

**BGCT RESOLUTION 2010
On Fair Lending**

WHEREAS, unscrupulous lending practices, such as payday and auto title loans, are deeply harmful to many of our fellow Texans and exacerbate poverty in our state;

WHEREAS, there are more than 2,800 unlicensed and unregulated lending storefronts in Texas, making an estimated \$3 billion in high-cost loans to Texas families each year;

WHEREAS, these loan businesses promise "easy credit" only to hurt people with fees and interest rates that often pull them deeper into debt;

WHEREAS, fifteen states and the District of Columbia have adopted a 36 percent or lower annual percentage rate cap for these small loans;

WHEREAS, the federal government has adopted a similar rate cap for payday and auto title loans to military personnel;

WHEREAS, God calls it a sin to "trample on the heads of the poor as on the dust of the ground and deny justice to the oppressed" (Amos 2:6);

WHEREAS, we see a crisis in our communities and feel we have a compelling ethical and Christian obligation to speak out on matters of public concern;

BE IT RESOLVED that the messengers to the 125th annual meeting of the Baptist General Convention of Texas express deep concern over the currently legal, yet unethical, lending practices being used in economically disadvantaged communities throughout the state;

BE IT FURTHER RESOLVED that we urge the passage of just laws that will limit these unfair lending practices; and

BE IT FINALLY RESOLVED that we urge churches to consider offering ministries to assist people in personal financial management and stewardship.

Complaints Reported to Attorney General Greg Abbott

Senator John Carona, Senate District 16

The following is a compilation of complaints against CSOs offering payday and auto title loans that were received by the Texas Attorney General's office from January 1, 2008-November 5, 2010, from constituents in your district. They were obtained through an open records request that encompassed 15 of the largest CSOs offering payday and auto title loans in Texas. These complaints represent a fraction of those victimized by the cycle of debt. They are unfortunately not isolated cases, but rather they are common experiences for those who go to CSOs for small loans. The Office of Consumer Credit Commissioner has also received hundreds of complaints. The Attorney General's office does not act on individual complaints and the OCCC does not have jurisdiction over CSOs.

Constituent: James Kelly

CSO: Ace Cash Express

Type of Loan: No Loan

Complaint Type: Fraud

Description: "Received an e-mail that he had taken out a \$350 loan, but had not and had not signed any contract."

Constituent: Karnicha Lyons

CSO: Check N Go

Type of Loan: Payday

Complaint Type: Personal Information Sharing

Description: "When I went into the store to renew my loan, Carrolyn could not find my two checks with my account and personal information on it. She looked in the trash, she also looked through other customer checks and files. Carrolyn gave my checks to another customer or someone who worked inside the store stole them. I feel like my identity was given out and I should not have to pay that loan back; and I am refusing to do business with them."

Complaints Reported to Attorney General Greg Abbott

Constituent: Shemika Mills

CSO: Ace Cash Express

Type of Loan: Payday

Complaint Type: Collections Harassment

Description: *"ACE Cash Express representatives were calling me at my place of employment and on my cell phone. I requested that they stop calling me and requested their fax number to send a cease and desist letter. The letter was faxed on April 13, 2009 at 4:02 PM. I began receiving more calls on April 14, 2009 around the same time." The ACE Cash Express representatives told the borrower that the cease and desist letter does not matter because she signed a binding contract. The borrower "believes this is a direct violation of FDCPA laws."*

Constituent: Lucillo Kyles

CSO: Ace Cash Express

Type of Loan: Payday

Complaint Type: Collections Harassment

Description: *"I will not allow anyone to use intimidation toward me regarding a loan. I was told that I had reached the number of refinancing and they couldn't accept the payment. I didn't know that there was a limit. The first Ace I dealt with didn't give me a problem with that. The only problem I had with that store was that they supposedly sent the check in for payment to my bank before I could get to the office that morning. I sent a letter to you regarding that and the matter was taken care of by CPD. What this letter is all about is putting a stop to the way the payday loan employees try and use scare tones to make one say that they can do something and it's no way they can. What I would like to know is this, if I go in to make a payment and let the clerk know that I can't pay it off, why couldn't something be worked out. I would think that a company would rather be paid something until that customer can pay in full. No matter how slow I am, I pay what I owe. I just know that the loan companies who use intimidation should be fired or shut down. Something has to be done."*

