

**Joint Testimony of**

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**Before the Committee on Business and Economic Development  
Council of the District of Columbia**

**Submitted for the Record of the Public Hearing Regarding:**

**Bill 22-0432  
“Financial Services Consumer Protection Act of 2017”**

**October 17, 2018**

The Legal Aid Society of the District of Columbia<sup>1</sup> and Tzedek DC<sup>2</sup> jointly submit this testimony regarding Bill 22-0432, the “Financial Services Consumer Protection Act of 2017.”

Legal Aid and Tzedek DC support the objectives of the bill, which would provide for licensing and regulation of certain non-depository financial entities, including currency exchangers, retail sellers (that extend credit through retail installment transactions), sales finance companies, debt

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<sup>1</sup> The Legal Aid Society of the District of Columbia is D.C.’s oldest and largest general civil legal services organization. Since 1932, Legal Aid lawyers have been making justice real in individual and systemic ways for persons living in poverty in the District. Legal Aid’s Consumer Law Unit represents D.C. consumers in matters arising from retail installment sales, in debt collection cases involving sales finance companies and debt buyers, and in judicial foreclosure actions involving third party loan servicers.

<sup>2</sup> Tzedek DC is a public interest center headquartered at the University of the District of Columbia David A. Clarke School of Law with the mission of safeguarding the rights of low-income D.C. residents facing debt-related crises. Tzedek DC’s work includes representing D.C. residents in matters arising from retail installment sales and in debt collection cases involving sales finance companies and debt buyers. These comments supplement Tzedek DC’s oral testimony at the Committee’s October 3, 2018 hearing on this bill.

collection agencies (including debt buyers), and third-party loan servicers. These businesses would be required to obtain a license from the Department of Insurance, Securities and Banking (“DISB”), and would be subject to application, bonding requirements and enforcement provisions. We thank the Committee for its work on this important legislation.

In summary, we propose the following enhancements to Titles II, III, and IV of the bill:

- **Title II:** This title would create a new retail installment sales act for the District. We recommend that the Committee combine and harmonize the consumer protection provisions in this title with the existing, overlapping consumer protections in the D.C. Consumer Credit Protection Act to create a single, more comprehensive statute governing retail installment sales.
- **Title II:** We recommend that the Committee add interest rate and fee caps to the consumer protection provisions in this title (consistent with other provisions of D.C. law).
- **Title III:** This title would impose licensing requirements on debt collection agencies, including debt buyers, and third party loan servicers. Separately, Bill 22-0071, the Debt Buying Limitation Amendment Act of 2017 (also pending before the Committee), would create important consumer protections relating to the collection of consumer debt by those same entities. We recommend that the Committee combine the licensing requirements of Title III with the consumer protection provisions of B22-0071 in a single act.
- **Title IV:** This title contains bonding and enforcement provisions in support of Title II and III. We support the D.C. Attorney General’s request that his office be given more direct enforcement authority for these titles. We also recommend that the Committee add a private right of action to Title IV or, alternately, tie the consumer protection provisions in the bill to the existing private right of action in the D.C. Consumer Protection Procedures Act.

### **The D.C. Retail Seller and Sales Finance Company Act (Title II)**

As advocates for the interests of low-income D.C. residents and consumers, we have a special interest in Title II of B22-0432 (the “District of Columbia Retail Seller and Sales Finance Company Act of 2017”). Title II would provide a series of specific protections for consumers who purchase consumer goods or services in which the price is to be paid to the seller (or a sales finance company that regularly purchases retail installment contracts) in installments. These protections include:

- Requiring compliance with federal Truth in Lending Act requirements for determination and disclosure of finance charges (sec. 202)
- Requiring a series of disclosures in all retail installment contracts, and additional disclosures for open end credit transactions (secs. 207 and 210)

