

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10938 HOUSE LABOR & COMMERCE

Payday loans up
to \$1000

Fast Approval -
No Credit Check

Cash deposited
directly to your
account

Confidential &
Secure

**Payday
Loans**
up to \$1000

FEEES

The following table shows the amounts and fees associated with the short term loans provided by IGotIt.com:

Loan Amount (Amount financed)	Loan Term (Days)	Loan Fee (Finance charge)	Check Amount (Total of payments)
\$100.00	7-14	\$19.88	\$119.88
\$100.00	15-21	View Pay Schedule	
\$150.00	7-14	\$29.82	\$179.82
\$150.00	15-21	View Pay Schedule	
\$200.00	7-14	\$39.76	\$239.76
\$200.00	15-21	View Pay Schedule	
\$250.00	7-14	\$49.70	\$299.70
\$250.00	15-21	View Pay Schedule	
\$300.00	7-14	\$59.64	\$359.64
\$300.00	15-21	View Pay Schedule	
\$350.00	7-14	\$69.58	\$419.58
\$350.00	15-21	View Pay Schedule	
\$400.00	7-14	\$79.52	\$479.52
\$400.00	15-21	View Pay Schedule	
\$500.00	7-14	\$99.40	\$599.40
\$500.00	15-21	View Pay Schedule	
\$600.00	7-14	\$119.28	\$719.28
\$600.00	15-21	View Pay Schedule	
\$700.00	7-14	\$139.16	\$839.16
\$700.00	15-21	View Pay Schedule	

Fee Schedule. You will be charged a flat fee of \$30 per one hundred dollars advanced to you. There will be no discount or refund of the Finance Charges if you repay your loan early.

Promise to Pay. You promise to pay to us or to our order, in one payment, on the date indicated in the Payment Schedule, the Total of Payments. On or after the day your loan comes due you authorize us to effect one or more ACH debit entries to your Account at the Bank. You may revoke this authorization at any time up to 3 business days prior to the due date. However, if you timely revoke this authorization, you authorize us to prepare and submit one or more checks drawn on your Account to repay your loan when it comes due. If there are insufficient funds on deposit in your Account to effect the ACH debit entry or to pay a check or otherwise cover the loan payment on the due date, you promise to pay us all sums you owe by mailing a check or Money Order payable to: Avantis Financial, LLC.

Return Item Fee. You agree to pay \$30 if an item in payment of what you owe is returned unpaid or an ACH debit entry, the authorization for which was not properly revoked by you, is rejected by the Bank for any reason.

Prepayment. The Finance Charge consists solely of a Loan Fee that is earned in full at the time the Loan is funded. You may pay all or part of what you owe prior to the due date, without penalty. However, if you pay early you will not be entitled to a refund of part or all of the Finance Charge.



GET YOUR
PAYDAY LOAN

- HOME
- MEMBERS
- NEW CUSTOMERS
- HOW IT WORKS
- FAQ
- ABOUT US
- FEE SCHEDULE
- FINANCIAL TIPS
- CONTACT US
- QUIK REWARDS

Fee Schedule

		Loan Amounts available depending on your earnings & approval				
		\$100	\$200	\$300	\$400	\$500
Term in Days	Annual Percentage Rate	Finance Charge				
4	1825.00%	\$20	\$40	\$60	\$80	\$100
5	1460.00%	\$20	\$40	\$60	\$80	\$100
6	1216.67%	\$20	\$40	\$60	\$80	\$100
7	1042.86%	\$20	\$40	\$60	\$80	\$100
8	912.50%	\$20	\$40	\$60	\$80	\$100
9	811.11%	\$20	\$40	\$60	\$80	\$100
10	730.00%	\$20	\$40	\$60	\$80	\$100
11	663.64%	\$20	\$40	\$60	\$80	\$100
12	608.33%	\$20	\$40	\$60	\$80	\$100
13	561.54%	\$20	\$40	\$60	\$80	\$100
14	521.43%	\$20	\$40	\$60	\$80	\$100
15	486.67%	\$20	\$40	\$60	\$80	\$100
16	456.25%	\$20	\$40	\$60	\$80	\$100
17	429.41%	\$20	\$40	\$60	\$80	\$100
18	405.56%	\$20	\$40	\$60	\$80	\$100



Webmasters: Click Here to earn money with Quik Payday

How to determine your Due Date

All loan due dates must be on your payday. The minimum number of days a loan can be taken for is 4 days. The maximum number of days a loan can be taken for is 18 days.

- If you get paid once a week: You must use the subsequent payday.
- If you get paid twice a month or every other week: You must use your next payday. If you next payday is less than 4 days away then you must use the following payday.

AFFORDABLE LOAN COMPANY

Feb. 2, 2004

Jackie Brock
Manager

Affordable Loan Company
750 East Fireweed, Suite 101
Anchorage, Ak. 99503

750 EAST FIREWEED LANE, SUITE 101 • ANCHORAGE, AK 99503
(907) 562-7511 • FAX: (907) 563-7329
TOLL FREE (800) 558-7511

Members of Department of Labor and Commerce Committee

Dear Sir/Madame:


Affordable Loan Company was licensed with the State of Alaska and issued license number 45 in 1991. Since then, we have grown and have a wide customer base in the State of Alaska. We currently hold accounts totaling over 5 million dollars for consumers. We are always trying to find ways to better serve the people of the State of Alaska.

We are a small loan company, therefore we are audited by the Banking Commission to insure we are in compliance with statues and regulations. Affordable Loan Company also has an outside auditing firm to handle an audit for our "compliance issues" with our bank. We have the permission from the Banking Commission to conduct "other business" within the State of Alaska. In that area, we purchase auto paper from dealerships, not only in Anchorage but also Eagle River, Wasilla, Fairbanks, Kenai and Soldotna areas. We specialize in sub-prime auto financing, for consumers with credit problems. Affordable Loan Company asked and was granted by the State Banking Commission the authority to conduct Payday Loans in our office. We are currently not doing that business, but we now can offer that service to the consumer but with some regulations. Our customers are all races, gender, some with college degrees, some with high school only, and some that have not even graduated high school, and some with GED's. They are your neighbor's and they are my neighbor's. They are moderate income mothers and fathers.

Affordable Loan Company charges interest rates allowed by law, and even with the higher interest rates allowed under the "small loan statues", any loan under \$500.00 is not financially feasible for us to conduct. The cost of that action, and the rate of delinquency of an unsecured loan for any amount smaller than \$500.00 is too high. The total amount of interest on a \$500.00 loan for a 6 month term is \$53.74. Consider the cost of that deal, employee, forms, payment books, postage, etc...we could not do loans for an amount less than \$500.00 and break even. We do offer smaller loans for our prior customers when they get into a bind, but at a cost to our company.

We have seen the need, and are asked for payroll advance loans by our customers and per phone calls. In working with the consumers on a daily basis, we know what a need there is for short term loans in our community. We also know the risk for companies to offer this service at a small fee, to a stranger with no credit check. Customers have emergencies, they have car repairs, children get sick, rent needs to get paid, utilities need to be kept on, without bouncing a check. They are the consumer who is to embarrassed to admit they made a mistake in their checking account. They are all people that the banks will not loan a small amount of money due to the cost of doing that business. They are all people with a job, an Alaskan identification card or drivers license or a military ID, and they all have a checking account. The fee for a payroll advance loan is substantially less then a bounced check or a late fee for rent or utilities getting shut off.

Respectfully,



Jackie Brock
Manager-Affordable Loan Company



CHECK CASHERS ASSOCIATION OF NEW YORK, INC.
500 Fifth Avenue, Suite 2410, New York, NY 10110, 212-268-1911, Fax 201-487-3954

OFFICERS:

James Eustace, *President*
Matthew Bardach, *Vice President*
Jay Brodsky, *Treasurer*
Andrew Boisselle, *Secretary*

EXECUTIVE DIRECTOR:

Henry F. Shyne

GENERAL COUNSEL:

Gerald Goldman

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- Marshall & Sterling, Inc.
- Most Distribution Services, Inc.
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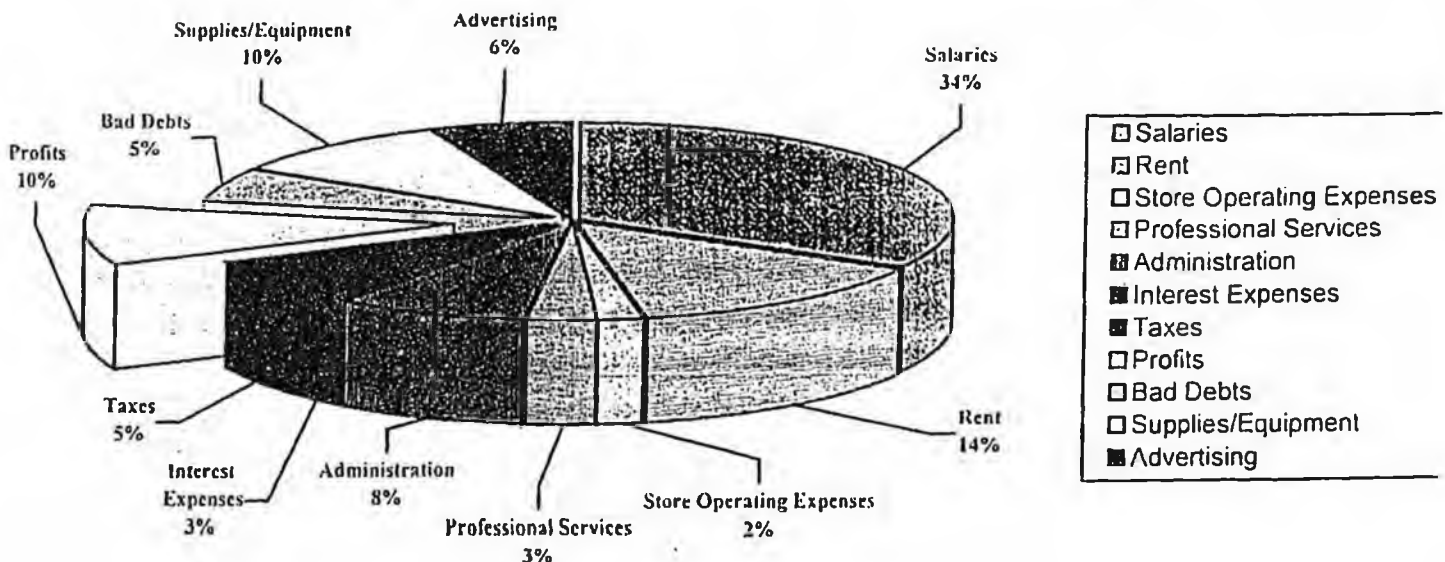
The Costs of Providing Emergency Advance Services

The businesses that will provide Emergency Advance services are primarily small, family run operations. A number of factors play a part in determining the cost of providing this vital service to working New Yorkers. The legislation supported by the Check Cashers Association of New York calls for a \$15 fee per \$100 advanced. This would be among the lowest rates charged for deferred deposit services in the country and far lower than the \$25 to \$40 now charged by some out of state lenders advertising services to New York residents.

The Check Cashers Association of New York State has reviewed available data from several sources to determine how much licensed check cashers would expect to make on each transaction. This included reviewing a study from the State of Tennessee, a government filing made by a company that operates 250 check cashing outlets in the Midwest and other available data. Each of these sources confirm that the single largest expense area for check cashers would be the salaries paid to people working at the outlets in New York. Based on the \$15 fee per \$100 advance proposed in the New York legislation, the data uncovered by the Check Cashers Association of New York indicates that New York businesses providing Emergency Advance services would earn only \$1.50 to \$3.00 on each \$100 transaction.

Where do fees for Emergency Advance Services go?

(Data for this chart was obtained from a public filing with the Securities and Exchange Commission by a company offering deferred deposit services in several states, including Kentucky, Tennessee, Missouri and Illinois.)



Rep. Sittenberg



NCO Update

NCO Update
08/01/2003

Third Quarter 2003

CAUTION: MILITARY TARGETED MONEY SCAMS

Predatory lenders, check cashers, high-cost car dealers and insurance groups will often station themselves around military installations in hopes of grabbing as many hard-earned military dollars as possible. In the end, they can sometimes prove to be more harmful to troops and troop morale than the enemy in the battlefield. A soldier's mind concentrated on over-exerted finances is not alert on the battlefield or the immediate world around him, where it should be.

Professional scam artists target the military community for several specific reasons: its high youth-oriented population, general lack of financial knowledge, steady paychecks and the constant relocation of its personnel.

→ Currently, the worst financial offenders to military communities are "payday lenders."

Payday loans are small-dollar, short-term, unsecured loans borrowers promise to repay out of their next paycheck. Because these loans have such short terms to maturity, the cost of borrowing, expressed as an annual percentage rate, can range from 300 percent to 1,000 percent or more. Payday lenders are not yet deemed "illegal" by the government, but they are under heavy scrutiny at the moment.

High-cost lenders target car owners and would-be car owners on military installations. They attempt to finance new cars at a much higher interest rate than what the borrower is qualified for. They make money on many new car buyers who do not have a frame of reference for what a "good" interest rate is and also don't know interest rates on automobiles can be bargained for, much like the sticker price on the car itself.

Some pawn shops are getting into the car business posing as money lenders. These lenders will grant money out of a car's equity at an extremely high interest rate, adding a second lien to the automobile. Many times the borrower cannot repay the loan because of the extremely high monthly payments and the car is lost to the lender for a fraction of its value.

Younger soldiers aren't the only ones who are singled out and targeted for money scams; veterans are targets, too. Certain companies will offer "buyout programs," attempting to pay for an entire benefit package with one lump-sum payment, which is not only unfair to the retiree but extremely illegal. (From www.fdic.gov, www.consumerlaw.org, and a *Washington Post* article by Jennifer C. Kerr)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2004

SUBJECT: Draft CSHB 387(L&C) relating to deferred deposit advances
(Work Order No. 23-LS1341\Q)

TO: Representative Tom Anderson
Chair of House Labor and Commerce Committee
Attn: Josh

FROM:  Theresa L. Bannister
Legislative Counsel

This memo accompanies the bill described above. In addition to the requested draft material, this bill contains versions of the two conceptual amendments requested by the committee.

Relationship to AS 06. As requested, the bill states that other state law applies if there is a conflict between the other state law and the proposed AS 06.50. Usually, if there are specific provisions in new legislation, the more specific new provisions would prevail. Why else adopt them? Particularly since the licensee is defined to be a financial institution subject to AS 06, the requested approach makes it very unclear as to which investigative and enforcement (or other?) provisions will prevail. I recommend making the provisions of the new chapter prevail in a conflict with other state law, deleting the provisions in the new chapter that you do not want, or making the relationship between AS 06 and the new chapter clearer.

If I may be of further assistance, please advise.

