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Proponent Testimony on H. B. No. 123
Senate Finance Committee
Nick Bourke, Director, Consumer Finance, The Pew Charitable Trusts
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Chairman Oelslager, Vice-Chair Manning, Ranking Member Skindell, and members of the Senate Finance Committee:

On this third day of hearings this week about payday lending, you seem to have three options before you.

One option is to REFORM Ohio's payday and small-dollar loan market.

- Reform is difficult, especially because the status quo in Ohio is so unbalanced. A small number of lenders who are essentially unregulated control a lucrative market with little threat of outside competition. To normalize the laws in the market, open it to more mainstream competition, and better protect consumers, these lenders will have to give up some of their advantages. They have resisted this fiercely, and will continue to do so.

- Reform would require you to make hard choices about how much to change the status quo. Consumer and community advocates, who have long fought for strict controls on pricing and elimination of "predatory lenders," will not get everything that they want.

- Reform will consist of strong rules to ensure affordable payments and safe loan terms. Reform will consist of dramatically and demonstrably reducing the cost of small-dollar loans, while allowing the prices to be well above what mainstream loans, like credit cards and bank signature loans, cost.

- Reform is what HB 123, as passed by the House, will achieve.

If you cannot reform payday loans, you may choose to ELIMINATE them.

- Elimination is easy in one sense, because the public widely supports it, as demonstrated in numerous polls and by the 2008 ballot initiative in Ohio, 2016 ballot initiative in South Dakota, the 2010 ballot initiative in Montana, and so on.

- To eliminate payday lending today, you could amend the law to effectuate what this legislative body voted to do in 2008, and which your constituents overwhelmingly supported at the ballot:

impose a strict 28% rate cap on all small-dollar loans. To do this, you could simply prohibit Credit Services Organizations from brokering small loans (below $5,000 or $10,000) and make the minimum allowable loan size under the Mortgage Loan Act $5,000 or so.

- But elimination is hard too, because that same small number of lenders that control and profit from Ohio's status quo have an enormous amount to lose, and they will do anything within their power to prevent it. That is why elimination of payday lending usually occurs at the ballot box. As you are probably aware, the Attorney General recently approved a ballot initiative to amend Ohio's constitution.

- Elimination of payday lending has downsides, but it is certainly, clearly better than the status quo.

- If you choose to eliminate payday lending, and you are concerned about the (admittedly, small) number people who obtain loans illegally, I recommend you enact legislation to clarify that any loan made without a license in Ohio is void and uncollectable under state law. This solves many problems by making it difficult or impossible for out-of-state lenders and in-state debt collectors to access consumer checking accounts or otherwise harm them.

Or, if you will not reform or eliminate payday lending, you could choose to maintain the status quo. This is what Senator Huffman's proposal to strike and replace HB 123 would do.

- Payday loans in Ohio today can be extremely high-cost loans. Loans on the market today include a $500 loan with more than $600 due back in a single payment just weeks later, and a $1,000 loan that lasts four months with payments exceeding $1,700.

- Payday and payday installment loans in Ohio today have unaffordable payments, taking 30 percent or more of a borrower's paycheck (before taxes).

- Companies charge Ohioans four times more for short-term loans than they charge elsewhere, Loans in Ohio today have APRs of 500% or more for smaller loans, and 250% or more for larger installment loans.

- Senator Huffman's half-sketched proposal is an attempt to codify the harmful and unusually expensive status quo into Ohio law. It would do this by legitimizing the loans currently made under the CSO payday loan model and authorizing the highest installment loan prices in the country. It is not reform because it does not solve problems for consumers and it would cost the small number of payday lenders who control the market today virtually nothing.

- While it is true, as Senator Huffman said yesterday, that Ohio has no limits on prices today and one of the highest rates in the country, it is patently false that his proposal to strike and replace HB 123 will will bring the rates down to be one of the lowest in the nation. Quite the opposite is true. No other state law codifies APRs of 360 percent for installment loans. For the larger loans in Senator Huffman's spreadsheet, they would be some of the most expensive loans in the nation at even HALF that APR. This is nothing short of a giveaway to CSO payday lenders and their backers, many of whom are private equity firms. (**See appendix A**).

My colleagues and I have appeared before you as proponents of HB 123, because in our analysis it achieves real reform based on strong, simple, and reasonable rules. As researchers and analysts, we know that HB 123 will improve the situation in Ohio. We know it will cost the incumbent lenders significantly, because that is what it takes to achieve real reform in Ohio, but it will not go so far as to give consumer advocates everything they may want, or eliminate subprime credit. It is well balanced. If you wish to reform payday and small-dollar lending in Ohio, we stand ready to help you do that.

