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**Testimony of Lorry S.C. Brown
On Behalf of the Michigan Poverty Law Program (MPLP)**

**Senate Committee on Banking and Financial Institutions
Senate Bill 842 and Senate Bill 843**

Chairman Booher and members of the Senate Committee on Banking and Financial Institutions. Thank you for the opportunity to testify regarding Senate Bills 842 and 843. I am Lorry Brown, the statewide consumer law attorney at Michigan Poverty Law Program. Michigan Poverty Law Program (MPLP) is the statewide support office for legal services programs. MPLP advocates on behalf of the state's low-income residents on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

Senate Bills 842 and 843 propose a new model to payday lending that will allow higher fees in addition to the permissible interest rate for payday loans in Michigan. These bills are an attempt to circumvent the limitations placed on payday lending by the current law in Michigan – Michigan's Deferred Presentment Services Transactions Act. If passed, the payday lenders will be allowed to expand their loan products at a higher cost further contributing to the debt trap that low-income consumers find themselves. Given that, the Michigan Poverty Law Program opposes Senate Bills 842 and 843.

Brief History of Payday Lending

Prior to January 2006, payday lending arguably was unregulated in Michigan. In General, payday lenders were evading usury laws and charging exorbitant interest rates for short term loans. These abusive lending practices that resulted in triple-digit interest rates became a trap for consumers in long term debt. As a result, states enacted interest rate caps and other protections to eliminate the abusive lending practices. Michigan was one of those states. Michigan enacted the Deferred Presentment Services Transactions Act (DPSTA) effective January 1, 2006. Although DPSTA still resulted in a triple digit interest rate, it placed restrictions on permissible fees, the number of loans, and provided some consumer protections. Payday lenders in Michigan are regulated under the DPSTA.

However, the payday lending industry has always tried to circumvent the payday lending statutes nationally and in Michigan by creating new ways to maintain its business in offering short term loans at exorbitant interest rates. For example, payday lenders tried to circumvent state payday lending laws by partnering with national banks. This model was referred to as the "Rent-A-Charter" model. This model was later prohibited by the FDIC in 2005. Shortly, the industry began introducing the credit services organization model – CSO model. (See Center for Responsible Lending Report – *Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The next chapter in payday lending subterfuge* (July 2010), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-CSO-Issue-Brief-FINAL.pdf>.)



The Credit Services Organization Model – CSO Model

Most states have a Credit Services Protection Act that is modeled after the Federal Credit Repair Organizations Act. These statutes are intended “to protect the public from unfair and deceptive advertising and business practices by credit repair organizations.” Most recently it has been very effective in protecting Michigan residents against foreclosure rescue scams. These statutes were not enacted to address lending practices, thus, the credit services protection acts do not place limitations on the fees charged.

The payday lending industry quickly seized upon this model. The CSO model is merely a scheme to avoid the state limitations on fees. Essentially, as CSOs, the payday lenders become loan brokers that can charge fees without any restrictions. Unfortunately, in 2005, the payday lending industry convinced Texas to allow them to operate as CSOs. In 2008, they began operating as CSOs in Ohio. However, in 2006, Michigan was the first state to reject the CSO model by finding it deceptive.

In 2006, Michigan’s then Commissioner of Financial and Insurance Services after

thoroughly and carefully considered and reviewed the dynamics of the proposed CSO payday loan business model . . . [found] it to be prohibited by both the [Regulatory Loan Act] and the [Credit Services Protection Act]. A reasonable review of this business model can only conclude that it is a deceptive subterfuge designed to extract impermissible fees from a borrower. The purpose of this business model appears to be to avoid the interest rate limits of the [Regulatory Loan Act] as well as the fee limitations placed on deferred presentment service transactions, commonly known as payday loans, by the recently enacted Deferred Presentment Service Transactions Act (“DPSTA”).

Not only did the Commissioner of Michigan’s Financial and Insurance Services (DFIS) rejected the CSO model, DIFS defended this position in court in 2015. The court agreed with DIFS.

Likewise, in 2007, California rejected the CSO model. Maryland also rejected this model in 2010 by passing a bill that requires the broker fees to be subjected to the interest rate cap. (See Center for Responsible Lending Report – *Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The next chapter in payday lending subterfuge* (July 2010), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-CSO-Issue-Brief-FINAL.pdf>.)

Proposed CFPB Rules

It is no surprise that Senate Bills 842 & 843 is now being proposed. This is an apparent attempt to overturn DIFS’ ruling and the court’s ruling.

The industry argues that proposed CFPB rules will change how payday lending is done in Michigan and the CSO model is in response to the pending CFPB rules. The CFPB rules should

not have any different impact on the CSO model than on the current payday lending model in Michigan. The rules will basically require that the lenders make a determination on the borrowers' ability to pay. The CFPB rules will not impose any interest rate cap.

For the last several years, the lending industry has come before this legislature in an attempt to eliminate state consumer protection laws arguing that new CFPB rules change everything and certain Michigan laws are no longer necessary. It is important to note that the CFPB rules are not intended to preempt strong state consumer protection laws. The CFPB rules are intended to be a floor not a ceiling.

As to the payday lending industry, arguing that the CSO model is aimed at complying with the pending CFPB rules, is disingenuous. The CFPB rules did not exist in 2005 when the industry introduced the CSO model in Texas. The CFPB rules did not exist in 2008 when it began operating as a CSO in Ohio. The CFPB rules did not exist in 2006 when it tried to operate as a CSO in Michigan and DIFS rejected its application. The CSO model is clearly a subterfuge to charge fees that are currently impermissible under Michigan law.

Conclusion

The Michigan Poverty Law Program, on behalf of Michigan's low-income residents, requests that these bills should not be passed. Payday lenders should not be considered credit services organizations in Michigan. Credit services statutes are not designed for payday lenders. As payday lenders are already regulated under Michigan's payday lending statute, they must comply with existing Michigan law. The Michigan Poverty Law Program opposes SB 842 & SB 843.

Thank you.

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