

Mission Ministry- Issue Resources Payday Lending in Kentucky

The following are ideas and resources to help individuals and congregations become informed and respond to the issue of Payday Lending in Kentucky and its effect on payday-loan borrowers. Some of these resources do not necessarily reflect the policies of Transylvania Presbytery and/or the Presbyterian Church (USA).

Current Kentucky Law:

The current Kentucky law allows payday lenders to provide loans to Kentucky citizens that are considered usurious by most measures of religious and moral standards.

This is a link to the law as it is currently stated in Kentucky Revised Statutes, Chapter 386, Subtitle 9, relating to payday lending.

<http://www.lrc.ky.gov/statutes/chapter.aspx?id=38642>

The Issue and its Legal History in Kentucky:

The history of payday-lending law in Kentucky has changed since its inception in 1992. The following is that history as outlined by Anne Marie Regan of the ***Kentucky Equal Justice Center***.

"History of Payday Lending in Kentucky

- 1992 – Kentucky legislature passed HB 747 which enacted KRS Chapter 368. This bill required check cashing businesses to be licensed by Department of Financial Institutions (DFI). The bill also allowed check cashers to charge an unspecified fee for cashing a check, which would not be considered interest. Bill does not mention deferred deposit businesses.
- 1992-1998 – DFI failed to promulgate any regulations specifying maximum check-cashing fees. DFI interpreted HB 747 to include deferred deposit businesses. Deferred deposit businesses began engaging in deferred deposit transactions without any service fee or interest fee limit.
- 1997 – United States District Court in E.D. Kentucky issued opinion (Hamilton v. York, 987 F. Supp. 953) finding that a check cashing company, which held checks for 2 weeks for a 20% "fee", was actually engaging in interest-bearing loans, and was subject to Kentucky's usury limits under KRS 360.010. The

general usury law, KRS 360.010 sets the legal rate of interest at eight percent (8%) per annum, but for loans up to \$15,000, the parties may agree in writing to a rate not to exceed four percent (4%) in excess of the Federal Reserve Bank discount rate on ninety (90) day commercial paper or nineteen percent (19%), whichever is less. All loans are subject to this limit unless otherwise authorized by statute. Consumer Loan Companies can charge a maximum of 36% per annum on small consumer loans up to \$15,000. KRS 286.4-530.

- 1998 – Kentucky legislature passed HB 266, which for the first time allowed deferred deposit transactions to come within the purview of the check cashing statute, KRS Chapter 368. HB 266 capped the “service fees” a deferred deposit licensee could charge at \$15 per \$100.
- 1999 – Supreme Court of Kentucky issued advisory opinion to U.S. District Court, E.D. Ky. (*White v. Check Holders, Inc.*, 996 S.W.2d 496) finding that the 1992 Act did not authorize deferred deposit transactions, and that these businesses were not exempt from the general usury laws. The Court also found that deferred deposit businesses for the first time came under the purview of KRS Chapter 368 and DFI regulation when HB 266 was passed in 1998.
- In 2010, the payday loan law was amended to create a real-time database, designed to enforce the 2 loan limit up to \$500 and to monitor how serious a problem payday lending had become. This Act did not change the \$15 per \$100 “service fees” permitted by payday lenders, which **on an annual basis add up to 400% APR** (compiler’s bolding). Other efforts to amend the payday lending laws, by increasing the loan amount limit to \$1000 and to authorize internet payday lending, have been rejected.

KRS Chapter 368 has since been re-codified as KRS Chapter 286, Subtitle 9.”

Kentucky Legislative Links:

Here is a link to the 2014 proposed Kentucky Senate Bill 32, a bill restricting payday lenders in Kentucky to a per-annum interest rate of 36 percent. The bill, however, failed to make it to the chamber floor <http://www.lrc.ky.gov/record/15RS/SB32.htm>

In 2014, there were a large number of Kentucky faith communities and organizations that supported Kentucky Senate Bill 32 and reasonable regulation of payday loans in Kentucky. These organizations are listed below:

Faith Communities

African Methodist Episcopal Church Kentucky Conference	Episcopal Church Diocese of Kentucky
African Methodist Episcopal Church West Kentucky Conference	Jewish Community Relations Council (Louisville)
African Methodist Episcopal Zion Church Mid-West Episcopal District	Kentucky Baptist Convention Kentucky Baptist Fellowship
BUILD (Building a United Interfaith Lexington through Direct Action)	Kentucky Council of Churches Presbyterian Church U.S.A. Mid-Kentucky Presbytery
Catholic Charities of Louisville	Presbyterian Church U.S.A. Transylvania Presbytery
Catholic Conference of Kentucky	Presbyterian Church U.S.A. Western Kentucky Presbytery
CLOUT (Citizens of Louisville Organized United Together)	Roman Catholic Church Archdiocese of Louisville
Consolidated District of the General Association of Baptists in Kentucky	Roman Catholic Church Diocese of Covington
Christian Church (Disciples of Christ)	Roman Catholic Church Diocese of Lexington
Christian Methodist Episcopal Church 2nd Episcopal District	Roman Catholic Church Diocese of Owensboro
Cumberland Presbyterian Church	St. Vincent De Paul

United Church of Christ
Indiana/Kentucky Conference

United Church of Christ Ohio
Conference

United Methodist Church
Kentucky Annual Conference

United Methodist Church
Memphis Conference

Union Church in Berea Kentucky

Central Kentucky Housing and
Homeless Initiative

Central Kentucky Coalition for
Peace and Justice

Coalition for the Homeless

Community Action Kentucky

United Methodist Church Red
Bird Missionary Conference

Organizations

AARP Kentucky

Barren River Area Safe Space

Barren River Asset Building
Coalition

Bell-Whitley CAA

Bethany House Abuse Shelter

Bluegrass Domestic Violence
Program

Brighton Center

Center for Economic
Development, Entrepreneurship
and Technology

Center for Great Neighborhoods
of Covington

Center for Women and Families

Community Ventures
Corporation

Eastern Kentucky Asset Building
Coalition

Family Foundation

Family Life Abuse Center

Federal Home Loan Banking
Cincinnati

Federation of Appalachian
Housing Enterprises

Frontier Housing

Gateway Homeless Coalition,
Inc.

Green River Asset Building
Coalition

Habitat for Humanity, Morehead

Hager Educational Foundation

Louisville Urban League

Homeless and Housing Coalition
of Kentucky

Mountain Assn. for Community
Economic Development

Kentucky AFL-CIO

Merryman House

Kentucky Association of
Counties

Metropolitan Housing Coalition

Kentucky Asset Success
Initiative

Metro United Way

NAACP – Louisville/Jefferson
County Branch

Kentucky Domestic Violence
Association

N. KY Community Action
Commission

Kentucky Equal Justice Center

OASIS

Kentucky Habitat for Humanity

People’s Self Help Housing, Inc.

Kentucky Poverty Law Center

RAISE KY

Kentucky Resources Council

Safe Harbor

Kentucky Youth Advocates

Sanctuary

Lawrence & Augusta Hager
Foundation

Sandy Valley Abuse Center

Lexington Fair Housing Council

Shelter of Hope

Low Income Housing Coalition
of East Kentucky

SpringHaven

LKLP Safe House

Urban League of Lexington-
Fayette County

Louisville Asset Building
Coalition

Welcome House

Presbyterian Church (USA) Link:

Here is what our church said about payday lending in 2006. It is a general statement about the Church's understanding of usury. It is relevant to citizens of Kentucky, especially those who, due to economic circumstances, do not qualify for normal bank or other financial loans and who are forced to deal with payday lenders.

*A Reformed Understanding of Usury for the Twenty-first Century-
PCUSA, 2006*

http://www.pcusa.org/site_media/media/uploads/resolutions/usury.pdf

Kentucky Religious-Based Links:

Here are the positions of Kentucky religious-based organizations relating to current Kentucky law and its negative economic effect on Kentucky families.

*God's Concern for People in Economic Jeopardy- **Kentucky Council of Churches***

<http://www.kycouncilofchurches.org/economic-justice/>

BUILD (Building a United Interfaith Lexington through Direct-Action), a group of 27 churches in Lexington, is currently working with more than 60 diverse organizations (listed above) across Kentucky to end current usurious payday lending practices in the state.

<http://thedartcenter.org/location/build/>

Data released from the ***Kentucky Department of Financial Institutions***, as quoted by ***BUILD*** on April 21, 2015:

- "The Kentucky payday-loan database shows that Kentucky payday lenders keep borrowers indebted for 207 days a year on average; much longer than the advertised 2-week loan.
- In 2014, more than 6,000 Kentuckians were trapped in 30 or more payday loans
- A typical Kentucky payday borrower was trapped in 10 payday transactions in 2014, typically taken out back-to-back, thus costing \$573 in fees alone.
- Despite marketing claims of a short-term loan, over 92% of payday loans were generated by borrowers with five or more loans a year.
- In 2014, payday lending drained over \$122 million in fees alone from families.