TLB:med
04-223.med

Enclosure

23-LS1341Q
Bannister
2/25/04

CS FOR HOUSE BILL NO. 389(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain monetary advances in which the deposit or other negotiation**
2 **of checks to pay the advances is delayed until a later date; and providing for an effective**
3 **date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 06.01.050(3) is amended to read:

6 (3) "financial institution" means an institution subject to the regulation
7 of the department under this title; in this paragraph, "institution" includes a
8 commercial bank, savings bank, credit union, premium finance company, small loan
9 company, bank holding company, financial holding company, trust company, [AND]
10 savings and loan association, and a deferred deposit advance licensee under
11 AS 06.50:

12 *** Sec. 2.** AS 06 is amended by adding a new chapter to read:

13 **Chapter 50. Deferred Deposit Advances.**

14 **Article 1. Licensing.**

1 **Sec. 06.50.010. License required.** A person, including a person doing
2 business from outside this state, may not engage in the business of making or offering
3 to make deferred deposit advances in this state without having a license under this
4 chapter. A separate license is required for each location from which the person
5 conducts the business.

6 **Sec. 06.50.020. Qualifications for license.** (a) To qualify for a license, an
7 applicant shall

8 (1) have cash assets of at least \$25,000, as determined under generally
9 accepted accounting principles, except that an applicant who wants to engage in the
10 business of making advances at more than one location in the state shall have cash
11 assets of at least \$25,000 for each location;

12 (2) demonstrate the financial responsibility, financial condition,
13 business experience, character, and general fitness that reasonably warrant the
14 department's belief that the applicant's business will be conducted lawfully and fairly;
15 when determining whether this qualification has been met, and for the purpose of
16 investigating compliance with this chapter, the department may review

17 (A) the relevant business records of the applicant and the
18 adequacy of the capital of the applicant;

19 (B) the competence, experience, integrity, and financial ability
20 of the applicant, and, if the applicant is an entity, of any person who is a
21 member, partner, director, senior officer, or owner of 10 percent or more of the
22 equity of the applicant; and

23 (C) a record of conviction, on the part of the applicant or a
24 person described in (B) of this paragraph, of

25 (i) criminal activity, fraud, or other act of personal
26 dishonesty;

27 (ii) an act, an omission, or a practice that constitutes a
28 breach of a fiduciary duty; or

29 (iii) a suspension, a revocation, a removal, or an
30 administrative act by an agency or a department of the United States or
31 a state from participation in the conduct of a business;

1 (3) if the person has a physical business location in the state, have a
2 physical business location that is accessible by and convenient to the public;

3 (4) have a current business license issued under AS 43.70; and

4 (5) if applicable, have a certificate of incorporation under
5 AS 10.06.218, have a certificate of authority under AS 10.06.705, have a copy of
6 articles of organization that satisfies AS 10.50.090, be registered under AS 10.50.605,
7 have a statement of foreign qualification filed under AS 32.06.922, have a certificate
8 of limited partnership filed under AS 32.11.060, or be registered under AS 32.11.420.

9 (b) The requirements in (a) of this section are continuing in nature and may be
10 reviewed periodically by the department.

11 **Sec. 06.50.030. Application.** (a) An application for a license must be in
12 writing and under oath, in a form prescribed by the department by regulation, and
13 include at least

14 (1) the legal name, residence, and business address of the applicant
15 and, if the applicant is not a natural person, of each member, partner, director, senior
16 officer, or owner of 10 percent or more of the equity of the applicant;

17 (2) the address and physical location of the principal place of business
18 named in the application; and

19 (3) other information the department may require with respect to the
20 applicant and, if the applicant is not a natural person, about the applicant's members,
21 partners, directors, senior officers, or owners of 10 percent or more of the equity of the
22 applicant.

23 (b) The applicant shall submit with the application the bond required by
24 AS 06.50.040 and a nonrefundable application fee in an amount that is established by
25 the department by regulation and that does not exceed \$1,200. The application fee for
26 the initial license may not be prorated.

27 **Sec. 06.50.040. Bond.** (a) An applicant for a license shall file with the
28 application a bond

29 (1) in a form to be approved by the department;

30 (2) in which the applicant is the obligor; and

31 (3) in the sum of \$25,000 for a business with one location and \$50,000

1 for a business with more than one location.

2 (b) Only one bond is required for an application for a business with more than
3 one location.

4 (c) The bond required by (a) of this section is for the use of the state and a
5 person who may have a cause of action against the obligor under this chapter.

6 (d) The bond must state that the obligor will

7 (1) faithfully conform to and abide by the provisions of this chapter
8 and regulations adopted by the department under this chapter; and

9 (2) pay to the state and to a person all money that may become due or
10 owing to the state or to the person from the applicant under this chapter.

11 (e) The bond must remain in effect for three years following the denial of a
12 renewal of a license or the expiration of a license.

13 (f) If, at any time, the department finds that a bond filed under (a) of this
14 section is unsatisfactory for any reason, the department may require the licensee to
15 file, within 10 days after the receipt of a written demand, an additional bond to comply
16 with this section.

17 (g) The licensee shall file a new bond that complies with this section each time
18 a license is renewed.

19 **Sec. 06.50.050. Investigation by department.** Within 60 days after an
20 applicant files a completed application, the bond, and an application fee, the
21 department shall investigate whether the applicant satisfies the qualifications of
22 AS 06.50.020(a). If the department finds that the applicant satisfies the qualifications,
23 it shall approve the application and issue the applicant a license to engage in the
24 business of making deferred deposit advances.

25 **Sec. 06.50.060. Conditions precedent to license.** The requirements of
26 AS 06.50.030 - 06.50.050 are conditions precedent to the issuance of a license under
27 this chapter. The license permits the applicant to make advances under this chapter at
28 the location specified in the application.

29 **Sec. 06.50.070. Duration of license.** A license issued under this chapter is
30 valid for two calendar years. Each license remains in force through the calendar year
31 after the calendar year in which the license was issued unless surrendered, suspended,

1 or revoked under this chapter.

2 **Sec. 06.50.080. Renewal of license.** A license issued under this chapter shall
3 be renewed on or before the date set by the department by submitting to the
4 department a completed renewal application on a form established by the department
5 and paying a nonrefundable renewal fee established by the department, which may not
6 exceed \$1,200.

7 **Sec. 06.50.090. Denial of license or renewal.** (a) If the department
8 determines that an applicant is not qualified to receive a license or a license renewal,
9 the department shall notify the applicant in writing within 20 days that the application
10 has been denied and state the basis for the denial.

11 (b) The decision of the department to deny an application or a renewal may be
12 reviewed in the manner provided in AS 44.62.330 - 44.62.630 (Administrative
13 Procedure Act).

14 (c) If the denial of a renewal is upheld, the former licensee shall return the
15 license to the department within 10 days after the former licensee receives notice of
16 the denial. Upon receipt of the license, the department shall return the bond less any
17 outstanding expenses owed by the former licensee.

18 (d) A license application shall be considered withdrawn within the meaning of
19 this section if the applicant fails to respond to a written notification of a deficiency in
20 the application within 60 days after the date of the notification.

21 (e) If a license renewal is denied or if a license is surrendered, suspended, or
22 revoked, all accounts of the licensee remain subject to this chapter until paid in full.

23 **Article 2. Licensee Transfer, Assignment, Control, and Change.**

24 **Sec. 06.50.200. Transfer or assignment.** Except for the transfer of a license
25 to a new location under AS 06.50.220, a licensee may not transfer or assign the
26 licensee's license.

27 **Sec. 06.50.210. Change in control.** The prior written approval of the
28 department is required for the continued operation of a licensee's deferred deposit
29 advance business when a change in control of the licensee is proposed. The
30 department may require the information it considers necessary to determine whether a
31 new application is required. The licensee requesting approval of the change in control

1 shall pay all reasonable expenses incurred by the department to investigate and
2 approve or deny the change in control.

3 **Sec. 06.50.220. Change in location or name.** A licensee shall notify the
4 department in writing at least 15 days before any proposed change in the licensee's
5 business location or name, and shall provide the department with the information
6 described in AS 06.50.030(a).

7 **Sec. 06.50.230. Conduct of other business.** A licensee may conduct other
8 business at a location where it engages in making advances unless it conducts the
9 other business for the purpose of evading or violating the provisions of this chapter.

10 **Article 3. Department Supervision.**

11 **Sec. 06.50.300. Suspension or revocation of license.** (a) The department
12 may suspend or revoke a license under AS 44.62 (Administrative Procedure Act) if the
13 department finds that

14 (1) the licensee has failed to pay the license fee, failed to maintain the
15 required bond in effect, or failed to comply with a demand, ruling, or requirement of
16 the department made under this chapter;

17 (2) the licensee has violated a provision of this chapter or a regulation
18 adopted by the department under this chapter; or

19 (3) a fact or condition exists that, if it had existed at the time of the
20 original application for the license, clearly would have constituted ground for denial of
21 the issuance of the license.

22 (b) If the reason for suspension or revocation of a licensee's license at one
23 location applies generally to all locations operated by the licensee, the department may
24 suspend or revoke all licenses issued to the licensee.

25 **Sec. 06.50.310. Reports to department.** (a) On or before March 15 of each
26 year, a licensee shall file with the department a composite annual report for the
27 preceding calendar year in the form prescribed by the department relating to all
28 advances made by the licensee. The department may require that the report be
29 submitted under oath or affirmation, or with notice that false statements made are
30 punishable as unsworn falsification under AS 11.56.210.

31 (b) The report must include

- 1 (1) the total number and dollar amount of advances made by the
 2 licensee;
- 3 (2) the total number of individual customers who received advances;
- 4 (3) the minimum, maximum, and average amount of advances;
- 5 (4) the average annual percentage rate of the fee charged for advances;
- 6 (5) the average number of days of the advances;
- 7 (6) the total number and dollar amount of returned checks;
- 8 (7) the total number and dollar amount of checks paid by advance
 9 recipients;
- 10 (8) the total number and dollar amount of checks charged off as a loss;
- 11 (9) the total dollar amount of outstanding advances as of the last day of
 12 the calendar year;
- 13 (10) the total number of outstanding advances as of the last day of the
 14 calendar year; and
- 15 (11) any other information the department determines is required to
 16 conduct its review.

17 (c) Within 15 days after the occurrence of any of the following events, a
 18 licensee shall file a written report with the department describing the event and its
 19 expected effect on the activities of the licensee in the state:

- 20 (1) filing for bankruptcy or reorganization by the licensee;
- 21 (2) institution of suspension or revocation proceedings against the
 22 licensee by a state or other governmental authority;
- 23 (3) a felony indictment or felony conviction of the licensee and, if the
 24 licensee is not a natural person, of a member, partner, director, senior officer, or holder
 25 of 10 percent or more of the licensee's equity; and
- 26 (4) other events that the department determines and identifies by
 27 regulation that may impair the ability of the licensee to operate its business under this
 28 chapter.

29 (d) In the discretion of the department, the occurrence of an event in (c) of this
 30 section may constitute grounds for suspension or revocation of a license.

31 **Sec. 06.50.320. Records.** (a) A licensee shall maintain all records relating to

1 this chapter at the location for which the licensee has a license. The records must
2 conform to generally accepted accounting principles and practices in a manner that
3 will enable the department to determine whether the licensee is complying with the
4 provisions of this chapter. The department shall have unrestricted access to the
5 records of the licensee.

6 (b) A licensee shall retain records relating to an advance for at least two years
7 after the last entry on the advance, unless otherwise required by the department.

8 (c) A licensee shall retain records of an advance that is the subject of a court
9 action for at least two years after a judgment or settlement of the court action.

10 **Sec. 06.50.330. Examinations and investigations.** (a) The department shall
11 examine the business records of a licensee at intervals the department considers
12 appropriate. In addition, for the purpose of discovering violations of this chapter or
13 securing information lawfully required, the department may, at any time, investigate
14 the advances, business transactions, and records of a licensee. For these purposes, the
15 licensee shall provide the department with unrestricted access to the offices, places of
16 business, and records of the licensee. The licensee shall pay the department the cost of
17 examination at a rate of \$75 an hour within 30 days after the department requests
18 payment.

19 (b) For the purposes of this section, the department may administer oaths or
20 affirmations and, upon its own motion or upon request of a party, may subpoena
21 witnesses, compel the attendance of witnesses, take evidence, and require the
22 production of material that is relevant to the investigation, including the existence,
23 description, nature, custody, condition, and location of books, documents, and other
24 tangible items, and the identity and location of persons having knowledge of relevant
25 facts, or other material reasonably calculated to lead to the discovery of admissible
26 evidence.

27 (c) Upon failure without lawful excuse to obey a subpoena or to give
28 testimony, and upon reasonable notice to all persons affected by the failure, the
29 department may apply to the superior court for an order compelling compliance.

30 **Article 4. Advances.**

31 **Sec. 06.50.400. Advance agreement.** (a) An advance shall be documented in

1 a written agreement that is signed by the advance recipient and on a form, approved by
2 the department.

3 (b) The agreement must clearly and conspicuously disclose

4 (1) the name of the licensee;

5 (2) the date of the advance;

6 (3) the principal amount of the advance;

7 (4) a statement of the total amount of fees that may be charged under
8 AS 06.50.460(a) as a condition of making the advance, expressed both as a dollar
9 amount and as an annual percentage rate;

10 (5) the repayment terms;

11 (6) the due date;

12 (7) an itemization of all disbursements, including disbursements to
13 third parties;

14 (8) the name and title of the employee who signs the agreement on
15 behalf of the licensee; and

16 (9) any other item required to be disclosed under state or federal law.

17 (c) The written agreement required by (a) of this section may not require an
18 advance recipient to waive any rights under 15 U.S.C. 1692 - 1692o (Fair Debt
19 Collection Practices Act) or other state or federal laws that regulate debt collection
20 practices.

21 **Sec. 06.50.410. Maximum amount of advances.** A licensee, including a
22 licensee with more than one location, may not make advances to an advance recipient
23 that exceed \$500 outstanding in advances to the recipient at one time.

24 **Sec. 06.50.420. Prohibition on dividing advance amount or increasing**
25 **number of advances.** A licensee may not induce or permit an advance recipient to
26 divide the amount of an advance, or to become obligated, directly, contingently, or
27 both, for more than one advance at the same time, if the purpose or result is to obtain
28 additional origination fees under AS 06.50.460(a)(1).

29 **Sec. 06.50.430. Prohibition on collateral and services.** The licensee may
30 not accept collateral or services as security for or payment of an advance.

31 **Sec. 06.50.440. Duration of advances.** The minimum duration of an advance

1 is 14 days.

2 **Sec. 06.50.450. Prohibition on advances on behalf of another.** A licensee
3 may not make an advance to a person who purports to be acting on behalf of another
4 person.

5 **Sec. 06.50.460. Fees.** (a) Notwithstanding any other provision of law, except
6 for the fee allowed under AS 06.50.510(b)(3) and where federal law provides
7 otherwise, a licensee may only charge

8 (1) a nonrefundable origination fee in an amount not to exceed \$5; and

9 (2) a fee that does not exceed \$15 for each \$100 of an advance, or 15
10 percent of the total amount of the advance, whichever is less.

11 (b) A licensee may not charge a fee other than the fees allowed under (a) of
12 this section.

13 (c) The fees allowed by (a) of this section are considered earned at the time of
14 the transaction and may not be prorated.

15 (d) A licensee may not charge the advance recipient an additional fee to access
16 the proceeds of an advance.

17 **Sec. 06.50.470. Renewal of advance.** (a) The minimum term of a renewal of
18 an advance is 14 days.

