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TO: Senate Financial Institutions and Insurance Committee

FROM: Jennifer Cook, Deputy Commissioner
Consumer and Mortgage Lending Division
Office of the State Bank Commissioner

DATE: February 1, 2017

RE: SB 87

Good morning Mr. Chairman and members of the committee. The OSBC appreciates the opportunity to provide testimony in support of SB 87 to modernize the Kansas Credit Services Organization (CSO) Act. The intent of the bill is to enhance certain consumer protections and provide additional flexibility and resources for credit services organizations (CSOs) to provide services to consumers.

The CSO Act was enacted in 2004, and was last amended in 2012. Currently, 31 CSOs are licensed in Kansas. The Act sets licensing and regulatory requirements for CSOs, and establishes protections for consumers seeking assistance with debt management. As defined in the Act, debt management services include channeling consumer debt payments to the consumer's creditors to aid the consumer in reducing debts; improving the consumer's credit record, history, or rating; or negotiating to defer or reduce a consumer's debt obligations.

In addition to providing debt management services, CSOs often provide other services, such as classes for consumers on personal finance, home buying, student loan repayment, and budgeting. Classes are generally offered at little or no cost to the consumer. CSOs also provide individual counseling to consumers in areas of consumer finance.

SB 87 recognizes the role of CSOs is evolving to reflect the needs of consumers in managing their finances. The bill clarifies and updates the CSO Act to better reflect the services that CSOs provide to consumers, strengthens certain consumer protections, and proposes to eliminate provisions of the Act that are not applicable to the CSO model. It also provides flexibility for CSOs to serve consumers. The bill updates the CSO Act to reflect the range and cost of services provided by CSOs, and makes adjustments to reduce regulatory burden. In developing the bill the agency reached out to CSOs based in Kansas which work with consumers on a daily basis, as well as the association representing a broader range of Kansas-licensed CSOs.

Key provisions of the bill:

Clarifies the duties of the licensee to provide when developing an initial budget plan for the consumer, that all outstanding debt obligations listed on the consumer's credit report as well as any debt obligations identified by the consumer shall be included. This provision is intended to ensure the consumer has a complete picture of the outstanding debt obligations.

Requires a licensee that uses a DBA (doing business as) name to provide that name to the consumer with the CSO's legal name and the contact information on the debt management agreement.

Requires a licensee to include the CSO name and license number on advertisements. Prohibits a licensee from advertising under any name (which can include a DBA) other than the name on the license.

Expands the time the CSO has to disburse consumer funds to creditors by 10 days. Depending on the billing cycle of the debt, the proposed change may benefit the consumer when a CSO is able to make a full payment in the correct billing cycle. The current 10-calendar-day limitation can sometimes require a CSO to relay a payment to a creditor during a billing cycle in which a payment has already been made, potentially increasing late fees or other penalties for a consumer. The statute change would prohibit a payment from being held for any period of time that results in an additional charge, fee, or penalty to the consumer.

Amends the annual report due date and the annual license renewal period from March 1 to April 1 of each year and secures the confidentiality of annual report documents. Publication of annual report information may only be made in composite form. This provision is subject to a five-year sunset subject to legislative review and reenactment.

Amends the Act to require notice of a change to the CSO business activity from 15 days after an occurrence to 15 days either before or after the occurrence. For example, this could include reorganization or bankruptcy filing by a licensee, an action against a licensee by a government entity, or a felony conviction of an owner, officer, or director. It can also include more informational items such as the addition of an owner, officer, or director or a change in the licensee's name or legal entity status.

Proposes to adjust fees to better reflect the actual costs incurred by a CSO to provide services. This is the first time fees have been adjusted since enactment of the CSO Act. The following adjustments are proposed in the bill:

- Adjusts the one-time consultation fee from a maximum of \$50 to a maximum of \$75. The fee includes the cost of a consumer's credit report.
- Adjusts the monthly maintenance fee cap from \$20 to \$40 per month, or alternatively, permits a CSO to collect a monthly maintenance fee of \$5 for each creditor that is listed in the consumer's debt management services agreement. The CSO may only collect the lesser of the two fees.
- Permits a CSO to collect a reasonable fee from a consumer for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, or other counseling services authorized by the commissioner. This includes educational programs, or materials and supplies.
- Permits the CSO a one-time charge of up to \$30 for an insufficient payment. Permits the CSO to charge a consumer up to \$5 to process an electronic payment, but the consumer must authorize the payment. The bill prohibits a charge for a payment if the consumer makes all payments through electronic means.
- Includes language that permits a CSO to waive any of the fees permitted in the statute if the CSO determines the consumer is unable to pay the fees. CSO's indicate they frequently waive fees for consumers.

Secures the confidentiality of examination reports and related correspondence. In addition, authorizes the commissioner to enter into informal agreements with any person for a plan of action to address violations of the CSO Act. Also allows the commissioner to issue, amend, and revoke written

administrative guidance documents. Both provisions are subject to a five-year sunset subject to legislative review and reenactment.

Imposes enhanced penalties for a violation against an elder or disabled person as set out in K.S.A. 50-676. The bill permits an additional penalty of \$10,000 per violation in addition to any other penalty provided by law. It requires restitution for any loss arising from a violation or the disgorgement of any profits arising from the violation.

The agency is requesting the committee consider the following amendments to the bill. The language comprising these definitions was inadvertently retained in the draft of the bill.

- Sec. 1, page 2, lines 5 through 20: deletion of the definition of “Related interest.”
- Sec. 1, page 2, lines 21-22: deletion of the definition of “Registrant.”

SB 87 provides much-needed modernization of the CSO Act. These adjustments will help CSOs provide additional services, strengthen safeguards for consumers, and update regulatory processes. We appreciate the opportunity to share our support for SB 87 and thank the committee for its consideration of the bill.