for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser as required by this section may be made or effected through or in conjunction or coordination with such a central registration depository;

(B) alternative registration expiration and renewal dates for registered broker-dealers, agents and investment advisers be utilized in lieu of the registration expiration and renewal dates provided under subsection (d);

(C) all fees for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser be collected by such a central registration depository in the dollar amounts required by subsection (f), provided that such fees are subsequently submitted to the commissioner pursuant to K.S.A. 17-1270 and amendments thereto and remitted by the commissioner pursuant to K.S.A. 17-1271 and amendments thereto.

(3) Subsequent to the effective date of any rule and regulation or order of the commissioner that is adopted under subsection (j)(2):

(A) All applications for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser, and all documents supporting such applications, which shall be filed with or received by such a central registration depository shall be deemed to be filed with or received by the commissioner pursuant to subsection (b), when such applications or documents are received by such a central registration depository; and

(B) any statement which is contained in any application for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser or contained in any document supporting such applications, which is filed with or received by such a central registration depository and which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect shall constitute a violation of K.S.A. 17-1264 and amendments thereto.

History: L. 1957, ch. 145, § 3; L. 1965, ch. 150, § 1; L. 1969, ch. 118, § 1; L. 1972, ch. 231, § 1; L. 1979, ch. 61, § 3; L. 1981, ch. 99, § 1; L. 1984, ch. 313, § 50; L. 1985, ch. 88, § 1; L. 1988, ch. 90, § 1; July 1.

17-1257. Registration of securities by coordination; requirements; effective, when. (a) Any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section may be filed by the issuer, any other person on whose behalf the securities will be offered or by any registered broker-dealer, shall be filed in the office of the commissioner and shall contain the following information and be accompanied by the following documents:

(1) ~~Three copies~~ One copy of the prospectus filed under the securities act of 1933 together with all amendments as of the date of filing;

(2) the amount of securities to be offered in this state;

(3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by an court of the securities and exchange commission;

(4) a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(5) payment of the registration fee prescribed in K.S.A. 17-1259;

(6) if required under K.S.A. 17-1263, a consent to service of process meeting the requirements of that section; and

(7) an undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(c) A registration statement under this section will automatically become effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) No stop order is in effect under K.S.A. 17-1260 and no proceeding is pending under K.S.A. 17-1260; (2) the registration statement has been on file with the commissioner for at least ten days; (3) a statement of the maximum and minimum offering prices and the maximum underwriting discounts and commissions has been on file for two full business

ays or such shorter period as the commissioner may permit by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expenses, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under K.S.A. 17-1260; but this advice by the commissioner does not preclude the institution of such a proceeding at any ›e.

istory: L. 1957, ch. 145, § 6; July 1.

17-1270. Administration of act; commissioner; powers and duties; fees; expenses; rules and regulations; sales literature, filing; books and records, examination; reports; hearings; documents, filing, registration, copies of information. (a) This act shall be administered by the securities commissioner of Kansas.

(b) All fees herein provided for shall be collected by the commissioner. All salaries and expenses necessarily incurred in the administration of this act shall be paid from the securities act fee fund.

(c) The commissioner may, except with respect to securities exempt under K.S.A. 17-1261 and amendments thereto and transactions exempt under K.S.A. 17-1262 and amendments thereto, by rule and regulation or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors.

(d) The books and records of every person issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer or investment adviser registered under this act shall, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors, be subject at any time, or from time to time, to such periodic or special examinations by the commissioner, or such accountant or examiner as the commissioner may determine. ~~The person, broker-dealer or investment adviser subject to the examination shall pay a fee for each examiner or accountant employed to make such examination of not to exceed $100 for each day or fraction thereof, plus the actual expenses, including the cost of transportation of the accountant or examiner, while absent from such accountant's or examiner's office for the purpose of making such examination, except that no such fee shall be charged to an investment adviser who does not maintain custody of customers' moneys, securities, or other property.~~ The commissioner may, by rule and regulation, set a fee to be paid by the person, broker-dealer or investment adviser subject to the examination. For the purpose of avoiding unnecessary duplication of examinations, the commissioner may cooperate with other proper authorities.

(e) The commissioner may require any registered broker-dealer, registered investment adviser or issuer who has registered securities under this act to file a semiannual report containing such reasonable information, except with respect to securities exempt under K.S.A. 17-1261 and amendments thereto or transactions exempt under K.S.A. 17-1262 and amendments thereto, as the commissioner may believe necessary regarding the financial condition of such person and the securities sold in this state by such person. Each such report shall be accompanied by a filing fee of $5.

(f) The commissioner may from time to time adopt, amend, and revoke such rules and regulations, orders and forms as may be necessary to carry out the provisions of this act. In prescribing rules and regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the commissioner shall be published. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the commissioner, notwithstanding that the rule and regulation, form or order may later be amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason. Every hearing in an administrative proceeding shall be public unless the commissioner in the commissioner's discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(g) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection.

The commissioner may receive a document filed by electronic format that is submitted by direct digital transmission, magnetic tape or diskette, and may maintain and provide the document in such an electronic format.

The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules and regulations as the commissioner may adopt. Upon request and after payment of a fee per page in an amount fixed by the commissioner and approved by the director of accounts and reports under K.S.A. 45-204 and amendments thereto, the commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record, which copies shall be certified under the commissioner's seal of office if requested. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified. The commissioner in the commissioner's discretion may honor requests from interested persons for interpretative opinions.

History: L. 1957, ch. 145, § 19; L. 1969, ch. 117, § 3; L. 1973, ch. 309, § 5; L. 1978, ch. 74, § 2; L. 1978, ch. 308, § 44; L. 1978, ch. 75, § 1; L. 1979, ch. 61, § 7; L. 1981, ch. 299, § 44; L. 1982, ch. 98, § 10; L. 1984, ch. 87, § 1; July 1.

K.S.A. 17-1262 is hereby amended to read as follows: 17-1262. Except as expressly provided in this section, K.S.A. 17-1254, 17-1255, 17-1256, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, shall not apply to any of the following transactions:

(a) Any isolated transaction, whether effected through a broker-dealer or not.

(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding securities at a price reasonably related to the current market price of such securities, if Moody's manual, Standard & Poor's manual, or any recognized securities manual approved by the commissioner, contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and sending copies of such order to all registered broker-dealers.

(c) Any nonissuer transaction by a registered broker-dealer pursuant to an unsolicited order or offer to buy. The commissioner may require, by rules and regulations, that: (1) The customer acknowledge upon a specified form that the sale was unsolicited; and (2) a signed copy of each such form be preserved by the broker-dealer for a specified period.

(d) Any transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(e) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator ~~or~~ , any transaction executed by a bona fide pledgee without any purpose of evading this act or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests.

(f) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer or to a broker-dealer or underwriter.

(g) Any offer or sale of a preorganization certificate or subscription if: (1) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber and no advertising has been published in connection with any such sale; (2) no payment is made by any subscriber; and (3) such certificate or subscription is expressly voidable by the subscriber until such subscriber

has been notified of final acceptance or completion of the organization and until the securities subscribed for have been registered. The commissioner may require, by rules and regulations or by order, reports of sales under this exemption.

~~(h) The issue of stock of a domestic corporation to not more than 15 incorporators.~~

(h) ~~(i)~~ Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within 90 days of their issuance, if: (1) No commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or (2) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days.

(i) ~~(j)~~ Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(j) ~~(k)~~ The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(k) ~~(l)~~ Any act incident to a class vote by stockholders, pursuant to the articles of incorporation, bylaws or applicable statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation or any act incident to a plan of reorganization, approved by a majority of the stockholders of every corporation involved in such reorganization, in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash. The issuer of such securities must first file a notice specifying the term of the offer and such other information as the commissioner requires, and the commissioner by order may disallow this exemption within 30 days.

(l) ~~(m)~~ The offer or sale ~~by a corporation~~ of securities by an issuer that is a corporation, limited partnership or limited liability company formed under the laws of the state of Kansas ~~of any of its securities to a purchaser~~, if: (1) The aggregate number of sales by the ~~corporation~~ issuer in the twelve-month period ending on the date of the sale does not exceed ~~15~~ 20 sales; (2) the seller believes that the purchaser is purchasing for investment; (3) no commission nor other remuneration is paid or given, directly or indirectly, for soliciting the purchaser; and (4) neither the ~~corporation~~ issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (A) Any advertisement, article, notice or other communication published in any newspaper,

17

magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

In calculating the number of sales in a twelve-month period, sales made in violation of K.S.A. 17-1255 and amendments thereto, and sales exempt from registration under subsection (a), (h) or (m) shall be taken into account. For purposes of the exemption in this subsection, a husband and wife shall be considered as one purchaser. A corporation, partnership, association, joint-stock company, trust or other unincorporated organization shall be considered as one purchaser unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser. The commissioner may withdraw this exemption or impose conditions upon its use.

