Special Committee on Financial Institutions and Insurance

HB 2267 - An Act concerning the uniform consumer credit code; relating to consumer loans.

Whitney Damron
On behalf of the Kansas Consumer Financial Services Association, Inc.

OPPOSITION TESTIMONY

October 11, 2017

Good morning Chairman Longbine and Members of the Committee:

I am Whitney Damron and I appear before you today on behalf of the Kansas Consumer Financial Services Association in opposition to HB 2267 introduced into the 2017 Legislature that proposes to eliminate a source of credit that has been available to consumers for more than 25 years.

Members of our association are both large, national chains and smaller stores offering loans under K.S.A. 16a-2-404, otherwise known as "payday loans."

On Thursday, October 5, 2017 the Consumer Financial Protection Bureau issued a rule on certain loans, including payday loans (payday loans, auto title loans, deposit advance loans and longer-term loans with balloon payments). That rule is scheduled to become effective in 21 months. As my client has stated in the past when legislation like HB 2267 was being considered by the Legislature, we believe it is appropriate for the Office of the State Bank Commissioner to be allowed to review this matter and see what, if any state laws or regulations should be amended to comply with Federal requirements (or if Federal law will supersede Kansas law, making changes unnecessary).

In the coming months, it is very likely the rule issued by the CFPB will be challenged by one or more parties on one of several grounds, including adoption of a rule contrary to public comment and due process.

That said, I thought it may be helpful to provide the Committee with background on the Kansas payday loan laws as part of your deliberative process.

By way of information, payday loan transaction rates in Kansas are among the lowest in the United States and as low as or lower than our surrounding states. We have 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 and even proposed by the Kansas payday loan industry. Furthermore, many independent studies, including one by the New York Federal Reserve Bank have debunked many of the myths about payday lending, including the premise that they are predatory in nature.

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 $100.00 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 the industry is regulated by the Office of the State Bank Commissioner and history shows there are few complaints filed against licensed payday lenders, due in large part to the straightforward terms of the agreement.

Customers of payday loan lenders 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 payday loan to meet a short-term need vs. the consequences of not taking out a loan? Paying rent, obtaining medicine for a child, fix a car to make it to work or simply to avoid writing an insufficient fund check and incurring the consequences of that transaction may be a consideration for taking out a payday loan.

The action by the CFPB unduly targets a small class of consumers and will result in a loss credit options for millions of people.

The arguments the CFPB asserts for sustaining their rule on payday, auto title and related short-term loans could be made for most any financial services product, including:

- No Doc/Low Doc mortgage loans;
- 100% and greater mortgage loans;
- Motor vehicle loans with balloon payments;
- Consumers with multiple credit cards and/or open-ended credit;
- Consumers who find themselves in a change of circumstances (e.g., loss of job, health issues, etc.).

The CFPB rule and legislation such as HB 2267 unfairly targets customers of payday loans, yet remains silent about other financial transactions that have costs much higher than those associated with a payday loan. The CFPB and this legislation fails to recognize the costs a consumer faces when they write an insufficient check to a grocery store or other vendor where an insufficient fund check 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. Furthermore, 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 short-term loans to protect the user's credit history, insure their checks clear and important debt obligations are paid and to help manage personal cash flow. The charges for those services can compare to a payday loan charge, yet are not a part of this legislation.

The consequences of a bad check would seem to make a $15.00 charge on a two-week payday loan a responsible financial decision.

Consumers have the requisite understanding of their own personal financial situation and can make informed choices about short-term and long-term loans and financial matters. Legislation such as HB 2267 would effectively kill off a financial option that has been available to Kansas consumers for more than 25 years without replacing it with a suitable alternative for those with short-term credit needs.

In closing, I would note in a regulated free-market, interest rates and financial transaction fees reflect lender risk and consumer preference – a fact the CFPB and proponents of HB 2267 fail to comprehend. There is a myriad of borrowing options available to consumers with varying interest rates, fees and terms. Payday loans are an important source of credit for many consumers and this legislation unfairly proposes to eliminate this as an option with little regard for the real-world consequences.