19 (b) A licensee may not renew an advance more than two consecutive times,
20 after which the licensee shall require the advance recipient to repay the advance in
21 full.

22 (c) A licensee may not renew an advance for a fee greater than the fee under
23 AS 06.50.460(a).

24 **Sec. 06.50.480. Rescission.** A person who receives an advance may rescind
25 an advance without cause and without cost, except for the nonrefundable origination
26 fee, at any time before the close of business on the business day following the day on
27 which the advance was made by paying the principal amount of the advance to the
28 licensee in cash or other immediately available funds.

29 **Sec. 06.50.490. Prohibited arbitration requirement.** A licensee may not
30 require a recipient to agree to mandatory arbitration.

31 **Sec. 06.50.500. Posted fee notice.** A licensee shall post a notice in each

1 business location that discloses the fees that the licensee charges for advances. The
2 fees in the notice must be expressed as a dollar amount, as an annual percentage rate
3 for 14 days for each \$100, and as an annual percentage rate for 30 days for each \$100.
4 The notice must also contain any other reasonably necessary information required by
5 the department by regulation. The notice shall be posted so that it is conspicuous to an
6 advance recipient or a potential advance recipient. The lettering in the notice must be
7 legible and at least one inch in height.

8 **Sec. 06.50.510. Required disclosures before disbursement.** (a) Before
9 disbursing funds under an advance, a licensee shall provide a clearly written statement
10 that is separate from the written advance agreement required by AS 06.50.400(a).
11 This disclosure statement must be reviewed and signed by the advance recipient. The
12 licensee shall keep the signed original in the advance file for the recipient and give a
13 copy to the recipient.

14 (b) The disclosure statement required by (a) of this section must

15 (1) indicate the advance is intended to address short-term, not long-
16 term, financial needs;

17 (2) include an explanation of all fees for advances and renewals of
18 advances;

19 (3) state that the licensee may charge an advance recipient a fee of up
20 to \$25 if a payment is returned unpaid;

21 (4) state that, in the event of the advance recipient's default, the
22 licensee may sue the recipient and recover up to \$700 over the amount of the payment
23 and, if the payment is a check, recover as permitted under AS 06.50.550(b);

24 (5) give the department's address and telephone number for receiving
25 calls regarding customer complaints and concerns;

26 (6) state that the licensee may not accept collateral or services for an
27 advance;

28 (7) state that the check given as security for the advance may be
29 negotiated as part of the advance;

30 (8) state that

31 (A) the advance recipient may rescind the advance without

1 cause at any time before the close of business on the business day following
2 the day on which the licensee makes the advance by paying the principal
3 amount of the advance to the licensee in cash or other immediately available
4 funds;

5 (B) if the advance recipient rescinds under this paragraph, the
6 origination fee is not refundable, but the licensee may not charge the recipient
7 another fee, except for a fee up to \$25 if the payment is returned unpaid;

8 (9) state that a criminal action may not be brought against the advance
9 recipient for failure to pay the advance; and

10 (10) include other information reasonably required by the department
11 to inform and protect advance recipients.

12 **Sec. 06.50.520. Payment by licensee.** (a) A licensee may give an advance
13 recipient the amount of the advance in cash, by the licensee's business check, by a
14 money order, or by a reasonable electronic payment mechanism, including an
15 electronic funds transfer to the advance recipient's account.

16 (b) A licensee may not use another form of payment than the form of payment
17 authorized in (a) of this section to make an advance to an advance recipient. In this
18 subsection, "another form of payment" includes coupons, merchandise, services, or
19 chattel of any kind.

20 **Sec. 06.50.530. Payment by advance recipient.** (a) An advance recipient
21 may repay an advance

22 (1) in cash;

23 (2) by negotiation of the recipient's check that secures the advance; or

24 (3) with the agreement of the licensee, a debit card, a cashier's check,
25 an electronic funds transfer from the recipient's bank account, or a reasonable
26 electronic payment mechanism to which the parties agree.

27 (b) An advance is paid in full when the advance recipient repays the advance
28 under (a) of this section, or when the advance recipient rescinds the advance under
29 AS 06.50.480.

30 (c) A licensee may not accept payment of an advance from the proceeds of
31 another advance provided by the same licensee.

1 **Sec. 06.50.540. Default fees.** If a payment received from an advance
2 recipient is returned unpaid to a licensee, the licensee may not collect the fees allowed
3 by this section unless the fees are disclosed in the agreement for the advance under
4 AS 06.50.400.

5 **Sec. 06.50.550. Court action after default.** (a) If an advance recipient
6 defaults, before initiating any action in court against the recipient, a licensee

7 (1) shall attempt in good faith to contact the advance recipient at
8 reasonable times by telephone or mail to discuss the delinquency and to offer the
9 recipient a payment plan under (2) of this subsection;

10 (2) shall offer the recipient a payment plan under which

11 (A) the recipient may repay the delinquent advance over an
12 extended period of time, which may not exceed six months;

13 (B) at least five percent of the outstanding balance is due when
14 the payment plan is signed;

15 (C) an additional fee by the licensee is not allowed, except for
16 the fee permitted in (D) of this paragraph;

17 (D) the licensee may charge the recipient a fee that may not
18 exceed \$25;

19 (3) in addition to the contact required by (1) of this subsection, shall
20 send a certified letter to the recipient's last known address at least 15 days before the
21 action that makes the offer described in (2) of this subsection and that informs the
22 recipient of the licensee's intent to proceed with legal action.

23 (b) The licensee may initiate legal action against a defaulting recipient to
24 recover damages, fees, and costs allowed under AS 09.68.115 if the licensee has
25 complied with (a) of this section. Notwithstanding AS 09.68.115, the total of all
26 damages, fees, and costs, including damages recovered under AS 09.68.115(a), may
27 not exceed the amount of the payment by \$700.

28 **Sec. 06.50.560. Threat of criminal action prohibited.** A licensee may not
29 threaten an advance recipient with criminal action as a result of the recipient's default.

30 **Sec. 06.50.570. Third-party collector.** If a payment obligation is assigned to
31 a third party for collection, the third-party collector shall comply with the provisions

1 of

2 (1) AS 06.50.540 and 06.50.550 to the extent those provisions have not
3 been satisfied by the licensee; and

4 (2) AS 06.50.560.

5 **Article 5. Miscellaneous Provisions.**

6 **Sec. 06.50.600. Regulations.** The department may adopt regulations under
7 AS 44.62 (Administrative Procedure Act) to implement this chapter.

8 **Sec. 06.50.610. Relationship to federal and other state law.** If a provision
9 of this chapter is preempted by or conflicts with federal or other state law, except for
10 AS 06.50.550(b), in a particular situation, the provision does not apply to the extent of
11 the preemption or conflict.

12 **Article 6. General Provisions.**

13 **Sec. 06.50.900. Definitions.** In this chapter, unless the context requires
14 otherwise,

15 (1) "advance" means a deferred deposit advance;

16 (2) "advance recipient" means a borrower to whom an advance is
17 made;

18 (3) "control," in the case of a person who is not a natural person,
19 means direct or indirect ownership, the right to vote or otherwise control 10 percent or
20 more of the governance interests of the entity, or the ability of a person to elect a
21 majority of the directors;

22 (4) "deferred deposit advance" means a transaction in which a person

23 (A) accepts a dated check from a person seeking an advance;

24 (B) agrees to hold the check for a specified period of time
25 before depositing or otherwise negotiating the check; and

26 (C) pays to the advance recipient, credits to the account of the
27 advance recipient, or pays to another person on behalf of the advance recipient
28 the amount of the check less the charges allowed under this chapter;

29 (5) "department" means the Department of Community and Economic
30 Development;

31 (6) "license" means a license issued under this chapter;

1 (7) "licensee" means a person to whom a license has been issued under
2 this chapter.

3 * **Sec. 3.** AS 44.62.330(a) is amended by adding a new paragraph to read:

4 (61) Department of Community and Economic Development relating
5 to the licensing and regulation of persons making deferred deposit advances under
6 AS 06.50.

7 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **TRANSITION: EXISTING ACTIVITIES.** (a) Notwithstanding the licensing
10 requirements of AS 06.50.010 - 06.50.090, enacted by sec. 2 of this Act, a person who, on the
11 day before the effective date of secs. 1 - 4 of this Act, is engaged in the business of making
12 deferred deposit advances may continue to make deferred deposit advances for 60 days after
13 the effective date of secs. 1 - 4 of this Act without being licensed under AS 06.50, enacted by
14 sec. 2 of this Act. Beginning on the 61st day after the effective date of secs. 1 - 4 of this Act,
15 a person described in this subsection shall be licensed under AS 06.50.010 in order to
16 continue making deferred deposit advances.

17 (b) In this section, "deferred deposit advance" has the meaning given in
18 AS 06.50.900, enacted by sec. 2 of this Act.

19 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **TRANSITIONAL PROVISIONS: REGULATIONS.** The Department of Community
22 and Economic Development may proceed to adopt regulations necessary to implement this
23 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
24 before the effective date of secs. 1 - 4 of this Act.

25 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 7.** Sections 1 - 4 of this Act take effect January 1, 2005.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 389 BY: Representative Tom Anderson

TITLE: "An Act relating to certain monetary advances in which the deposit or other negotiation of certain instruments to pay the advances is delayed until a later date; and providing for an effective date."

The deferred deposit advance industry, recognizing consumer demand for small, short-term credit options, has rapidly expanded across the United States. Thirty-nine states and the District of Columbia have specifically regulated the service; Alaska is currently unregulated.

In developing the regulation process HB 389 adheres to two important aspects of the deferred deposit/payroll advance issue: first, consumer protection – shielding citizens from unconscionable fees and predatory lending tactics; and second, business protection – allowing businesses who are filling a legitimate need for the Alaskan consumer to operate without unreasonable regulatory burdens.

HB 389 proposes licensing and record-keeping requirements, limits on terms and the number of allowable renewals, fees, and reasonable limits on the amount of the advances. It would provide the consumer detailed information about the type of service and require full disclosure for all fees and costs incurred during the advance process. Additionally, provisions of the bill create a next day "change of mind" provision allowing the consumer time to reconsider their decision for any reason.

Additionally, HB 389 clearly states that businesses may not threaten customers with criminal action as a result of a payment deficit.

HB 389 does not regulate traditional pawnshop activities of loans under \$500; the focus is on deferred deposits and business providing this service.

I urge your support for this legislation.

Sectional Analysis for HB 389

Section 1. States the purpose of the Act.

Section 2. Establishes a new chapter relating to deferred deposit advances

Sec. 06.50.010 prohibits a person from engaging in the business of making deferred deposit advances without a license. Requires a separate license for each location.

Sec. 06.50.020 establishes the qualifications that a person must meet to qualify for a license. This covers mandatory liquid assets and demonstrations regarding financial responsibility, financial condition, business experience, character, and general fitness. Makes these requirements continuing in nature and subject to periodic review by the department of Community and Economic Development

Sec. 06.50.030 establishes requirements for the license application. Requires submission of a nonrefundable investigation fee for each business location. Directs the department to investigate whether the applicant satisfies the requirement and, if the applicant satisfies the requirements and the department approves the application, to issue the license. Make the license effective for the year in which issued, unless surrendered, suspended, or revoked. Establishes procedures for renewal.

Sec. 06.50.040 establishes the procedures for denial of a license or of a license renewal.

Sec. 06.50.050 prohibits the transfer or assignment of a license, except for transfer to a new location under Sec. 06.50.070.

Sec. 06.50.060 requires the prior written approval of the department for the continued operation of a licensee's deferred deposit advance business when a change in control of the licensee is proposed. Requires the licensee requesting approval to pay any costs (up to a stated amount) that are incurred by the department to investigate the request for approval.

Sec. 06.50.070 requires a licensee to notify the department in writing at least 15 days before any proposed change in the licensee's business location or name and to provide the department with certain information.

Sec. 06.50.080 allows the department, after notice and a hearing, to suspend or revoke a license if the department finds that the licensee has engaged in certain listed activities.

Sec. 06.50.090 requires a licensee to file with the department a composite annual report relating to all advances made by the licensee during the preceding calendar year. Also requires a licensee to file with the department (within 15 days after the occurrence of certain listed events) a written report describing the event and its expected effect on the activities of the licensee in the state.

Sec. 06.50.100 establishes certain criteria that a licensee must follow when keeping its records, including the manner in which they must be kept, their location, and the length of time they must be kept.

Sec. 06.50.110 provides examination and investigative powers for the department and corresponding obligations of licensees regarding these examinations and investigations. Authorizes the department to apply to the superior court for an order compelling compliance if there is a failure without legal excuse to obey a subpoena or give testimony.

Sec. 06.50.120 state that the Administrative Procedure Act, AS 44.62, applies to department action taken under the chapter, except where other procedures are provided in the chapter.

Sec. 06.50.130 establishes certain requirements for deferred deposit advances.

Sec. 06.50.130(a) requires an advance to be documented in a written agreement signed by the recipient. States certain items the agreement must include.

Sec. 06.50.130(b) states that a licensee may not be an organization.

Sec. 06.50.130(c) sets a maximum principal amount for an advance.

Sec. 06.50.130(d) allows a licensee to charge an origination fee. Treats the fee as fully earned as of the date of the transaction and states that the fee is not considered interest. Prohibits a licensee from charging another fee unless expressly allowed by the chapter.

Sec. 06.50.130(e) requires a licensee to post a notice of the licensee's fees in each licensed location. Indicates how much a licensee may charge.

Sec. 06.50.130(f) allows an advance recipient to rescind an advance without cost if done not later than the end of the next business day after the advance.

Sec. 06.50.130(g) requires a licensee to provide written notice to the advance recipient of certain listed information before disbursing the money.

Sec. 06.50.130(h) prohibits a licensee from accepting more than one instrument as security for each advance. Requires the licensee to endorse the instrument with the licensee's actual business before depositing or otherwise negotiating the instrument. Allows an advance recipient to redeem the instrument before the deposit or other negotiation of the instrument by making payment.

Sec. 06.50.130(i) indicates how a licensee may pay the advance recipient, but prohibits the licensee from charging an additional fee to the recipient to access the proceeds of the advance.

Sec. 06.50.130(j) allows a licensee to charge an advance recipient and additional fee if the advance is renewed rather than paid in full when due.

Sec. 06.50130(k) indicates how an advance recipient may repay an advance.

Sec. 06.50.130(l) prohibits a licensee from accepting property other than an instrument from an advance recipient when making an advance.

Sec. 06.50.140(a) sets limits on the advances (plus allowable fees) that a licensee or a person under common control with a licensee may have outstanding to a single advance recipient.

Sec. 06.50.140(b) allows a licensee, or an assignee, to collect for returned instruments the fees allowed by the chapter in addition to the damages, fees, and costs allowed for bad checks under AS 09.68.115, if disclosed in the advance agreement.

Sec. 06.50.140(c) prohibits a licensee from threatening an advance recipient with criminal action for a payment deficit.

Sec. 06.50.140(d) states that a licensee may not renew an advance for a fee greater than the initial origination fee or for more than four consecutive times. Allows an advance recipient to get a new advance transaction at any time after the recipient pays off the previous balance. Indicates when an advance is considered paid off.