(m) ~~(n)~~ Any transaction pursuant to a rule and regulation adopted by the commissioner for limited offerings which was adopted for the purpose of furthering the objectives of compatibility with federal exemptions and uniformity among the states.

(o) Any offer or sale by an investment company, as defined by K.S.A. 16-630 and amendments thereto, of its investment certificates.

~~(p) The offer or sale of units in a limited partnership formed under the laws of the state of Kansas if: (1) The number of limited partners does not exceed 35; (2) the seller believes that all of the purchasers are purchasing for investment; and (3) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.~~

~~For the purpose of the exemption under this subsection, a husband and wife shall be considered as one limited partner. A corporation, partnership, association, joint-stock company, trust or other unincorporated organization shall be considered as one limited partner unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate limited partner.~~

(p) ~~(q)~~ The offer or sale of a security, issued by Kansas Venture Capital, Inc., or its successors.

(n) Any transaction pursuant to a rule and regulation adopted by commissioner concerning the offer or sale of an oil, gas or mining lease, fee or title if the commissioner finds that registration is not necessary or appropriate for the protection of investors.

~~(r)~~ The offer or sale of interests in a limited liability company ~~formed under the laws of the state of Kansas if: (1) The number of members does not exceed 35; (2) the seller believes that all of the purchasers are purchasing for investment; and (3) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.~~

~~For the purpose of the exemption under this subsection, a husband and wife shall be considered as one member. A corporation, partnership, limited liability company, association, joint stock company, trust, or other unincorporated organization shall be considered as one member unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of an equity interest or equity securities in the entity shall be considered a separate member.~~

~~The provisions of this subsection shall expire on and after July 1, 1992.~~

This act shall take effect and be in force from and after July 1, 1992, and its publication in the statute book.

17-1262a. Exempt oil and gas transactions; fractional or undivided interest; definitions. (a) As used in this section:

(1) "Commission or other remuneration" shall include any consideration, compensation or fees paid or given to an agent in exchange for the agent's services, except that "commission or other remuneration" shall not include any interest in the oil and gas estate, including any overriding royalty interest, or the production therefrom so long as the identity of the person or persons owning or holding any such interest and the extent of such interest is fully disclosed to all purchasers.

(2) "Public advertising or public solicitation" means any offers to sell or sales that are effected by means of any advertising or general solicitation printed in any brochure, prospectus, offering memoranda, handbill, newspaper, magazine, periodical or other publication of general circulation and mailed or delivered to its subscribers or addressees, or communicated by radio, public seminar, television, general telephone solicitation, or similar means.

(3) "Purchasers" means any individual, corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the oil or gas interests offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(b) Except as hereinafter expressly provided, K.S.A. 17-1254, 17-1255, 17-1256, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, shall not apply to any offer to sell or sale of any limited partnership interest involving, or any fractional or undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas storage and payments out of production, if the land subject to the interest or certificate is situated in Kansas and:

(1) All sales are made to persons who are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas or whose corporate predecessor, in the case of a corporation, has been so engaged or whose officers and 2/3 of the directors, in the case of a corporation having an existence of less than two years, have each been so engaged; or

(2) all sales are made to not more than a total of 32 purchasers without regard to whether the purchasers reside within or without the state of Kansas, and:

(A) The seller of such interests reasonably believes that all purchasers of such interests are purchasing for investment and not for resale; and

(B) no commission or other remuneration is paid or given directly or indirectly for the solicitation, offer to sell or sale of any such interests; and

(C) no public advertising or public solicitation is used in connection with the solicitation, offer to sell or sale of any such interest; or

(3) all sales of such interests involve properties that produce oil or gas or petroleum products in paying quantities on the date of sale and the seller, subsequent to the sale, does not retain any ownership interest in or control over the lease or the interest or interests that are being sold.

(c) The exemption provided by this section shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-1262 and amendments thereto, nor shall any exemption provided by K.S.A. 17-1262 and amendments thereto, other than the exemption provided by subsections (a), (e), or (n) of that section or by this section, be available for any offer to sell or sale of any limited partnership interest involving, or any fractional or undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas storage and payments out of production.

History: L. 1980, ch. 78, § 2; L. 1983, ch. 91, § 1; L. 1985, ch. 90, § 1; July 1.

THE STATE OF KANSAS

OFFICE OF **Consumer Credit Commissioner**

JOAN FINNEY
Governor

WM. F. CATON
Commissioner

AMENDMENTS TO KANSAS INVESTMENT CERTIFICATE ACT

HOUSE BILL No. 2748

In 1981, the Kansas Legislature enacted the Kansas Investment Certificate Guaranty Fund Act to provide a limited guarantee to certificate holders of Investment Certificate Corporations that have been regulated since 1961 and in existence long before that. Investment Certificate Corporations were licensed lenders who raised funds to underwrite their loan portfolios by issuing certificates to investors similar to bank savings accounts and certificates of deposit. This Guaranty Fund was set up in a private corporation managed by the member Investment Certificate Companies and overseen by the consumer credit commissioner.

At this time, there is only two Investment Certificate Corporations left in existence that are owned by the same stockholder and are presently in chapter 11 Bankruptcy. The value of the assets of the bankrupt companies plus the Guaranty Fund money (approx $498,000) appears to be short in paying the $8,900,000 of investment certificates off in full.

This problem has not been isolated to Kansas. All other states that this office is aware of that had similar legislation have ended with Investment Certificate Companies going out of business and the Guaranty Fund being depleted. The concept of creating a local guaranty fund without large participation is similar to creating an insurance company that never sold enough policies to spread the risk enough to weather a disaster.

Another problem is the misconception that investors perceived that "Guaranteed to $10,000" meant that there was NO risk up to that amount. It appeared to be the same as FDIC insurance only on a smaller scale and local level. The concept of the guaranty fund was to limit the risk to investors to insure that funds would be available for credit from a local investor base. This was misconceived to be an "insurance" fund to unconditionally "insure deposits" instead of investments. Even though all certificates and written advertisements disclaim any liability of the State, many of the certificate holders feel the State has allowed them to be misled and consequentially loose money. The fact that bankruptcy proceedings have stayed the State from intervention and liquidation has put an undo burden and hardship on many of the investors.

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Atch # 4

The amendments in HB 2747 discontinue any reference to the Kansas Investment Certificate Guaranty Fund Act. This would eliminate the possibility of a new Investment Certificate Company from seeking the Guarantee Fund to guarantee its investment certificates. Once this Chapter 11 Bankruptcy proceedings are completed and the Guaranty Fund Corporation is liquidated and dissolved, the entire Guarantee Fund Act should be repealed to end this era legislation sponsored investment certificate guaranteeing.

HOUSE BILL No. 2749

SHORT TERM NON RENEWABLE LOANS

BACKGROUND

There are two relatively new financial services in the finance industry that are small, extremely short term loan contracts. Kansas usury laws were developed before the concept of these services.

Our usury laws were originally based on the concept that the contract interest rate be expressed in an annual percentage rate and a ceiling was placed on this contract interest rate. Later, a minimum finance charge and non-refundable prepaid finance charge were approved to allow lenders to recover administrative costs directly related to the extension of credit. However, these changes did not address the special considerations of these two new financial services.

One of the new financial services is a Tax Refund Anticipation Loan. If specific criteria are met, taxpayers can obtain a loan against this refund. With the technological advance of electronic tax filing, these loans may last only 14 to 18 days.
This service is extremely popular with the public and presently several states have made changes in usury laws to provide the lender a fee which is both profitable and sensible.

The other new financial service is a small, short term loan to a debtor who promises to pay the loan back "next payday". Usually, the debtor gives the lender a bank check that the lender agrees to hold for deposit until to debtor has sufficient funds to cover the check. Thus, this service is nicknamed "Payday Loans".

Both of these new financial services realistically are 5 to 25 day loans. Both require fees higher than Kansas Usury Laws permit to be profitable to the lender. In the case of the Refund Anticipation Loan, the administrative costs are high due to required exchange of information with the lender, borrower, and IRS but has a small risk factor. The payday loan does not have high administrative costs, but has an extremely high risk exposure; probably even more than a pawn shop who is allowed by law to charge 10% per month up to $5,000.

The annual percentage rate on small, short term loans does not realistically reflect the cost of borrowing. The fees allowed under the small loan program are realistic and moral related to the cost of the debt and the administrative costs and risk factors involved.

Kansas consumers may obtain these services from out-of-state lenders that come under the jurisdiction of other State's laws. This is not healthy for the Kansas economy.

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Attach #5

HOUSE BILL No. 2749

SHORT TERM NON RENEWABLE LOANS

CONSUMER BENEFITS

1. Money will be available to those who need it from Kansas creditors and fulfills the purposes set forth in 16a-1-102.

2. In reference to the "payday loan" application, it could possibly save the consumer a substantial amount of bank overdraft or return check charges plus third party collection fees if the bank does not honor the checks.

