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**May 31<sup>st</sup>, 2016**

**BILL NUMBER:** A.9634-A/S.6985-A

**SPONSORS:** Assemblymember Rodriguez / Senator Savino

**TITLE OF BILL:** “Community Financial Services Access and Modernization Act”

**STATEMENT OF OPPOSITION:** The Western New York Law Center opposes A.9634-A/S.6985-A, as amended, which would permit New York check cashers to make loans. The bill would allow check cashers, which have no experience as lenders, to make small businesses and commercial loans in New York, without ensuring the safety and soundness of those loans. The legislation does not establish regulatory oversight for safety and soundness of the loans issued by check cashers. By allowing an unprecedented and unwarranted expansion of check cashers’ authority, the bill would pave the way for high-cost, predatory loans that New York has successfully fought to keep out of our state. The Western New York Law Center opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

Regularly, the check-cashing industry has tried to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York’s longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. This bill is the check-cashing industry’s latest attempt to convince the New York State Legislature to grant them the power to make loans, and pave the way for legalization of high-cost loans. New York has fought to keep any form of predatory lending from entering the state; this legislation would erase necessary consumer protections that stop predatory lenders from target New York’s low-income communities and communities of color with high cost loan products.

May the recent financial meltdown be a firm reminder that a loosening of lending standards and reasonable oversight can have a devastating effect on our communities. Effective regulation and enforcement of sound underwriting practices is crucial in ensuring that institutions engaging in lending activities are acting in the best interest of borrowers and the communities’ financial stability. The proposed legislation does not address how check cashers and other potential lenders will examine the safety and soundness of their loans.

While this bill is largely presented as a “modernization” act, in reality it fails to modernize the financial system. By allowing check cashers the ability to lend, the financial system is not modernized but rather money is introduced into the market in a reckless manner that subjects consumers and business owners to unreasonable fees and high interest rates.

The proposed legislation would greatly expand the permissible services of check cashers beyond those that they have the capacity to safely provide in communities. Check cashing businesses have never been in the business of making loans or issuing credit. Loans would be made to business owners without the responsibility of proper underwriting – that is, evaluating the ability to repay, considering income and expenses – which is absent in this bill.

The bill would also permit check cashers to provide “conduit services” as well as “any other financial service permitted in this state.” The bill loosely defines “conduit services” as activities “in collaboration with a bank, credit union, or other financial institution or licensee authorized to do business in this state or by federal law.” This vague, unprecedented language could be construed as permitting check cashers to collaborate with out-of-state banks in “rent-a-bank” schemes designed to evade our usury laws – the very schemes that New York and federal regulators have in the past shut down through effective enforcement actions.

In 2011, a bill was introduced in the New York State Legislature that would have permitted New York check cashers to make loans. In the same manner as the proposed legislation, this bill would have introduced unsound lending practices into New York communities. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ... This legislation would for the first time allow check cashers to make loans, even though the State’s supervision is not set up to ensure the safety and soundness of such lending.

In response to 2013 legislation pushed by the check cashing industry, former Department of Financial Services’ Superintendent Benjamin Lawsky asserted in April 29, 2013 letter that check cashers are “entities not regulated for...safe and sound lending operations.”

This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, effectively stripping wealth from low-income communities and communities of color. If passed, the legislation would effectively weaken New Yorker’s established consumer protections and reintroduce consumers and business owners to internet and other predatory pay day lenders.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans allows check cashers to make loans, and New York should not be the first to do so.

The Legislature should reject A.9634-A/S.6985-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

The Western New York Law Center urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.