

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox on February 9, 2004 at 3:30 p.m. in Room 527-S of the Capitol.

All members were present except:

Representative Tom Burroughs- excused

Committee staff present:

Bruce Kinzie, Revisor's Office  
Bill Wolff Legislative Research Department  
Maggie Breen, Secretary

Conferees appearing before the committee: Kevin Glendening - Office of the State Bank Commissioner  
Whitney Damron - Kansas Payday Loan Association  
Bud Burke - Kansas Payday Loan Association  
Darren Anderson, QC Financial  
Rickie Coleman - Wichita Concerned Citizen

Others attending:

See Attached List.

Chairman Cox asked **Chuck Stones** to give a brief summary of **HB 2580 - Banks and banking, general powers** before the committee took action on it. Chuck said the bill changes the percentage limit, which banks can own Industrial Revenue Bonds, to reflect the same limit that they can make loans to the same companies. He did have an amendment request to change the effective date from publication in the statute book to publication in the register.

Representative Wilke moved to amend section 3 of the bill by striking the words "statute book" and inserting the word "register." Representative Campbell seconded the motion. The motion carried.

Representative Grant moved that the committee pass out **HB 2580** as amended favorable for passage. Representative Burgess seconded the motion. The motion carried.

Chairman Cox opened the hearing on **HB 2685 - Payday loans, concerning the regulation thereof**

Proponents:

**Kevin Glendening** - Office of the State Bank Commissioner, said that by and large the payday lenders operating in Kansas are very compliant with our laws. A number of the amendments pertaining to this bill are addressing that certain element that tries to operate outside the bounds. It adds a minimum loan term of seven days, makes a maximum of three loan to each consumer in any thirty day period, and requires that each check taken as part of a payday loan be endorsed with language stating criminal prosecution is not permitted. It also requires a 24 hour rescission period, in essence a no cost option to change their mind. The bill also reduces the maximum amount of a payday loan to \$500. And finally, the bill contains some prohibited activities and business restrictions which would prevent circumvention of state law. Kevin requested a slight amendment on page 3, line 4, striking the words "made under" and inserting the words "subject to." He asked favorable consideration of the bill. (**Attachment 1**)

**Whitney Damron** - Kansas Payday Loan Association, said the association represents about 25% of the industry. He said the association offered their general support to most of the provisions of the bill. They are still somewhat concerned with Section 12, as it relates to agency relationships, and intend to continue to work with the Bank Commissioner's office to discuss potential future amendments that might clarify the intent and application of the section. (**Attachment 2**)

**Bud Burke** - Kansas Payday Loan Association, distributed information to the committee from The Community Financial Services Association of America (CFSA) the only national organization that represents payday loan providers in all states. He referred them specifically to the research on payday advance. (**Attachment 3**)

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE on February 9, 2004 at 3:30 p.m. in Room 527-S of the Capitol.

**Darren Anderson**, QC Financial, Kansas City, Kansas, and also on the board of CFSA. There are presently about 15,000 payday loan locations in the nation and they did about \$25 billion in loans last year. There are 35 states, Kansas being one, plus the District of Columbia that have payday regulation. The national organization supports fair and balanced regulation which includes: the right of rescision, no criminal prosecution, fair disclosure, licencing, and all the things that are in the bill. They support and appreciate the fact that Kansas is a regulated entity and tries to rein in the disguised payday loan operators. **(No written testimony)**

**Rickie Coleman** - Wichita Concerned Citizen, and also a member and president of Sunflower Action, a grassroots non-profit organization, which works on issues that affect citizens in the community. She requested the committee support the bill as it protects Kansas consumers from predatory lenders. **(Attachment 4)**

Melinda Lewis - El Centro, Inc. - Written only **(Attachment 5)**

Chairman Cox closed the hearing on **HB 2685**.

Chairman Cox said he appreciated the industry and Kevin getting together and coming up with a solid front. He said the bill would be worked on Wednesday.

Representative Grant moved that the committee minutes for January 28 and February 4 be approved as written. Representative Dillmore seconded the motion. The motion carried.

The meeting adjourned at 4:05 p.m.

The next meeting is scheduled for Wednesday, February 11.

# HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: February 9, 2004

NAME	REPRESENTING
J.J. Selmon	SUNFLOWER COMMUNITY ACTION.
Rickie Coleman	SUNFLOWER COMM. ACTION
Melinda Lewis	El Centro, Inc.
Mithey Damron	KS Payday Loan Assn.
Sarah Novascone	Aderico Consulting
Sonya Allen	Office of State Bank Commissioner
Paula Langworthy	Office of State Bank Comm.
Ron Gaches	GBBA
Kevin Glendonig	Office of State Bank Comm.
Clancy Norris	Office of State Banking Dept.
William BANKER	QC Financial SERVICES
Darrin Andersen	QC Financial Services

WICHITA,  
→ KS.

11



# KANSAS

OFFICE OF THE STATE BANK COMMISSIONER  
*CLARENCE W. NORRIS, Bank Commissioner*

KATHLEEN SEBELIUS, GOVERNOR

February 9, 2004

## House Committee on Financial Institutions

### Testimony on HB 2685

Mr. Chairman and members of the Committee:

My name is Kevin Glendening, Administrator of the Kansas Uniform Consumer Credit Code and Deputy Bank Commissioner. Today I ask for your favorable consideration of HB 2685.

HB 2685 contains several amendments to K.S.A. 16a-2-404 which regulates Payday lending in Kansas. These amendments will clarify and strengthen existing consumer protections contained in the law and, in my opinion, represent reasonable regulatory requirements that do not place unwarranted burden on the industry. The proposed amendments can be grouped into two general categories as follows:

#### **Loan structure and handling issues:**

Establish a minimum loan term of seven days and a maximum of three loans to each consumer in any thirty day time period. These amendments are intended to reduce the possibility of lenders "churning" loans to inflate fees charged to borrowers.

Require each check taken as part of a payday loan transaction to be endorsed with language stating criminal prosecution is not permitted. We believe this will reduce the possibility of a borrower being incorrectly charged with a crime by providing an easily identifiable notice to county attorneys.

Provide borrowers the opportunity to rescind a payday transaction without cost within 24 hours of obtaining the loan. This provision would give a no cost option for the consumer to, in effect, change their mind about obtaining the loan.

Reduce the maximum amount of a payday loan to \$500.

House Financial Institutions  
2-09-04  
Attachment 1

**Prohibited activities and business restrictions:**

Reinforce the agency's existing position that attempting to utilize an alternative marketing device or other scheme does not circumvent the requirements and regulations governing payday lending in Kansas. In addition, the proposed amendments would prohibit a lender from using the criminal process to collect a loan, or attempting to have a consumer waive any rights in exchange for a loan. Finally, the bill would add a provision that addresses agency relationships, "rent-a-charter" schemes, or other business structures or devices that attempt to circumvent state laws.