There will be a great deal of commentary and speculation regarding the impact of the CFPB rule on consumers and we would anticipate the OSBC would weigh in with comments and perhaps suggested statutory changes in 2018 or closer to the implementation of the CFPB rule if it withstands legal challenges. Accordingly, we do not believe the Legislature should proceed with HB 2267 or related legislation now.

Thank you.

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On behalf of the Kansas Community Financial Services Association, Inc.

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Attachment: *President Cordray Strikes Again*
Wall Street Journal
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REVIEW & OUTLOOK

President Cordray Strikes Again

He bids to kill payday lending after Trump refuses to fire him.

CFPB Director Richard Cordray in Charleston, W.Va., Feb. 16. PHOTO: BRYCE SPIVEY/PLANET PIX/ZUMA PRESS

By The Editorial Board
Oct. 5, 2017 7:25 p.m. ET

President Trump hasn't fired Consumer Financial Protection Bureau (CFPB) director Richard Cordray despite ample cause. Yet the economic costs continue to compound—now with the bureau's payday-loan rule that seeks to put the industry out of business.

The CFPB on Thursday finalized its rule regulating the pay-day market. These short-term loans are typically for less than $500 and carry fees of $15 per $100 borrowed. Many low-income Americans use them to pay for emergencies or bills that are due between paychecks.

Payday lending has been regulated by the states, and 15 impose restrictions that in effect ban the business. House Democrats in 2009 proposed sweeping legislation to regulate the industry that never got traction. Dodd-Frank directs the CFPB to supervise pay-day lenders but doesn't include express rule-making authority. But Mr. Cordray has demonstrated time and again that he doesn't see the law as a limit on his discretion.

The new rule requires lenders to conduct a "full-payment" test to ensure that borrowers can repay the loans and fees within two weeks while meeting other major financial obligations. Short-term loans that customers can roll over are capped at three, and lenders are barred from debiting customer checking accounts after two unsuccessful attempts at collection.

These restrictions may seem well-intended, but they in effect allow loans only to unprofitable customers with good credit and prevent lenders from taking recourse against borrowers who don't pay their bills. As a result, many Americans will lose access to an important source of emergency cash.

Mr. Cordray is outraged that "lenders actually prefer customers who will re-borrow repeatedly rather than simply repaying the loan when it comes due." Yet this is how credit cards make money too.

While he portrays borrowers as unwary victims, most understand their options. A 2009 study by George Washington University found that about half of borrowers surveyed had considered other credit alternatives, and more than 80% lacked funds in their bank accounts to cover expenses. Payday loans can prevent borrowers from incurring more expensive overdraft fees.

A New York Federal Reserve study in February 2008 examined how households in two states fared after they banned payday loans. Compared with households in states where payday lending is allowed, the study found that Georgia and North Carolina households had "bounced more checks, complained more to the Federal Trade Commission about lenders and debt collectors, and filed for Chapter 7 bankruptcy protection at a higher rate." The researchers concluded that payday credit is preferable to alternatives such as bounced-check protection from banks or loans from pawnshops.

The final rule doesn't cover longer term loans that were included in its proposal because reviewing all of the public comments could have required several more months. Mr. Cordray appears to have truncated the regulatory process in anticipation of leaving to run for Governor of Ohio, though we hear he may now have second thoughts.

Mr. Trump may be loath to make Mr. Cordray a progressive martyr by firing him. But his reluctance has allowed the director to do significant economic harm with the pay-day rule and ban on arbitration class-action waivers, which Senate Republicans are unlikely to overturn under the Congressional Review Act.

The recent rule-makings give the President more cause to dismiss the director, and a D.C. Circuit Court of Appeals panel has held that he can be removed at will. Mr. Cordray has appealed the panel's ruling to the full circuit. If Mr. Cordray doesn't now leave on his own, will the President have the will to fire him?