3. The charges are reasonable for the services rendered.

4. An IMMEDIATE source of funds are provided to consumers who have immediate or emergency needs that their daily budget cannot provide.

CREDIT INDUSTRY BENEFITS

1. Provides reasonable return for cost of money, administrative expenses and risk factors.

2. Is relatively simple to understand and initiate

3. Will aid the regulated credit industry with compliance of federal Community Reinvestment Act.

4. Expands services provided to customers.

REGULATORY BENEFITS

1. Provides rules for credit services demanded by consumers but not presently addressed by the code.

2. Compliance will be easily ascertained due to the simplicity of the plan.

3. Will promote high industry standards through aggressive investigation of new licensees and compliance examinations.

HOUSE BILL No. 2749

SHORT TERM NON RENEWABLE LOANS

AMOUNT	FIN CHG	ADM FEE	TOT CHG	TOTAL LOAN	APR
$25.00	$2.50	$5.00	$7.50	$32.50	360.00%
$50.00	$5.00	$5.00	$10.00	$60.00	240.00%
$75.00	$7.50	$5.00	$12.50	$87.50	200.00%
$100.00	$10.00	$5.00	$15.00	$115.00	180.00%
$125.00	$10.00	$5.00	$15.00	$140.00	144.00%
$150.00	$10.50	$5.00	$15.50	$165.50	124.00%
$175.00	$12.25	$5.00	$17.25	$192.25	118.29%
$200.00	$14.00	$5.00	$19.00	$219.00	114.00%
$225.00	$15.75	$5.00	$20.75	$245.75	110.67%
$250.00	$17.50	$5.00	$22.50	$272.50	108.00%
$275.00	$17.50	$5.00	$22.50	$297.50	98.18%
$300.00	$18.00	$5.00	$23.00	$323.00	92.00%
$325.00	$19.50	$5.00	$24.50	$349.50	90.46%
$350.00	$21.00	$5.00	$26.00	$376.00	89.14%
$375.00	$22.50	$5.00	$27.50	$402.50	88.00%
$400.00	$24.00	$5.00	$29.00	$429.00	87.00%
$425.00	$25.50	$5.00	$30.50	$455.50	86.12%
$450.00	$27.00	$5.00	$32.00	$482.00	85.33%
$475.00	$28.50	$5.00	$33.50	$508.50	84.63%
$500.00	$30.00	$5.00	$35.00	$535.00	84.00%
$525.00	$31.50	$5.00	$36.50	$561.50	83.43%
$550.00	$33.00	$5.00	$38.00	$588.00	82.91%
$575.00	$34.50	$5.00	$39.50	$614.50	82.43%
$600.00	$36.00	$5.00	$41.00	$641.00	82.00%
$625.00	$37.50	$5.00	$42.50	$667.50	81.60%
$650.00	$39.00	$5.00	$44.00	$694.00	81.23%
$675.00	$40.50	$5.00	$45.50	$720.50	80.89%
$700.00	$42.00	$5.00	$47.00	$747.00	80.57%
$725.00	$43.50	$5.00	$48.50	$773.50	80.28%
$750.00	$45.00	$5.00	$50.00	$800.00	80.00%
$775.00	$46.50	$5.00	$51.50	$826.50	79.74%
$780.00	$46.80	$5.00	$51.80	$831.80	79.69%

ADMINISTRATIVE FEE: $5.00 PER LOAN REGARDLESS OF SIZE

0 TO $100 - 10% OF LOAN PROCEEDS
$101 TO $250 - 7% OF LOAN PROCEEDS WITH $10.00 MIN
$251 TO MAXIMUM - 6% OF LOAN PROCEEDS WITH $17.50 MIN

MAXIMUM EQUALS SAME AS MAXIMUM YOU CAN CHARGE 36%

IF LOAN HAS TO BE EXTENDED OR RENEWED, 3% PER MONTH

PRESENT MAXIMUM CHARGES UNDER CODE

AMOUNT	INTEREST	2% PREPAID	TOTAL FIN CHG	TOTAL LOAN	APR
$25.00	$5.00	$0.50	$5.50	$30.50	264.00%
$50.00	$5.00	$1.00	$6.00	$56.00	144.00%
$75.00	$5.00	$1.50	$6.50	$81.50	104.00%
$100.00	$7.50	$2.00	$9.50	$109.50	114.00%
$125.00	$7.50	$2.50	$10.00	$135.00	96.00%
$150.00	$7.50	$3.00	$10.50	$160.50	84.00%
$175.00	$7.50	$3.50	$11.00	$186.00	75.43%
$200.00	$7.50	$4.00	$11.50	$211.50	69.00%
$225.00	$7.50	$4.50	$12.00	$237.00	64.00%
$250.00	$7.50	$5.00	$12.50	$262.50	60.00%
$275.00	$8.25	$5.50	$13.75	$288.75	60.00%
$300.00	$9.00	$6.00	$15.00	$315.00	60.00%
$325.00	$9.75	$6.50	$16.25	$341.25	60.00%
$350.00	$10.50	$7.00	$17.50	$367.50	60.00%
$375.00	$11.25	$7.50	$18.75	$393.75	60.00%
$400.00	$12.00	$8.00	$20.00	$420.00	60.00%
$425.00	$12.75	$8.50	$21.25	$446.25	60.00%
$450.00	$13.50	$9.00	$22.50	$472.50	60.00%
$475.00	$14.25	$9.50	$23.75	$498.75	60.00%
$500.00	$15.00	$10.00	$25.00	$525.00	60.00%
$525.00	$15.75	$10.50	$26.25	$551.25	60.00%
$550.00	$16.50	$11.00	$27.50	$577.50	60.00%
$575.00	$17.25	$11.50	$28.75	$603.75	60.00%
$600.00	$18.00	$12.00	$30.00	$630.00	60.00%
$625.00	$18.75	$12.50	$31.25	$656.25	60.00%
$650.00	$19.50	$13.00	$32.50	$682.50	60.00%
$675.00	$20.25	$13.50	$33.75	$708.75	60.00%
$700.00	$21.00	$14.00	$35.00	$735.00	60.00%
$725.00	$21.75	$14.50	$36.25	$761.25	60.00%
$750.00	$22.50	$15.00	$37.50	$787.50	60.00%
$775.00	$23.25	$15.50	$38.75	$813.75	60.00%
$780.00	$23.40	$15.60	$39.00	$819.00	60.00%

MAXIMUM LOAN RATES UNDER PRESENT CODE ASSUMING BASE = $780
MIN CHG = $5.00 ON $75 OR LESS AND $7.50 ON OVER $75

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Check-Cashing Outlets in the U.S. Financial System

By John P. Caskey

In the current debate over banking reform, some policymakers and consumer advocates have expressed concern that many lower-income Americans have lost access to basic payment services provided by banks. Reports of branch closings and increased service charges have led to proposals that banks be required to provide basic banking services to all consumers.

Most discussions of this issue are incomplete, however, because they overlook existing alternatives to banks for those who cannot or choose not to use banks to meet their payments needs. This article examines the role of check-cashing outlets (CCOs), a principal alternative to banks for many low and moderate-income consumers.[1] Despite evidence of rapid growth over the past decade, relatively little is known about the check-cashing industry. Understanding who uses CCOs and why provides new insight into the costs of payment services and adds a new dimension to the debate over basic banking services.

The first section of the article provides an overview of the check-cashing industry, including its services, fees, structure, and recent growth. The second section examines who uses CCOs and why, and offers possible explanations for recent growth. The final section addresses the regulation of CCOs and their possible role in providing basic banking services to low-income consumers.

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An Overview of the Check-Cashing Industry

The check-cashing industry began in the 1930s as a response to banking problems during the Depression and to changes in employer payment practices. CCOs originally specialized in cashing payroll checks but over the years have evolved to provide a

56

variety of payments services. Largely unregulated, the check-cashing industry has grown rapidly in the past decade, expanding beyond its traditional base in urban areas.

Services provided by CCOs

Nonfinancial businesses have cashed consumers' checks for many decades. Traditionally, this role was filled by bars, grocery stores, or other businesses that would cash third-party checks for regular customers or for customers making purchases. Such establishments rarely charged an explicit fee for cashing checks. The cost of the service was covered by the additional sales it generated.[2]

It is difficult to establish exactly when firms began to specialize in check-cashing and to levy a fee for the service. Most evidence suggests that CCOs evolved from other businesses that cashed checks on the side. CCOs apparently first appeared in Chicago and New York in the 1930s and spread to other large urban areas.