- Requiring that retail installment contracts be contained in a single document in an approved form, signed by both parties, and delivered to the buyer prior to consummation of the transaction or delivery of the goods or services (secs. 208 and 209)
- Prohibiting the practice of asking buyers to sign contracts before all blank spaces are filled in and the buyer has a reasonable opportunity to review the document (sec. 211)
- Prohibiting certain provisions in contract forms, including use of uneven payment intervals and unequal installments, waivers of claims or defenses against the seller, and agreements for the buyer to pay the seller's attorney's fees in collection of the debt (sec. 216)
- Regulating the seller's rights of repossessions of goods and providing for the buyer's right of redemption (secs. 219 and 220)

Similar protections are currently contained in the D.C. Code of Municipal Regulation, but not in the D.C. Code.<sup>3</sup> Title II of the Bill would make these regulations statutory, modernize and streamline the existing provisions, and confer on DISB clear regulatory and enforcement authority for the licensing of both retail installment sellers and sales finance companies. We support those objectives and adoption of the specific consumer protection features of Title II.

The Title II Requirements Should Be Combined and Harmonized with the Existing Consumer Credit Protection Act to Create a Single, More Comprehensive Statute Governing Retail Installment Sales

While we support the objectives and substantive provisions of Title II, we have some concern regarding the relationship between the proposed Title II and other D.C. consumer protection laws. To avoid a patchwork of legislation that may be cumbersome to navigate and contain internal inconsistencies, we urge the Committee to consider ways to combine and harmonize the laws regulating retail installment sales.

The District currently has a variety of consumer protection statutes, several of which apply to the same retail installment sellers and the same sort of retail sales transactions that would be regulated by Title II of the bill. For example, the Consumer Credit Protection Act ("CCPA"), D.C. Code §§ 28-3801 to 3816, applies to consumer credit sales in which credit is granted by retail sellers for consumer goods or services and the debt is payable in installments or a finance charge is made.<sup>4</sup> But that Act contains various consumer protections that are quite different from those in Title II, for example, prohibiting assignments of earnings as security for payment of the debt, prohibiting confession of judgment provisions, and prohibiting a seller from taking a negotiable instrument (other than a check) as evidence of a consumer's credit obligation.

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<sup>3</sup> See DCMR Title 16, Chapter 1 (Consumer Retail Credit)(providing for enforcement by the Department of Consumer and Regulatory Affairs); DCMR Title 26, Chapter C25 (Consumer Retail Credit)(providing for enforcement by DISB). The two sets of regulations in Titles 16 and 26 are virtually identical.

<sup>4</sup> The District's Consumer Protection Procedures Act ("CPPA"), DC Code Title 28, Chapter 39, would also apply to the transactions regulated by Title II. The CPPA broadly prohibits unfair or deceptive trade practices arising in transactions between consumers and merchants.

A few provisions of the CCPA are similar to those in Title II. For example, both the CCPA and Title II make assignees subject to all claims and defenses of the consumer, and both would prohibit balloon payments (albeit with very different language). Other provisions of the CCPA are inconsistent with proposed Title II. For example, while the CCPA limits attorney's fees to 15% of the unpaid balance, Title II would prohibit attorney's fees incurred in the collection of the debt entirely.

Consumer protection statutes like the CCPA and proposed Title II that focus on retail installment sales are generally referred to as "RISAs," or retail installment sales acts. Such acts have been enacted in a variety of forms in virtually every state. Enactment of Title II would give the District two overlapping, and somewhat inconsistent, RISAs. We recommend that the Committee consider potential approaches to combining the two statutes into a single, more comprehensive RISA that includes all of the consumer protection provisions in each.

### The Law Should Impose Interest and Fee Caps on Retail Installment Sales

Many state RISAs regulate the maximum interest charges (sometimes referred to as finance charges or credit service charges) and fees, including late fees that can be charged to the consumer. In its current form, Title II does not address interest or fee caps. We strongly recommend that the Committee add such caps to Title II.

Once again, there are other D.C. laws regulating interest rates and fees that would appear to apply to at least some of the transactions covered by Title II. For example, D.C. Code Title 28, Chapter 27 (the Consumer Credit Interest Rate Amendment Act of 1981), regulates the amount and computation of credit service charges on a revolving credit account in which a seller of goods or services extends open end credit to the buyer and imposes a credit service charge on the unpaid balance. In such transactions, that Act limits the credit service charge to 2% a month and limits late fees on minimum payments not paid in full to \$15 for any one minimum payment.<sup>5</sup> Title II would apply to both closed end and open end retail installment sales transactions. Consistent with the approach already taken in Title 28, Chapter 27 and in many other state RISAs, we recommend that limits similar to those in Chapter 27 be added to Title II's consumer protections.