Complaints Reported to Attorney General Greg Abbott

Constituent: Tonia Burch

CSO: Ace Cash Express

Type of Loan: Payday

Complaint Type: Collections Harassment

Description: *"On April 6th, a Mr. Wilkes called my work number a minimum of 3 times and the proceeded to call the main number to my company. He not only demanded to speak to CEO of the company that works in the office with me. He was rude with my direct supervisor and Human Resource Director in an attempt to confirm my employment and stated he would have someone file legal action against me at my workplace. I have a recorded message with Mr. Wilkes misrepresenting himself from a law office. The lack of professionalism dealing with such a confidential matter is beyond me. Also please note, I have taken multiple loans from them so its not like I refused to work with them. This is unacceptable."*

Constituent: John Shepard

CSO: Check N Go

Type of Loan: Payday

Complaint Type: Usury

Description: *"This has been going on for over 5 months. This loan has been extended for a long period of time. At no time could I afford to pay the full-amount of \$1,787.69 (this is the full-amount of my pay check). Therefore, I extended this note just paying interest only. The interest paid on this loan has been over three thousand dollars. It was not a break in the loan. I just paid the interest on the loan (only)...Can a loan company make this kind of loan (extending it for months without a break)?" "I have filed a complaint that involves a business that has no regulation in The State of Texas. After sending my information to the Consumer Credit Commission I was told that I need to forward my information to the Attorney General of Texas (letter dated March 11, 2009 from the Consumer Credit Commission). I received a letter from Mrs. Joann Farris (April 03, 2009) who stated that Mr. Greg Abbott needs me to forward my letter to Consumer Credit Commission. Therefore, we do not have any one watching to make sure that the consumers are not taken advantage of in times like these." Note: Borrower took out a loan in the amount of \$1,485.00 with a finance charge of \$302.69 totaling \$1, 787.69. He has paid \$606.00 for 5 months and still owes \$1, 787.69. His payments have not been applied to the loan, only to fees and finance charges. "I would like to know if it is fair for me to pay all of these fees."*

Complaints Reported to Attorney General Greg Abbott

Constituent: Carrie Lawson

CSO: Check N Go

Type of Loan: Payday

Complaint Type: Collections Harassment

Description: *"They are not honoring the Cease and Desist letter sent to them and continue to call my work and cell as well and send mail to my house. I understand this is a debt that needs to be repaid; however at this point keeping out home and our bills paid is priority. I will settle this debt when I have the money; however this company needs to honor the letter sent to them and stop contacting me by phone at work and cell and mail at home and emails. There's no point in having these letters if they are not honored by the companies they are sent to!"*

Constituent: Sharon Shepard

CSO: Check N Go

Type of Loan: Payday

Complaint Type: Usury

Description: *"There is no ordinance to protecting consumers from payday loans. The State of Texas legislature has made no attempts to cap interest rates on payday lenders. Rick Perry has repeatedly failed to protect the tax payer. We have no regulation on payday loan companies."*