As previously stated, I believe these amendments will provide additional worthwhile protections for Kansas consumers and represent reasonable regulation of the industry. I would be happy to answer any questions of the committee. Thank you.

Office of the State Bank Commissioner  
**Consumer & Mortgage Lending Division**

<b>Kansas Payday Loan Licensees</b>																						
<p>Companies must obtain a Supervised Loan License under the Uniform Consumer Credit Code to make payday loans to Kansas consumers.</p>																						
<p>At the close of 2003, 78 companies had a total of 204 locations licensed to make payday loans in Kansas. Nine of the 78 companies have an out-of-state administrative home office. Currently, three companies have pending license applications to conduct payday lending activity in Kansas.</p>																						
<p>The cities with the most payday licensed locations are Wichita with 33, followed by Topeka with 19 and Junction City with 12. The Kansas City, Kansas greater metropolitan area has 27 payday licensed locations.</p>																						
<p>For 2002, licensed payday lenders reported 667,317 loans made to Kansas consumers totaling \$102,790,061.00</p>																						
<p>Number of Kansas Payday Lender Locations licensed in each of the following years:</p> <table style="margin-left: auto; margin-right: auto; border: none;"> <thead> <tr> <th style="text-align: center;"><u>1993</u></th> <th style="text-align: center;"><u>1994</u></th> <th style="text-align: center;"><u>1995</u></th> <th style="text-align: center;"><u>1996</u></th> <th style="text-align: center;"><u>1997</u></th> <th style="text-align: center;"><u>1998</u></th> <th style="text-align: center;"><u>1999</u></th> <th style="text-align: center;"><u>2000</u></th> <th style="text-align: center;"><u>2001</u></th> <th style="text-align: center;"><u>2002</u></th> <th style="text-align: center;"><u>2003</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">17</td> <td style="text-align: center;">26</td> <td style="text-align: center;">36</td> <td style="text-align: center;">53</td> <td style="text-align: center;">67</td> <td style="text-align: center;">89</td> <td style="text-align: center;">103</td> <td style="text-align: center;">107</td> <td style="text-align: center;">115</td> <td style="text-align: center;">121</td> <td style="text-align: center;">204</td> </tr> </tbody> </table>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	17	26	36	53	67	89	103	107	115	121	204
<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>												
17	26	36	53	67	89	103	107	115	121	204												

# THE INTERNET SOLUTION

**Legislation Controlling  
Your  
Business???**

**Electronic Transactions**

**or "Cooling Off" Period**

**No Reg Z, No APR, No  
Federal Truth in Lending**

**You set your own fees and  
payment plans!**

**One contract per customer  
per year**

**WE OFFER AN AGGRESSIVE REBATE  
MARKETING PLAN SIMILAR TO MSN, AOL  
COMPUSERVE AND PRODIGY THAT  
INCREASES SALES ON TERM AGREEMENTS.  
HUNDREDS OF PAYDAY LOAN COMPANIES  
WERE ABLE TO SUCCESSFULLY MARKET TO  
THEIR EXISTING CUSTOMER BASE AND/OR  
ADD ADDITIONAL SERVICE - RESULTING IN  
GREATER PROFITS.**

**CyberQik**

**1-866-224-8080**

**sales@cyberqik.com**

1-4

# ATTENTION PAYDAY LENDERS

NEED A BETTER WAY TO DO BUSINESS?

COMPLEX  
AND  
MESSY?



MAKE  
THINGS  
SIMPLE

INTERNET ACCESS IS THE  
FUTURE OF PAYDAY LENDING.

INTERNET ACCESS OFFERS LICENSE AGREEMENTS THAT ALLOW YOU TO OFFER REBATES TO SELL MEMBERSHIPS TO OUR WEB PAGES.

INTERNET ACCESS HAS OVER 20,000 MEMBERS THAT ARE PAYING WITHOUT REBATES. NO OTHER INTERNET COMPANY OFFERING ISP LINES CAN MAKE THIS CLAIM.

INTERNET ACCESS OFFERS SERVICES THAT THE CUSTOMERS ARE WILLING TO PAY FOR WITHOUT REBATES. GIVING REBATES IS A BONUS FOR THE CUSTOMERS AS WELL AS YOUR PAYDAY LENDING COMPANY.

WE OFFER:

1. LOW START UP COSTS
2. MAXIMUM FLEXIBILITY
3. NO SALES TAX OR REGULATIONS
4. LOWEST RATES IN THE COUNTRY



- MOST IMPORTANTLY -

YOU CAN JUSTIFY YOUR RATES BECAUSE WE OFFER MORE SERVICES THAN ANY OTHER COMPANY IN THE INDUSTRY.

FOR MORE INFORMATION AND FREE DEMOS, VISIT US ON THE WEB AT

[www.MYINTERNETACCESS.BIZ](http://www.MYINTERNETACCESS.BIZ)

OR CALL 1-888-80-MONEY,  
ASK FOR JOHN MARTINEZ.

1-5



**WHITNEY B. DAMRON, P.A.**  
**800 SW JACKSON STREET, SUITE 1100**  
**TOPEKA, KANSAS 66612-2205**  
**(785) 354-1354 ♦ 354-8092 (FAX)**  
**E-MAIL: WBDAMRON@aol.com**

---

TESTIMONY

**TO:           The Honorable Ray Cox, Chairman  
              And Members Of The  
              House Financial Institutions Committee**

**FROM:       Whitney Damron**

**On Behalf Of The  
              Kansas Payday Loan Association**

**RE:           HB 2685 – Payday Loans; Concerning the Regulation Thereof.**

**DATE:       February 9, 2004**

Good afternoon Chairman Cox and Members of the House Financial Institutions Committee. I am Whitney Damron and I appear before you this afternoon on behalf of the Kansas Payday Loan Association. With me today are Darren Andersen and Bill Banker of QC Financial Services, a nationwide lender with its headquarters in Kansas City, Kansas and Bud Burke, who also serves as legislative counsel to the Association.

On behalf of the Kansas Payday Loan Association, I would like to offer our general support to the proposed changes to the payday loan industry that are contained in HB 2685, with the reservation that we still have some concerns with Section 12, found on page three of the bill, lines 25-31, as it relates to agency relationships.

The Kansas Payday Loan Association has a good working relationship with Mr. Glendening and the office of the State Bank Commissioner. We met with Mr. Glendening and his staff in late December in regard to their legislative initiatives and followed up that meeting with an additional meeting in January to exchange ideas and concerns over specific language that you see in this legislation.

While we are not appearing before you today requesting deletion of Section 12, we would like for this Committee to know that we intend to continue to work with the Commission to discuss potential amendments that might clarify the intent and application of this section to the payday loan industry.

On behalf of the Kansas Payday Loan Association, I thank you for your time and would be pleased to stand for questions at the appropriate time.

## **The Community Financial Services Association of America (CFSA)**

Established in 1999, the industry's national trade association is comprised of more than 100 member companies representing over half of the payday advance industry.