Most accounts cite widespread banking problems and changing employer payment practices as the principal factors motivating the early development of CCOs. For example, in Chicago, specialized check-cashing firms arose to provide payments services during the banking crisis of the 1930s (Illinois Department of Financial Institutions 1980). In addition, CCOs were stimulated by firms converting from cash payrolls to payroll checks during the 1930s and 1940s (Wolf).

The core business of a contemporary CCO is cashing checks for a fee. The fee is intended to provide the check-casher a profit after covering expenses, which include the cost of maintaining a storefront and insurance and personnel costs. Moreover, because the check-casher advances funds on checks that must subsequently be cleared through the banking system, CCOs incur interest expenses on the funds advanced. And, CCOs run the risk that some cashed checks will be uncollectible because of insufficient funds or fraud.[3]

Because of the risks associated with advancing money on checks, many outlets cash only customers' payroll or government entitlement checks. Some CCOs also cash personal checks but typically charge a higher fee for this service to cover the higher risk that the check will bounce. Many CCOs cash personal checks only after they have confirmed with the bank it is drawn on that there are sufficient funds.

In some states, CCOs make "payday" loans. They do this by cashing a customer's personal check, which is sometimes postdated, and agreeing to hold it until the customer's payday. Since this amounts to making an unsecured loan, check-cashers generally charge much higher fees for this service. It is generally offered only to customers with stable employment records who have maintained bank accounts in good standing for several months.[4]

While most CCOs derive most of their revenue from check-cashing fees, almost all CCOs do more than just cash checks.[5] They typically offer a range of financial and nonfinancial services—they may sell money orders, make wire transfers of cash, and handle telephone and utility bill payments. In some states, they sell lottery tickets and public transportation passes, offer income-tax preparation services, and distribute welfare payments and food stamps. In addition, many sell cigarettes and candy or buy and sell gold jewelry.

Fees charged by CCOs

CCO fees for cashing checks are usually expressed as a percentage of the face value of the check. In most states, check-cashers can charge whatever the market will bear; however, seven states currently set ceilings on check-cashing fees (Table 1).[6] As shown in the table,

Table 1

Maximum Check-Cashing Fees in Regulated States

(Rates are a percentage of the face value of the check)

State	*Legal ceiling rate*
Connecticut	2% for non-public aid checks and 1.0% for state public aid checks. (Ceiling fees set in 1990.)
Delaware	1% or $4.00, whichever is greater. (Ceiling fee set in 1989. The previous ceiling rate was 0.5% or $0.25.)
Georgia	The larger of $5.00 or 3% for public aid checks, 10% for personal checks, and 5% for all other checks (payroll). (Ceiling fees set in 1990.)
Illinois	1.2% plus $0.90. (Ceiling fee set in 1986. The previous ceiling rate was 1.1% plus $0.75.)
Minnesota	2.5% for public aid checks above $500 (5% for a first-time customer), no limit on personal checks but the rate must be filed with the state Commerce Department and be "reasonable," 3.0% on all other checks (6% for a first-time customer). (Ceiling fees set in 1991.)
New Jersey	1% for in-state checks and 1.5% for out-of-state checks or $0.50, whichever is greater. (Ceiling fees set in 1979. The previous ceiling rates were 0.75% on in-state checks and 1.0% on out-of-state checks, or $0.35.)
New York	0.9% or $0.50, whichever is greater. (Ceiling fee set in 1988. The previous ceiling rate was 0.75%.)

Source: State regulatory agencies.

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the maximum permissible fee sometimes varies, depending on whether the check is drawn on an in-state or an out-of-state bank or is a government entitlement, payroll, or personal check. The different ceilings on fees across categories reflect the different speeds with which checks clear, different default risks, and the desire to limit the fees that public aid recipients pay for cashing their entitlement checks.

Outside of these seven states, commercial check-cashing fees vary widely. In 1989, the Consumer Federation of America (CFA) conducted a survey of the fees levied at check-cashing outlets in 20 major cities across the United States (Table 2). This survey suggests that CCOs charge roughly similar fees for payroll and government support checks.[7] For both types of checks, fees range from about 1.0 percent to 3.0 percent of the face value of the check, with an average rate of about 1.75 percent.[8]

About a third of the check-cashing outlets contacted by the CFA were willing to cash personal checks. Not surprisingly, given the default risk, they charge far more for this service. In the survey group, fees ranged from 1.66 percent to 20 percent of the face value of the check and averaged 7.7 percent.[9]

5 8

Table 2

National Check-Cashing Fees

Service	Minimum charge	Maximum charge	Average
Payroll checks	.9%	3.0%	1.74%
Government checks	.9%	3.25%	1.73%
Personal checks	1.66%	20%	7.7%
Money orders ($50)	$.19	$.99	$.55

Source: Consumer Federation of America (1989).

CCOs also levy fees for the other financial services they provide, such as selling money orders or making wire transfers. These services are largely used to pay bills by customers who do not have checkable bank deposits. The data suggest that many CCOs set low prices on these services. For example, the CFA survey found that the average charge for a $50 money order was $0.55, and many CCOs charged a flat fee independently of the size of the money order. This compares favorably to the $0.75 charged by the U.S. postal system for money orders up to $700.[10]

Structure of the industry

An examination of the structure of the check-cashing industry indicates commercial check-cashing is a relatively large industry, dominated mainly by local owner-operators. Historically, CCOs have been regulated extensively in only a few states. However, this picture is changing as national chains begin to develop and as more states consider regulating CCOs.

CCOs are currently regulated in only eight states. Seven states set ceilings on check-cashing fees and require that CCOs be licensed and abide by other regulations. These regulations generally require check-cashers to post their fees in a prominent location in the outlet and to provide customers with receipts. Often, the regulations require the CCO owner to meet a minimum bonding or capital requirement. Some states prohibit newly opened outlets from locating within a specified distance of existing CCOs. All states specify record-keeping requirements for the firms, and several of the states require check-cashers to report large sales of money orders or large wire transfers. This is to prevent check-cashing firms from being used in a money laundering process. Typically, the state banking department is responsible for issuing licenses and enforcing the regulations.

Because only a few states regulate the commercial check-cashing business, it is impossible to know exactly how many check-cashing firms are currently operating. However, across the United States there were 4,289 yellow-page listings of check-cashing firms in early 1991. This count is a lower-bound estimate of the total number of commercial check-cashing outlets

nationally. In six of the eight states that require CCOs to be licensed, for example, the yellow-page count closely approximates the number of licenses outstanding. However, the yellow-page count understates the number of licensed outlets in New York by about 20 percent and by almost 50 percent in Georgia.

Given the sparse information on the industry, any estimate of the size of the industry in dollar terms is subject to a large margin of error. However, a conservative estimate indicates that the industry cashed about 150 million checks in 1990 with a combined face value of $45 billion. From this activity, the check-cashing industry earned approximately $790 million in fees.[11]

The vast majority of CCOs across the country appear to be owned by local independent operators, many of whom own three to ten outlets in a given area. There is evidence, however, that large national chains are developing. For example, one check-cashing company owns over 100 stores in the Northeast and is publicly traded on the over-the-counter stock market. And some check-cashing franchise operations have grown rapidly in the past few years. Recently, Western Union, which has provided money-wiring services to many check-cashers, announced plans to develop a national network of check-cashing outlets (*Wall Street Journal*).

The growth and location of the check-cashing industry

Data on the check-cashing industry are sparse but nevertheless indicate that the industry is growing rapidly. Moreover, the evidence suggests that the industry is beginning to expand beyond its traditional concentration in lower-income urban areas.

In interviews, check-cashers who have been in the business many years said that the industry grew slowly until the early or mid-1980s and then expanded rapidly. Unfortunately, there is not sufficient data to confirm this view.[12] However, American Business Information (ABI), a firm that tracks yellow-page listings of businesses, reported 4,289 listings of check-cashing (or currency exchange) outlets nationally in July of 1991. In 1987, the earliest year it provided data, ABI reported just 2,151 national listings. Thus, in four years, the industry appears to have doubled, a phenomenal growth rate.

Existing CCOs are disproportionately located in major urban areas, generally in low and moderate-income neighborhoods. For example, in eight states fewer than 10 percent of the CCOs are located in cities of less than 100,000.[13] The Illinois Department of Financial Institutions (1980, p. 107) reported that of 624 licensed check-cashers in the state in 1985, 90 percent were located in the Chicago area. And, a study for the New York State Banking Department found that 69 percent of all check-cashing outlets in New York City in 1990 were located in low-income census tracts (Kemlage and Renshaw).

The evidence suggests that the recent growth in CCOs has been uneven, with especially rapid growth outside of the few major urban areas where check-cashing establishments have long existed. For example, yellow-page listings from late 1988 to early 1991 show growth rates for Illinois, New Jersey, and New York of below 20 percent. Over that same period of time, the number of listed check-cashers grew by 85 percent in Florida, 195 percent in Georgia, 96 percent in Missouri, 293 percent in North Carolina, 80 percent in Texas, and 87 percent in Washington.