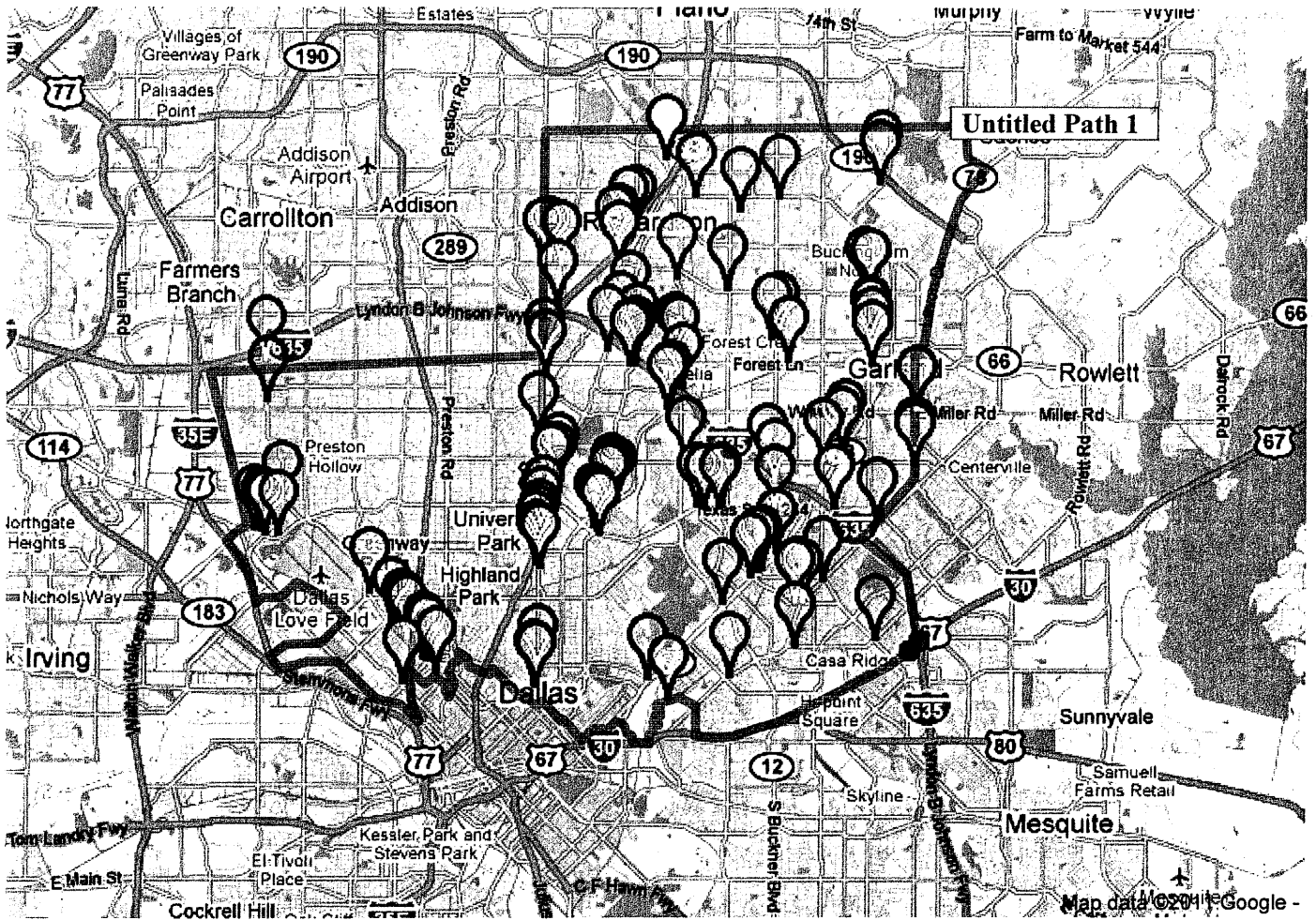
Constituent: Patricia Kirven

CSO: Ace Cash Express

Type of Loan: Payday

Complaint Type: Collections Harassment

Description: *"Mr. Brown called both my cell phone and my employer's phone. I contacted him directly and let him know it was inappropriate to call and speak with my employer, and if he expected me to pay the rest of what I owed, getting me fired was not the way to go about it. He said he did not care and was going to have me arrested for check fraud (of which I never wrote a check) and he was going to take me to court." Note: Mr. Brown contacts both the borrowers HR director and references from the borrowers application regarding collecting payment and regarding filing a case against the borrower for check fraud.*



Senate 16 (Carona)

: Texas EZ MONEY LP

: Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans

: Ace Credit Services, LLC

: Federal Cash Advance of Oklahoma LLC dba Cash Max

: Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans

: Texas Car Title and Payday Loan Services, Inc.

: Primerica Financial Services Home Mortgages, Inc.



- : Texas Car Title and Payday Loan Services, Inc.**
- : ACSO of Texas LP**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Ace Credit Services, LLC**
- : SCIL Texas, Inc.**
- : Check Into Cash of Texas, LLC d.b.a. Check into Cash**
- : Primerica Financial Services Home Mortgages, Inc.**
- : Las Palmas Cash Credit, LLC**
- : Ace Credit Services, LLC**
- : Gregory Broxton**
- : The PLS Loan Store of Texas, Inc.**
- : Ace Credit Services, LLC**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Ace Credit Services, LLC**
- : United Financial Services**
- : Ace Credit Services, LLC**
- : Ace Credit Services, LLC**
- : Ace Credit Services, LLC**
- : Cash America Financial Services Inc.**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Primerica Financial Services Home Mortgages, Inc.**
- : Ace Credit Services, LLC**
- : Better Credit Now**
- : Inter-Link Express LLC**