Sec. 06.50.140(e) prohibits a licensee from accepting property, title to property, or other evidence of ownership as collateral for an advance, except for an instrument from the advance recipient.

Sec. 06.50140(f) allows a licensee to conduct other business at a location where it makes advances.

Sec. 06.50.140(g) allows an advance recipient to rescind an advance without cost at any time before the close of business on the business day following the day on which the advance was made.

Sec. 06.50.140(h) prohibits a licensee from making an advance on behalf of another person.

Sec. 06.50.150 allows the department to adopt regulations to implement the chapter.

Sec. 06.50.160 establishes the relationship of the chapter to federal law.

Sec 06.50.190 defines terms for the chapter.

Section 3. Applies the administrative adjudication provisions of the Alaska Administrative Procedures Act to the Department of Community and Economic Development in the matter of the licensing and regulation of persons making deferred deposit advances under the new chapter, AS 06.50.

Section 4. Provides a transitional provision related to the liquid assets that a person must have in order to qualify for a license under AS 06.50.020. Changes the amounts required during the first 180 days after the effective date of the Act.

Section 5. Makes the Act effective January 1, 2005.

Index for HB 389 Bill Packet

1. Deferred Deposit/Payday Advance Facts and Fiction – from the Community Financial Services Association of America (CFSA) website based on studies by Georgetown University and Io Data Corporation
2. Measuring the Cost of a Payday Advance: Fixed Fee – CFSA
3. Backgrounder: Why Payday Advance is Not Predatory Lending – CFSA
4. Deferred Deposit: A Vital Service in Today's World – Financial Service Centers of America (FiSCA).
5. Deferred Deposit/Payday Advance Fact Sheet – FiSCA
6. State Law Governing Deferred Deposit Services/Payday Advance – FiSCA
7. Preserving Financial Freedom for Taxpayers – National Taxpayers Union & NTU Foundation, August 14, 2001.

DEFERRED DEPOSIT/PAYDAY ADVANCE

FACTS and FICTION

Fiction: Deferred Deposit/Payday Advance companies prey on poor, uneducated or older consumers.

Fact: Deferred Deposit customers represent the heart of the working middle class.

- Majority have incomes between \$25,000 and \$50,000
- 68% are under 45 years old; only 4% are over 65, compared to 20% of the population.
- 94% have a high school diploma or better, with 56% having some college or a degree.
- 42% own their own homes.
- 100% have a steady income and an active checking account (required for the service).

Fiction: They charge outrageous rates.

Fact: Deferred Deposit/Payday Advance fees typically cost less than customers' alternatives.

- Bank/merchant fees on one bounced check can cost three times that of a \$100 advance.
- Deferred Deposit APRs are often lower than customers' alternatives (on the same 2 week term)
 - \$100 payday advance with \$15 fee + 391% APR
 - \$100 bounced check with \$48 NSF/merchant fees = 1,251% APR
 - \$100 credit card balance with \$26 late fee = 678% APR
 - \$100 utility bill with \$50 late/reconnect fees = 1,304% APR

DEFERRED DEPOSIT/PAYDAY ADVANCE

Fiction: They put customers into a cycle of debt.

Fact: Most customers use Deferred Deposits responsibly and moderately.

- It's a closed-end, short term transaction with a one-time flat fee. No revolving debt and no additional fees or accruing interest if not paid when due.
- 66% use the service to cover unexpected expenses or a temporary reduction in income.
- 34% use it for planned expenses or other discretionary uses.
- 60% either did not renew in the last year or renewed only 1 – 4 times.
- Research and regulators confirm more than 70% use the service about once a month or less.
 - The Credit Research Center national survey reports 78% use or 14 or fewer times annually.
 - Wisconsin Department of Financial Institutions reports 71% use 15 or fewer times.
 - North Carolina Commissioner of Banks reports 73% use once a month or less.

Fiction: They take advantage of unsuspecting customers.

Fact: Deferred Deposit/Payday Advance customers make informed decisions and receive consumer protections under law.

- Millions choose the service as a dignified, discreet solution for temporary cash flow problems without asking family for money or pawning personal items.
- 70% choose Payday Advance for reasons of convenience (quick, easy process & fast approval).
- 96% are aware of the finance charge & 78% recalled it being disclosed as an APR.

DEFERRED DEPOSIT/PAYDAY ADVANCE

- 92% believe Deferred Deposit is a useful service, only 12% were dissatisfied with their last advance.

- 38 states and D.C. provide balanced, responsible regulation of Payday Advance/Deferred Deposit and most offer additional protections with the following practices.
 - Educational brochure that encourages consumer responsibility, warns against long-term use and informs customer of consumer credit counseling alternatives.
 - Full disclosure on in-store signage and in loan agreement (with TILA disclosures).
 - Privacy notice.
 - Limit on rollovers (or renewals)
 - Cost-free right of rescission
 - Professional, fair and lawful collection practices and no threat or use of criminal prosecution.

This "Facts and Fiction" information was taken from the CFSA website and is based on studies by Georgetown University and Io Data Corporation.

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:

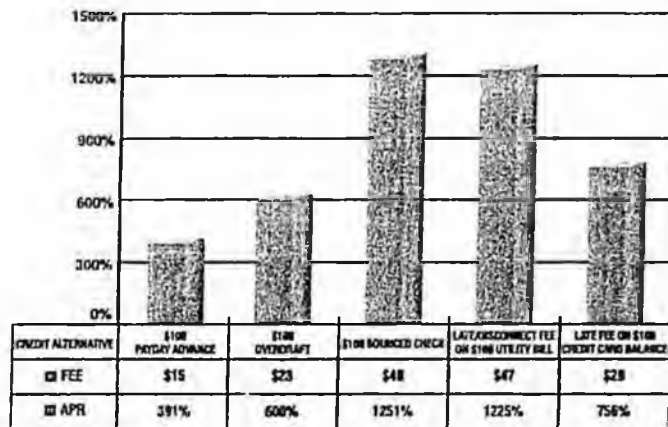
- Bank non-sufficient funds (NSF) and merchant fees on a bounced check typically cost \$48 or more.¹
- "Courtesy" overdraft protection can cost up to \$35 per overdraft.²
- Payday advance can be a sound economic choice compared to late payment fees charged by credit card, utility and mortgage/rental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

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



¹ 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.

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.

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

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



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BACKGROUND

Why Payday Advance Is Not Predatory Lending

The term "predatory lending" has received a lot of attention recently; but often its definition is unclear and the distinction between predatory lending and subprime lending is blurred. This vagueness of the term has been used to portray certain financial services inaccurately. Payday advance has been the target of just such an attempt, and it is clearly unwarranted.

In general, predatory lending is defined as a harmful form of subprime lending in which consumers are pressured to take loans they don't need, putting valuable assets at risk. Federal Reserve Governor Edward Gramlich said in an address to the Neighborhood Reinvestment Corp. in Raleigh, NC, March 26, 2001 that predatory lending typically involves at least one, and perhaps all three, of the elements listed below. **Not one** of these elements applies to payday advance and here's why.

Three Elements of Predatory Lending, according to Federal Reserve Governor Gramlich:

- Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation.
- Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced ("loan flipping").
- Engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower.

Why Payday Advance is NOT Predatory Lending:

- Payday advance is a small denomination, un-collateralized, unsecured short-term financial transaction based on the borrower's steady income.
- Most state laws prohibit the extension of a payday advance by paying an additional fee (rollover). CFSA members do not encourage rollovers and, in states where rollovers are permitted, limit them to 4 or the state limit, whichever is less.
- The cost of a payday advance is fully disclosed to customers on signage and in disclosure agreements. It is a one-time, flat fee and there are no hidden charges, balloon payments or accruing interest. CFSA members also provide an educational brochure emphasizing responsible use of the product and offer a free right of rescission should the customer change his mind.

Payday advances are small, short-term cash advances with simple terms and fees. Thirty-four states and the District of Columbia have laws and/or regulations governing this product. The industry is dedicated to working with interested parties to ensure that consumers use the service appropriately. Members of the Community Financial Services Association of America (CFSA), the national trade association of payday advance, believe that payday lending should be conducted in a safe and responsible manner and with appropriate disclosures and strong consumer protections. CFSA's Best Practices, which apply to all CFSA members, are intended to ensure such conduct. CFSA members must abide by the following Best Practices:

- A 24-hour, cost-free customer right to rescind any transaction.
- Prohibition of or limitation on rollovers.
- Full disclosure of transaction terms.
- Encourage responsible use of the service.
- Appropriate collection practices.
- No criminal action against customers.
- Compliance with state and federal regulations.
- Truthful advertising.
- Enforcement of Best Practices.

###



DEFERRED DEPOSIT

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A Vital Service In Today's World

What is a deferred deposit?

Many people do not have relatives to turn to or other means when the family car breaks down or an unexpected bill becomes due. Deferred deposit is sometimes the only viable option when people are strapped for cash. Here's how it usually works: A customer can have his or her check cashed immediately and deposited up to 30 days later in exchange for a pre-determined service fee. If the customer chooses to defer this deposit an additional 30 days, he or she may choose to "roll over" the deposit.

How the fee is determined?

Businesses that offer deferred deposit service take a risk that traditional financial institutions are unwilling to assume. That is why service fees for deferred deposit transactions are higher than the interest rates charged by banks and credit card companies.

Fees are proportional to the risk undertaken and the service provided

Critics of deferred deposit have raised concerns about the fee check cashers charge. However, FiSCA and its members believe fees should be reasonable, yet not be exorbitant. Ultimately, the deferred deposit industry as a whole opposes artificially imposed price controls as neither in the best interest of customers or business owners. Competition is the key and the market itself assures customers of a competitive service fee. If a business chooses to charge a rate the consumer finds too high, he or she will simply bestow their patronage elsewhere. It's the American way.

Why deferred deposit?

Because of small emergencies in people's lives, there is a real need for quick cash. However, the options for many people are limited:

A cash advance? Many people do not have credit cards.

The local bank? Most banks do not make loans for less than \$1,000.

[Click for Deferred Deposit Fact Sheet](#)

The Financial Service Centers of America

FiSCA is the professional organization that represents the expanding industry of check cashing which provides financial services for America's local communities. It was originally established in 1987 as the National Check Cashers Association.

The professional check cashing industry is one of the fastest growing business activities in the country. There are roughly 6,000 check cashing centers throughout the nation – that is more than double the number since 1986. Just how important is this industry? Check cashing centers handle more than 180 million checks annually valued in excess of \$55 billion.

Currently, FiSCA comprises 3,500 check cashing centers in 35 states. FiSCA and its members are committed to providing the most efficient service at fair and reasonable prices. FiSCA deplores the unscrupulous fringe check cashing businesses that charge exorbitant and unconscionable fees. FiSCA and its members support strong penalties for those who operate in contention with the legitimate check cashing centers that comply with both the letter and spirit of federal and state laws.

FiSCA has developed a White Paper that defines its position on deferred deposit. [Click here for the full FiSCA White Paper: *The Consumer's Choice: The Role of Deferred Deposit Services in Meeting Short Term Financial Needs.*](#)

If there were no deferred deposit: Where would many turn to?

Those that traditionally rely on deferred deposit are middle-class Americans who are gainfully employed, but generally have no where else to turn. If there were no deferred deposit, many would be forced to turn to pawn brokers. Pawn brokers loan small amounts of cash secured by personal property. For example, if the Smith family needed \$200 to pay for an emergency medical bill, they could get the money from a pawn broker, but only after leaving their television as collateral. Deferred deposit, on the other hand, allows the consumers to receive emergency cash with dignity, yet still retain their property. [Click for, *Freedom of Choice for Consumers: The Truth About Deferred Deposit Services -- A Reasoned Response to the CFA's Misrepresentations.*](#)

The Bottom Line: the consumer demands deferred deposit

Consumers who utilize deferred deposit express a high level of satisfaction with the service. For example, when deferred deposit legislation was being considered in California, many consumer letters in support of the service were submitted to lawmakers. According to one California customer:

"It's been a real 'lifesaver' for us, and, actually the only place one can get financial service in time of need."
Richard B. Enax

Another California customer expressed his appreciation as he finished a deferred deposit transaction:

"I came in today to get an advance so that I can rent a truck to move. I'm between paydays so this organization is the only place to get an advance."
J. Hernandez

California is not the only state where customer satisfaction of deferred deposit is at a high level. One customer in Utah said the service fee wasn't too high.

"That's all right, because it gets you out of a bind."
M. Raze

[Click here for Association's Response to Spurious Charges by Consumer Federation on Payday Advances](#)

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DEFERRED DEPOSIT

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Deferred Deposit/Pay Day Advance Fact Sheet

- Deferred Deposit/Pay Day Advance is designed to meet a short-term cash emergency such as a car repair or medical need (i.e. prescription).
- Deferred Deposit/Pay Day Advance is a key service provided by various members of the Financial Service Centers of America (FiSCA).
- Deferred Deposit/Pay Day Advance products are now an industry exceeding \$10 billion annually.
- Deferred Deposit/Pay Day Advance products are legal in at least 32 states and the District of Columbia and delivered mainly through approximately 11,000 service centers.
- Using Annual Percentage Rates (APR) to evaluate the costs of Deferred Deposit/Pay Day Advances is not accurate because the charge for the service is more in the nature of a fee.
- Most banks will not typically process a consumer loan for under \$1,000. The average Deferred Deposit/Pay Day Advance is \$200.
- FiSCA's Professional Code of Ethics calls for the full disclosure of interest rates, fees and all related charges in Deferred Deposit/Pay Day Advance transactions. The FiSCA Professional Code of Ethics also calls for full compliance with the federal Truth in Lending Act (TILA).
- It is estimated that the Deferred Deposit/Pay Day Advance industry could grow from \$2 billion in revenues to over \$6 billion in 2002.
- Fees charged by banks for bounced checks are often significantly higher than fees charged for Deferred Deposit/Pay Day Advance services. Additionally, merchants often charge their own bounced check fee.
- The Tennessee Department of Financial Institutions responded to allegations by the Consumer Federation of America that the Deferred Deposit/Pay Day Advance businesses were violating State law by charging fees in excess of the statutory cap as follows:

"The conclusion that these fees exceed legal limit authorization by State law was inaccurate... Therefore the companies in the CFA's (Consumer Federation of America) survey...are in compliance with [the statute], notwithstanding CFA's initial conclusions... Accordingly, it appears that all of the Tennessee companies surveyed by the CFA were complying with the fee limitation imposed by the [Tennessee] Act."

