voices for children IN NEBRASKA

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To: Chairman Williams and Members of the Banking, Commerce, and Insurance Committee
From: Julia Tse, Policy Coordinator for Economic Stability and Health
RE: Opposition to LB 379 - Change provisions under the Delayed Deposit Services Licensing Act and the Nebraska Installment Loan Act

Access to fair credit ensures that an unexpected expense does not send families into a spiral of financial devastation. Predatory lending products and their effects in sowing financial instability for families have been linked to increased health risks, poor health outcomes, and even poor socioemotional development in children.[i] Voices for Children in Nebraska opposes LB 379 because it opens the door to a significantly more predatory and abusive lending industry without ensuring that our state regulators will be able to sufficiently protect borrowers. **The payday lending debt trap is alive and well in Nebraska, and statutory violations are already rampant among storefront lenders.** A new report from the Nebraska Department of Banking and Finance (NDBF) showed that the average borrower **was trapped in 10 loans in a year**, and took out **$342** at **404% APR**. [ii]

Payday loans are intended for occasional use, but the reality in Nebraska is that the practice of renewing a payday loan—when a borrower can't repay their original loan after two weeks and is forced to take out multiple loans to pay off the first loan—is not an exception, but the rule. Nationally, 80% of payday loans are taken out within two weeks of repayment of a previous payday loan, and three-quarters of payday loans go to those who take out more than 10 loans each year.[iii] In total, **the volume of renewals in 2017 drained over $29 million in fees alone from just over 52,000 Nebraska borrowers**.[iv]

Nebraska payday lenders are extreme outliers when it comes to violations of state statutes and regulations. **Payday lenders represented less than 2% of institutions in 2015, but they accounted for 75% of violations investigated by NDBF**.[v] State statute includes explicit protections to prevent loan renewals, requiring explicit documentation if a lender enters into a new loan on the same day of completing a prior transaction.[vi] From 2005 to 2015, NDBF found **1,741 violations of this single statutory requirement alone**.[vii] One investigation in 2013 found 128 separate violations by one single payday lender. Subsequent investigations of the same lender for two years following found the same violations each year.[viii] The volume and prevalence of statutory violations among existing storefront payday lenders raises significant concerns about the capacity of NDBF to adequately regulate the online lending industry.

When compared to traditional storefront lenders, the business model and practices of the online payday lending industry are fundamentally different. These differences carry significant implications to consider when it comes to LB 379 and whether our state regulators will be able to faithfully enforce our state laws. As is the case with other industries that have advanced with technological innovation, online payday lending has quickly outpaced federal and state regulation. It is estimated that **70% of online payday lenders are operating without a license**. Key characteristics of the online lending industry, based on extensive surveys and focus groups with online and storefront borrowers, that should be considered in any approach to legalize the industry include:[ix]

- **Reliance on third-party entities.** Most online loans begin with a third-party "lead generator"—not an online borrower. Online lenders rely on these lead generators to attract potential borrowers, and third-party brokers are in the business of selling private information collected from potential borrowers to online lenders. This dependence on third-party entities often leaves borrowers confused about their loan and who to contact with issues and creates many vulnerabilities for borrowers.
- **Access to and dissemination of personal and financial information.** The online collection of personal and financial information—Social Security and bank account numbers—means that potential borrowers' information is regularly sold and resold to online lenders *and fraudulent debt collectors*, even if that individual did not end up authorizing the loan. In a survey, 33% of online borrowers reported being contacted about a debt they did not owe, and 39% believe their information was sold to a third party. The monetization of sensitive information means that even if legitimate lenders make up 30% of the market, all borrowers and potential borrowers are ripe for exploitation by the rest of the industry that operates illegally or fraudulently.
- **Deceptive practices.** The fine print on online payday loans, and the elimination of the opportunity for in-person interaction between the borrower and the lender often sets borrowers up to rollover their loan without their informed consent. Nearly a third of online borrowers reported that their loans were *automatically refinanced* when the lender only withdrew fees that did not reduce their principal. Most reported that the only way to submit a payment that reduced their principal was to proactively submit notice 2 days in advance or more over the phone.
- **Fraud, harassment and threatening behavior.** Electronic submission of sensitive information and the handling of such information leaves borrowers confused when they are contacted by lenders, debt collectors, or fraudulent entities posing as legitimate lenders or debt collectors. Nearly a third of online borrowers reported being threatened with arrest, or having their family, friends, or employer contacted over the phone or in-person. In addition to fake debt collectors and fraudulent electronic withdrawals, online borrowers are also vulnerable to identity theft.