- : Cash Time Leasing, LC**
- : Texas EZ MONEY LP**
- : PHD Investment Co., LLC dba My Cash Time.com**
- : Ace Credit Services, LLC**
- : ACSO of Texas LP**
- : Cottonwood Financial Texas LP**
- : Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans**
- : Ace Credit Services, LLC**
- : Ace Credit Services, LLC**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Texas EZ MONEY LP**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Ace Credit Services, LLC**
- : Federal Cash Advance of Oklahoma LLC dba Top Cash**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Check Into Cash of Texas, LLC d.b.a. Check into Cash**
- : The PLS Loan Store of Texas, Inc.**
- : Ace Credit Services, LLC**
- : Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans**
- : Texas EZ MONEY LP**
- : DC & BB Enterprises, Inc. d.b.a. Check-N-Title Finance**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Southwestern & Pacific Specialty Finance Inc. d.b.a. Check 'n Go**

- : Valeria Financial Services, LLC**
- : Ace Credit Services, LLC**
- : Cash America Financial Services Inc.**
- : Primerica Financial Services Home Mortgages, Inc.**
- : Ace Credit Services, LLC**
- : Rent-A-Center East, Inc. d.b.a. Cash AdvantEdge; Rent-A-Center Financial Services; RAC Financial Services**
- : The PLS Loan Store of Texas, Inc.**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Southwestern & Pacific Specialty Finance Inc. d.b.a. Check 'n Go**
- : Ace Credit Services, LLC**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Ace Credit Services, LLC**
- : Quest Capital Management Inc dba National Home Buyers Alliance**
- : Ace Credit Services, LLC**
- : Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans**
- : ACSO of Texas LP**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Texas EZ MONEY LP**
- : The PLS Loan Store of Texas, Inc.**
- : Rent-A-Center East, Inc. d.b.a. Cash AdvantEdge; Rent-A-Center Financial Services; RAC Financial Services**
- : Cottonwood Financial Texas LP**
- : U Save Tax Masters LLC**
- : Restore Credit Services**

- : Ace Credit Services, LLC**
- : Texas EZ MONEY LP**
- : FastBucks CSO, LLC fka PayDay Everyday CSO, LLC**
- : Cash America Financial Services Inc.**
- : Check Into Cash of Texas, LLC d.b.a. Check into Cash**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Cash America Financial Services Inc.**
- : Tower Haven, LLC**
- : BB & DC Enterprises Inc. dba Check-N-Title Finance**
- : Southwestern & Pacific Specialty Finance Inc. d.b.a. Check 'n Go**
- : Federal Cash Advance of Oklahoma LLC dba Cash Max**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Texas EZPAWN LP**
- : Southwestern & Pacific Specialty Finance Inc. d.b.a. Check 'n Go**
- : ACSO of Texas LP**
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- : Wellshire Financial Services, LLC dba LoanStar Title Loans; MoneyMax Title Loans**
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- : Check Into Cash of Texas, LLC d.b.a. Check into Cash**
- : Texas EZ MONEY LP**
- : PHD Investment Co., LLC dba My Cash Time Payday Loans**
- : Fast Cash and Loan**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Cash America Financial Services Inc.**
- : Ace Credit Services, LLC**
- : Cash America Financial Services Inc.**
- : Texas Car Title and Payday Loan Services, Inc.**
- : Texas Car Title and Payday Loan Services, Inc.**
- : First Cash Credit Ltd.dba First Cash Pawn or First Cash Advance or Cash & Go**
- : Texas EZ MONEY LP**
- : Ace Credit Services, LLC**

Senate Business and Commerce Committee

February 22, 2011

SB 253 Payday and Auto title Loans and CSO Loophole

Testimony: Suzii Paynter, Director Christian Life Commission,
Baptist General Convention of Texas

Lone Star State is making it through the Great Recession in better shape than most other states. The Texas economy has avoided collapse, our jobs are coming back, home sales have improved in most metro areas. Texas, like Gov Perry likes to say, is wide open for business.

