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OPPOSITION TESTIMONY

House Financial Institutions and Rural Development

HB 2189

An Act concerning the uniform consumer credit code; relating to consumer loans; providing restrictions and requirements for certain alternative small installment loans; requiring lender reporting.

February 22, 2021

Whitney Damron
on behalf of the
Kansas Community Financial Services Association, Inc.

Chairman Kelly and Members of the Committee:

By way of introduction, I am Whitney Damron and I represent the Kansas Community Financial Services Association, formerly known as the Kansas Payday Loan Association, established in 1999. Our members make short term loans, including payday loans to Kansas consumers and several members have operations in other states as well.

By way of information for the Committee, Kansas has some of the strongest pro-consumer protections in statute including military best practices lending requirements, forms required to be available in Spanish, 24-hour right of rescission, no loan rollovers, no criminal prosecution for bad checks, a limit of two outstanding loans per customer and other consumer protections, most, if not all of which were supported by and even proposed by the highly regulated lending industry.

In Kansas, the payday loan transaction is straightforward: The consumer can easily determine the amount they wish to borrow, when repayment is required and what the loan will cost. A typical transaction is for several hundred dollars ($500.00 maximum), with a fee charged of not more than $15.00 per $100 borrowed and the length of the term is typically two weeks (i.e., to the borrower's next payday). A borrower must have a job and a checking account to consummate a transaction.

The transaction and lenders are regulated by the Office of the State Bank Commissioner and history shows there are few complaints, due in large part to the straightforward terms of the agreement.

Kansas consumers are qualified to make financial decisions for themselves without government interference. Who is to say whether it is better for a borrower to take out a loan to meet a short-term need vs. the consequences of not taking out a loan? Rent, medicine for a child, fix a car to get to work or simply to avoid the consequences of writing an insufficient fund check.

Proponents of legislation such as HB 2189 may have never found themselves in a situation where they require access to a short-term loan to meet an unexpected financial burden.

The reality is that most Americans lack $400 in accessible savings. Whether facing a car breakdown or another unexpected bill, hardworking consumers deserve access to quality credit regardless of income level of despite flaws in their credit history. Without access to these loans, what alternatives do the 42% of non-prime consumers have?

Banks and credit unions do not make these kinds of loans; the proponents of these bills do not make these kinds of loans; and no one is there to help working people deal with the consequences of not having access to the resources they need to address their financial problems. When legitimate regulated products are forced out of the marketplace, demand does not go away - it merely shifts to costlier options. Research has shown that consumers cut off from short-term credit are more likely to pay their bills late resulting in fees that can equal 100% of the bill amount, bounce checks, turn to unregulated "sovereign" lenders except from state law, or pursue secured lending that can lead to the loss of assets. This mirrors evidence in states that have enacted similar restrictions, including Georgia and North Carolina.[1]

This bill unfairly targets borrowers who cannot risk an asset like a house or car to secure the loan, or who do not have family members that can readily lend money yet remains silent in regard to other financial transactions that have much higher costs.

This bill fails to recognize the costs a consumer faces when they write an insufficient check to a grocery store or other vendor; writing an insufficient fund check of $100.00 to Dillon's or Walgreen's can result in more than $70.00 in returned check charges. Substantially greater costs are incurred if the check is turned over to a collection agency, which can lead to treble damages of the amount of the check, attorney fees, court costs, garnishment of paychecks and more. In addition, negative marks on a person's credit score will be tacked on, making future borrowing more expensive or unavailable altogether.

Banks and credit unions offer their customers options to manage their credit and expenses in the form of overdraft protection. These are nothing more than short-term loans to protect the user's credit history, make sure their checks clear and important debt obligations are paid and help manage their personal cash flow. The charges for those services can be significantly higher than a short-term loan yet is not a matter of concern to the promoters of this bill.

The consequences of a bad check cited in my testimony would seem to make a $15.00 charge on a two-week payday loan seem like a responsible financial transaction.

Two more points I would like to make:

There is a new administration in Washington, D.C. and we can expect to see a change in direction for regulating short-term loans at the Consumer Financial Protection Bureau. Those companies making small, unsecured loans believe change will be coming rather quickly in this area under the Biden Administration.

[1] https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr309.pdf

Second, earlier in my comments I note the lack of alternative lending options for working people who need a short-term financial loan.

As we've stated, we know that banks and credit unions can't or won't provide small unsecured loans at these rates (and those that do, like US Bank, only lend to customers with checking accounts), and other lenders who might claim to support efforts to restrict rates to 36% market credit insurance products that increase the overall cost of the loan[2], require a cosigner or security interest in a car, or resort to collections by lawsuit. These practices have clearly been documented in states like California and Texas.[3][4] Consumers have plenty of options available for home loans, car loans, appliances, credit cards and other secured and unsecured transactions through a myriad of financial institutions and non-bank lenders. What they do not have available are state-regulated lenders who make small cash loans for unexpected consumer needs.

Eliminating regulated lending options for Kansans is a harmful policy, plain and simple. PEW and a handful of other lenders have supported these proposals in other states and, while the impact on consumers is still being collected, it has driven regulated lenders out and led to a rise in unregulated lending. you will drive Kansas consumers to illegal unlicensed internet lenders, of which there are literally thousands operating both within the United States and beyond. State regulators have virtually no chance of enforcing Kansas laws or requiring state licensure for unscrupulous operators when consumer complaints start coming in.

Capping interest rates and other fees that lenders can charge on personal loan products offered to consumers based on credit risk underwriting do not cap prices; instead, they restrict consumer access to credit. Rates are based on a credit risk assessment of the applicant, and a rate cap results in restricting which applicants a lender approves based on their credit history and income. Interest rates in consumer lending are matched to risk and operating expenses (a recent Federal Reserve study2 showed the high operating expenses for loans to high-risk populations). If banks and 'traditional' lenders could meet the real demand for credit at these artificially low rates, nothing is stopping them from doing so tomorrow. We respectfully suggest a review of income from overdraft fees and unnecessary 'ancillary' credit insurance products. A cynical person might think eliminating competition could drive up profits for those left standing.

Rather than eliminating needed credit options for working people and their families, evidence-based regulation focuses on proven protections that help consumers fulfill their financial responsibilities. More borrowing options for a consumer can help price and allow for greater choices for the customer. We oppose any restrictions on legal regulated credit that will cut borrowers off and leave them with worse options. Pass HB 2189 without eliminating current choices for Kansas consumers and we will stand aside. Eliminating these products when our customers both want and like the product is a disservice to those who make these financial decisions for themselves and we have to oppose this bill.

We ask the Committee to not pass HB 2189.

On behalf of the Kansas Consumer Financial Services Association, I thank you for your time and consideration of our comments.

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[2] Pew Charitable Trusts, "State Laws Put Installment Loan Borrowers at Risk," October 2018.
[3] https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic
[4] https://www.bizjournals.com/sanfrancisco/news/2020/08/04/bay-area-subprime-lender-oportun-reins-in-interest.html