### **Mission**

To promote laws and regulations that provide payday advance customers with substantive consumer protections while preserving their access to short-term credit options and to support and encourage responsible industry practices.

### **Best Practices**

CFSA members believe that payday advance should be conducted in a safe and responsible manner and with appropriate consumer protections. A set of Best Practices standards were adopted in January 2000 to help ensure such conduct and self-govern the industry. Later that year, Best Practices were revised to address the partnering of payday advance companies with federally insured financial institutions.

All CFSA member locations display the CFSA seal and Best Practices, signaling to consumers their mandatory compliance in areas such as:

- Full disclosure of transaction terms
- Customer's cost-free right of rescission
- Limitation/prohibition of rollovers
- Appropriate collection practices
- Prohibition of criminal prosecution
- Compliance with all applicable laws
- Encouragement of responsible use of the service
- Truthful advertising
- Establishment of safe, sound relationships with financial institutions

**For more information on CFSA and Best Practices, visit  
[www.cfsa.net](http://www.cfsa.net)**



## Best Practices for the Payday Advance Industry

To be a member in good standing of CFSA, a payday advance provider must abide by the following best practices:

- 1. Full disclosure.** A member will comply with the disclosure requirements of the State in which the payday advance office is located and with Federal disclosure requirements including the Federal Truth in Lending Act. A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR").
- 2. Compliance.** A member will comply with all applicable laws. A member will not charge a fee or rate for a payday advance that is not authorized by State or Federal law.
- 3. Truthful advertising.** A member will not advertise the payday advance service in any false, misleading, or deceptive manner.
- 4. Encourage consumer responsibility.** A member will implement procedures to inform consumers of the intended use of the payday advance service. These procedures will include notifying consumers that a payday advance is a short-term cash flow tool not designed as a solution for longer term financial problems and informing customers of the availability of credit counseling services.
- 5. Rollovers.** A member will comply with State laws on rollovers (the extension of an outstanding advance by payment of only a fee). In States where rollovers are not specifically allowed a member will not under any circumstances allow a customer to do a rollover. In the few States where rollovers are permitted, a member will limit rollovers to four (4) or the State limit, whichever is less.
- 6. Right to rescind.** A member will give its customers the right to rescind, at no cost, a payday advance transaction on or before the close of the following business day.
- 7. Appropriate collection practices.** A member must collect past due accounts in a professional, fair, and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. CFSA believes that the collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area.
- 8. No criminal action.** A member will not threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid.
- 9. Enforcement.** A member will participate in self-policing of the industry. A member will be expected to report violations of these Best Practices to CFSA, which will investigate the matter and take appropriate action. Each member company agrees to maintain and post its own toll-free consumer hotline number in each of its outlets.
- 10. Support balanced legislation.** A member will work with State legislators and regulators to support responsible legislation of the payday advance industry that incorporates these Best Practices.
- 11. Relationships with financial institutions.** A member may market and service payday advances made by a federally insured financial institution, provided the financial institution does the following: (1) sets its own credit criteria; (2) approves and funds each advance; (3) complies with State disclosure requirements, where not inconsistent with Federal law; (4) complies with State law as to the number of rollovers; (5) permits the member to purchase no more than a *de minimis* amount of the advances, or any such other amount which may be consistent with safety and soundness determinations by Federal banking regulators; and (6) complies with these Best Practices.

### Community Financial Services Association of America

515 King Street, Suite 300, Alexandria, VA 22314, 703-684-1029 Fax: 703-684-7912

Website: [www.cfsa.net](http://www.cfsa.net) E-mail: [cfsa@multistate.com](mailto:cfsa@multistate.com)

2002

## Banks Partner with Payday Lenders

Recognizing consumer demand for a small, short-term credit option, an increasing number of traditional banks are providing payday advances through *agent-assisted loan programs*. Under such programs, the bank partner sets credit criteria, approves and funds the loan, and the payday advance company assists in marketing and loan distribution.

## Regulators Recognize Agency Relationships

While industry critics claim that federal policymakers are on the brink of banning agent-assisted loan programs between banks and payday advance companies, evidence points to the contrary:

- Federal regulators have recognized these relationships, releasing supervisory guidance to banks engaged in payday lending. The guidance emphasizes the need to protect consumers from unfair lending practices and ensure the safety and soundness of financial institutions, but in no way prohibits banks or thrifts from offering payday advances or using agents to assist in marketing and servicing them.<sup>1</sup>
- While the OCC has required some national banks to terminate relationships with payday lenders, many more state-chartered banks continue offering loans nationally through sound and responsible relationships with payday lenders.
- Despite recent bank exits, additional financial institutions continue to enter the payday advance business and the number is expected to increase with growing consumer demand.

## Third-Party Relationships Are Common, Legal Practice

The few publicized regulatory actions do not deny banks' authority to offer payday loans or the legality of distribution through third-party agents:

- Banks have long been authorized to conduct agent-assisted loan programs.
- Agency programs with payday lenders are patterned after those providing credit cards, car loans and mortgages nationally, charging a bank's home state rate.

- A state cannot prohibit out-of-state banks from offering payday loans through agent relationships, due to federal pre-emption laws.
- The only federal court to specifically address the pre-emption issue between banks and payday lenders stated that the loans are governed by Section 85 of the National Bank Act and the lending arrangement lawful under federal law.

## CFSA Issues Guidelines for Members in Agency Relationships

In 2002, CFSA adopted stringent guidelines for agent-assisted loan programs. The guidelines — developed through consultation with payday lenders, policymakers and bankers — direct both payday lenders and their bank partners in conducting responsible and sound business relationships.

The guidelines enhance consumer protections by incorporating a number of practices that go beyond the letter of the law, including the recommendation that agency programs follow additional consumer protections outlined by the state in which the agent does business. To promote the safety and soundness of financial institutions, the guidelines suggest business practices such as:

- Due diligence on potential partners
- Written agreements that provide periodic reports on the financial performance of the program
- Maintenance of capital, concentration limits and loan loss allowances

CFSA's guidelines are consistent with federal precedent and guidances, as well as the Association's own Best Practices.

To view the complete guidelines, visit  
[www.cfsa.net](http://www.cfsa.net)

<sup>1</sup> OCC Advisory Letter, AL 2000-10, November 27, 2000. Office of Thrift Supervision, Memorandum for Chief Executive Officers, Richard M. Riccobono, November 27, 2000. OCC Bulletin, OCC 2001-47, November 1, 2001. Federal Deposit Insurance Corporation, Draft Guidelines for Payday Lending, January 29, 2003.

Research on payday advance has been conducted by a number of sources. Most notably, the Credit Research Center at Georgetown University's McDonough School of Business produced the first impartial observation of payday advance customers and their use of the service. Following release of the national study, an independent research firm was commissioned by the industry to conduct similar customer surveys in six geographically dispersed states. In the state and national studies, more than 3,000 customers were surveyed and the results were strikingly similar. The studies present a clear and consistent picture of payday advance consumers.