Texas families, the state's greatest economic asset, are **not** riding this latest wave of success. While the state's economy overall is moving ahead, the state's hardworking families are struggling to stay afloat. Indeed, they are in worse shape than those in most other states.

	Texas	U.S.	Texas' Rank/50 states ¹
Net Worth (\$)	45,434	88,803	48
Unbanked (%)	33.1	26.8	41
Median installment debt (\$)	16,289	14,887	46

today, many hardworking families in our state are falling into a new debt servitude – a servitude to payday and auto title lenders and other new anti-thrift businesses.

Creating debt of this magnitude for Texas families is essentially building a massive step ladder into poverty, instead of the needed recovery of building prosperity .

¹ **Source:** Corporation for Economic Development, 2009-2010 Assets and Opportunities Scorecard. net worth 48th/50 states; installment debt 46th/50states.

It is simple math - You can take out a \$4000 car title loan, and pay \$1200 every month and never pay off the loan. That is the state of the law in Texas today. And that is what we are here to try to correct.

In your packets are two lists:

1. a list of _____ actual complaints of constituents from your district who after frustrating attempts to resolve loan issues with payday and auto title lenders resorted to complaints at the Attorney General’s office. These complaints are still outstanding – they generated no state action or enforcement.
2. A list of all the payday and auto title lenders in your district, names as registered with the secretary of state.

Although Texas lending laws provide generous regulatory and fee structures, payday lenders and car title lenders sidestep these provisions by posing as credit services organizations (CSOs), giving them an unfair advantage in the lending landscape. As CSOs, payday and car title lenders operate outside of the bounds of the rules set for all other consumer lenders in the state and exploit a state law designed to protect consumers from seeking credit repair help.

The Legislature, specifically Senate business and Commerce cannot design every business plan in the state, but **the role of this committee and these legislative bodies is to create fair rules, transparent reporting, complaint and enforcement remedies – these do not exist in this business sector now.**

Below is a comparison of Texas’s existing lending law which payday and car title lenders evade, and a snapshot of their abusive practices permitted by the CSO loophole.

	Payday Loans		89% Car Title Loans	
	135%	529%	(304%
APR ⁱⁱⁱ	Existing Lending Law (14-day term)	CSO Loophole (14-day term)	Existing Lending Law 30-day term)	CSO Loophole (30-day term)
Finance Charges (on \$300 loan)	\$15.60 ⁱ	\$61.06	\$22.00 ⁱⁱ	\$75.00

Collateral ^{iv}	Post-Dated Check	Post-Dated Check	Car Title	Car Title
OCCC Oversight ^v	Yes	No	Yes	No
Fees paid to State	\$600 - \$1200 per location	\$100 for Corporation	\$600 - \$1200 per location	\$100 for Corporation

It's Time to Level the Playing Field: The state's CSO statute was designed to protect consumers from abuse when seeking credit repair help, not as a vehicle for loans that result in long term indebtedness. After more than 5 years of permitting this evasion of state law to continue, it is time for legislators to close this loophole, and ensure that these lenders operate under the Texas lending laws in place for all other consumer lenders.

From **Dave Ramsey, Fox Business TV program**, radio host and author of the best selling *Total Money Makeover* and a church-based financial curriculum "Financial Peace University"

- "Michael Novak says our economy rests on a three-legged stool comprised of **political freedom, economic freedom and moral restraint**. Without any of these three "legs," the economy—as we know it—collapses. In this instance, payday lenders had no moral restraint. Capitalism without moral restraint is anarchy. Anarchy is anything goes—no laws, no restrictions, total chaos. **A true capitalist believes in moral restraint.**"

It's time to close the loophole and this is the purpose of SB 253.

If we close the loophole where will people go? The effort to close the CSO loophole does **not seek to put payday lenders out of business** or "kick them out of our state." We simply ask that they operate fairly and openly. To the average borrower they look and act like a lender. They should then be regulated like a lender. We need not set up an entirely new regulatory system. The regulations have already been approved by the legislature and set by the Finance Commission. Texas Finance Code, Chapter 342 sets reasonable rates and fees and provides for oversight of consumer loans through the Office of Consumer Credit Commissioner.