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Financial Service Centers of America

STATE LAW GOVERNING DEFERRED DEPOSIT SERVICES/PAYDAY ADVANCE

STATES (safe harbor legislation)	Payday Advance Available under State Law	Permitted Fees	Permitted Period	Maximum Amount of Check	Rollovers
Alabama* H.B. 178 (2003)	Yes	17.5% of the amount advanced	min. of 10 days and max. of 31 days	\$500	Limited to one
Alaska	Yes <small>(Alaska Small Loan Act exempts loans not in excess of \$500)</small>	Rate of loan determined by parties	Term of loan determined by parties	\$500	N/A.
Arizona AZ ST § 6-1251 et seq.	Yes	15% of the check	min. 5 days	\$500	Limited to three
Arkansas AR ST § 23-52-101 et seq.	Yes	10% of the check + \$10 charge + \$5 fee on 1st transaction	min. of 6 days and max. of 31 days	\$400	Prohibited
California** CA FIN §1789.30 et seq.	Yes	15% of the check	max. of 30 days (31 days as of 3/1/04)	\$300	Prohibited
Colorado CO ST §5-3.1-101 et seq.	Yes	20% of the 1st \$300 + 7.5% on amount greater than \$300	max. of 40 days	\$500	Limited to one
Delaware DE ST TI 5 §2227 et seq.	Yes	Rate of loan determined by parties	max. of 60 days	\$500	Limited to four
District of Columbia DC Code §26-311.01 et seq.	Yes	Scale of Fees***	max. of 31 days	\$1000	No statutory limit
Florida FL ST §560.401 et seq.	Yes	10% of advance + \$5 verification fee	min. of 7 days and max. of 31 days	\$500	Prohibited
Hawaii** HI ST §480F-1 et seq.	Yes	15% of the check	max. of 32 days	\$600	Prohibited

STATES (safe harbor legislation)	Payday Advance Available under State Law	Permitted Fees	Permitted Period	Maximum Amount of Check	Rollovers
Idaho* ID ST 528-46-401 et seq.	Yes	Rate of loan determined by parties	Term of loan determined by parties	\$1000	Limited to three
Illinois 38 IL ADC 110.300 et seq.	Yes	N/A.	max. of 30 days	\$400 <small>but interest - interest cap exceeds 10% of borrower's income for period</small>	Limited to two so long as outstanding balance of the loan is reduced by 20%
Indiana IN ST 24-4.5-7-101 et seq.	Yes	15% of the check on 1st \$100; 10% for more than \$100; fee cannot exceed \$35	min. of 14 days	\$400	Limited to one; subsequent rollovers (limit of 3) require 25% reduction in the renewal principal amount
Iowa IA ST 5 533D.1 et seq.	Yes	15% of the check on 1st \$100; 10% on subsequent \$100 increments	max. of 31 days	\$500	Prohibited
Kansas KS ST 516a-2-404 et seq.	Yes	Scale of Fees***	max. of 30 days	\$860 <small>(adjusted annually)</small>	Prohibited
Kentucky KY ST 5368.020 et seq.	Yes	\$15 per \$100 on face amount of check	min. of 14 days and max. of 60 days	\$500	Prohibited
Louisiana LA R.S. 9:3578.1 et seq.	Yes	16.75% of the check	max. of 30 days	\$350	Prohibited, but can accept part. amt. of 25% fees and enter into new agreement
Michigan	Yes <small>Under declaratory ruling of Dept. of Commerce (No. Ind. Bureau)</small>	N/A.	N/A.	N/A.	N/A.
Minnesota MN ST 547.60 et seq.	Yes	Scale of Fees***	max. of 30 days	\$350	Prohibited
Mississippi MS ST 575-67-501 et seq.	Yes	18% of the check	max. of 30 days	\$400	Prohibited
Missouri MO ST 408.500 et seq.	Yes	No limit, but total fees (incl. rollovers) cannot exceed 75% of initial loan	min. of 14 days and max. of 31 days	\$500	Limited to six, but borrower must reduce principal by at least 5% w/ each rollover
Montana MT ST 531-1-701 et seq.	Yes	cannot exceed 25% of amount advanced	max. of 31 days	\$300	Prohibited
Nebraska NE ST 545-901 et seq.	Yes	\$15 per \$100 on face amount of check	max. of 31 days	\$500	Prohibited
Nevada NV ST 5604.010 et seq.	Yes	Rate of loan determined by parties	Term of loan determined by parties	1/3 of borrower's expected monthly net income	Limited to 10 weeks after initial loan is made
New Hampshire* S.B. 72 (2003)	Yes	Rate determined by parties, however, after initial term of loan interest can't be > 6% per year	min. of 7 days and max. of 30 days	\$500	Prohibited
Nr v Mexico	Yes <small>(Small Loan Act does not cap interest rates and fees)</small>	Rate of loan determined by parties	Term of loan determined by parties	\$2500	N/A.
North Dakota ND ST 513-08-01 et seq.	Yes	20% of amount borrowed	max. of 45 days (incl. rollover period)	\$500	Limited to one
Ohio OH ST 51315.35 et seq.	Yes	\$5 per \$50 + 5% per month	cannot exceed 6 months	\$500	Prohibited
Oklahoma* S.B. 583 (2003)	Yes	15% of the 1st \$300 + 10% on amount greater than \$300	min. of 13 days and max. of 45 days	\$500	Prohibited
Oregon**** OR ST 5725.010 et seq.	Yes	Rate of loan determined by parties	max. of 60 days	\$50,000	Limited to three
Rhode Island RI ST 519-14.1 et seq.	Yes	10% of the check or \$5, whichever is greater	fixed term of 14 days	\$300	Limited to one
South Carolina SC ST 534-39-110 et seq.	Yes	15% of the check	max. of 31 days	\$300	Prohibited
South Dakota	Yes <small>(Small Loan Act does not cap interest rates and fees)</small>	Rate of loan determined by parties	Term of loan determined by parties	N/A.	N/A.
Tennessee TN ST 545-17-101 et seq.	Yes	15% of the check or \$30, whichever is lesser	max. of 31 days	\$500	Prohibited
Texas 7 TX ADC 51.605 et seq.	Yes, but very limited	Scale of Fees***	not less than 7 days	N/A.	Limited
Utah UT ST 57-23-101 et seq.	Yes	Rate of loan determined by parties	Term of loan determined by parties	N/A.	Limited to 12 weeks after initial loan is made
Virginia VA ST 56.1-444 et seq.	Yes	15% of the amount advanced	min. of 7 days	\$500	Prohibited
Washington** WA ST 531.45.010 et seq. (S.B. 5452 (2003))	Yes	15% of the principal on first \$500 borrowed; 10% on amount over \$500	max. of 45 days	\$700	Prohibited
Wisconsin <small>(No interest rate cap on loans less than \$1,000)</small>	Yes	Rate of loan determined by parties	Term of loan determined by parties	\$25,000	N/A.
Wyoming WY ST 540-14-362 et seq.	Yes	\$30 or 20% per month on the principal balance of the check	one calendar month	No statutory cap	Prohibited

* recently enacted safe harbor legislation ** recent change in law *** The detailed scale of fees appears at fisca.org.
**** S.B. 159 (2003), effective 1/1/04, amended the Oregon Consumer Finance Act to include specifically payday loans.

Deferred deposit services are not permitted under state law in the following jurisdictions: Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont and West Virginia.

DISCLAIMER: This document has been compiled for information purposes for FiSCA members only. FiSCA's publication of this document and related materials shall not be construed in any way to be legal advice. To the best of our knowledge this information is current, but FiSCA cannot make assurances regarding the accuracy of this document. FiSCA encourages the reader to rely solely on independent legal advice with respect to the subject matter of this document. More detailed information is available at fisca.org. This area of the law has been quite volatile, although the number of states permitting deferred deposit services has steadily increased.



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National Taxpayers Union & NTU Foundation



December 14, 2003

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Preserving Financial Freedom for Taxpayers

NTU Issue Brief 126

By
Al Cors, Jr.

August 14, 2001

Each year, as taxpayers face the dreaded “tax day” filing deadline to send their tax returns (and the amount they owe) to the Internal Revenue Service, they use every financial option at their disposal to help them meet that deadline. Just as on other occasions when working men and women have cash-flow problems, one of the tools they use to deal with a short-term money shortage is the widely popular “payday loan.”

What is a payday loan or advance? It’s an important financial service used by thousands of consumers every week. It allows a person to get a small amount of cash for a short period, with the loan made against his or her next paycheck. The customer writes a personal check for the amount of the advance plus a fee, and then gets cash for that check, less the agreed-upon fee. The personal check is then held for a predetermined period – usually two weeks. At the end of the period the check is deposited.

Why is such a short-term financial option so important? **As Americans continue to be overtaxed, they lose an average annually of 35 to 40 percent of their earnings to taxes.** Paychecks continue to be ravaged by the endless array of federal, state, and local taxes. Most workers have little disposable income and little or no emergency savings. **One recent national survey by a consumer group noted 53 percent of those surveyed said they sometimes, most of the time, or always “live from paycheck to paycheck.”** This percentage increases to 64 percent for those with moderate incomes (household incomes of \$20,000 to \$50,000) and to 79 percent for those with low incomes (household incomes under \$20,000).[1] Consumers need every possible financial tool to deal with life’s emergencies. Payday advance loans are one such widely-used money management tool.

There is overwhelming evidence that payday advance loans provide a

valuable service, filling a critical financial need for millions of Americans in states across the country. In one of those states, North Carolina, a recent report by the State Commissioner of Banks revealed just how well consumers like the payday loan option. **The report cited 2.9 million North Carolina transactions in 1999, with the Commissioner of Banks receiving only 12 complaints.** "It is safe to say there is a genuine need for payday advance, otherwise we wouldn't have over 1,000 locations throughout the state," Deputy Banking Commissioner Otis Meacham was quoted as saying earlier this year.[2]

As additional evidence, the Credit Research Center of Georgetown University recently released a comprehensive study highlighting the benefits of payday advance loans as expressed by customers across America. **"Our study shows that payday advance satisfies an unfulfilled demand for very short-term credit in today's market,"** wrote Dr. Gregory Elliehausen, a senior research scholar at Georgetown and co-author of the study. **"The overwhelmingly favorable response strongly suggests that payday advance companies serve a real economic need for their customers."**

The Georgetown study, *Payday Advance Credit in America: An Analysis of Customer Demand*, found that most payday advance customers (96 percent) understood the service and the fees involved, and that most (92 percent) believe payday advance is a useful service. The study also revealed that nearly all payday advance customers (91 percent) use other types of consumer credit. **Most customers who considered other credit options chose payday advance because of the quick and easy process the fast approval, and the limited paperwork.**[3]

Payday advances are so popular because they provide a needed financial alternative to the many charges that burden consumers who are late on their rent or their monthly credit card payment. Payday loans are also far better options than bouncing a check due to lack of funds. Any fair comparison of the fees charged for the short-term, unsecured loan of cash against a future paycheck, to those charged for check bouncing or late credit card or rent payments, would show the payday loan fees to be much more attractive. To the people who need the loans, the fees are more than reasonable.

If you consider the fee charged on a typical payday loan, \$30 on a \$200 loan over a period of two weeks, it certainly seems fair in comparison to the alternatives. For example, that loan may prevent a late-payment-of-rent charge of \$50 for rent paid five days late. It could save the consumer from a bounced check bank charge (\$25) and a bad check store charge (\$20). Finally, that loan might stop credit card late charges (\$29 a day) that can quickly escalate into hundreds of dollars of almost instant debt. These are the alternatives, and they are clearly to be avoided. But Americans need look no further than their own recently-filed tax returns to appreciate how payday loans can serve as workable alternatives.

Again, the typical family's total tax burden to all levels of government now approaches 40 percent. Taxes are a family's single biggest expense – larger than food, clothing, and shelter combined – and federal income taxes often figure prominently in this expense.[4] But what happens when a working family comes up short on federal withholding at the end of the year, and gets stuck with owing the IRS?

Not filing is the worst possible option, carrying a 5 percent per month failure to file penalty, a ½ of 1 percent per month charge for failure to pay, possibly other civil and criminal fines, and even interest charges on some of the penalties themselves!

Always eager to “help” Americans pay their taxes, the IRS offers what it calls an “installment agreement” to families who can't afford to send in what they owe up-front. Assuming a family meets the three conditions for an agreement, **the fee for paying in installments is \$43, plus interest and a possible late payment penalty on any tax not paid by its due date (including the tax being paid in installments).**[5]

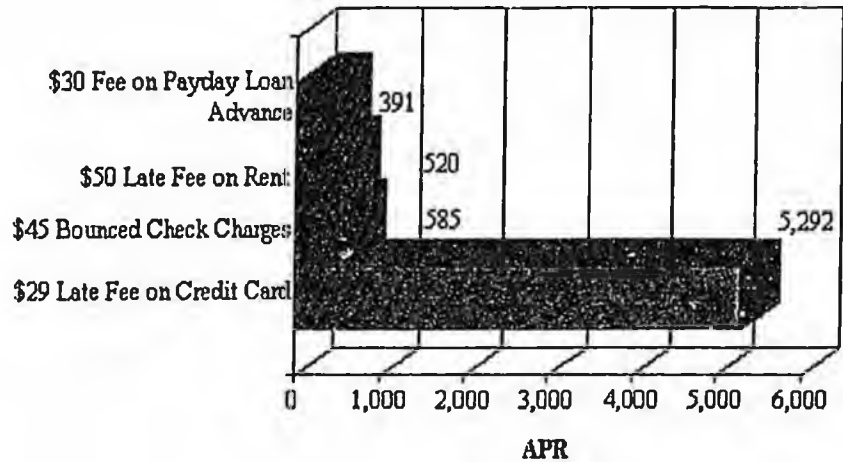
Compared to payday loans, the IRS's short-term finance options could constitute a very raw deal for many taxpayers.

And yet, the narrow-minded “nanny state” opponents of these critical payday loans contend that the annual percentage rate (APR) is just too high, and that these lenders are taking advantage of their customers. Those same critics harass the payday advance companies (and thus their customers) in numerous areas, in effect conspiring to shut down their legitimate business operations. Are they right in their assertions?

Clearly they are wrong to measure the fees paid for short-term payday loans in terms of “APR,” like you would measure a mortgage, or a car loan, or the annual interest on a continuing credit card unpaid balance. Payday lending could be compared to a taxicab ride from one side of the city to another. A short-term loan is like a short cab ride. You wouldn't hire a cab to travel across the country, and you wouldn't take out a short-term loan over and over for a year. Neither would you judge the per-mile cost of a short cab ride by the per-mile cost of a weekly rental car.

But, if APR is an accurate measure, then the alternatives faced by families every day should be judged by that same APR yardstick. Looking at that same payday advance of \$200 over two weeks, the fee would be \$30. That is expressed as a 391 percent APR. While that is still a misleading and simplistic measure, let's compare the alternatives anyway.

**Chart 1: A Comparison of
Late Fees Expressed as APR**



As Chart 1 depicts, that typical late charge on rent paid 5 days late, \$50, could be expressed as a **520 percent APR**. A bounced check bank fee (\$25) and a bad check store charge (\$20) combined is expressed as a **585 percent APR**. Finally, the \$29 per day credit card late payment fee would be expressed as an **incredible 5,292 percent APR**. According to those fair comparisons, the credit product of choice is crystal clear. The payday advance is far superior to the alternatives.

While the evidence is clear, this needed and widely-used small business continues to be attacked. Payday lenders have to contend with relentless and counterproductive do-gooders, just to stay in business. These include "consumer groups" that, in their efforts to justify their existence, unfairly target the short-term lenders as "usurers," based on the specious APR argument. These are the same consumer groups who support every government regulation, every big government program, and every effort to increase taxes, and then lament the fact that the average citizen who pays those taxes can't build substantial savings for emergencies. They would rather see a consumer pay an exorbitant IRS penalty for a late tax payment than to have them take advantage of a payday advance loan at a reasonable (much more so than the penalty) fee.