## **Georgetown University's Credit Research Center Report — "Payday Advance in America: An Analysis of Customer Demand"**

In April 2001, the Credit Research Center released the first-ever, comprehensive economic analysis of consumer demand for and use of payday advance services. Conducted among a nationally representative sample of customers of CFSA member companies, survey findings included the following:

- **Customers overwhelmingly appreciate payday advance.**
  - 92% believe it's a useful service.
  - Over 75% were satisfied with their last transaction, only 12% were dissatisfied.
- **Customers use the service responsibly.**
  - 66% use it to cover unexpected expenses or a temporary reduction in income.
  - 34% use it for planned or discretionary expenses.
- **Customers understand the cost of the service.**
  - 96% were aware of and reported the finance charge and could compare it with similar fees.
  - 78% could recall that the fee had been disclosed as an APR, although most could not recall the rate.
- **Most customers use payday advance infrequently or moderately.**
  - 60% either did not renew in the last year or renewed only 1-2 or 3-4 times. ("Renewals" include both rollovers and advances taken out the same day another was paid in full.)
- **Most customers fit the expected economic profile of consumers in early life-cycle stages.**
  - Most are middle-income, middle-educated young families.
  - 42% own homes and 100% have steady incomes and checking accounts.
  - Nearly 94% have a high school diploma or better, with 56% having some college or a degree.

## **Io Data Corporation — "Payday Advance Customer Study" and "Cumulative State Research Report"**

During 2001 and 2002, Io Data Corporation released a "Payday Advance Customer Study" for each of six states including California, Colorado, Illinois, North Carolina, Utah and Washington. The surveys obtained payday advance customer information regarding demographics, motives for using the service and perceptions of borrowing alternatives. The Georgetown study was used to validate findings in the state studies by comparing payday advance customers in each state to the national customer sample.

A "Cumulative State Research Report", issued in September 2002, presented consolidated and comparative results of the six state reports. While individual state results are statistically representative of payday advance customers within their respective states, cumulative results do not present a nationally representative sample. They do, however, provide an overall view of the responses of 2,600 customers in the six states and facilitate comparisons between state results and those in the national Georgetown study.

## **PricewaterhouseCoopers — "The Payday Advance Industry: 1999 Company Survey Findings" and "Fees and APRs Associated with Payday Advances and Other Sources of Low-Balance Short-Term Credit"**

The company survey findings attest to the large size and rapid growth of the payday advance business. In one year the industry grew:

- 42% in store locations and 104% in employee payroll
- 71% in number of customers and 79% in number of advances

PricewaterhouseCoopers also examined the controversial interest rates associated with payday advance and found that:

- "Payday advances are competitive when compared to other means of obtaining small amounts of short-term credit. Indeed, payday advances are often substantially cheaper than alternative sources of credit, especially when allowance is made for the value of maintaining a good credit rating."
- "Fixed costs associated with administering loans add little to the APR of large long-term loans, but can easily push the APR on small short-term loans high into the triple digits. Hence, if loans of all sizes and durations are to yield a reasonable profit, the APR associated with a large long-term loan is much lower than the APR associated with a small short-term loan like a payday advance."

For copies of research reports, visit [www.cfsa.net](http://www.cfsa.net).

## Opinion Leaders

*"Payday lenders enable millions of Americans to get the cash needed to pay their bills... All must comply with federal and state truth-in-lending and other consumer protection measures. Most states require licensing of such lenders... people are smart, and they surely are the best judges of their needs and circumstances. If they obtain payday loans, it's because the terms of those loans are better than their alternatives."*

— Frank Cross, *The Houston Chronicle*, Guest Editorial, July 8, 2002

*"The so-called 'fringe banking' market should be very attractive to credit unions... it is composed almost entirely of employed people... What also makes this market particularly lucrative in the long-term is that it is mostly young people between the ages of 20 and 35 – a key demographic for credit unions to woo as membership ages."*

— Susan Brayman, Credit Union Veteran & Speaker at CUNA Symposium, *The Credit Union Journal*, October 7, 2002

*"Saying that these companies prey on certain people is like saying doctors prey on sick people or supermarkets prey on hungry people... In Milwaukee, there is a lot of competition among these businesses, and if they were not satisfying their customers, they would not exist."*

— David Livingston Pewaukee, *Milwaukee Journal Sentinel*, Letters, August 11, 2002

*"The payday loan industry has come to the rescue of mothers with sick children, people with broken down cars, teachers who are paid only once a month and customers from all walks of life who want to avoid bounced check fees, late credit card payments, late car payments and late mortgage payment charges."*

— Richard Rawle, *The Deseret News* (UT), Opinion Editorial, July 11, 2002

*"Moderate-income consumers looking for a quick financial boost often have relied on the assistance of family and friends or have turned to credit officers at banks. Today, a new type of financial instrument is meeting the needs of this population — the payday loan."*

— *The Region Focus* (Publication of the Federal Reserve Bank of Richmond, VA), "Need Quick Cash," July 2002

## State Regulators

*"It has been a growth industry. When we have a downturn in the economy, it makes it harder for some people to get a traditional loan. The growth is not unique to Idaho. It's going on all over the country."*

— Gavin Gee, Director, ID Department of Finance, *The Times-News*, "Payday Business Not Likely to Dry Up in Idaho," June 9, 2002

*"The quick loan segment of the financial services industry seems to have grown substantially in South Dakota and other states during the past decade... There is a lot of business going on so there is apparently a need for it."*

— Dick Duncan, Director, SD Division of Banking, *The Argus Leader*, "Quick Loans Carry Hefty Price in State," March 25, 2002

*"A survey conducted for the state legislature last year reveals the typical customer is not down-and-out... I sense it's people looking for convenient, no-hassle loans..."*

— Bill Verant, Director, NM Financial Institutions Division, *Weekly Alibi*, "Predatory Lending in Albuquerque," March 21, 2002

## State Legislators

*"Again, CFSAs have stepped up when others would not and offered bold guidelines that protect both consumers and business. The Association's Best Practices have made significant improvements to the way many companies conduct their business."*

— Senator Thomas Moore (R-SC), *Business Wire*, January 31, 2002

*"For hard-working families with checking accounts and steady incomes, this product can be a cost-effective alternative to bounced checks or late fees when an unexpected expense arises between paydays. And while you or I may think these loans are unneeded, millions of Americans, and thousands of Pennsylvanians, choose this option."*

— Representative Chris Ross (R-Chester County), *Intelligencer Journal* (PA), Opinion Editorial, August 2002

## Research Organizations

*"The favorable attitudes toward payday advances and the high level of satisfaction with the most recent transaction, suggests that for many customers, continued use of payday advance credit was a choice, not a burden."*

— Gregory Elliehausen, Ph.D., The Credit Research Center, Georgetown University, *North Carolina News & Record*, Opinion Editorial, June 25, 2001