While demand for payday loans seems high on the surface, it is a fraction of what the industry reports —3 out of 4 payday loans are the result of borrower churning, or taking out new loans to extend their original due date. The structure of these loans traps borrowers in a cycle of repeat borrowing.

Alternatives DO Exist!

- ***Licensed Lenders.*** There are currently many licensed lenders in this state that provide for small dollar, unsecured loans according to Chapter 342 of the finance code. They are able to operate profitably under these rules. ***Closing the CSO loophole will not affect these lenders.***
- ***Credit Union Loans.*** Many credit unions offer small dollar, short-term loans to their members at reasonable interest rates with longer repayment periods and installment payments. In 2010 Texas Credit Union Department changed its rules to allow more flexibility in short-term lending.
- ***Payday Plans with Creditors.*** The best alternative to payday loans is for consumers to deal directly with their debt. Many creditors will negotiate partial payments if a payment plan is in place.
- ***Consumer Credit Counseling.*** Non-profit credit counselors can work with consumers to work out a debt repayment plan with creditors or develop a budget. These services are available at little or no cost.
- ***Emergency Assistance Programs.*** Many churches, faith-based groups, and community organizations provide emergency assistance, either directly or through social services programs.
- ***Military Loans.*** Several companies offer loans ranging from \$500 to \$10,000 to active duty and retired military personnel. Payday loans are 10 to 13 times more expensive than these small consumer loans. These loans cost less than payday loans because they have much lower APR, ranging from 33% to 34.99%.
- ***Cash Advances on Credit Cards.*** Credit card cash advances, which are offered at about 30% APR, are substantially cheaper than a payday loan.
- ***Advances from Employers.*** Some employers grant paycheck advances to employees. Because this is a true advance, and not a loan, there is no interest and the advance is therefore cheaper than a payday loan.

Small-dollar loans currently available in Texas

Lender	APR	Term	Min & Max
<i>Name of Loan Program</i>	with Fees	of Loan	Amount
Installment Loans offered by Licensed Consumer Lenders in Texas	36% to %140	2-9 month	max \$1240
Bank of America <i>GoldOption Line of Credit</i>	3% origination fee; 9.99% - 24.99%	12-96 months	\$1000 - \$5000
El Paso Collaborative for Community and Economic Development <i>Secured Payday Loan Alt.</i>	\$25 origination fee; Interest varies with payment history	12 months	max \$750
First Convenience Bank <i>Fresh Start Loan</i> <i>Pocket Money Loan</i>	18%	Varies	max \$1000
Liberty National Bank	18%	Up to 24 months	\$500 - \$2000
Main Street Bank <i>Small Dollar Loan Program</i>	18% (unsecured)	Up to 36 months	\$150 - \$2500
NCI Community Development Credit Union <i>Preferred Associates Loan (PAL)</i> <i>Program</i>	10% plus \$50 origination fee	Up to 10 months	max \$1000

Velocity Credit Union	9.9 -15.49% based	12 months for	max \$20,000
<i>Small Dollar Loan Program</i>	on credit score	every \$1000, not to exceed 5 yrs.	
Greater Texas Federal	17.24-17.74%	Varies	min \$200
Credit Union	worthiness		
<i>Small Dollar Loan Program</i>			
Family Services of Greater	8%	1 month for	Average \$500
Houston and United Way		every \$100	
<i>THRIVE Loan</i>		borrowed	

ⁱ Under existing Texas lending laws, finance charges for payday loans are set by the Texas Office of Consumer Credit Commissioner (OCCC). Texas OCCC's authority to set these rates comes from TFC § 342.007 which allows the finance commission to establish rules for payday loans, and in TAC § 83.604(c) which incorporates the fees by reference. For current Texas OCCC rates, see http://www.occc.state.tx.us/pages/int_rates/deferred%20presentment%20transaction%20rate%20charts%20.XLS. However, instead of complying with this law intended for them, payday lenders operate as CSOs, in which there is no limit on finance charges, and rates reach upwards of 500% APR (and higher) for a loan that typically has a 14-day term.