And there is no lack of hypocrisy in the media on this issue. Some editor have criticized these short-term financial tools with boundless moral outrage and indignation. Yet, while these self-styled "muckrakers" ply their trade on one page of the paper, a preceding page will feature a \$25,000 or more display ad for a credit card that charges that aforementioned \$29 a day late penalty (5,292 percent APR).

Finally, there are the politicians who are constantly striving to protect us from ourselves. Through their misguided efforts to eliminate this critical short-term solution to consumers' cash-flow shortfalls, they will bring

about the very individual and family financial disasters that payday advance customers are trying to avoid. Ironically, over-regulation and bureaucratic attempts to “structure” other portions of the lending industry have met with different fiscal disasters – for taxpayers. Who can forget, for example, the federal government’s bungling of the Savings & Loan (S&L) crisis, which was once estimated to have cost taxpayers up to \$30 billion in depositor bailouts and institutional “thrift resolutions”? The National Commission on Financial Institution Reform, Recovery, and Enforcement, a blue-ribbon panel appointed to investigate the causes of this debacle, laid much of the blame squarely on the government’s own shoulders.

In its own clumsy attempt to re-structure the marketplace, Congress created the law that chartered S&Ls as a new form of lending institution. Unfortunately, Congress also backed the S&Ls’ deposits with tax dollars. Market discipline could not prevail because Congress allowed the institutions it created to privatize profits but socialize risks. In an unsubsidized environment, S&L consumers would have helped to act as “self-regulators” against institutions that invested deposits in risky portfolios. They would either demand a better interest rate or would simply

move their deposits to a “safer” institution. But by raising the per-accrual insurance limit to \$100,000, and by failing to introduce adequate risk-based deposit insurance premiums, the Commission concluded that the government created an environment in which “depositors could benefit with no meaningful risk of financial loss.”⁶

But Congress has learned little since the S&L crisis. In another attempt to manipulate how consumers and lenders interact, lawmakers have created “Government-Sponsored Enterprises” (GSEs) like Fannie Mae and Freddie Mac. These quasi-public corporations, initially designed to facilitate greater availability of home loans, have become tax-backed competitors to truly private lenders. Worse, aside from a direct government subsidy of some \$10 billion annually, Fannie Mae and Freddie Mac currently hold \$1.1 trillion in debt at below-market interest rates, in a portfolio that the Congressional Budget Office concludes to be implicitly backed by taxpayers.⁷

Payday lenders don’t receive “deposit guarantees” from taxpayers. In the true entrepreneurial spirit of self-reliance and initiative, small community lenders have developed a product, without government interference, that many Americans find convenient and helpful. But now some state and even federal officials want to go beyond sensible business practice guidelines, and do for payday loans what they did to S&Ls and GSEs: either take them over directly and hand the bill of operations over to taxpayers, or strangle them with so many petty regulations that the overarching laws of the marketplace are forever subverted. Neither of these two outcomes should be acceptable to hard-working Americans, which is why payday loans constitute a fiscal issue in which taxpayer

advocates have a vital interest.

American taxpayers want more choices, not fewer. And they especially resent having their elected officials, the people they pay with their hard-earned taxes, take away choices that help them to survive. The National Taxpayers Union believes that, given appropriate information, consumer can make their own decisions and handle their own finances. Payday advance offers consumers a safe, convenient, and dignified financial alternative.

About the Author and the Organization

Al Cors, Jr. is Vice President for Government Affairs, National Taxpayers Union. National Taxpayers Union Vice President for Communications Pete Sepp contributed to this paper.

National Taxpayers Union is America's largest grassroots taxpayer organization and is based in Alexandria, Virginia. To find out more about our work, please visit our website (www.ntu.org).



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Notes

[1] <http://www.consumerfed.org/backpage/savings.html>, Savings and Wealth, "CFA Research Reveals Most Americans Have Built Little Wealth," February 20, 2001.

[2] North Carolina Commissioner of Banks, "Report to the North Carolina General Assembly on the Subject of Payday Lending," February 22, 2001, and North Carolina Deputy Banking Commissioner Otis Meacham writing in Marcy Lowe, Ed., *Too Much Month at the End of the Paycheck: Payday Lending in North Carolina*, Community Reinvestment Association of North Carolina, with the Center for Community Capitalism, the Frank Hawkins Kenan Institute of Private Enterprise, and the University of North Carolina-Chapel Hill, January 2001.

[3] *Payday Advance Credit in America: An Analysis of Customer Demand*, Credit Research Center, McDonough School of Business, Georgetown University, April 2001.

[4] Tax Foundation, "New Study Profiles Total Tax Burden of Median American Family," March 9, 2000, <http://www.taxfoundation.org/prmedianfamily.html>.

[5] Internal Revenue Service, Publication 17, *Your Federal Income Tax, Tax Year 2000*, and Instructions to Form 9465, "Installment Agreement Request."

[6] National Commission on Financial Institution Reform, Recovery, and Enforcement, *Origins of the S&L Debacle: A Blueprint for Reform*, July 1993.

[7] Congressional Budget Office, *Federal Subsidies and the Housing GSEs*, May 2001.

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HB

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 391
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title "An Act relating to employers and to victims of crime." RDU Legal and Advocacy Services
Sponsor Heinze Component Public Defender Agency
Requester H Labor & Commerce Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Bill will have no fiscal impact.

Prepared by: Bababara Brink Phone 465-2200
Division: Public Defender Agency Date/Time 3/24/04 1:40 PM
Approved by: Mike Miller, Commissioner Date 3/24/2004
Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 391
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title "An Act relating to employers and to victims of crime." RDU Legal and Advocacy Services
Component Office of Public Advocacy
Sponsor Heinze
Requester H Labor & Commerce Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Bill will have no fiscal impact.

Prepared by: Josh Fink Phone 465-2200
Division Office of Public Advocacy Date/Time 3/24/04 1:39 PM
Approved by: Mike Miller, Commissioner Date 3/24/2004
Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 391
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to employers and to victims of crime." RDU Centralized Administrative Services
 Component Personnel
 Sponsor Heinze
 Requester H Labor & Commerce Component No. 56

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Bill will have no fiscal impact.

Prepared by: Dianne Corso, Director Phone 465-2200
 Division: Personnel Date/Time 3/24/04 1:37 PM
 Approved by: Mike Miller, Commissioner Date 3/24/2004
 Agency: Administration

Alaska State Legislature



Representative Cheryll Heinze

Sponsor Statement HB 391

“An Act relating to employers and to victims of crime.”

HB 391 will prevent employers of victims from punishing or interfering with victims attending criminal proceedings.

This legislation allows victims to attend a criminal proceeding relating to the crime at which the victim has a right to be present. It amends AS 12.61.017 to include protection from penalizing victims for attending any criminal proceeding at which they have a right to be present, instead of solely when the victim is requested or subpoenaed by the prosecuting attorney for the purpose of giving testimony.

Alaskans have a statutory right “To be present during any proceeding in...the prosecution and sentencing of a defendant if the defendant has the right to be present, including being present during testimony even if the victim is likely to be called as a witness.” (AS 12.61.010). And the constitutional right to “...be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present.” This bill would make sure that the people of Alaska are able to take advantage of these rights without suffering retribution from their employers.

Currently 80% of the states in the US have laws pertaining to the rights of victims to attend relevant court proceedings and preventing employers from punishing them for doing so.

Alaska Statutes relating to employers of victims of crime:

Sec. 12.61.017. Interference by victim's employer.

(a) An employer may not penalize or threaten to penalize a victim because the victim is subpoenaed or requested by the prosecuting attorney to attend a court proceeding for the purpose of giving testimony. In this subsection, "penalize" means to take action affecting the employment status, wages, and benefits payable to the victim, including

(1) demotion or suspension;

(2) dismissal from employment; and

(3) loss of pay or benefits, except pay and benefits that are directly attributable to the victim's absence from employment to attend the court proceeding.

(b) A person who violates (a) of this section is guilty of a violation.

(c) A victim who suffers a pecuniary loss as a result of an employer's act prohibited by this section may bring a civil action to recover actual damages and punitive damages of three times the actual damages sustained.

Alaska Constitutional Amendment regarding crime victims:

Section 1.24 - Rights of Crime Victims.

Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present*; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

* Underlining added for emphasis, not part of original text.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

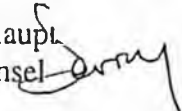
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 26, 2004

SUBJECT: Sectional Summary - HB 391 (Work Order No. 23-LS1488\A)

TO: Representative Cheryl Heinze
Attn: Jon

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 amends AS 12.61.017 by adding a new subsection (b) requiring an employer, as defined in this subsection, to allow an employee who is a crime victim to take leave from employment to attend criminal proceedings relating to the crime. An employer who fails to comply with this subsection may be liable for monetary damages as provided in the section.

GPL:med
04-081.med

LEGISLATIVE RESEARCH REPORT

JANUARY 26, 2004



REPORT NUMBER 04.110

EMPLOYMENT RIGHTS FOR VICTIMS OF CRIMES

PREPARED FOR REPRESENTATIVE CHERYLL HEINZE

BY KATHLEEN L. WAKEFIELD, LEGISLATIVE ANALYST

You asked about the rights of victims to attend criminal proceedings relating to the crime committed against them. Specifically, you wished to know of any statutes or legislation from other states that protect victims' rights to attend trials concerning them, and how many victims have been prevented from or penalized for attending such proceedings. We contacted the following organizations for information: the Alaska Violent Crimes Compensation Board, the Bureau of Justice Statistics, the Council of State Governments, the Center for Law and Social Policy, the National Center on Poverty Law, the National Center for Victims of Crime, the National Conference of State Legislators (NCSL), the National Consortium for Justice Information and Statistics, the National Crime Victims Law Institute, the National Crime Victims Bar Association, the National Criminal Justice Association, the National District Attorneys Association, and the Office for Victims of Crime with the U.S. Department of Justice. We also searched Findlaw for pertinent court cases, and Lexis for applicable state statutes.

According to NCSL, most states (about 80 percent) have enacted statutory provisions for victims of crimes that allow them the right to attend relevant court proceedings.¹ These laws prohibit employers from firing, disciplining, penalizing, threatening or coercing employees who are victims, or whose family members are victims, and who leave work to attend court proceedings. For example,

- ◆ In Arizona, an employer with 50 or more workers, or the employer's agent, must allow an employee who is the victim of a crime to leave work to attend court proceedings stemming from the crime. The employer may not discharge the employee nor will the employee lose seniority. The employer is not required to compensate the employee for time off, except that an

¹ Personal communication, Sarah Brown, National Conference of State Legislatures, January 22, 2004. Ms. Brown can be reached at 303-364-7700.

employee may be required, or may choose, to use his or her accrued leave (Arizona Revised Statutes § 13-4339).

- ◆ In **California**, an employer must allow an employee who is the victim of a crime (or an immediate family member, spouse, or domestic partner of a victim) to be absent from work to attend judicial proceedings related to the crime. An employer may not discharge, demote, suspend, threaten, or discriminate against an employee victim who is absent from work for these purposes (California Labor Code § 230, 230.2).
- ◆ In **Maryland**, a victim may not be deprived of employment solely because of job time lost because the person attended a judicial proceeding associated with the crime (Maryland Code Annotated, Criminal Procedure § 11-302).
- ◆ In **Michigan**, an employer may not discharge or discipline, or threaten to discharge or discipline, an employee victim who is subpoenaed or requested by the prosecuting attorney to attend court for the purposes of giving testimony. An employer who does so is guilty of a misdemeanor punishable by up to 90 days in prison or a fine of not more than \$500. The employer may also be punished for contempt of court (Michigan Compiled Laws § 780.62).
- ◆ In **Montana**, an employer may not discharge or discipline a victim or a member of the victim's family for being absent from work at the prosecution's request to prepare for or attend a criminal proceeding (Montana Code Annotated § 46-24-205).
- ◆ In **Ohio**, an employer may not discharge, discipline, or otherwise retaliate against a victim, a member of the victim's family, or a victim's representative for preparation for or attendance at a criminal or delinquency proceeding at the prosecution's request (Ohio Revised Code § 2930.18).

We include copies of these statutes as Attachment A, as well as a list provided by NCSL that gives a brief description of applicable laws in various states (but does not include statutory citations). In addition, we include two reports from the Office for Victims of Crime (OVC) as Attachment B: *The Crime Victim's Right to Be Present*, and *Victims' Rights Compliance Efforts: Experiences in Three States*. You may also wish to visit OVC's website to view information they have developed for National Crime Victims' Rights Week in April, at <http://www.ojp.usdoj.gov/ovc/ncvrrw/2004/welc:ome.html>.

You also asked about statistics regarding victims of crimes who have been penalized for or prevented from attending court cases dealing with the crimes. Although we found a variety of statistics on victims of crime, we were unable to find the specific information you requested. According to Susan Browne, administrator of the Alaska Violent Crimes Compensation Board (VCCB), employers do sometimes deny employee victims time to attend criminal proceedings,

but, in her experience, "it doesn't happen very often."² Ms. Brown said the VCCB is more likely to know when a victim has been allowed unpaid leave for trials or hearings, because then the board compensates the person for the time off through the Crime Victim Compensation Program.³

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

² Personal communication, Susan Browne, Administrator, Violent Crimes Compensation Board, Alaska Department of Administration, January 26, 2004. Ms. Browne also said that sometimes an employee doesn't want the employer to know they have been the victim of a crime. She can be reached at 907-465-3040.

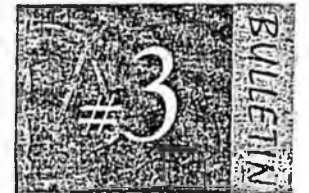
³ The Crime Victim Compensation Program, authorized by the 1984 federal Victims of Crime Act, reimburses victims for crime-related expenses such as medical costs and lost wages, after other financial resources (such as private insurance and restitution from offenders) are exhausted.



NOVEMBER 2001

THE CRIME VICTIM'S RIGHT TO BE PRESENT

LEGAL SERIES



Message From THE DIRECTOR

Over the past three decades, the criminal justice field has witnessed an astounding proliferation of statutory enhancements benefiting people who are most directly and intimately affected by crime. To date, all states have passed some form of legislation to benefit victims. In addition, 32 states have recognized the supreme importance of fundamental and express rights for crime victims by raising those protections to the constitutional level.

Of course, the nature, scope, and enforcement of victims' rights vary from state to state, and it is a complex and often frustrating matter for victims to determine what those rights mean for them. To help victims, victim advocates, and victim service providers understand the relevance of the myriad laws and constitutional guarantees, the Office for Victims of Crime awarded funding to the National Center for Victims of Crime to produce a series of bulletins addressing salient legal issues affecting crime victims.

The Crime Victim's Right To Be Present, the third in the series, provides an overview of state laws addressing the rights of victims to attend criminal justice proceedings, particularly trials, and how their presence might affect the rights of defendants. This bulletin and the others in the Legal Series highlight

Continued on page 2

Introduction

For crime victims and their families, the right to be present during criminal justice proceedings is an important one. Victims want to see justice at work. They want to hear counsel's arguments and view the reactions of the judge, jury, and defendant. Most state victims' rights constitutional amendments and statutory victims' bills of rights give victims the right to be present during proceedings.