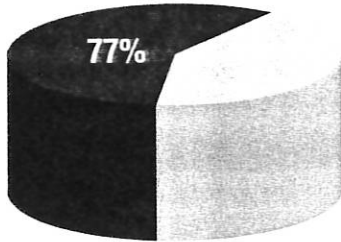
*"Americans who have been ravaged by recession need more alternatives to get through these tough times, not fewer. Now more than ever, the misguided assault on payday loans should end."*

— Al Cors, VP of Government Affairs, National Taxpayers Union, *Business Wire*, August 20, 2001

# PAYDAY ADVANCE CUSTOMER PROFILE

## Heart of the Working Middle Class

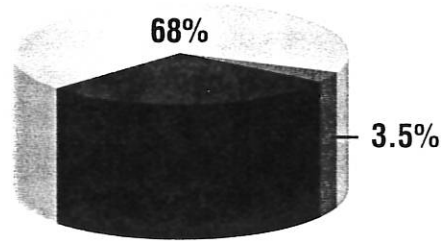
### Middle-Income



77% have incomes over \$25,000

- 52% have incomes between \$25,000 and \$50,000
- 23% less than \$25,000
- 25% greater than \$50,000

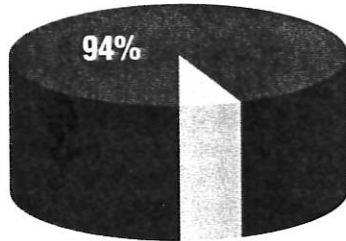
### Young Families



68% are under 45 years old (only 3.5% are 65 or older)

- Majority are married
- 64% have children in household

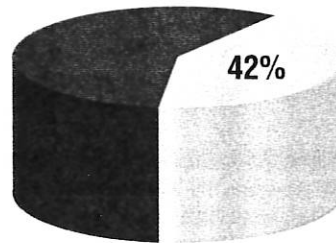
### Middle-Educated



94% have high school diploma or better

- 56% have some college or degree
- 19% have a college degree

### Stable Working Class



42% own homes

- 100% have steady incomes
- 100% have checking accounts
- 49% are credit union members
- 57% have major credit cards

Source: *The Credit Research Center, McDonough School of Business, Georgetown University, Gregory Elliehausen and Edward C. Lawrence. Payday Advance Credit in America: An Analysis of Customer Demand. April 2001.*

© 2003 CFSA, 515 King Street, Alexandria, VA 22314, 703-684-1029 Fax: 703-684-7912, [www.cfsa.net](http://www.cfsa.net)



## The Payday Advance Service

Payday advance provides a small, unsecured, short-term cash advance until payday. Customers choose payday advance to cover small expenses and avoid costly bounced-check fees or late payment penalties and other less desirable short-term credit options. A customer with an active checking account and a regular income simply:

- Reads and signs an agreement that discloses transaction terms,
- Writes a personal check for the advance amount plus a fee, and
- Immediately receives the advance in the value of the check minus the fee.

The customer's check is held for an agreed-upon time period, usually about two weeks. At the end of that time, either the check is deposited or the customer returns with cash to reclaim the check.

## Industry Evolution

Payday advance emerged in the early 1990's and grew as a result of robust consumer demand and changing conditions in the financial services marketplace:

- Traditional financial institutions exited the small-denomination, short-term credit market, largely due to its high cost structure.<sup>1</sup>
- The cost of bounced check fees<sup>2</sup>, late payment penalties, and other short-term credit products<sup>3</sup> soared.
- Enactment of enabling legislation provided regulations and consumer protections for payday advance customers.

Today, industry analysts estimate that more than 15,000 payday advance locations across America extend about \$25 billion in short-term credit to millions of middle-class households<sup>4</sup> experiencing cash-flow shortfalls between paydays.

## Current Business Models

- Stand-alone storefront businesses that offer payday advance as their sole product and source of income
- Multi-service providers that offer payday advance as an ancillary product to other services (i.e., check cashers, pawn shops)
- Federally insured banks that offer small, short-term loans through agent relationships with payday advance companies
- Federally insured banks that offer payday advances to their direct deposit customers

<sup>1</sup> Federal Reserve Bank of San Francisco, *1999 Commercial Bank National Average Report, Product-Line Comparisons and Functional Cost and Profit Analysis*, 2000, reported that it costs a small commercial bank \$173.91 to originate a non-electronic consumer loan and service it for one month.

<sup>2</sup> Federal Reserve System Board of Governors, *Annual Report to the Congress on Retail Fees and Services of Depository Institutions*, June 2002, reported that in 2001, the average NSF fee assessed by large, medium, and small banks was \$24.70, \$22.05, and \$19.33, respectively, and that the "average fees for NSF checks rose a significant 57 cents."

<sup>3</sup> CFSA, *Payday Advance: A Cost-Effective Alternative, A 2002 Industry Survey of Payday Advance Customers' Alternatives for Short-Term Credit*, 2002.

<sup>4</sup> Stephens Inc. Investment Bankers, Jerry Robinson, *Deferred Deposit: Future of the Industry*, presentation to the annual meeting of the Financial Service Centers of America, 2002.