ⁱⁱ Under existing Texas lending laws, car title loans can carry finance charges consisting of a \$10 set fee, plus \$4 per \$100 a month installment charge. Car title loan finance charges are authorized under TFC § 342.253 which incorporates the fees permitted by TFC § 342.252 (3). In addition to these finance charges, under existing Texas lending law, TFC § 342.502(b)(5) expressly permits a "fee for recording a lien on or transferring certificate of title to a motor vehicle offered as a security for a loan." (The recording fee is not included in APR calculations because they are excludable from inclusion in the finance charge under the federal Truth in Lending Act. Reg. Z § 226(e)(1).) However, instead of complying with this state lending laws intended for them, car title lenders operate as CSOs, in which there is no limit on finance charges, and rates reach upwards 300% APR for a loan that typically has a 30-day term.

ⁱⁱⁱ Regardless if the cost is classified as "interest" or "fees" under state law, the cost to the borrower is the same. The federal Truth in Lending Act requires that both interest and fees be combined and disclosed to borrowers as an Annual Percentage Rate (APR). Federal law requires the cost of the all credit to be disclosed in terms APR, regardless if the loan is for two-weeks or two years.

^{iv} Existing Texas lending laws expressly permits payday loans to use a borrower's post-dated check as collateral for the loan, and expressly permits car title loans to use a borrower's title to her car as collateral. For payday loans, see TAC § 83.604(b) ("The check given in the [payday loan] transaction may serve as security for the payment of the loan."). For car title loans, car title as security is not expressly prohibited under TFC § 342.503 and is stated as a permitted practice for authorized fees in TFC § 352.502(b)(5). However, even though the CSO statute does not expressly allow any these collaterals, these payday and car title lenders operating as CSOs use checks and car titles as collateral respectively, as well as electronic access to a borrower's debit account and a letter of credit issued by the CSO.

^v Under existing Texas lending law, payday lenders and car title lenders, just like all other consumer lenders and brokers, are subject to oversight by the Texas OCCC. Although CSOs are subject to private litigation and oversight of the attorney general, these provisions have proven insufficient to protect consumers against abusive high cost ending. CSOs are the only entities engaged in consumer lending transactions that escape oversight and compliance requirements of the OCCC.

Senate Business and Commerce Committee

February 22, 2011

SB 254 Military protection for Payday and Auto title Loans and CSO Loophole

Testimony: Suzii Paynter, Director Christian Life Commission,
Baptist General Convention of Texas

We see every day in our offices around the country individuals who have come in and fallen into the Venus Flytrap of the payday lending problem, and it has literally destroyed their lives.

Admiral Charles Abbott of the Navy-Marine Corps Relief Society, testifying to the U.S. Senate Banking Committee, September 14, 2006

Military personnel are very attractive to lenders because they have a guaranteed paycheck ... Many military car buyers are also young and inexperienced consumers. They don't recognize a bad deal when they see it ... and through lack of experience, they're signing on the dotted line when they shouldn't.

Holly Petraeus of the Office of Servicemember Affairs of the Consumer Financial Protection Bureau, *Washington Post*, January 4, 2011

With scores of installations and fifteen major military bases within its borders, Texas has long been a target for payday lending and auto title lending to the military. A comprehensive study of payday lenders by ZIP code found that almost every base in our state had concentrations of payday lenders well in excess of statewide averages. Further, the study concludes, "no industry, with the possible except of the illegal narcotics business, so openly ignores [consumer protection] laws" against predatory lending.ⁱ

The concentration of payday lenders in close proximity to Texas military bases is a direct assault on the military's longstanding anti-debt tradition. The U.S. Military views over-indebtedness as the enemy within. Its leaders say that debt weakens troop preparedness and morale; causes family stress and conflict; triggers bankruptcy and divorce; and leads to security clearance revocations and denials. For all those reasons, the military has enforced stringent anti-debt rules: it requires service men and women to live within their means and stay clear of debt.

In 2006, President George W. Bush signed into law protections against the abuses caused by payday, car title, and refund anticipation loans to active soldiers and their families. Among these provisions, known as the Talent-Nelson Amendment to the Military Lending Act, were a 36% rate cap and prohibiting the use of a check or car as collateral for the loan. The Amendment passed with bi-partisan support to protect our soldiers and national security from crippling 400% interest rate debt.

Why did the Department of Defense seek action against 400% interest rate loans?

After studying their impact, the Pentagon reported: "Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force."ⁱⁱ At a Senate Banking Committee hearing on the issue, then Undersecretary of Defense David Chu, reported his concern, "because it is detrimental to mission readiness and because it can have disastrous consequences for the quality life and for the careers of service members."