In states with early and well-developed check-cashing industries, recent growth has occurred mainly outside of the traditional inner-city areas. For example, the Illinois Department of Financial Institutions (1989, p. 5) reported

5-10

that from 1985 to 1989, 108 new check-cashing licenses were granted but only 13 of these were for locations in Chicago; 75 were for locations in the Chicago suburbs and the remaining 20 were for downstate locations.

Explaining the Use and Growth of CCOs

Understanding the reasons behind the recent growth of check-cashing firms requires knowledge of who uses them and why. This section compares the cost and types of services offered by banks and CCOs, presents recent survey evidence on usage of CCOs, and examines factors behind their recent growth.

Comparing banks and CCOs

Since both banks and CCOs provide basic payments services, a key question is why consumers use CCOs rather than banks. One possible explanation is that CCOs are cheaper than banks. Or, perhaps CCOs are more convenient than banks or provide a type of service that banks are unable or unwilling to provide.[14]

The information on fees presented earlier can help provide an estimate of the cost to a household of meeting its payment needs through a CCO. For example, assume a family cashes its paychecks or government entitlement checks at a check-cashing firm charging a 1.5 percent fee and buys six money orders a month at an average price of $0.50 per money order. In this situation, a family with a $10,000 yearly income (about 75 percent of the 1990 official poverty level for a family of four) would spend $186 annually on basic financial transactions. Since check-cashing fees are a fixed percentage of the value of a check, a family with higher income would pay more. Thus, in this example a family with $24,000 annual income would spend $396 annually for financial services.[15]

The cost of obtaining similar services from a bank would be somewhat less, according to a 1990 national survey of bank fees by the Consumer Federation of America (1990). In estimating the cost of a checking account based on its survey data, the CFA assumed that a family maintains an average balance of under $400 in the account and that the account balance falls below $200 only once a month. In addition, the CFA assumed the family writes ten checks, makes four ATM withdrawals, and two deposits monthly and, over the year, the family bounces two checks and deposits one check that fails to clear. Based on this behavioral pattern, the CFA estimated that a family would pay $107.96 a year to maintain a noninterest-bearing checking account and would pay $111.39 a year to maintain an interest-bearing NOW account.

Regardless of the type of account maintained, it appears a family would save significant out-of-pocket costs by conducting its financial transactions through a bank rather than a CCO.[16] Because the fees for cashing checks at a CCO are assessed as a percentage of the face value of the check, the difference can be small for very low-income households. For example, a family earning $10,000 a year would save only about $80 annually by using a checking account rather than a CCO, while a family earning $24,000 a year would save almost $300. However, the very poorest households may be least able to afford the additional cost.

Two explanations account for the success of the check-cashing industry in the face of this cost disadvantage. One explanation is that out-of-pocket expenses do not measure the full cost of using a financial institution. Convenience, quality, and type of service also matter. In these aspects, CCOs may have an advantage for many consumers since most CCOs have much longer opening hours than do banks and are located more conveniently for some consumers. Also, CCOs may be faster with the range of simple

financial transactions in which they specialize.

Another explanation for the success of CCOs is that bank services do not fully substitute for CCO services. Most important, while CCOs are willing to assume the risk that a check they cash will bounce, banks generally will not. Most banks require a consumer to maintain a deposit account in order to cash checks, even government checks with a negligible default risk.[17] For depositors, most banks require the customer either maintain sufficient funds in an account to cover the check or wait a few days for the check to clear. If the check fails to clear and the bank has cashed the check for a customer with sufficient funds to cover it, the customer's account is docked for the amount of the check. Moreover, many banks charge the customer for the bank's cost of handling a "returned" deposit.

Because of these differences in check-cashing policy, consumers without bank accounts may be forced to take their business to CCOs. Moreover, even if they maintain a bank account, consumers may not be able to cash a paycheck or government assistance check because the amount exceeds their account balance. Although these consumers could save money by depositing their check in a bank and waiting for it to clear, they may prefer to pay a fee to have the cash immediately.

Evidence on CCO use

Surveys of who uses commercial check-cashing firms and why they choose to do so suggest that most customers are either low-income to lower-middle income workers cashing payroll checks or recipients of government transfer payments. Relative to the population as a whole, a disproportionate percentage of CCO customers are young, nonwhite, and do not have bank accounts. Limited access to banking services and the convenience of CCOs appear to be the most important factors governing their use.

This profile of CCO customers is drawn from two recent surveys. One, a survey by the Consumers Banking Association (CBA), focused on consumers cashing paychecks. A second survey, conducted by the New Jersey Department of the Public Advocate, concentrated on those cashing public assistance and social security checks.[18]

The CBA survey found that CCO customers were younger and poorer than the general population and more likely to be a racial minority. Thirty-seven percent of respondents were between the ages of 18 and 30, and 29 percent reported a household income of less than $15,000 a year. The median reported household income in the survey was $20,400 as compared with a 1985 national median family income of $28,906. While 33 percent of respondents were white, 47 percent were black and 18 percent hispanic.

The survey found that customers' reasons for using a CCO revolved around their access to bank services. Two-thirds of customers surveyed had deposit accounts at banks or other financial institutions. Only 13 percent of these customers used CCOs regularly, citing convenience and ready access to cash. In contrast, the one-third of CCO customers without bank accounts made more regular use of CCOs. For those customers, lack of funds to maintain bank minimum balances and high bank service charges were cited as the main reasons for use of CCOs.[19]

The study by the New Jersey Department of the Public Advocate provides a somewhat different portrait of the customer base of the check-cashing industry because it focuses on those cashing public assistance and social security checks.[20] The Department interviewed 750 recipients of government transfer payments. In contrast to the CBA survey, 92 percent of those interviewed said that they did not

have a bank account. Fifty-seven percent were cashing Aid to Families with Dependent Children (AFDC) checks. Another 20 percent, were cashing social security checks, and the rest were cashing unemployment benefits, veterans assistance, or state disability checks.

In the New Jersey survey, 79 percent of those interviewed stated that they never go to a bank to cash their government checks and, of these, 61 percent said they only go to CCOs. When asked why they were using a CCO to cash their government check, respondents cited lack of access to bank services and the convenience of CCOs.

Factors behind CCO growth

Knowledge of who uses CCOs and why is important for understanding the rapid growth in the industry during the 1980s. Changes in the economic situation of households may have led to an increased demand for check-cashing services. At the same time, regulatory changes may have increased the cost of banking services.

One factor contributing to the growth of CCOs may have been the strong growth in payroll employment following the 1982 recession. From 1983 to 1989, total civilian employment increased 16 percent (*Economic Report of the President*). Unlike the economic expansions of the 1960s and 1970s, however, employment growth in the 1980s was accompanied by a fall in employees' real incomes. For example, average weekly earnings of private sector, nonagricultural, industrial workers fell from $408 in 1978 to $346 in 1990.[21] Because the customer base of CCOs is disproportionately low-wage and moderate-wage workers, lower real incomes may have contributed to the demand for CCO services.

More generally, the 1980s saw a fall in the standard of living for many low-income families. From 1979 to 1988, the mean real family income of families in the lowest income quintile fell 5.4 percent (Bradbury, p.26). And, the number of families falling below the poverty line rose from 24.5 million in 1978 to 31.9 million in 1989 (*Economic Report of the President*). To the extent that poorer families had increased difficulty in accumulating financial savings to maintain bank balances, they may have had an increased incentive to use CCOs.

The 1980s also saw changes in the cost and supply of banking services. In 1980, the federal government enacted the Depository Institutions Deregulation and Monetary Control Act. Among other things, this act began a phaseout of ceilings on the interest rates banks could pay on deposits. The Act also required the Federal Reserve System to begin charging banks for a number of services it had previously provided for free.

Another factor was a change in the attitude of bank regulators at the federal and state levels toward competition among banks. Prior to 1980, regulators often looked unfavorably on a proposed branch that would be located in a community already well-served by other bank branches. However, after 1980, in an atmosphere much more favorable to free-market competition, regulators began to consider the increased competition provided by an additional community bank to be a positive factor in approving new bank branch applications (Spong).

Following these changes, banking became a much more competitive business. Banks reacted by pricing services based on the costs of providing those services. Thus, they began to charge for accounts with high transactions volume and small balances, significantly raising the cost of using banks for many low and moderate-income consumers (U.S. GAO). Bankers also reacted to the increased competition by closing branches in unprofitable or marginally profitable areas, which were often

5/13

low-income areas, and opening branches in the more desirable, higher-income areas already served by other banks.[22] Combined, these changes worked to make banks both more expensive and less convenient for many low-income and moderate-income consumers, and likely contributed to a growing demand for commercial check-cashers' services.