# STATES RESPOND TO EMERGING INDUSTRY

## State Legislative Status

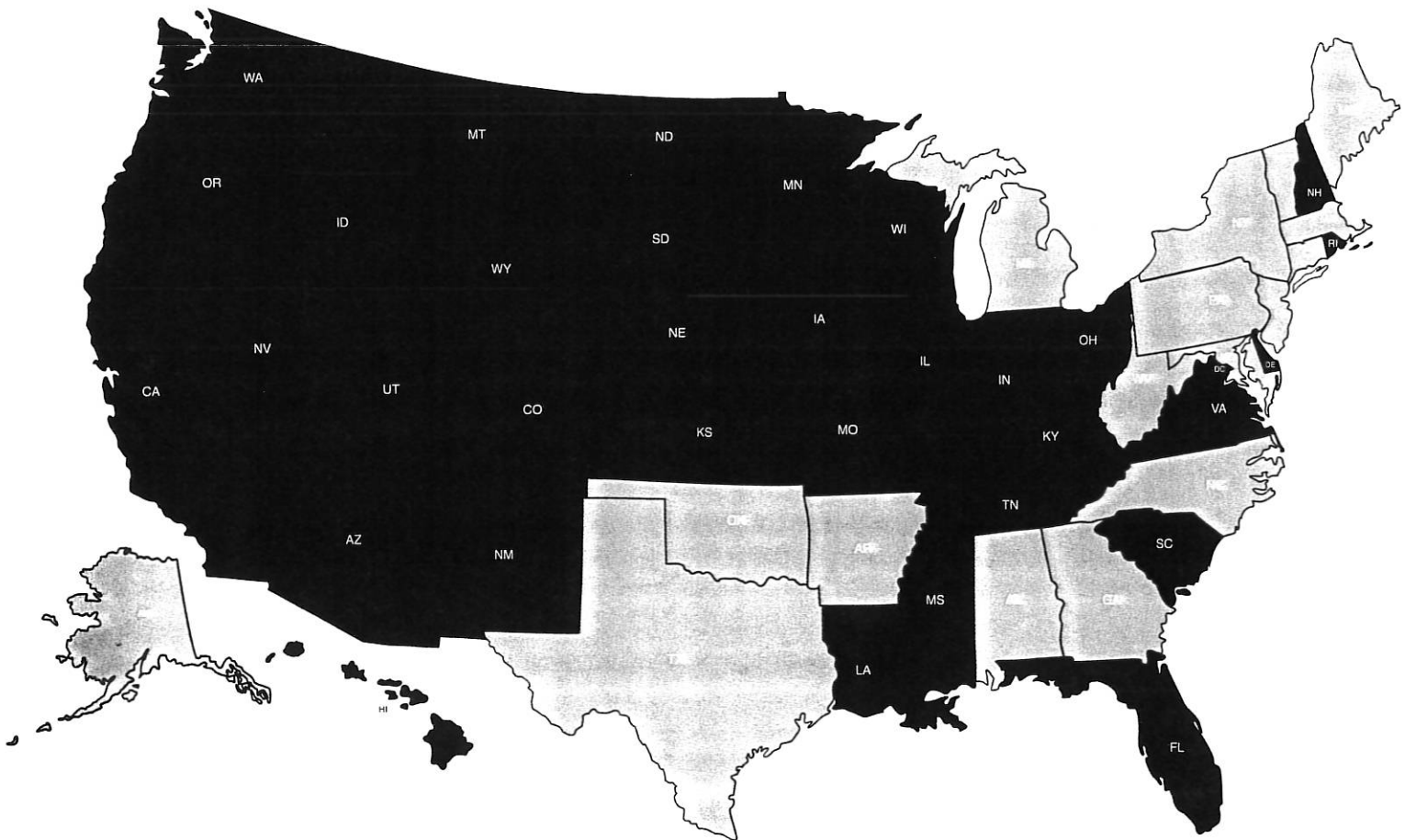
- Majority of states have considered and enacted balanced, responsible legislation
- 33 states and the District of Columbia regulate payday advance
- In last three years, 12 states enacted or reauthorized legislation

## Regulatory Framework

- 25 states and D.C. have specific payday advance laws and regulations
- 8 states regulate payday advance under small loan laws
- 17 states do not have payday advance laws or are unfavorable to the industry due to interest rate ceilings or other restrictions

## Model Legislation

- CFSA has drafted a model bill with Best Practices as its foundation
  - The Association supports and encourages incorporation of Best Practices into state legislation so that CFSA's high standards raise the bar for all providers in the state
- In 1999, the American Legislative Exchange Council (ALEC) adopted CFSA's model bill
- In 2001, the Committee on Suggested State Legislation of the Council of State Governments unanimously adopted the industry-supported model bill that was enacted in Colorado



■ States that regulate the industry through specific payday advance laws (25 & DC) or small loan laws (8).

□ States that do not have payday advance laws or are unfavorable to the industry due to interest rate ceilings or other restrictions (17).

## Customer Motivation

About half of all Americans live paycheck-to-paycheck<sup>1</sup>, where one unexpected expense can cause a financial setback. For those with checking accounts and steady incomes, payday advance can be a convenient and less costly solution.

A national survey of payday advance customers found that:<sup>2</sup>

- 70% choose payday advance for convenience (quick and easy process, fast approval, less paperwork, convenient location).
- Only 6% choose it because there's no other alternative.
- Most customers use the service responsibly.
  - 66% to cover unexpected expenses or temporary reduction in income
  - 34% for planned expenses or other discretionary uses

## Payday Advance Use & Frequency

While the vast majority of customers use payday advance responsibly, CFSA continues to address the minority who become over-reliant on the product. The Association implemented mandatory practices to its membership and works with state policymakers in supporting regulations that provide appropriate solutions for the minority, while protecting access for the majority.

The Credit Research Center (CRC) found that customers use payday advance infrequently or moderately:

- More than half used payday advance six or fewer times in the last year.
- 78% used it between once a year and about once a month.
- 60% either did not renew in the last year or renewed only 1-4 times.

A PWC industry survey found that the average customer took out 7.3 advances in a year.<sup>3</sup>

Recent reports by state regulatory agencies are consistent with research findings that most customers use payday advance between once a year and about once a month:

- 73% of NC customers took out between one and 12 advances a year and the average was 6.9.<sup>4</sup>
- 71% of WI customers used payday advance between one and 15 times a year.<sup>5</sup> Report data yielded an estimated average of 11.9 annual advances.<sup>6</sup>

Many customers attribute repeat use of payday advance to the unavailability of cheaper alternatives. A payday advance is always cheaper than a bounced check, a late fee to a landlord or a utility reconnect. When faced with these choices, whether once a month or once a year, consumers often choose payday advance.

## Customer Satisfaction

Customers overwhelmingly appreciate payday advance (CRC). 92% believe it's a useful service. Over 75% were satisfied with their most recent transaction; only 12% were dissatisfied.

State regulators receive very few complaints out of millions of transactions:

- NC Commissioner of Banks reported 27 in 2000.
- WI Department of Financial Institutions reported 10 from 1995 to 2001.
- WA Department of Financial Institutions reported 3 in 2001 out of 2.2 million transactions.<sup>7</sup>
- IA Division of Banking Superintendent said his office took no complaints in 2001 and only one in 2002.<sup>8</sup>
- Commissioner, UT Department of Financial Institutions, estimates fewer than 10 a year.<sup>9</sup>
- Director, NM Financial Institutions, estimates a dozen or fewer annually.<sup>10</sup>

<sup>1</sup> Ispos-Reid Omnibus Poll, June 2002, reported 48%. Princeton Survey Research Associates, Consumer Survey, October 2000, reported 53% sometimes, most of the time or always, and the percentage increases to 64% for those with moderate incomes of \$20,000 to \$50,000.

<sup>2</sup> The Credit Research Center, McDonough School of Business, Georgetown University, Gregory Ellichhausen and Edward C. Lawrence. *Payday Advance Credit in America: An Analysis of Customer Demand*, April 2001.

<sup>3</sup> PricewaterhouseCoopers, *The Payday Advance Industry: 1999 Company Survey Findings*, October 2001.

<sup>4</sup> North Carolina Office of the Commissioner of Banks, *Report to the General Assembly on Payday Lending*, 2001.

<sup>5</sup> Wisconsin Department of Financial Institutions, *Review of Payday Lending in Wisconsin*, 2002.

<sup>6</sup> Caskey, John P., *The Economics of Payday Lending*, Filene Research Institute, 2002.

<sup>7</sup> Washington Department of Financial Institutions, *Annual Report*, 2002.