U.S. Senators from both sides of the aisle recognized that payday lenders were targeting military personnel and trapping them in long-term, high-cost debt. "It is a terrible blight upon the lives of our service men and women and, really, to all people who fall prey to this kind of lending." said Sen. Mel Martinez (R-FL).

Who and what does the protection actually apply to?

The Talent Nelson Amendment, effective October 1, 2007, applies to borrowers who are regular or reserve members of the Army, Navy, Marine Corps, Air Force or Coast Guard and these soldiers' dependents including their spouse or child. The Amendment reaches the consumer credit products that meet the following definitions, regardless if they are made in stores or on-line:

- Payday Loans: loans up to \$2,000, closed-end, term of 91 days or less, and secured by post-dated check or electronic access to a soldier's bank account
- Car Title Loans: closed-end loan of any amount secured by a car title (except when buying a car), with a term of 181 days or less
- Refund Anticipation Loans: closed end credit where tax refund goes to creditor to repay loan

Given that the act applies to loan *product*, rather than the *provider*, even if these products were made via a CSO, soldiers are still subject to these protections. The protections in the Talent-Nelson amendment require not only that lenders comply with a 36% APR limit, but also waive their mandatory arbitration clause and not secure the loan with a personal check, access to the borrower's checking account, or use the title to the car as security.

What has happened since President Bush signed this into law?

The Department of Defense concludes that is "has established a balanced approach in using the regulation to curb products with demonstrated high costs and balloon payments, while working with Federal and state governments to protect Service members and their families."ⁱⁱⁱ Financial counselors and legal assistance officers report limited use of payday and car title loans, and the Navy Marine Corps Relief Society reports a savings in relief funds from no longer having to rescue "active duty personnel entrapped by the predatory loan industry."^{iv}

However, some troubles continue for certain soldiers who have bravely served our country. For example, loans come to the attention of counselors involving retirees, who are not covered by the rate cap, and pre-service loans taken before the person came into the military. And, despite companies' claims such as Advance

America that they no longer provide payday loans to the military,^v there are signs from these same companies that these federal protections are being evaded.^{vi}

Texas without a guardian for the law

Yet despite the Pentagon's successful efforts to protect military families from extortionately priced payday loans, Texas military families are still vulnerable to these practices for two main reasons:

- First, the vast majority of payday lenders in Texas are able to evade both state and federal government laws that prohibit predatory interest rates through the CSO loophole.
- In addition, there is no "cop on the beat" in Texas to make sure that the federal law against predatory lending to the military is strictly enforced. Base commanders are quick to take action against reports of predatory lending businesses but they have limited time and means to ensure that the more than 3,000 payday lenders in the state are playing fair with the men and women under their command.

ⁱ Steven M. Graves and Christopher L. Peterson, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns, *Ohio State Law Journal* 66, no. 4 (2005), 802-809.

ⁱⁱ U.S. Department of Defense, "Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents." Aug. 9, 2006, http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf

ⁱⁱⁱ U.S. Department of Defense, "Report on Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," July 22, 2008, www.dccuc.org/PDF%20Files/Senate%20Report%20Final.pdf

^{iv} In the first year after Congress capped the rates for military at 36%, relief societies reported "a decrease in the assistance provided to active duty personnel entrapped by the predatory loan industry." They reported no longer having to spend \$100,000 per month on assisting military victims of the payday loan industry once the rate cap went into effect in October 1 2007. U.S. Department of Defense, "Report on Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," Page 16 www.dccuc.org/PDF%20Files/Senate%20Report%20Final.pdf. See also, Army Times, "Need emergency cash? Look to relief societies first," April 26, 2010. ("Assistance related to payday loan trouble is about one-fourth what it was in 2006,")

^v Press Release: *Advance America Voluntarily Refrains from Providing Advances to Military* (September 25, 2006).

^{vi} Mona Moore, "Advance America manager steals \$1100 with Army family's identification," Northwest Florida Daily News, Feb 1, 2011, <http://www.nwfdailynews.com/articles/family-37162-identification-advance.html>, (Even though the incident took place in Florida, it was a Ft. Hood soldier's identity that was stolen by the Advance America employee.).