I should point out that the colorful language used in some opponents' testimony appears to be coming from a place of ignorance about the text of HB 123 or what it would do. Yesterday, Mr. Saunders of Community Choice Financial demonstrated this. He did not know that HB 123 allows loans that last less than six months. He did not understand that if 5% of a person's monthly income is $127.30, their $400 loan under HB 123 would be repaid in about four months. He either did not know or would not admit that HB 123 requires no new documentation of income other than the evidence of checking account deposits or other information that he said he already collects. And if indeed he thinks he needs between "255 and 285" as he said in response to a question from this panel about how much revenue he needs on a $500, six-month loan, he would be pleased to know that HB 123 would allow him to earn up to $250 on that loan if he simply structed it to last a few more months.

Alternatively, consider that three lenders (Ace Cash Express, Advance America, and Check Into Cash)—that account for nearly half of all payday stores in Ohio—have been and continue operating in Colorado for eight years after that state's payday loan reform. They also account for almost half of all stores in Colorado. These companies do not wish to discuss this fact, since they have experience under a true reform bill like HB 123, as well as in Ohio's effectively unregulated market, and they know how much they stand to lose if real reform is enacted.

Mr. Cheney is a CSO payday lender. He and this colleagues who oppose this bill are simply defending their patch in Ohio, which is expected. But this committee should understand that the conclusory and hyperbolic objections to HB 123 that you have heard are largely coming from a place of ignorance about what the bill actually does, or a simple unwillingness to give up any advantage that true reform would entail.[1]

I am fortunate to be in a different position than the opponents. This is because neither I nor my institution have a stake in the outcome other than our charitable purpose of improving public policy and consumer outcomes. Because of our resources and dedication to careful, thorough analysis of issues, I was able to spend years researching this issue with a team of highly-skilled experts before we even took a position on it. We did conduct focus groups—more than 20, throughout the country. We interviewed hundreds of borrowers, in person, and I am deeply proud of and enriched by that experience. To comprehend a problem people are having, there is no better place to start than by talking with people about it. That is when we started to understand that there is so much more to this issue than price or APR. The loan terms matter. The safeguards matter. We heard people say that yes, it sometimes felt good to get a fast loan in a pinch, but that the loans were "blowing up" budgets and they needed something to change.

[1] Likewise, we found little to no willingness to discuss HB 123 on the merits when we met with Senator Huffman.

When we followed up with unique, first-of-their kind nationally representative surveys, we learned that borrowers feel taken advantage of. We also learned—and reported—and they like having access to funds but they want policy makers such as yourselves to regulate the loans better. They want changes to ensure affordable payments, and more time to repay. They have a deep desire to repay their loans, but they need more reasonable terms. They can afford to make a monthly payment on a loan, but not as much as payday lenders were requiring them to pay.

We followed this up by talking with lenders—payday lenders, installment loan companies, fintech and emerging companies, banks, credit unions—anyone who would discuss their experiences lending to subprime customers or share data with us. This process unfolded over several years.

And we added to all of that by purchasing a large database of subprime installment loan data from one of the country's big-three consumer credit reporting agencies. This allowed us to see what loans looked like and how they performed, especially when the customer has a very low credit score, similar to a payday loan customer, and takes a small loan—but unlike a payday lender, the installment lenders must fully underwrite the loan to ensure the borrower can repay it without the lender having access to the borrower's checking account. In other words, what were able to understand what loans should look like when lenders are managing for the customer's ability to repay more than the lender's ability to collect.

We learned many interesting things from this process, and gained a strong sense of how to balance the equities involved. For example, this is how we came to understand how a simple rule to require affordable payments would vastly improve policy about payday and small-dollar loans. This is how we became convinced that policy should allow certain subprime lenders to have access to a borrower's checking account to control risk, but only if it also limits the amount of money the lender can take from that checking account to 5% of the person's income or 6% of net deposits. We concluded that this would represent a real and viable reform. Something that is good for the customer, but also easy and reasonable for the lender. This is, of course, something that HB 123 would do.

And yes, we reviewed academic literature—all of it that we could find. And one thing we found in that literature was total disagreement about whether high-cost lending should be banned or not. And that is one of the reasons that we have said, since 2013, that while reforming payday lending is viable based on research, it's a pure policy choice whether to simply allow high-cost lending or ban it.

And that brings me back to the choices in front of you now. (Continued on next page.)