<sup>8</sup> The Associated Press, Des Moines, IA, *Rules for Payday Loans Proposed*, December 12, 2002.

<sup>9</sup> *The Deseret News*, Salt Lake City, UT, "Easy Cash, Hard Reality," January 27, 2002.

<sup>10</sup> *Weekly Alibi*, Albuquerque, NM, "Predatory Lending in Albuquerque," March 21, 2002.

## Payday Advance Customers Pay a Fixed Service Fee

A payday advance is a closed-end transaction for a limited time period. Customers pay a one-time flat fee, based on a percentage of the advance amount. Permissible fees vary according to state law, but are typically 15 to 20 percent of the advance amount.

Payday advance fees are lower than many of consumers' alternatives:

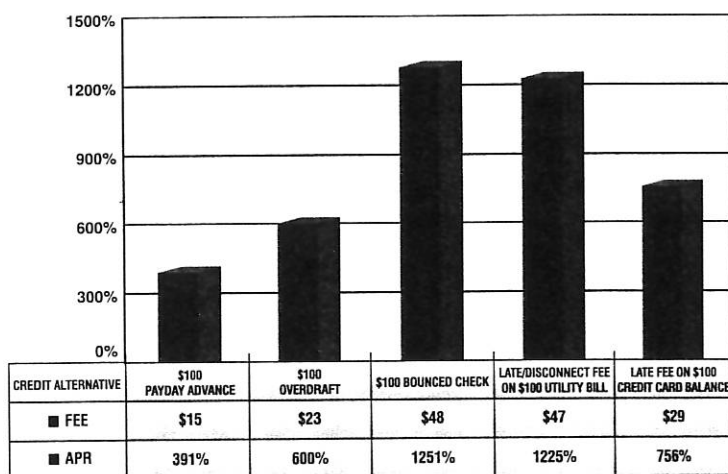
- Bank non-sufficient funds (NSF) and merchant fees on a bounced check typically cost \$48 or more.<sup>1</sup>
- "Courtesy" overdraft protection can cost up to \$35 per overdraft.<sup>2</sup>
- Payday advance can be a sound economic choice compared to late payment fees charged by credit card, utility and mortgage/rental companies.<sup>3</sup>

## APR Comparisons Can Be Misleading

Payday advance customers are making a short-term, cash-flow decision, not a long-term credit or loan decision. There is no revolving debt and, unlike a consumer loan rate, the fee does not vary with the term of the advance. If the advance is not paid when due, interest does not accrue.

Payday advance lenders disclose fees as an annual percentage rate (APR), as required by the Truth in Lending Act. Disproportionate attention to APR, however, can be misleading on this very short-term transaction. As shown in the following chart, payday advance APRs are often lower than customers' alternatives, even on the same two-week term.

APR COMPARISONS ON PAYDAY ADVANCE ALTERNATIVES



## Payday Advance Customers Understand the Cost of the Service

In a national survey of payday advance customers conducted by Georgetown University's Credit Research Center:

- 96% were aware of and reported the finance charge and could compare it with similar fees, including late fees.
- 78% could recall that the fee had been disclosed to them as an APR.

"It's less than what I would pay if I would have bounced a check or missed a rent payment...A payday loan was the only way we could save our apartment. It's a real lifesaver."

— Patti Hanaway, *The San Diego Union-Tribune (CA)*, "Fistful of Payday Cash Isn't Free," September 3, 2000

"The people at the payday advance company were up front about the fees involved. They had large signs on the wall that were really clear about exactly how much the advance was going to cost. The cost was worth it to me."

— Dennis Harrison, *Daily Press (VA)*, Letters to Editor, April 12, 2002

"The lunchtime customers [at the store] say they're aware of the APRs but focus instead on the cost for the two weeks and find it a superior deal to alternatives like a credit card advance."

— *Florida Trend Magazine*, "How Much Credit," March 1, 2002

"Grace, who said she uses payday advances only occasionally, is like many payday loan customers. In a perfect world, paying \$15 per \$100 wouldn't be her first choice for dealing with a cash crunch. But in the real world, it seems a rational choice."

— *Kansas City Star (MO)*, "Credit Union Explores New Way to Help People in Cash Crunch," June 30, 2002

## Research Report Reviews Cost

"This review of the product and operations of payday lenders explains why payday loans carry such high interest rates. Payday lending is labor intensive because borrowers have face-to-face interactions with lenders each time they borrow or extend a loan. In addition, lenders devote substantial time to monitoring the status of the loans and working to minimize defaults...Because the loans are small, dividing these expenses across each loan results in a higher cost per loan...In addition to labor costs and office occupancy expenses, payday lenders must cover their loan losses."

— John P. Caskey, *The Economics of Payday Lending*, Filene Research Institute & The Center for Credit Union Research, 2002

<sup>1</sup> Federal Reserve System, *Annual Report to the Congress on Retail Fees and Services of Depository Institutions*, June 2002, reported that in 2001 the average NSF fee assessed by multi-state banks was \$23.28. PricewaterhouseCoopers, *Fees and APRs Associated with Payday Advances and Other Sources of Low-Balance, Short-Term Credit*, October 2001, reported the median returned check merchant fee was \$25.

<sup>2</sup> Federal Reserve Annual Report also said that in 2001 the average overdraft fee assessed by multi-state banks was \$23.13. *The New York Times*, "Banks Encourage Overdrafts, Reaping Profit," January 22, 2003, reported that banks charge flat fees up to \$35 for each overdraft.

<sup>3</sup> CFSA, *Payday Advance: A Cost Effective Alternative, A 2002 Industry Survey of Payday Advance Customers' Alternatives for Short-Term Credit*, 2002.

Hello

My name is Rickie Coleman, I am a concerned citizens who is here today in favor of HB 2685. I am also a member and president of Sunflower Community Action in Wichita, Kansas. Sunflower Community Action is a grassroots non-profit organization, which works on issues that affect the citizens of our community. We need your support on this bill for the simple fact that protecting Kansas's consumers should be priority number one. Currently, I assist individuals who have been taken advantage of by predatory lenders. It's mind blowing to see peoples American Dream of homeownership turn into a terrible nightmare. My daughter was a victim of predatory lending so I know first hand the struggle and stress individuals go through. Through a settlement that was worked out with Mr. Glendening we were able to win a \$7.1 million settlement with Conseco Finance. This settlement helped put money back into Kansas's consumers pockets, lowered interest rates and in a couple of instances individuals whole loans were forgiven.

