Testimony of Marc Dann
Senate Insurance and Financial Institutions Committee
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Chairman Hottinger, Ranking Member Brown and members of the Committee, my name is Marc Dann. I am the Managing Partner of DannLaw a consumer and disability rights law firm with offices in Cleveland, Columbus, Cincinnati and other locations across the United States. Previously I served as Ohio's Attorney General, the Chief Consumer Protection Officer of our state, as well as a member of the Ohio Senate.

During my time as AG I held a series of public hearings on the payday lending industry. During those sessions people from across Ohio talked, often tearfully, about their experiences and the hopelessness they felt as they struggled to deal with the crushing debt they had unwittingly incurred. The dozens of hours of testimony offered by the industry's victims and the conclusions my office reached about the practices payday lenders utilized to trap consumers in a seemingly never-ending cycle of debt were presented to the General Assembly in 2008. Members of the House and Senate carefully considered the findings and then enacted the Short Term Loan Act--a serious attempt to curb industry abuses and protect Ohio's working class and poor families.

Unfortunately, clever lenders found a way to work around the law: they simply declined to register and do business under the new Act and continued to make loans carrying effective interest rates ranging from 200 to 2000 percent under the auspices of other regulatory schemes including the Mortgage Loan Act.

The industry's blatant attempt to subvert the law was challenged in court. The case, *Cashland v. Scot*t, was eventually heard by the Ohio Supreme Court which issued a unanimous decision that placed a stamp of approval on the industry's tactic and said the makers of small consumer loans in Ohio simply did not have to follow the provisions of the Short Term Loan Act. Although the ruling was unanimous, Justice Paul Pfeiffer noted in his concurring opinion that something was amiss:

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"***I write separately because something about the case doesn't seem right. {¶ 43} There was great angst in the air. Payday lending was a scourge. It had to be eliminated or at least controlled. So the General Assembly enacted a bill, the Short-Term Lender Act ("STLA"), R.C. 1321.35 to 1321.48, to regulate short-term, or payday, loans. And then a funny thing happened: nothing. It was as if the STLA did not exist. Not a single lender in Ohio is subject to the law. How is this possible? How can the General Assembly set out to regulate a controversial industry and achieve absolutely nothing? Were the lobbyists smarter than the legislators? Did the legislators realize that the bill was smoke and mirrors and would accomplish nothing?"***

Now, after too many years have elapsed and too many consumers have been trapped in predatory loans, the General Assembly is renewing its efforts to rein in the industry. I applaud the members for doing so and am pleased to appear here as an interested party on behalf of both the National Association of Consumer Attorneys (NACA) and the National Association of Consumer Bankruptcy Attorneys (NACBA). I am here because I want to make sure that your effort is not overturned by the Supreme Court at some point in the future.

Let me begin by saying that I respect and admire Senator Terhar's and Representative Dever"s attempt to modernize and bring into harmony several different consumer lending laws in the state.

Updating these statutes to reflect the realities of the marketplace, evolving technology, and the experience of lenders and consumers is both a long overdue and extremely difficult endeavor. An endeavor made even more difficult given the fact that finance companies and lenders employ dozens of lobbyists devoted to maintaining the status quo and their soaring profits while the industry's victims have relatively few advocates here in the Statehouse. That is why it is extremely important for each member of this committee to stand up for and protect the interests of your constituents, many of whom are financially unsophisticated and desperate because they have become unemployed, seen their incomes fall, or lost their homes as a result of the mortgage crisis.

Jane Moon exemplifies the type of Ohioan who needs your help. A kind and intelligent woman who baked extraordinary pound cakes, Mrs. Moon lived in the same house with her disabled son for half a century. Those of you here that know me won't be surprised to learn I accepted monthly deliveries of those cakes in lieu of fees because she was otherwise unable to pay me.

I wasn't the only person or entity she couldn't pay. Mrs. Moon was struggling because she was burdened with a $10,000 loan issued by Springleaf Financial that never should have been made in the first place. Springleaf, one of the most active lenders in our state under the Mortgage Loan Act, loaned Ms. Moon the money even though they clearly knew she could not make the payments. Yet, despite that knowledge, the company granted the loan which was secured by all her worldly possessions, including the car she needed to take her son to his frequent medical appointments. At every turn, Springleaf exploited Ms. Moon and callously took advantage of her lack of financial sophistication. In the end she, like so many others who become tangled in the web of deception the industry uses to trap borrowers, was left broke and despondent.

Springleaf acted deceptively and in ways that I believe violated the Ohio Consumer Sales Practices Act and the Mortgage Loan Act. The first loan violated ORC 1321.40 by requiring Mrs. Moon to pay 33% interest, a full five points above the statutory maximum. Springleaf also violated the act by loaning Mrs. Moon more money that she requested. When it became clear that she couldn't pay the first loan, the kind folks at Springleaf persuaded Mrs. Moon to add her car to the collateral and increased her loan to over $10,000--a sum they knew or should have known that far exceeded her ability to repay.

Why would Springleaf loan Mrs. Moon money that they knew she couldn't repay? Because Springleaf and similar companies pool and securitize these loan, thereby passing the risk of default on to bondholders. Sound familiar? It should. Today payday lenders are following the same formula for disaster that led to the mortgage meltdown and the near-collapse of the U.S. economy in 2008-2009.

There's a second reason Springleaf and other predatory lenders are willing to make loans they know are bad: they have an easy way to recover most of what they are owed by seizing vehicles owned by borrowers like Ms. Moon.

And finally, they know that the arbitration clauses and class action waivers hidden in their loan agreements make it difficult if not impossible for borrowers to retain attorneys to fight for them. Although Ms. Moon didn't have money to pay us, we continued to handle her case fueled by generous helpings of pound cake until she died. By the time she passed away the legal fees we incurred were nearly equal to the amount of money she borrowed and because of the arbitration clause in her loan documents our prospects for success were dim to say the least.

I have attached Ms. Moon's loan documents to my testimony. I urge you to review them because they provide a clear roadmap of the path far too many Ohioans follow to financial ruin as a result of dealing with the lending industry.

Mrs. Moon's story also shines a light on what can be done via HB 199 to protect consumers:

1. Add a prohibition against title loans like the one that trapped and exploited Jane Moon to the legislation. More than half the states in the country already outlaw this type of lending.

There is simply no benefit to non-purchase money loans secured by vehicles. These loans place financially marginal borrowers at daily risk of losing their ride to work, to the doctor or to the grocery store. In many parts of Ohio, including most of the Senate District that I previously represented, no car means no way to get to work. Losing that vehicle can turn a working-class family into a poor family overnight. With "kill" technology a title lender can immobilize a vehicle remotely to ease repossession in the event of a default. This makes it extremely difficult for borrowers to use due process to fight back.

2. Prohibit the resale of loans under the act. If lenders are prohibited from passing off the risk of loans to others the free market will ensure that their underwriting and repayment standards become more realistic.

3. Prohibit Arbitration Clauses and Class Action waivers and make the conduct of lenders under the act directly actionable under the consumer sales practice act or some other mechanism that will allow borrowers meaningful access to the courts in the event of bad conduct by lenders.

4. Change the way that the APR cap is calculated to use the calculation that is required under the Truth in Lending Act. The 25% cap contemplated is reasonable for riskier loans like these, but credit check fees and origination fees can turn a 25% APR quickly into a 250% real APR.

Who knows what might happen if one of those financially strapped senior citizens finds out that you took Justice Pfeiffer's advice and stood up to the lobbyists. They just might bake you a cake.