Finally, the rapid growth in the check-cashing industry in the 1980s may have been stimulated by an increased awareness of the market potential of the millions of Americans who do not regularly use the banking system for their financial transactions. Beginning in the mid-1980s, journalists, academics, and policy analysts began to write about bank closings in low-income neighborhoods and the large number of households not using banks.[23] These reports may have captured the imagination of entrepreneurs and fed the expansion of nonconventional financial institutions serving those whose needs were poorly met by banks.

Public Policy Issues

Recognizing that CCOs are playing a more important role in the U.S. financial system raises a number of public policy issues concerning CCOs and the delivery of affordable financial services to low-income households. This section considers the trade-offs in regulating CCOs and the role they could play in the financial system.

Regulation of CCOs

Bank closings in low-income communities, increases in bank fees on small deposit accounts, and the rapid growth of the check-cashing industry have made the policies of CCOs far more relevant than the policies of banks for many segments of the population.

This observation has led to suggestions that the check-cashing industry be more widely regulated. Those advocating that more states, or perhaps even the federal government, should regulate the industry point out that many check-cashing customers are relatively unsophisticated consumers, with little social or economic power. These customers might be grossly overcharged by an unscrupulous operator, some of whom may have local monopoly power. Thus, there is concern that many poor and moderate-income individuals could spend a large percentage of their limited disposable incomes for basic financial transactions.

Indeed, evidence supports the concern that some check-cashing firms levy relatively high fees. For example, the survey by the Consumer Federation of America (1989) found that 11 percent of the firms charge 3 percent or more for cashing government entitlement checks. In New Jersey, for example, check-cashers are limited by law to charging 1.0 percent on in-state checks and 1.5 percent on out-of-state checks. Of 662 customers there who reported the amount of the check they cashed and the amount of fee they paid, 49 percent were charged more than the legal maximum (New Jersey Department of the Public Advocate, p. 29). On average, check-cashers overcharged by about 44 percent of the ceiling rate, and in some cases the excess charge was substantial. To cite two examples from the report: a Hispanic woman who could not speak English was charged $25 for cashing a $268 social security check, and another woman was charged $16 for cashing her $525 AFDC check.[24]

Interestingly, in its response to the study by the Department of the Public Advocate, the New Jersey Department of Banking, which oversees check-cashing outlets, reported that it had received only one check-cashing complaint over two years (GAO, p. 9). It appears, therefore, that the vast majority of people who were charged more than the legal maximum in New

5.14

Jersey did not complain to the oversight agency, perhaps because they were unaware of the overcharge, felt a complaint would be ineffective, or did not know how to file an official complaint or felt that the effort was greater than the cost of the overcharge.[25]

Those who favor limits on check-cashing fees need to be aware of possible consequences, however. Mandating very low check-cashing fees could kill the industry and hurt the low and moderate-income people who have no realistic alternatives for cashing their checks. Prior to 1989, for example, Delaware limited check-cashing outlets to charging a fee of 0.5 percent of the face value of the check or $0.25, whichever was greater. In 1989, the state raised the limit to 1.0 percent or $4.00, whichever is greater, noting that no CCOs were operating in the state under the old law.

On the other hand, it is clear that CCOs can flourish in urban areas when the ceiling rate is around 1.0 to 2.0 percent.[26] In New York, for example, the ceiling rate is 0.9 percent or $0.50, whichever is greater. Yet over 400 check-cashing outlets operate in the state. Illinois, which permits check-cashers to charge up to 1.2 percent of the face value of the check plus $0.90, has more CCOs per capita than any other state.[27]

The evidence suggests, therefore, that if regulation of CCOs is deemed desirable, states can set limits on check-cashing fees to protect consumers against the highest charges and yet permit the industry to flourish. The evidence from New Jersey also suggests, however, that the state must devote resources to enforcing compliance with the statute. In New York and Illinois, where the state banking departments conduct annual on-site surveys of CCOs, firms do not appear to charge more than the legal maximum. Presumably, annual license fees from CCOs can provide the states with the revenue to cover the costs of monitoring the industry and enforcing state legislation.

The role of CCOs in the financial system

The 1980s have seen increased emphasis on the access lower-income households have to affordable basic financial services. Legislatively, this concern has been expressed in congressional hearings or proposals to force banks to cash government entitlement checks for free and to offer "basic," or "life-line," bank accounts (U.S. Senate, U.S. House 1989).[28] Such accounts would permit a consumer to conduct a limited range of basic financial transactions for a very small fee or no fee. Regulators and community activists have also used the Community Reinvestment Act and other means to bring pressure on banks to keep branches open in low-income areas and to improve banking services in these communities.[29]

However, the possible cost or effectiveness of these proposals has also caused concern. For example, if banks are forced to provide these services without sufficient compensation, the burden might not be shared equally among banks. Indeed, banks with existing branches in low-income areas could be most affected. Moreover, imposing such policies on banks but not their competitors could place banks at a competitive disadvantage and, perhaps, lead to an acceleration of bank branch closings.

Recognition of the growing importance of CCOs, however, suggests that they might play a role in providing basic financial services to low-income households. CCOs specialize in delivering a narrow range of payments services. With experience, they have learned which financial services are most in demand by lower-income households and have learned to minimize the cost of providing these services. CCOs already compete for locations that are most convenient for the low-income and moderate-income households that make up their customer base.

By viewing CCOs as an integral part of the financial system, federal, state, and local

5/15

governments may be able to work with them to ensure that they deliver affordable basic payments services. Indeed, a number of states already appear to be taking this approach, using CCOs in the distribution of public benefits and services. For example, residents of New York City and Chicago can elect to receive their AFDC payments or food stamps through local CCOs. In New York, the state pays the CCO to distribute AFDC benefits in cash. In Illinois, the CCOs handle the distribution of AFDC checks for free, but if the recipients cash their checks at the CCO, they pay the regulated state fee. And, in Illinois, many CCOs have the right to handle automobile registrations and title transfers.

The suggestion that CCOs be used as delivery points for government services is linked with the view that they be more widely regulated. This is true for two reasons. First, in a state where CCO fees and services are regulated, the industry is likely to have a better public image and therefore is more likely to be trusted for distributing public services. Second, because permitting CCOs to distribute AFDC payments, handle automobile registrations, or provide other public functions is profitable for CCOs, such opportunities can be traded for lower ceilings on the fees CCOs levy for basic financial services.

Realistically, however, advocating broader regulation and reliance on CCOs for the delivery of basic financial services does not require abandoning efforts to improve the accessibility of banks for lower-income households. While CCOs provide some basic payment services, they are not substitutes for banks. CCOs do not take deposits, so residents of a community served only by CCOs would not have a safe and convenient outlet for their savings. And, CCOs also do not make loans, so the economic development of a community served only by CCOs may suffer.

Summary

This article has surveyed the role check-cashing outlets play in the financial system. CCOs provide basic financial transaction services to many low-income and moderate-income households. And, measured by the number of outlets, CCOs may be the most rapidly growing segment of the financial system. Households that consistently use CCOs appear to devote a larger fraction of their incomes on average to pay for financial transactions than do families that rely on banks. Some use of CCOs appears to be voluntary. Consumers may turn to them rather than to banks because CCOs have a more convenient location or longer hours of operation. However, some consumers may turn to CCOs because they cannot afford to meet minimum balance requirements at banks.

For many moderate-income and low-income households in urban areas, a CCO may be the most important financial institution in their daily lives. This observation has led an increasing number of states to regulate CCOs and suggests that CCOs might be employed in the delivery of basic financial services and government benefits.

Endnotes

The author would like to thank Jennifer Ekert and Bart Yavorosky for excellent research assistance. The three of us are grateful to the commercial check-cashers and state regulators who took the time to explain the business and its regulatory environment to us. The article also benefited from conversations about this research with Gordon Sellon, Hyman Minsky, and my colleagues at Swarthmore College. The author is also grateful to Kristin Lewis of American Business Information for providing some of the data used in this article.

[1] In Indiana, Illinois, Minnesota, and Wisconsin, firms that cash customers' checks for a fee are said to be in the "currency-exchange" business. The more widely used term "check-cashing" business is used to avoid confusion with foreign exchange transactions.

[2] For lack of data, the article does not attempt to examine recent trends in check-cashing by these nonfinancial businesses. It also excludes from the analysis mobile payroll services.

[3] As is clear from this explanation, all check-cashing outlets must work closely with at least one bank. This is because a CCO needs a bank to clear the large volume of checks the firm cashes. Moreover, most CCOs rely on bank lines of credit to meet their periodic, substantial needs for cash.

[4] In the few states that regulate the check-cashing business, it is illegal for check-cashers to make such loans. In some unregulated states, payday loans are effectively illegal because the fees violate state usury laws.

[5] Data from the Department of Financial Institutions in Illinois show check-cashing firms earn about 67 percent of their revenue from check-cashing fees and about 11 percent from sales of money orders.