Sunflower feel's as though payday lending is just another form of predatory lending. They target low-income individuals and in many cases make it hard for consumers to pay back these loans due to outrageous fees and interest. The law currently allows a maximum time frame for paying back payday loans. However there is no minimum time frame for paying back these loans. We don't want consumers to get hit twice with fees if they have a two-day loan repayment and for whatever reason have to take out another loan. Also consumers need to have the ability to repay a loan without fees or penalties if the money loaned is repaid within 24 hours. Furthermore payday lenders should just be payday lenders. Payday lenders are engaging in rebate schemes and selling other merchandise so they can get around existing laws with fees. These

companies shouldn't be able to tweak the system so that they get an advantage and consumers end up getting the short end of the stick. Lastly consumers do not want to go back to the days of "debtors prison." Currently payday-lending companies are trying to criminally prosecute individuals for passing bad checks when they don't have money to pay back the loan. We want payday lenders to be treated like mortgage companies in this aspect. Banks can't throw people in jail for non-payment of a mortgage and this same thing should hold true for payday lenders. The purpose for HB 2685 is to strengthen already existing laws, which regulate payday lenders. Stronger regulations of payday lenders are necessary so that consumers in Kansas aren't being harmed. As a concerned citizen doing my part to help Kansas consumers I urge you all to consider this bill because appropriate regulations of payday lenders is necessary to protect the people of this great State of Kansas.

# El Centro, Inc.

*The Center for Continuous Family Improvement*

## Administration and Computer Learning Center

650 Minnesota Avenue  
Kansas City, KS 66101  
913-677-0100

[www.ElCentroInc.com](http://www.ElCentroInc.com)

## The Academy for Children

1330 S. 30th Street  
Kansas City, KS 66106  
913-677-1115  
913-677-7090 fax

## Academy for Children, Choo Choo Child Care

219 S. Mill Street  
Kansas City, KS 66101  
913-371-1744  
913-371-1866 fax

## Academy for Children, Donnelly College

608 North 18th Street  
Kansas City, KS 66102  
913-281-1700

## Casa de Rosina Apartments

851 Barnett  
Kansas City, KS 66101

## ECI Development, Inc.

2100 Metropolitan Ave.  
Kansas City, KS 66106  
913-677-1120  
913-677-0051 fax

## El Centro, Inc. Argentine

1333 S. 27th Street.  
Kansas City, KS 66106  
913-677-0177  
913-362-8520 fax

## El Centro, Inc. Family Center, Johnson County

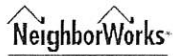
9525 Metcalf Avenue  
Overland Park, KS 66212  
913-381-2861  
913-381-2914 fax

## Macías-Flores Family Center

290 S. 10th Street  
Kansas City, KS 66102  
913-281-1186  
913-281-1259 fax

## Woodland Hills, Inc.

1012 Forest Court  
Kansas City, KS 66103  
913-362-8155  
913-362-8203 fax

 NeighborWorks®  
CHARTERED MEMBER



February 9, 2004

Chairman Cox

Committee on Financial Institutions  
Kansas State Capitol, Room 527-S

Payday lending, as it is currently conducted in Kansas, is a serious threat to the already-precarious financial security of low-income families and to the economic well being of many Kansas communities. For these reasons, it is of grave concern to El Centro, Inc. and to the low-income families with whom we work. A review of the phone book listings for payday lenders in Kansas City reveals over 60 different payday-lending companies with names, like EZ Cash, Dr. Dollar, Uncle Bucks, and Jiffy Quik Payday, that clearly indicate their incompatibility with how low-income families need to think about finances, asset acquisition, and long-term economic stability if they are to achieve their financial goals. Payday loans are certainly not restricted to Kansas City, though. Nationwide, the payday loan industry has enjoyed explosive growth and considerable legislative support, over the past several years. Driving along main streets in Topeka, Wichita, Garden City, Great Bend, Liberal, Dodge City, Emporia, and many smaller towns in Kansas demonstrates the degree to which payday lending has institutionalized itself in our communities. Given the kind of impact it has on our most vulnerable families and the ways in which payday lenders target women moving from welfare to work, minorities, and limited-English speakers, the nearly unchecked growth of this industry is cause for great concern. Because of this concern, we strongly support HB2685 and its efforts to increase the minimum term of payday loans, limit the number of loans that any one borrower can have, and, perhaps most importantly, ensure that no one is prosecuted criminally for, in good faith, taking out a payday loan that she cannot repay.

Business associations for the payday lending association lure new investors with boasts of annual percentage rates of 805% on 8-day paycheck advances. The average payday loan is 485% APR, including fees and interest, far greater than the state usury cap and certainly much greater than what credit cards and traditional banks are allowed to charge. While El Centro is not arguing that it should be impossible for these companies to operate, we remain unconvinced that any industry should have the right to rob their customers so egregiously. The interest rates that payday lenders charge are not commensurate with the risk they take on, and they are destroying families in their pursuit of profit. A North Carolina study that contributed to more restrictive legislation in that state found that over 50% of borrowers pay back more in fees than they borrowed in principal. The loans are designed to produce rollovers and create perpetual debt, and they are effective in pursuit of these goals. At El Centro, we have new immigrant families, unfamiliar with the U.S. financial system, which are lured by Spanish-language advertisements and compelled by difficult financial realities that create desperate need. While payday lenders are certainly not the cause of these economic crises, the high fees and interest they charge trap families in cycles of debt from which they cannot escape.

While there is much about the payday lending phenomenon that goes against El Centro's vision of helping families create and sustain assets, what most concerns us about the industry are the high fees, excessive interest, often inadequate disclosures, and the use of the criminal code to pursue low-income families who default under the burden of high costs. While we believe that legislation

in addition to HB2685 may be necessary to fully control for these practices in the payday lending industry, we are pleased to see key elements included in the legislation and we believe that HB2685's adoption is an important step in protecting low-income Kansans from unsafe business practices. We would, in addition, stand in opposition to SB439, which would raise the fee cap on payday loans. We believe that current fees, at approximately 9.5%, more than adequately account for the risk undertaken by the payday lender and that increases would only serve to further enrich the industry at the expense of hard-working Kansans.

El Centro realizes that many payday loan customers are individuals who have difficulty accessing traditional credit, and we fully agree that companies should be allowed to protect their investments as the risk warrants. We personally have experience making small auto loans to low-income individuals as a part of our job-training program, and we realize that default rates on these loans are sometimes higher than the industry average. However, we see no reason why payday lenders deserve the preferential treatment they now receive—charging interest rates over 20 times higher, in many cases, than credit card companies and other underwriters of unsecured debt, circumventing usury laws with few consequences, using county prosecutors as collection agents, and, through rollovers and high fees, collecting many times the original loan amount from vulnerable borrowers with limited resources. Currently, only approximately 10% of our immigrant families report using payday lenders, but it is our sincere fear that, as we help our families establish utility accounts in their names, open bank accounts, and obtain identification, they will meet payday lenders' underwriting guidelines and will be vulnerable to losing many of the gains they achieve in financial security. The permissive regulatory environment that payday lenders lobbied for in state halls around this country is changing rapidly as the consequences of these businesses on local communities are becoming all too well known. Kansas should be a part of this changing tide, for the economic health and well being of all our of families.

Sincerely,



Melinda Lewis

Director of Policy Advocacy and Research

El Centro, Inc.