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On House Bill 38
Senate Insurance and Financial Institutions Committee
Opponent Testimony

Chairman Hackett, Vice Chairman Hottinger, Ranking Member Craig, and Members of the Senate Insurance and Financial Institutions Committee:

My name is Emily White, I am an attorney with the Dann Law Firm where I represent consumers and homeowners. Prior to joining Dann Law, I represented low income consumers as an attorney with the Legal Aid Society of Cleveland.

The proposed eleventh-hour change to HB 38, amendment g_133_0602, would allow payday lenders to increase their profits by burdening consumers with junk fees for ancillary products and services they never requested and do not need. This amendment would turn a reasonable and limited exception into a loophole that swallows the statute.

The current payday lending law, the Short Term Loan Law, was enacted in response to abusive practices and high fees by the payday lending industry in Ohio. The legislation was carefully drafted with input from all interested parties and passed two years ago with overwhelming support from the public and consumer advocates. The law put in place sensible restrictions on payment terms, fees, and interest rates. In order to ensure that payday lenders did not continue to charge high fees to consumers through other means, the law expressly prohibits lenders from conditioning a loan on other transactions.

The proposed amendment would effectively destroy the prohibition on required add-on ancillary products and services. While the existing law expressly permits payday lenders "to engage in other transactions with borrowers, provided the transactions are not a condition of the loan", the new language adds three conditions, each of which is reasonable and necessary, but none of which is sufficient:

> As used in this division, a transaction shall not be considered a "condition of the loan" if it meets any of the following conditions:
> (a) It is not required for the extension of the credit.
> (b) It is a type of charge that would be payable in a comparable cash transaction.
> (c) It is a charge that is not considered a "finance charge" pursuant to 12 C.F.R. 1026.4.

The problem, of course, is that the amendment states that it is enough to meet **any** of these conditions. In fact, the language would only make sense, at minimum, if **all** the conditions were met. If any of the conditions were sufficient, the amendment would make the loophole only as strong as the weakest condition—which in this case would be the "comparable cash transaction." Practically any product or service could be payable in a cash transaction. Therefore, under the proposed language, if this condition is met a payday lender could **require** that a consumer agree to the additional fee as a condition of the loan, whether the consumer requested or needed the service or not.

Requiring additional ancillary products or services that a consumer has not requested and does not need is unfair and anticompetitive. The practice goes by various names, such as upselling, bundling, loan padding, or bait-and-switch, but in all cases it is misleading and abusive to consumers and it obscures the true cost of credit. In a 2006 report to Congress that led to the passage of the Military Lending Act, the U.S. Department of Defense found that lenders targeting military families routinely evaded lending disclosures by padding loans with hidden fees for dubious high cost ancillary products and services such as "credit insurance". *See* U.S. Dep't of Def., *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (Aug, 9, 2006).[1] In response, the Military Lending Act expressly requires that such ancillary services and products be included when calculating and disclosing the cost of credit for covered loans to protected consumers. *See, e.g.*, 32 C.F.R. § 232.4. But the Military Lending Act does not protect non-military borrowers, and the proposed amendment to the Short Term Loan Law would open the door to such abusive practices in Ohio.

Ohio payday lenders have a long, rich, and creative history of exploiting loopholes by engaging in the same practices under new names. For example, after the Short Term Loan Act was passed in 2008 and ratified by a statewide referendum, payday lenders claimed to be unsecured second mortgage lenders and charged loan origination fees and credit check fees that were never intended to apply to unsecured loans, but which allowed these operators to pump up the cost of credit.

[1] https://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.

Payday lenders have also played a shameful role in corroding and corrupting our political system in Ohio. If this industry had any legitimate concerns to raise about the language in this statute, they should have been raised during the legislative process that led to the passage of the Short Term Loan Law. To push such special interest legislation during the waning days of the legislative session, all while a historic pandemic and recession devastates Ohio families is shameful.

If the Ohio Senate is truly interested in considering policy changes to provide relief to working families facing financial strain, a better starting point would be to revisit our antiquated debt collection laws. Ohio law permits creditors to seize twenty-five percent of a working person's wages to satisfy a debt, and our state exemptions fail to adequately protect family cars and homes. With the highest wage garnishment rate in the nation, desperate consumers facing a significant loss of income or loss of their sole means of transportation are driven into predatory loans. Reforming our debt collection laws by reducing or eliminating wage garnishment and increasing protections for cars and homes would be a great relief to struggling working families. The National Consumer Law Center report on collection reforms is a good starting point for model legislation: https://www.nclc.org/issues/report-still-no-fresh-start.html

In sum, Ohio consumers would be best served by retaining the statute in its current form, or alternatively, by strengthening the definition of "condition of the loan" to require all factors to be met before the exception applies.