Status of the Law

Thirty-nine states give crime victims the right to attend criminal justice proceedings, including trials. However, most of these states impose limitations on that right. The restrictions stem from concern that a victim's right to attend proceedings may conflict with the rights of the accused. Thus, victims are often given a right to be present only "to the extent that it does not interfere with the rights of the accused" or is "consistent with the rules of evidence."

The "rule on witnesses," generally Rule 615 of a state's Rules of Evidence, was developed to limit the possibility that a witness might be influenced by hearing the testimony of other witnesses or the arguments of counsel. Thus, to ensure a fair trial, witnesses are excluded—sequestered—from the criminal trial except during their testimony. This rule does not apply to a defendant, who is exempted as a party to the case.

Judges often apply the rule on witnesses by looking only at one side of the equation—protecting the interests of the defendant by excluding the prosecution's witnesses. They fail to consider the legitimate interest of the victim of an offense—who often is also a witness in the case—in attending and observing the proceedings. In practice, defense counsel need only list victims and/or their family members as potential witnesses to have them excluded from the trial. As a result, this rule often allows victims and family members to be excluded even when they have little, or no, relevant testimony to offer.

Eight states—Alabama, Alaska, Arizona, Arkansas, New Hampshire, Oregon, South Carolina, and Utah—generally exempt crime victims from sequestration as witnesses. However, Arkansas, New Hampshire, South Carolina, and Utah still permit the court to

OVC

Crafting a Compromise

Several states have attempted to draft statutes that encourage courts to limit the application of sequestration rules. Wisconsin's law states that exclusion of a victim to preserve a defendant's right to a fair trial must be based on something more than the fact that the victim would be present during the testimony of other witnesses.¹⁶ Florida's law requires the court to determine that the victim's presence would be prejudicial; the victim cannot be excluded merely because he or she is subpoenaed to testify.¹⁷

Delaware and Wyoming require the defendant to show good cause to exclude the victim.¹⁸ In several other states, the court cannot exclude a victim unless it determines that the victim's testimony "would be materially affected" if he or she were to hear the testimony of other witnesses.¹⁹ Virginia recently strengthened its law giving victims a right to attend, providing that a crime victim "shall not be excluded unless the court determines, in its discretion, the presence of the victim would *substantially impair* the conduct of a fair trial."²⁰ [Emphasis added by author.]

In other states, courts are encouraged to craft compromises based on the context of a particular case. For example, North Carolina requires the court to "make every effort to permit the fullest attendance possible for the victim" without interfering with the defendant's right to a fair trial.²¹ California's statute provides detailed instructions to the court in this regard, stating that any order of sequestration must allow the victim to be present whenever possible. The party moving for the victim's exclusion must demonstrate "a substantial probability that overriding interests will be prejudiced by the presence of the victim."²² The statute gives examples of such "overriding interests," including the defendant's right to a fair trial and the protection of witnesses from harassment and physical harm. The court is required to consider reasonable alternatives to excluding the victim, and the victim must be heard at any hearing regarding exclusion. The court also must make specific factual findings that support any victim exclusion.²³

In many cases, accommodating the interests of both the defendant and the crime victim may be possible. Often, a crime victim has made pretrial statements, or has even been deposed, regarding the facts of the case. Such prior statements reduce the likelihood that victims/witnesses will alter their testimony, regardless of any intervening influence. If the victim/witness does give conflicting information while on the stand, defense counsel

in the case could confront the victim with the earlier statement. The judge or jury then would have to consider any variation in such testimony when assessing the credibility of the victim. The Utah Supreme Court noted that "inconsistent statements of witnesses, whether they be by the actual victim or others, are in many cases simply a credibility factor that the finder of fact must weigh in determining the outcome."²⁴ Alternatively, a victim could testify first and then remain in the courtroom for the duration of the proceedings.

Although a victim may have a right to be present in the courtroom and may even be exempted from the rule on witnesses, the victim's right to attend is not absolute. The court retains discretion to control courtroom decorum. The judge can order a crime victim (or even a defendant) who is disruptive or violent to be removed from the courtroom.²⁵

Unlike some other victims' rights, the right to attend criminal justice proceedings, especially the right to attend the trial, generally does not involve an administrative burden. Most often, the crime victim is a witness in the case and thus, to testify, will be notified of the date and time of proceedings. Victims generally have the right to be notified of all public court proceedings on request—even if they are not witnesses—so the right to attend proceedings does not imply an additional burden of notification. Rather, large-scale implementation of the victim's right to attend appears to have been restricted by the presumption that allowing a victim/witness to remain in the courtroom violates the right of the defendant to a fair trial. As illustrated above, such a presumption may be unwarranted.

Current Issues

Sitting at the Counsel Table

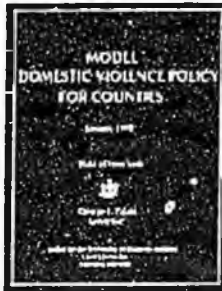
Many victims want the right to sit at the counsel table with the prosecutor during proceedings. Only Alabama's law affirmatively gives victims this right.²⁶ In contrast, Louisiana's court rule specifically prohibits the victim from sitting at the counsel table.²⁷

Case law indicates courts generally do not allow victims to sit at the counsel table. In an Arkansas case, a conviction was overturned because the court found that allowing a robbery victim to sit at the counsel table during the trial may have unfairly prejudiced the defendant.²⁸ However, that same year, a California case found that allowing the victim to sit at the counsel table did not prejudice the defendant's right to a fair trial. The court was

6. IDAHO CONST. art. I, § 22; IDAHO CODE § 19-5306 (Michie 1999).
7. N.M. CONST. art. II, § 24; N.M. STAT. ANN. § 31-26-4 (Michie 2000).
8. LA. CODE EVID. ANN. 615 (West 2000); MD. ANN. CODE art. 27, § 773 (2001); MICH. STAT. ANN. §§ 28.1287(761), (789), (821) (Law. Co-op. 2000); NEV. REV. STAT. § 171.204 (2001); S.D. CODIFIED LAWS § 19-14-29 (Michie 2001); WASH. REV. CODE § 7.69.030 (2000).
9. WASH. REV. CODE § 7.69.030 (2000).
10. ALASKA STAT. § 12.61.010 (Michie 2000).
11. ALASKA R. EVID. 615.
12. *State v. Beltran-Felix*, 294 Utah Adv. Rep. 3, 12, 922 P.2d 30, 35 (Utah Ct. App. 1996).
13. *State v. Fulminante*, 195 Ariz. 485, 975 P.2d 75, 92 (1999).
14. *Gabriel v. State*, 925 P.2d 234, 236 (Wyo. 1996).
15. *People v. Ramer*, 17 Cal. App. 4th 672, 679, 21 Cal. Rptr. 2d 480 (5th Dist. 1993), *review denied, op. withdrawn by order of ct., People v. Ramer*, 24 Cal. Rptr. 2d 237, 860 P.2d 1183 (1993).
16. WIS. STAT. § 906.15 (2001).
17. FLA. STAT. § 960.001 (2000).
18. DEL. CODE ANN. tit. 11, § 9407 (2000); WYO. STAT. ANN. § 1-40-206 (Michie 2000).
19. CONN. CONST. amend. XVII(b). See also ILL. CONST. art. I, § 8.1, 725 ILL. COMP. STAT. § 120/4 (2001); MASS. GEN. LAWS ch. 258B, § 3 (2001); TEX. CONST. art. I, § 30; 42 U.S.C. § 10606 (2001).
20. VA. CODE ANN. § 19.2-265.01 (Michie 2000).
21. N.C. GEN. STAT. § 15A-832 (2000).
22. CAL. PENAL CODE § 1102.6 (Deering 2001).
23. *Id.*
24. *State v. Beltran-Felix*, 294 Utah Adv. Rep. 14 n.6, 922 P.2d 35 (quoting *State v. Rangel*, 866 P.2d 607, 612 n.6 (Utah Ct. App. 1993)).
25. For example, ALA. CODE § 15-14-54 (2000); MD. ANN. CODE art. 27, § 773 (2001); UTAH R. EVID. 615.
26. ALA. CODE § 15-14-53 (2000).
27. LA. CODE EVID. ANN. art. 615 (West 2000).
28. *Mask v. State*, 314 Ark. 25, 869 S.W.2d 1 (1993).
29. *People v. Ramer*, *supra*, note 15.
30. For example, see UTAH CODE ANN. § 77-38-2 (2000).
31. WIS. STAT. § 950.04 (2000).
32. ARK. CODE ANN. § 16-90-1103 (Michie 1999); CAL. PENAL CODE § 1102.6 (Deering 2000); COLO. REV. STAT. § 24-4.1-303 (2001); DEL. CODE ANN. tit. 11, § 9407 (2000); 725 ILL. COMP. STAT. § 120/4.5 (2001); IOWA CODE § 915.20 (2001); K. REV. STAT. ANN. § 421.575 (Banks-Baldwin 1999); NEV. REV. STAT. § 178.571 (2001); N.H. REV. STAT. ANN. § 516:7-a (2000); OHIO REV. CODE ANN. § 2930.09 (Anderson 2001); WIS. STAT. § 950.04 (2000).
33. ORLA. STAT. tit. 19, § 215.33 (2000).
34. N.H. REV. STAT. ANN. § 516:7-ii (2000).

The OVC Legal Series bulletins were created by the National Center for Victims of Crime (NCVC) under grant number 1999-VF-GX-K007 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this bulletin are those of the author/NCVC and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.



[Return to Contents](#)

Employers

Model Domestic Violence Policy for Counties



- [Victim Safety and Self-determination](#)
- [Abuser Accountability](#)
- [Systems' Responsibility](#)

The responsibility of employers to respond effectively to victims and perpetrators of domestic violence in their employ extends to employers across all systems. Public agencies, with the active involvement of employee unions and other employee organizations, should ensure that existing employee assistance programs, work/family and health benefits, security and supervisory policies, and/or workplace violence policies apply to and are responsive to the needs of victims of domestic violence, and should encourage all agencies with which they contract to do the same. Because employers' responses must be consistent with existing collective bargaining agreements, employers should also encourage labor unions to develop union policy and to adopt contract language that addresses domestic violence.

Research suggests that as many as 74% of working battered women are harassed by their abusive partners on the job; and, of them, each year 45% miss at least 18 days of work; 56% are late for work on at least 60 days; and 28% leave early on at least 60 days.(20) Another study found that 20% of working battered women lose their jobs altogether.(21) Battered women consistently identify the lack of financial resources as a primary obstacle to separating from their abusive partners. For working women, battering can further weaken their financial security by compromising their ability to perform and keep their jobs.

In addition, on-the-job harassment of employees by abusive partners may also threaten the safety of co-workers at the job site. Protecting the health and safety of all employees is in the interest of both employer and employee, reducing unnecessary turnover and abuse-related costs to the victim and co-workers, and enhancing continued employee well-being and productivity. Having well-defined responses to domestic violence in the workplace will also better protect employers from potential liability. Whether employers are large or small, have an Employee Assistance Program (EAP) or not, security staff or not, the policy recommendations that follow should provide useful guidance.


In addition to incorporating the recommendations outlined in the *Guiding Principles* into their responses to domestic violence, employers should also integrate the following recommendations specific to employers. The following policy recommendations do not necessarily require the development of new, domestic violence-specific policies or programs. Evaluation and modification of existing policies may be all that's required.

1. VICTIM SAFETY AND SELF-DETERMINATION

- a. Employers should actively promote health and wellness programs that increase awareness of the problem and inform employees of available

sources of assistance, including workplace personnel who are trained and available to serve as confidential sources of information, support, and referral to local domestic violence service providers.

Battered women often legitimately fear that there will be negative consequences if they disclose to their employers that they are victims of domestic violence. Employers' first responsibility, therefore, is to create an environment of support and safety for victims to come forward. Health promotion can take many forms, including the availability of written information in private locations such as women's rest rooms, prominent display of posters informing employees of available assistance for domestic violence, inclusion of information on domestic violence in new employees' benefit packages, Employee Assistance Programs in the workplace, available support from union and labor representatives, distribution of brochures/handbooks/flyers on domestic violence to all employees, articles about domestic violence in agency publications, and lunch-time informational programs.

-  b. **When an employee needs to be absent from work as a result of being a victim of domestic violence, such as for medical care, counseling, criminal and/or civil court proceedings, legal consultation, or relocation, employers should maximize the employee's options in order to prevent loss of wages.**

Effective November 1, 1996, Chapter 331 of the Laws of 1996 made it a crime for employers to penalize an employee who, as a victim or witness of a criminal offense, is required or chooses to appear as a witness, consult with the district attorney, or to exercise his/her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law. The law requires employers, with prior day notification, to allow time off for victims or witnesses to pursue legal action related to domestic violence.

In addition to compliance with the law, however, employers should allow employees to use accrued time off, including personal, sick, and vacation time, if necessary. Where shift work, flexible schedules, or compressed work weeks are feasible, employees should be given these options. Employers should also review and, if necessary, modify any existing Family Leave policies to ensure that leave for reasons due to domestic violence is clearly and specifically permitted.

When employer policies require employees to submit documentation to justify their requests for these benefits, employers should be aware that victims of domestic violence often lack such documentation, such as orders of protection, medical records, or police reports. Further, employers should not require an employee to obtain these specific kinds of documentation because making a police report or petitioning for an order of protection may not be viable, safe, or desirable options for any particular victim. Instead, employers should consult with the employee to identify what documentation she might have or be able to get that won't compromise her safety-related needs and that will satisfactorily meet the documentation requirement of the employer.

- c. **Employers should allow an employee who is a victim of domestic violence and leaves a spouse (or domestic partner, if covered), to make changes in benefits at any time during a calendar year and should expedite the process for the employee to make changes in payroll processing.**

When victims of domestic violence separate from their abusive partners, with or without a



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Utah

[LOCAL LINKS](#)



- A state Constitutional Amendment for Victims' Rights was passed in November, 1994.
- The amendment was passed by 68% of voters.

Amendment Text:

ARTICLE I, SECTION 28 – DECLARATION OF THE RIGHTS OF CRIME VICTIMS

1. To preserve and protect victims' rights to justice and due process, victims of crimes have these rights, as defined by law:

- a. To be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process;
 - b. Upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging a crime has been publicly filed in court; and
 - c. To have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character and conduct of a person convicted of an offense except that this subsection does not apply to capital cases or situations involving privileges.
2. Nothing in this section shall be construed as creating a cause of action for money damages, costs, or attorney's fees, or for dismissing any criminal charge, or relief from any criminal judgment.
 3. The provisions of this section shall extend to all felony crimes and such other crimes or acts, including juvenile offenses, as the Legislature may provide.
 4. The Legislature shall have the power to enforce and define this section by statute.

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Maryland



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- Maryland is a Victims' Rights Educational Project (VREP) site.
- A state Constitutional Amendment for Victims' Rights was passed in November, 1994.
- The amendment was passed by 92% of voters.