[6] Other states partially regulate the industry or have legislation pending. For example, Wisconsin has long required check-cashers to be licensed but does not otherwise the state regulate check-cashers' activities. Washington state recently established extensive regulations of the check-cashing industry that will take effect in 1992, but the regulations do not set ceilings on check-cashing fees. At the time of this writing, Ohio and Pennsylvania have regulatory legislation pending. Legislation to regulate the industry was also recently introduced in a few other states, but failed to pass. Illinois and New York were the first to establish such regulations, enacting legislation in 1943 and 1944, respectively. Delaware and New Jersey began to regulate CCO fees in the 1950s, and in the past two years, Connecticut, Georgia, and Minnesota have also done so.

[7] It is also common for check-cashing firms to levy additional charges for first-time customers. Check-cashers say these charges are to cover the costs of issuing the customer an identification card or registering the customer.

[8] The CFA survey suggests that CCOs charge slightly more for cashing AFDC (welfare) checks then for social security checks.

[9] A 1991 telephone survey, by the author, of 42 check-cashing firms in several states found fees broadly agreeing with those found by the Consumer Federation of America. In the unregulated states, most firms charged between 1.5 and 3.0 percent to cash government and local payroll checks. Three outlets charged rates as high as 5 to 6 percent. Those that accepted personal checks charged from 4 to 15 percent. A small number of the firms permitted a customer to cash a post-dated personal check. For a check that was to be held up to one month, the customer typically was charged 20 to 35 percent of the amount advanced.

[10] Check-cashers want to promote money order sales because a check-casher selling numerous money orders will not need to use as much of his own capital or tap a relatively expensive bank credit line to obtain cash for check-cashing customers. The check-casher simply hands out the cash he receives from selling the money orders. In addition, check-cashers can earn float (i.e., interest on money being transferred to someone else) from money order sales, for the check-casher normally pays the money order company with a slight delay (Gagerman).

[11] In arriving at these estimates, it is assumed that there were 4,250 check-cashing outlets operating in 1990, each cashing an average 35,000 checks. This estimate of the average number of checks cashed is below the scale of operation of most check-cashing outlets in Illinois, New Jersey, and New York, as reported by the regulatory agencies in those states. However, outlets in these three states must do a greater volume of business than the national average to survive because these states have regulated fees lower than those charged elsewhere. Interviews with check-cashers in the unregulated states suggest most outlets handle between 25,000 and 40,000 checks annually.

These estimates also assume that the average check has a face value of $300 and the average cashing fee is 1.75

percent. The $300 estimate is consistent with the data for Illinois, New Jersey, and New York and was thought reasonable by check-cashers in the unregulated states. The 1.75 percent fee agrees with the national average reported by the Consumer Federation of America (1989).

12 Data are available for Illinois, New Jersey, and New York, but the trends in these states may well have been affected by unique factors. For example, in both Illinois and New York there was a sharp increase in the average annual growth rate in the number of licensed check-cashing outlets in the second half of the 1980s as compared to the first half of the decade. However, both of these states in the second half of the 1980s raised the ceiling on the fees check-cashers were allowed to charge. Moreover, New York, at the end of 1985, stopped considering distance between competing check-cashing locations as a factor in approving applications for licenses (Renshaw, p. 8). In New Jersey, the number of licensed check-cashing outlets grew strongly throughout the 1980s, rising from 69 in 1980 to 88 in 1989. However, the growth in the early part of the decade may have been aided by a 1979 increase in the fee check-cashers in New Jersey could charge. Finally, the trends in these states are unlikely to be nationally representative because Illinois, New Jersey, and New York, unlike almost all other states, have had well-developed check-cashing industries for over 40 years. In fact, the study by Reeb and others concludes that check-cashing in New York City is a mature industry with limited future growth possibilities for its core services.

13 This result is based on the author's survey of CCOs in eight states.

14 CCOs might also be used by those who do not want to create deposit-account records because of tax reasons, immigration status, etc.

15 This example assumes no taxes or withholding. The low-income family pays $150 ($10,000 x .015) for check-cashing and an additional $36 for money orders. The moderate-income family pays $360 for check-cashing and $36 for money orders.

16 While this example appears to be based on reasonable assumptions, other assumptions could change relative costs. For example, since the CFA study found that banks charged $15.11 per bounced check, the cost of using a bank would increase if the family's account were overdrawn more frequently.

17 In 1988, the Consumer Federation of America (1988) surveyed 110 banks and 84 thrifts located primarily in the urban areas of 15 states and the District of Columbia. It found that of the 191 financial institutions responding to the survey, 71 percent would not cash government checks for nondepositors at any price. Fourteen percent would cash non-depositors' government checks for free, and 15 percent would do so for a fee, averaging $3.88 for a $300 check. Outside of urban areas, banks are apparently more willing to cash government checks for nondepositors (U.S. GAO 1988, pp. 13-14).

The study (GAO 1988, pp. 16-17) suggests that banks that refuse to cash government checks for free for non-depositors do so because banks incur costs in handling checks, they do not want to crowd their lobbies with government aid recipients who only want to cash their entitlement checks, and they fear that some fraudulent checks might be cashed for which the government would not reimburse them.

18 There are several reasons that neither the Consumer Bankers Association's survey nor the New Jersey Department of the Public Advocate's survey is alone likely to be broadly representative of the customer base of the check-cashing industry. The Department of the Public Advocate survey limited its study to the use of CCOs by recipients of government aid programs and ignored people cashing payroll checks. In the case of the Consumer Bankers Association (CBA) survey, customers who visit a CCO during a heavy payroll period are unlikely to be representative of customers generally; that is, they are more likely to be employed and have higher education and income levels. They are probably also more likely to maintain a deposit account.

19 For additional evidence on reasons consumers may not use banks, see Canner and Maland.

20 According to the data in Appendices P through S of the study, CCOs in three New Jersey counties (Camden, Essex, and Mercer counties) cashed about 1.5 million checks in 1986, about 13 percent of which were AFDC checks. By examining 4,842 canceled AFDC checks from three counties, the Department found that 47 percent of them were cashed at banks, 32 percent were cashed at CCOs, 12 percent were cashed at local businesses, and 9 percent were cashed by friends, relatives, or landlords. Of the AFDC checks cashed at banks, 75 percent were cashed at banks that serve as depositories of county funds and are required to cash AFDC checks for nondepositors without a fee.

21 Both figures are expressed in 1990 dollars.

22 For evidence on branch closings, see Obermiller, and Avery.

23 For example, the U.S. GAO (1988, p. 19) estimated that about 16 million American families did not have banking accounts of any type in 1985. Also see the articles by Canner and Maland, Gross, Zamba, Lueck, Obermiller, and Bartlett.

24 In a survey, by the author, of 42 check-cashing outlets

5/8

across several states, a few charged 5 to 6 percent to cash government and payroll checks. When asked why competition would not drive firms that charge more out of business, check-cashers said many of their customers just want their money as fast as possible and pay no attention to a difference of a few percentage points in the fee charged. In addition, customer transportation costs may limit competition among check-cashing outlets.

[25] The New Jersey Department of Banking told the New Jersey Department of the Public Advocate (p. 68) in 1987 that it relied on the "honor system" to assure compliance with state limits on check-cashing fees. A 1991 telephone survey, by the author, indicated that check-cashing firms in the state are now complying with the law, perhaps because the Department of Banking increased the resources it devoted to enforcement after the report by the Department of the Public Advocate.

The author called several other state consumer advocate agencies and state banking departments to find out if there had been complaints against check-cashing outlets. In no state was this the case. However, in unregulated states, it was often difficult to locate anyone in a state agency who knew where one would go to file such a complaint or how it would be classified by the consumer advocacy agency.

[26] If outlets are to cash very small checks or personal checks, a higher fee may need to be permitted in these cases.

[27] Other states should not automatically assume they can adopt the New York or Illinois ceilings on check-cashing fees without adversely affecting the industry. Both of these states use check-cashing outlets to distribute welfare payments, which brings additional business to the outlets. Also, in both states, check-cashing outlets are almost exclusively found in the dense urban areas. States with less concentrated populations may find check-cashing firms cannot function profitably with a 1.0 percent ceiling.

[28] Some policy analysts have also suggested reviving the U.S. postal savings system to ensure all communities have convenient access to a deposit-taking financial institution. In fact, perhaps a major reason check-cashing outlets do not exist in Europe is because most European countries have postal savings systems with giro accounts.

[29] See the 1986 policy statement on basic banking by The Federal Financial Institutions Examination Council in Canner and Maland. In 1989, federal financial institution regulators made provision of basic banking services a part of a bank's CRA rating.

References

Bartlett, Sarah. 1989. "Bank Closings Discriminate, Report Asserts," *New York Times*, January 30.

Bradbury, Katharine L. 1990. "The Changing Fortunes of American Families in the 1980s," *New England Economic Review*, July/August.