We do not have to look too far to find that online payday lenders are already defrauding and exploiting Nebraskans. Dozens of complaints submitted to the Consumer Financial Protection Bureau (CFPB) and the Better Business Bureau by Nebraskans evoke the same narratives collected nationally. An older Nebraskan wrote: "I have had over 300 harassing phone calls at work and at home for a loan I have never been late or missed a payment on."[x] A mother from Hebron shared that her son submitted his bank information in applying for a loan, was denied the loan, and received a call two days later claiming that he was loaned $8,000 and was forced to close his bank account to prevent a fraudulent withdrawal.[xi]

The authority to investigate and act against online lenders who are operating illegally already exists with NDBF. Since 2002, only 2 cease and desist orders have been filed against illegal online lenders—once in 2007, and once in 2017.[xii] As of today, the subject of the most recent order, Steve's Payday Loans, operating illegally with an alleged physical location just 5 miles from the State Capitol, continues to have an operating website that collects Social Security and bank account numbers with just 2 clicks.[xiii]

We are additionally concerned by Section 7 of the bill, which allows installment lenders to be licensed as payday lenders. This language would give lenders the opportunity to mask refinancing or loan renewals by shuffling borrowers between different products without explicitly violating existing statutes that are in place to protect borrowers from loan churn.

We are thankful to Senator Kolterman for his time and consideration on this issue, and to the members of this committee for their efforts in protecting consumers. LB 379 would expand access to a product that leads thousands of Nebraskans into financial run, and the bill provides no increased capacity to NDBF to regulate the legalization of online payday lending. We respectfully ask you to not advance LB 379.

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[i] Elizabeth Sweet, Christopher W. Kuzawa, and Thomas W. McDade, "Short-term Lending: Payday Loans as Risk Factors for Anxiety, Inflammation and Poor Health," *SSM Population Health* 5 (2018):114-121, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6005810/. Jerzy Eisenberg-Guyot, et al., "From Payday Loans to Pawn shops: Fringe Banking, the Unbanked, and Health," *Health Affairs* 37, no. 3(2018):429-437, https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.1219. Lawrence M. Berger and Jason N. Houle, "Parental Debt and Children's Socioemotional Well-being," *Pediatrics* 137, no. 2 (2016), http://pediatrics.aappublications.org/content/pediatrics/early/2016/01/20/peds.2015-3059.full.pdf.

[ii] Nebraska Department of Banking and Finance, "Report to the Legislature: 45-931 DDS Annual Report," November 2018, https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Banking_and_Finance/680_20181121-091648.pdf.

[iii] Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings," April 2013, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

[iv] Nebraska Department of Banking and Finance, "Report to the Legislature: 45-931 DDS Annual Report."

[v] Ken Smith and James Goddard, "The Payday Lending Problem in Nebraska: An Analysis of Non-compliance with Regulatory Requirements," February 2017, https://neappleseed.org/wp-content/uploads/2017/02/ThePaydayLendingProblemInNebraska-2.17.pdf.

[vi] Neb. Rev. Stat. § 45-919(1)(g).

[vii] Voices for Children in Nebraska analysis of "Orders and Action Search," Nebraska Department of Banking and Finance, http://www.nebraska.gov/ndbf/searches/orders.cgi. Data available upon request.

[viii] Ken Smith and James Goddard, "The Payday Lending Problem in Nebraska."

[ix] Pew Charitable Trusts, "Fraud and Abuse Online: Harmful Practices in Internet Payday Lending," October 2014, https://www.pewtrusts.org/~/media/assets/2014/10/payday-lending-report/fraud_and_abuse_online_harmful_practices_in_internet_payday_lending.pdf.

[x] Consumer Financial Protection Bureau, "Consumer Complaint Database," https://www.consumerfinance.gov/data-research/consumer-complaints/.

[xi] Better Business Bureau, "BBB Scam Tracker," https://www.bbb.org/scamtracker/us.

[xii] Nebraska Department of Banking and Finance, "Orders and Actions Search," http://www.nebraska.gov/ndbf/searches/orders.cgi.

[xiii] Nebraska Department of Banking and Finance, "Order to Cease and Desist in the Matter of Steve's Payday Loans," December 5, 2017, http://www.nebraska.gov/ndbf/searches/Orders/20171205_Steve'sPaydayLoans_DDS.pdf. See also www.stevespaydayloans.com.