- These numbers have increased since 2010. The Kentucky payday industry is growing by keeping the people in greater debt. "

BUILD's conclusions are:

- "The above facts make it clear that payday lending is usury.
- Because, historically, Kentucky capped small loans of \$1,000 or less at 36 % annually, they wish to restore this cap on small loans.
- Since Senate Bill 32 was filed in 2014 with overwhelming support of the 36-percent cap by the electorate, but was not allowed a hearing in committee, they will continue to work to address this problem with the 2015 Kentucky legislature, working together with a coalition of over 60 diverse organizations (listed above) across the Commonwealth."

*Fair Finances for ALL People- **CLOUT (Citizens of Louisville Organized and United Together)***

<http://www.cloutky.org/page2/page2.html>

Federal Government Links:

The federal government is also concerned about the negative effects of payday loans. Their goal is to protect consumers, while assuring that they have access to a small-loan market that is fair, transparent and competitive. Here are links that address the national issue.

*Payday Loans and Deposit Advance Products- **United States Consumer Finance Protection Bureau**, April 24, 2013*

http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

http://files.consumerfinance.gov/f/201503_cfpb-proposal-under-consideration.pdf

National NGO Links:

National non-governmental organizations have a number of studies about the payday lending industry and its consumers, including the predatory practices and abuses that often occur.

*Payday lending in America: Who Borrows, Where They Borrow, and Why- **Pew Charitable Trusts**, July 2012*

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/PewPaydayLendingReportpdf.pdf

Center for Responsible Lending

<http://www.responsiblelending.org/>

Payday Lending Abuses and Predatory Practices: The State of Lending in America and its Impact of U.S. Households, Susanna Montezemolo, September 2013, **Center for Responsible Lending**
<http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>

Payday Lending: How a Short-Term Loan Becomes a Long-Term Debt, **Center for Responsible Lending**
<http://www.responsiblelending.org/payday-lending/>

Kentucky NGO Links:

Several Kentucky non-government organizations are also concerned about the negative effects of payday lending on its citizens.

A fact sheet by the **Kentucky Coalition for Responsible Lending** using data from **Kentucky Department of Financial Institutions** outlines the primary concerns and resulting issues is reproduced below:

“Too many Kentucky families are still being trapped in inescapable debt caused by predatory payday lenders, who siphon millions of dollars a year out of our local economies, sending it to other states and other countries. It is clear that Kentucky’s reforms in 2010 did nothing to stop the payday loan debt trap. It is time to finish the work necessary to stop abusive practices and protect families, seniors, veterans, and others in our state by capping payday loans at 36% annual interest.

Fast Facts:

- Predatory payday lenders are taking more money from families than ever. In 2014, payday lenders stripped away \$122 million in fees, a 10.7% increase since 2010 (\$105 million). Payday lenders are charging more too. The average fees on a typical payday loan have increased 7.8%, from \$529 in 2010 to over \$583 in 2014.
- Predatory payday lenders are taking more money out of the Kentucky economy than ever, sending it out of state and out of country. The \$121 million payday lenders drained from Kentucky families in 2013 went to mostly out-of-state companies. The largest

payday lender, Cash Express, is headquartered in Tennessee. Advance America, the second-largest lender in Kentucky, isn't even owned by a company in the United States—it's owned by a Mexican bank.

- The 2010 reform has a loophole—under Kentucky's current law, payday loan customers can take out up to 52 loans per year. In fact, in 2013, over 5,800 Kentuckians were trapped in 30 or more payday loans.
- Payday lenders say they offer a one-time quick-fix, but they trap borrowers in a cycle of debt. Over 93% of payday loans in Kentucky were generated by borrowers taking out five or more loans a year. Only 1% of loans in 2013 went to borrowers who did not borrow again during the year. The average payday loan borrower in Kentucky is stuck in 10 loans per year.
- The number of days that borrowers are stuck in the debt trap is getting longer. The amount of time a person is trapped in predatory loans has increased 21.6%, from 160 days in 2010 to over 207 days in 2014. Thus, the average borrower is in debt for more than half the year!
- Payday lenders engage in usury, but try to get churches to promote their products. The typical payday loan carries over 300% annual interest in Kentucky. Last year, payday lenders showed up with goody bags for Vacation Bible Schools, filled with candy and coloring books, with their company's name all over them, inviting our churches to promote usury to our children through Vacation Bible Schools!"