Amendment Text:

ARTICLE 47

(A) A victim of crime shall be treated by agents of the state with dignity, respect, and sensitivity during all phases of the criminal justice process.

(B) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceedings, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law.

(C) Nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding.

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Florida



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- Florida is a Victims' Rights Educational Project (VREP) site.
- A state Constitutional Amendment for Victims' Rights was passed in November, 1988.
- The amendment was passed by 90% of voters.

Amendment Text:

ARTICLE I, SECTION 16 – RIGHTS OF ACCUSED AND OF VICTIMS
(a) [pertains to rights of the accused]

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

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Colorado

[LOCAL LINKS](#)



- A state Constitutional Amendment for Victims' Rights was passed in November, 1992.
- The amendment was passed by 86% of voters.

Amendment Text:

ARTICLE II, SECTION 16a – RIGHTS OF CRIME VICTIMS

Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages", shall be defined by the General Assembly.

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Arizona



LOCAL LINKS

- A state Constitutional Amendment for Victims' Rights was passed in November, 1990.
- The amendment was passed by 58% of the voters.

Amendment Text:

- (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
 2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
 3. To be present at, and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
 4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
 5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
 6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
 7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
 8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
 9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
 10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
 11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
 12. To be informed of victims' constitutional rights.

(B) A victims' exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative except if the person is in custody for an offense or is the accused.

(D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect



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Missouri

[LOCAL LINKS](#)



- A state Constitutional Amendment for Victims' Rights was passed in 1992.
- The amendment was passed by 84% of voters.

Amendment Text:

ARTICLE I, SECTION 32

1. Crime victims, as defined by law, shall have the following rights, as defined by law:

- a. The right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult;
- b. Upon request of the victim, the right to be informed of and heard at guilty pleas, bail hearings, sentencing, probation revocation hearings, and parole hearings, unless in the determination of the court the interests of justice require otherwise;
- c. The right to be informed of trials and preliminary hearings;
- d. The right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law;
- e. The right to the speedy disposition and appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare his defense;
- f. The right to reasonable protection from the defendant or any person acting on behalf of the defendant;
- g. The right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration; and
- h. The right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime.

2. Notwithstanding section 20 of article I of this Constitution, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the court may deny bail or may impose special conditions which the defendant and surety must guarantee.

3. Nothing in this section shall be construed as creating a cause of action for money



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Michigan



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- Michigan is a Victims' Rights Educational Project (VREP) site.
- A state Constitutional Amendment for Victims' Rights was passed in November, 1988.
- The amendment was passed by 80% of voters.

Amendment Text

Please click here for a [dictionary](#) of terms used in these statutes. Please note that some states use different terms. If you need help understanding a right or the terms used, please [contact](#) NVCAN staff, and they will be happy to help you.

ARTICLE I, SECTION 24 – RIGHTS OF CRIME VICTIM; ENFORCEMENT; ASSESSMENT AGAINST CONVICTED DEFENDANTS

1. Crime victims, as defined by law, shall have the following rights, as provided by law:
 - The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
 - The right to timely disposition of the case following the arrest of the accused.
 - The right to be reasonably protected from the accused throughout the criminal justice process.
 - The right to notification of court proceedings.
 - The right to attend trial and all other court proceedings the accused has the right to attend.
 - The right to confer with the prosecution.
 - The right to make a statement to the court at sentencing.
 - The right to restitution.
 - The right to information about the conviction, sentence, imprisonment, and release of the accused.

2. The legislature may provided by law for the enforcement of the section.

3. The legislature may provided for an assessment against convicted defendants to pay for crime victims' rights.

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HB

402

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 28, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: February 25, 2004

The LABOR AND COMMERCE Committee considered:

HB 402

HOUSE BILL NO. 402

LABOR & WORKFORCE DEVELOPMENT FEES

"An Act relating to fees for the inspection of recreational devices, for certificates of fitness for electrical wiring and plumbing, for filing voluntary flexible work hour plans, and for licenses for boiler operators; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 402 (LSC)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REY
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LWF	1	X		
LWF	2	X		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	CRAWFORD	X			
	LYNN GATTO	X			
	ROKEBERG			X	
	DAHLSTROM			X	
	GUTTENBERG				
Chair:	ANDERSON	X			
Chair:					

Amendment #1 (conceptual)

TO HB 402 23-GH2111\A

OFFERED IN THE HOUSE BY REP. ROKEBERG

The Department will waive any inspection fees for businesses who use National Certified Inspectors under this section.

u/k

23-GH2111A.1
Bannister
2/27/04

AMENDMENT #2

OFFERED IN THE HOUSE

TO: HB 402

- 1 Page 1, line 2:
- 2 Delete "for filing voluntary flexible work hour plans,"
- 3
- 4 Page 2, lines 6 - 9:
- 5 Delete all material.
- 6
- 7 Renumber the following bill sections accordingly.

ALASKA STATE HOUSE OF REPRESENTATIVES


716 W. 4th Ave
Anchorage, AK 99501
Room 610



Phone (907)-269-0265
Fax# (907)-269-0264

Representative Tom Anderson

FACSIMILE

To: Legislative Legal Fax: 2029
From: Josh Applebee  Date: 3/18/2004
Re: Amendments to HB 402 *3 pages*
CC:

Urgent For Review Please Comment Please Reply Please Recycle

Good morning,

Attached please find the two amendments adopted by the House Labor & Commerce Committee to HB 402. Amendment #1 is conceptual and if additional explanation is needed, please call. Amendment #2 was drafted by your department and seems pretty straight forward.

-Josh Applebee

x4954

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 402

1 Page 1, line 2:

2 Delete "for filing voluntary flexible work hour plans,"

3

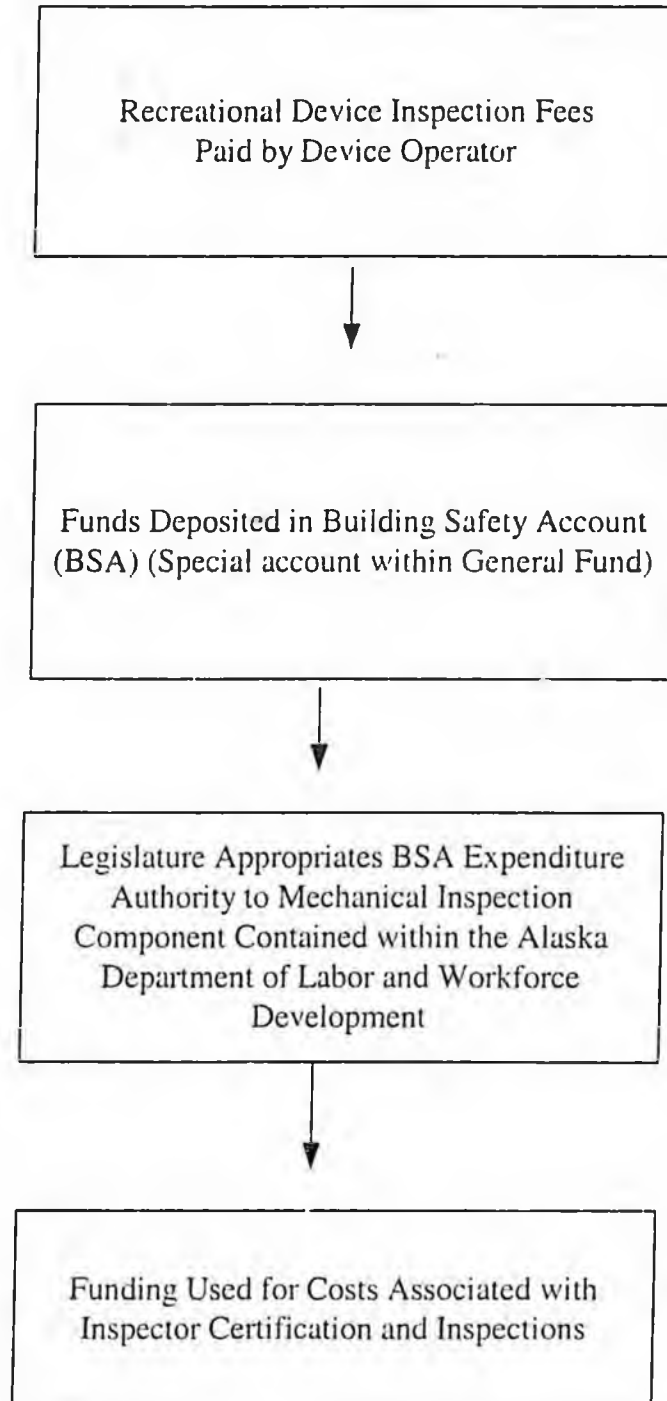
4 Page 2, lines 6 - 9:

5 Delete all material.

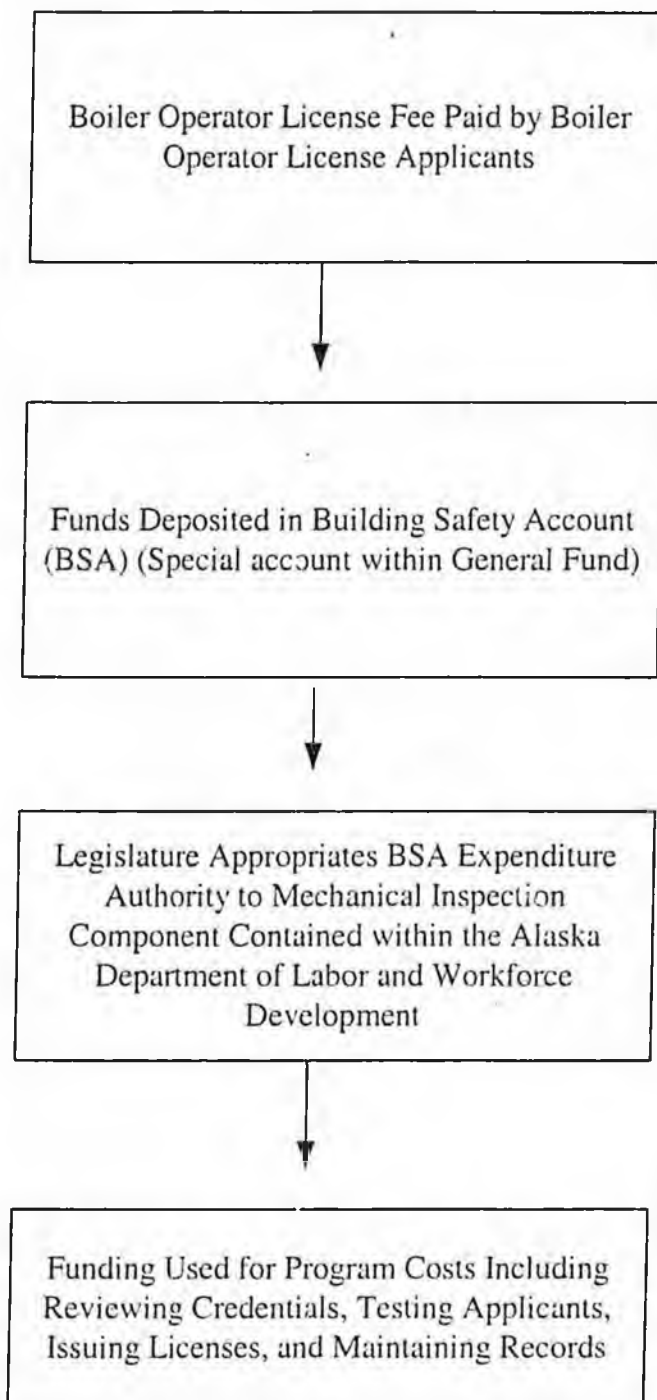
6

7 Renumber the following bill sections accordingly.

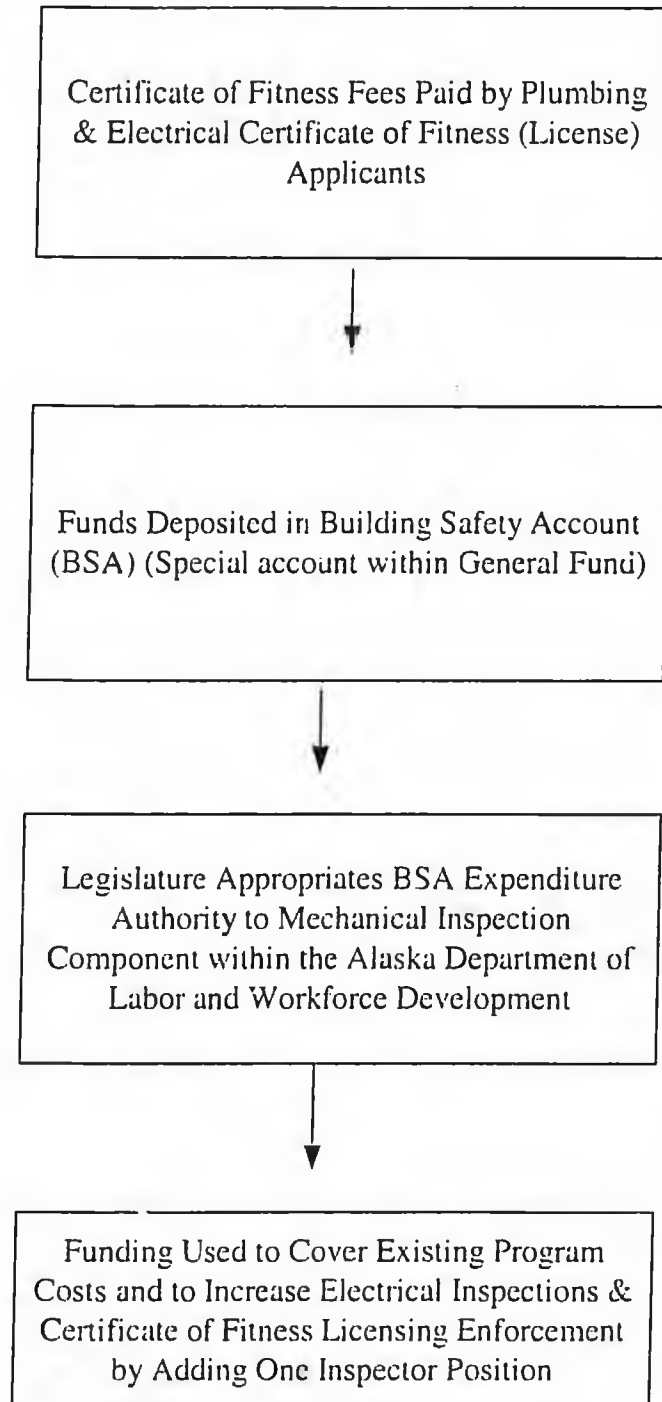
HB 402
Fee Flow Chart for House Labor
and Commerce Committee
Section 1: Recreational Device
Inspection Fee



HB 402
Fee Flow Chart for House Labor
and Commerce Committee
Section 2: Boiler Operator License
Fee



HB 402
Fee Flow Chart for House Labor
and Commerce Committee
Section 3: Electrician & Plumber
Certificate of Fitness Fee Increase



HB 402
Fee Flow Chart for House Labor
and Commerce Committee
Section 4: Flex Plan Filing Fee