One of the many benefits of reforming payday lending, by enacting HB 123, is that your constituents would still have access to credit but they would save a lot of money and avoid a lot of harm. Based on the number of stores in each of your districts, average volumes, and the amount of savings that the bill would achieve for each customer, I can give you the following estimates:

Estimated savings to constituents per Senate district – HB 123 as passed by House (Selected members)	
Sen. Coley	More than $1.5 million /yr
Sen. Eklund	Nearly $2 million /yr
Sen. Lehner	More than $2.5 million /yr
Sen. Huffman	More than $2 million /yr
Sen. Manning	More than $1.5 million /yr
Sen. Oelslager	Nearly $3 million /yr
Sen. Obhof	More than $1.5 million /yr

If, however, you would rather eliminate payday lending, that is a fairly simple matter as I discussed above, and I would be happy to discuss it further with you, or how the pending ballot initiative may affect Ohio.

But if you wish to maintain the status quo or proceed with a proposal such as the one that Senator Huffman has sketched out, I am afraid I cannot help you. This is not because I am unwilling, but because a proposal that is so clearly based on the goal of maintaining the status quo and even expanding the harmful aspects of Ohio's small-dollar loan market falls far outside of my purview. As I heard someone say recently on this issue, you can't grow flowers in quicksand.

In closing, I urge this committee to take a vote. Vote on HB 123 as passed by the House by a wide, bipartisan margin. Or make a few sensible amendments to HB 123 as we have discussed, and vote on that. Even if it fails, at least we will all know where this process stands. If this committee chooses to maintain the status quo in Ohio, you may of course choose to take no action. But I urge you to reject attempts to strike and replace HB 123 with partially-constructed or CSO payday lender-backed alternatives such as the one outlined by Senator Huffman.

I urge you to enact HB 123 intact, and would be happy to take any of your questions.

Thank you,

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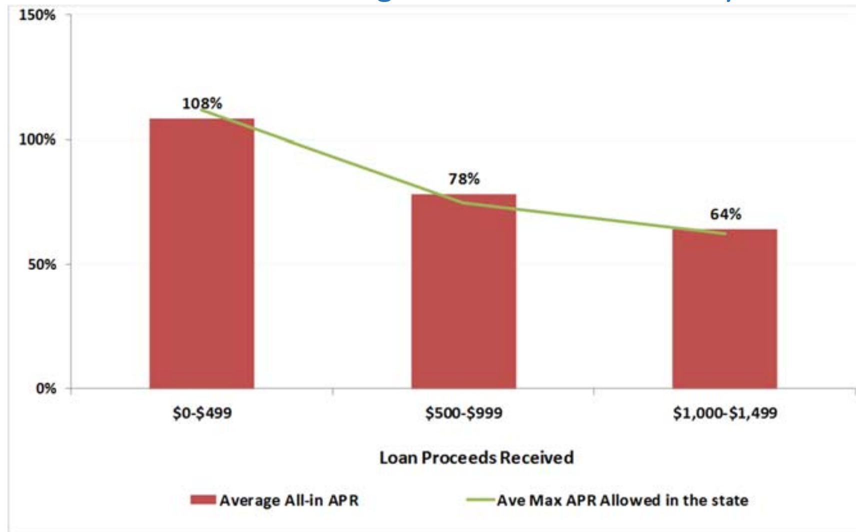
Appendix: A: Selected comments on proposal to strike and replace HB 123 as passed by the House

Further, as shown in the following chart summarizing actual average installment loan prices versus average maximum prices under state law, subprime lenders almost invariably charge the maximum.[2] Any proposal this committee puts forward should not be based on the assumption that lenders in Ohio would charge less than the law allows. Under Senator Huffman's proposal, that would be 360% for some or all loans up to $2,500, far higher than what installment loans cost in other states.



Senator Huffman's bill not a compromise; in fact, it seems tailor-made to benefit a handful of CSO payday lenders. Consider Tennessee, with its "flex loan" payday installment loan law that has among the highest installment loan rates allowed anywhere. Payday lenders have been promoting this law vigorously in other states; but in Ohio, Senator Huffman's proposal would give them even more than that, with far higher rates and fees. That is NOT reform. Similarly, in Florida, where payday lenders essentially wrote their own installment loan bill, the rates—although unreasonably high—are still lower than what is in Senator Huffman's proposal. In states that have caps on total charges, you will have a problem finding a $2,500 that costs anywhere near $5,670 allowed in Senator Huffman's spreadsheet. And it is not clear that the spreadsheet even reflects maximum allowable costs (for example, he has spoken of costs being limited based on APR, but application fees and credit insurance are not part of the APR calculation, this could potentially create a loophole for unlimited application fees, CSO fees, or "optional" credit insurance premiums that have tarnished loan markets in other states).

[2] See also: http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/04/10/how-state-rate-limits-affect-payday-loan-prices