Kentucky Coalition for Responsible Lending

<http://kyresponsiblelending.org/>

The Debt Trap in the Commonwealth- ***Kentucky Coalition for Responsible Lending***

https://www.kftc.org/sites/default/files/docs/resources/the_debt_trap_report.pdf

Kentucky's 400% Payday Loans Threaten the Financial Security of Families- ***Kentucky Coalition for Responsible Lending***

<http://kyresponsiblelending.org/get-the-facts/>

Payday Lending- ***Kentuckians for the Commonwealth***

<https://www.kftc.org/tags/payday-lending>

Lexington Media Links:

There are also media links to the dangers of payday lending

Payday Lending, **C-SPAN**, Michael Calhoun, President, Center for Responsible Lending, December 20, 2014

<http://www.c-span.org/video/?323435-4/washington-journal-michael-calhoun-pay-day-lending>

LEX 18 Investigates: Payday Interest Rates- **WLEX**, July 6, 2015

<http://www.lex18.com/story/29472373/lex-18-investigates-payday-interest-rates>

LEX Investigates: Payday Loans- clip of **WLEX newscast**, July 1, 2015

<http://www.lex18.com/Clip/11647451/lex-investigates-payday-loans>

A second installment of the LEX 18 series on payday lending in Kentucky is awaiting completion and is not available at the time of this writing.

Biblical References:

In the Old Testament, there are several ways of looking at loans and interest, ranging from no-interest loans, to loans with conditions.

Exodus 25: 225-27

If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them. If you take your neighbor's cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbor's only clothing to use as cover; in what else shall that person sleep? And if your neighbor cries out to me, I will listen, for I am compassionate.

Leviticus 25:35-37

If any of your kin fall into difficulty and become dependent on you, you shall support them; they shall live with you as though resident aliens. Do not take interest in advance or otherwise make a profit from them, but fear your God; let them live with you.

Deuteronomy 23:19-20

You shall not charge interest on loans to another Israelite, interest on money, interest on provisions, interest on anything that is lent. On loans to a foreigner you may charge interest, but on loans to another Israelite you may not charge interest, so that the LORD your God may bless you in all your undertakings in the land that you are about to enter and possess.

Psalms 15:5

...who do not lend money at interest, and do not take a bribe against the innocent (Those who walk blamelessly and do what is right—Psalms 15:1).

In the New Testament very little is said about loans and interest, however:

Luke 6:35

But love your enemies, do good, and lend, expecting nothing in return.

There are many places in the Bible where justice and fairness are promoted and love for all is commanded. Here are just a few.

Isaiah 56:1

Thus says the LORD: Maintain justice, and do what is right, for soon my salvation will come, and my deliverance be revealed.

Micah 6:8

He has told you, O mortal, what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?

Mark 12: 31

The second is this, 'You shall love your neighbor as yourself.' There is no other commandment greater than these."

Matthew 5:43-48

"You have heard that it was said, 'You shall love your neighbor and hate your enemy.' But I say to you, Love your enemies and pray for those who persecute you, so that you may be children of your Father in heaven; for he makes his sun rise on the evil and on the good, and sends rain on the righteous and on the unrighteous. For if you love those who love you, what reward do you have? Do not even the tax collectors do the same? And if you greet only your brothers and sisters, what more are you doing than others? Do not even the Gentiles do the same? Be perfect, therefore, as your heavenly Father is perfect.

Prayers from the Book of Common Worship, Presbyterian Church (USA), 1993, Prayers for the World, No.71, p. 820 and No. 114, 834, respectively:

For Those in Business

God of the covenant:
you give love without return
and lavish gifts without looking for gain.
Watch over the ways of business,

so that those who buy or sell, get or lend,
may live justly and show mercy
and walk in your ways.
May profits be fair and contracts kept.
In our dealings with each other
may we display true charity;
through Jesus Christ,
who has loved us with mercy. **Amen.**

For the Oppressed

Look with compassion, O God,
upon the people in this land
who live with injustice, terror, disease, and death
as their constant companions.
Have mercy upon us.
Help us to eliminate cruelty to these our neighbors.
Strengthen those who spend their lives
establishing equal protection of the law
and equal opportunities for all.
And grant that every one of us may enjoy
a fair portion of the abundance of this land;
through your Son, Jesus Christ our Lord. **Amen.**