Canner, Glenn and Ellen Maland. 1987. "Basic Banking," *Federal Reserve Bulletin*, April.

Consumer Bankers Association. 1989. "Check Cashing Services Study," monograph of study conducted by the Roper Organization Inc., December.

Consumer Federation of America. 1987. "National Survey of Check Cashing Outlets," September.

_____. 1988. "Bank Fees on Consumer Accounts: The Fifth Annual National Survey," manuscript, June.

_____. 1989. "Check Cashing Outlet Fees: Still High and Climbing," December.

_____. 1990. "Ten Years after Financial Deregulation: The Sixth Annual National Bank Fee Survey," manuscript, June.

Economic Report of the President. 1991. U.S. Government Printing Office.

Gagerman, Jerome S. 1990. "Professional Check Cashers and the Compliance Implications of the Money Laundering Control Act," manuscript, August 1.

Gross, Laura. 1987. "Branch Cuts Seen Hurting Minorities," *American Banker*, February 23.

Illinois Department of Financial Institutions. 1980. *Annual Report*.

_____. 1989. *Annual Report*.

Kemlage, Donald J. 1991. "More about Branch Banking and Check-Cashing Outlets in New York State," Appendix G in Reeb et al, *Economic Profile of the Check Cashers' Industry*, A Report to the New York State Banking Department, May.

_____, and Edward Renshaw. 1991. "Branch Bank Closings in Low-Income Areas of NYC and Check-Cashing Outlets," Appendix F in Reeb and others. *Economic Profile of the Check Cashers' Industry*, A Report to the New York State Banking Department, May.

Lueck, Thomas. 1988. "Banks Shut in Poor Areas Stir Worries," *New York Times*, August 17.

New Jersey Department of the Public Advocate. 1988. "Who's Checking?" January.

Obermiller, Phillip J. 1988. "Banking at the Brink: The Effects of Banking Deregulation on Low-Income Neighborhoods," *Business and Society*, Spring.

Reeb, Donald and others. 1991. *Economic Profile of the Check Cashers' Industry*, A Report to the New York State Banking Department, May.

Renshaw, Edward. 1991. "Regulation of the Dedicated Check-Cashing Industry," Appendix A in Reeb and others. *Economic Profile of the Check Cashers' Industry*, A Report to the New York State Banking Department, May.

Spong, Kenneth. 1990. *Banking Regulation: Its Purposes, Implementation, and Effects*, Federal Reserve Bank of Kansas City.

U.S. General Accounting Office. 1987. "Banking Services: Changes in Fees and Deposit Account Interest Rates Since Deregulation," July.

_____. 1988. "Government Check Cashing Issues," October.

U.S. House of Representatives. 1989. "Consumer Access to Basic Financial Services," Hearings before Subcommittee on Consumer Affairs and Coinage of the Committee on Banking, Finance, and Urban Affairs, October 17.

U.S. Senate. 1989. "Government Check-Cashing, Lifeline Checking and the Community Reinvestment Act," Group before The Subcommittee on Consumer and Regulatory Affairs of the Committee on Banking, Housing, and Urban Affairs, Law G-7.

Wolf, Irving J. 1975. *The Licensed Check Cashing Industry In New York City*, MBA thesis at Pace University, September.

Zamba, Michael J. 1987. "Closed Banks Worry Neighbors," *Christian Science Monitor*, May 8.

5-20

TESTIMONY

My name is Steve Dockins, I reside at 520 Vernon Ct. Colorado Springs, CO 80910. I have been in the Check Cashing business since October 1983. I would like to testify as to the demand for this type of service as well as the need to regulate it.

TESTIMONY OUTLINES

NEED:

QUICK AND EASY
LIMITED ALTERNATIVES
NUMBER OF CUSTOMERS
USE OF MONEY

COST:

RATES
BAD CHECKS/BIG EXP
COST OF COLLECTION
COST OF DOING BUSINESS
WHAT CUSTOMERS WOULD PAY FOR OUR SERVICES
BANK CHARGES

REGULATION:

ALLOW LEGITIMATE COMPANIES TO RUN
PREVENT DISHONEST PEOPLE & COMPANIES
SERVICE THE PUBLIC & THEIR NEEDS

STEVE DOCKINS
PRESIDENT
BAR D. Financial Inc.

CF&I
1-30-92
Atch #6

TESTIMONY

My name is LaTannia Fair, I reside at 6809-4 Meade Loop, Ft Riley, Kansas, 66442. I'm presently employed as the Office Manager for Payday Check Cashing Store. I am here to testify that paydays check cashing services are needed in our community. Payday opened on September 16 1991, and within 4 months time period we're reached a 2000 client base, which averages about 500 customers per month. We serve the community by relieving day to day stress resulting from financial difficulties.

Our customers cash checks with us to purchase groceries, gas and automobile parts; to pay bills such as electric, water or phone. Many of our customers would end up oweing past due bills or bad checks which could lead to poor credit rating. Payday services our customers in emergency situations, such as purchasing airlines tickets, paying court fees, or unexpected medical bills. Keeping all this in mind, one must also realize that it is important for such laws to be passed regulating check cashers to prevent illegitimate practices.

When evaluating the rates this law would allow us to charge, we would like you to consider the risk we take by holding checks until payday. We currently have 244 NSF CKS totaling 9,312.78. We spend hours calling customers, attempting to collect on NSF Checks, we have approximately 90 checks that are over 60 days old, and may never be collected on. In closing here at payday, we are more than willing to comply with the law passed as a result of this hearing, also I'd like to present you with 2765 names who signed a petition supporting our services at the rates we charge.

LATANNIA FAIR
OFFICE MANAGER

CF&I
1-30-92
Atch #7

House Bill No. 2749

TESTIMONY

My name is Amber Barry, I reside at 418 1/2 West 14th Street, Junction City, Kansas. I am here to testify that Payday Check Cashing Store is a necessary as well as a valuable service in our community. I have utilized Payday for various reasons. For instance paying bills that may arrive in the mail before our pay period. For emergencies such as replacing automobile parts, going home on leave due to illness of a family member and pay unexpected legal fees or court costs. Without the check cashing services that Payday offers many of my fellow community members would not be able to take care of important personal matters to maintain a stable day to day living.

Many times military families complain of difficulties they have experienced concerning mistakes with their monthly income making it impossible to meet these obligations which in turn prevents further action resulting in even more debt owed.

In short I believe that the fees which will be charged by Payday are reasonable for the service offered. Payday is taking a risk by accepting our post-dated checks and therefore rates should be understandably higher. Payday is also a preferable alternative over the embarrassment of using a Pawn Shop or bouncing a check.

Amber Barry
Customer

CF&I
1-30-92
Atch #8

STATE OF KANSAS

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Testimony of
Nancy L. Ulrich
Assistant Attorney General
Before the House Committee on
Commercial & Financial Institutions
RE: House Bill 2749
January 30, 1992

On behalf of Attorney General Bob Stephan and Consumer Credit Commissioner Bill Caton I ask for your support of House Bill 2749. Because of the strong public interest in short-term, personal check loans, the potential abuses under the current laws and the need for uniform enforcement and regulation, we feel passage of this bill is important.

It is interesting that our office and the Consumer Credit Commissioner's office received very few complaints about these "check-cashing companies" before we took action to enforce the Consumer Credit Code and the Consumer Protection Act, despite the fact that customers paid interest rates from 600% to 1600% APR and often were charged fee after fee when a check did not clear the bank. In February and March of 1991 our office subpoenaed 7 companies and examined their records; all companies but one subsequently ceased doing business in Kansas. We then received many phone calls from consumers asking when these companies would reopen.

CF&I
1-30-92
Atch # 9

In reviewing the records we noted the high default rate for these customers, and confirmed that these were high risk loans.

Check-cashing companies have continued to operate in Kansas despite the usuary provisions of the Consumer Credit Code. We filed a lawsuit against one company in Junction City, but before the case was heard by the court the company pulled out of Kansas with all records and cash. These companies have also developed creative means of circumventing the Code. For example, the defendant in our lawsuit sold certificates in lieu of charging a fee. The certificates could be redeemed for the company's highly-inflated catalog merchandise. Customers rarely, if ever, use the certificates and saw them as a cost of the check cashing service. Another check cashing company devised a transaction where they would charge the lawful fee for the check cashing service, but then charge the customer a much larger sum to cash their own check. That is, the customer would receive the pay day loan by check but would immediately incur a second fee to cash the check.

Filing lawsuits or administrative actions against these creative companies is time-consuming and permits the company to perpetuate its scheme until a court or hearing officer can rule. Under the current laws there is no certainty these and other means of bypassing the Code would be deemed unlawful.

The only way to properly protect check-cashing customers is through regulation that specifically addresses this unique type of loan. We therefore urge your support of House Bill 2749.