### **The Debt Collection Agency and Third Party Loan Servicer Act (Title III)**

Title III of B22-0432, the District of Columbia Debt Collection Agency and Third Party Loan Servicer Act of 2017, would provide for DISB licensing of collection agencies and third party loan servicers. "Collection agency" is defined broadly to include entities in the business of collecting money owed by a consumer to another person or, if the claim was in default when the agency acquired it, collecting on a claim owned by the agency (i.e., a debt buyer claim). "Third party loan servicer" is defined broadly to include persons who service loans owned or due to another person. (Lawyers who do not engage in debt collection or loan servicing as a regular part of their practice are generally excluded from these definitions.)

Our organizations regularly represent D.C. consumers in debt collection cases brought by collection agencies and debt buyers. The debt alleged to be owed in these cases typically

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<sup>5</sup> See D.C. Code § 28-3702(c) and (d).

includes credit card debt, medical debt, consumer loans, automobile financing, or retail installment transaction debt. Legal Aid also regularly represents homeowners in judicial foreclosure cases involving third party loan servicers. Legal Aid and Tzedek DC strongly support the proposed licensing, bonding, and other regulation of collection agencies (including debt buyers) and third party loan servicers because of the abusive and improper practices engaged in by certain companies in these businesses.

In his testimony before the Committee on October 3, DISB Commissioner Stephen Taylor emphasized that many states and consumer protection agencies have seen an increase in abuse allegations related to the businesses covered by the bill, including those who would be regulated by Title III. Calling for increased oversight and regulation of those bad actors, he noted that other states (including California and New York) have revised their rules to require more documentation before collection agencies and debt buyers can attempt to collect a debt. In New York, he said, there has been a corresponding decrease in the filing of debt collection lawsuits.

Nothing in Title III (or any other title in the bill) currently addresses the abuses identified by Commissioner Taylor or would require debt collectors or debt buyers to have any particular documentation related to the debt. Another bill pending before this Committee, however, does have such requirements. B22-0071, the Debt Buying Limitation Amendment Act of 2017, would amend the District's current debt collection law (a part of the Consumer Credit Protection Act), D.C. Code § 38-3814, to strengthen existing provisions designed to protect consumers from abusive collection practices, to require debt collectors to possess specific kinds of information and documents before collecting or attempting to collect a consumer debt, and to have additional documentation before filing a debt collection case. B22-0071 also would require debt buyers to allege certain information in any court debt collection complaint and to attach certain documentation to the complaint, as well as providing an expanded private right of action against debt buyers who violate the act.

Eight public interest organizations, including Legal Aid and Tzedek DC, previously recommended that this Committee hold a hearing on Bill B22-0071.<sup>6</sup> Consistent with that recommendation, we support Commissioner Taylor's call for increased regulation and oversight of debt collectors and debt buyers. As one potential approach to addressing that call, we suggest that, going forward, the Committee consolidate its consideration of B22-0071 and Title III of B22-0432 and consider combining the consumer protections in B22-0071 with the licensing requirements in Title II of B22-0432.

#### **Enforcement Provisions (Title IV)**

Title IV of B22-0432 addresses bonding requirements and enforcement provisions applicable to Titles II and III. The enforcement provisions outline a system for administrative enforcement of those titles by the DISB Commissioner through the issuance of cease and desist orders. They also include authorization for the D.C. Attorney General to seek restraining orders and injunctions in appropriate cases and to bring prosecutions for violations of those titles. Title IV

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<sup>6</sup> See July 5, 2017 Letter from Public Interest Groups to the Committee, on line at: <https://static1.squarespace.com/static/57056a9e0442629a7a43ca60/t/5967e1f403596ea29b1f51a9/1499980278350/Debt+Buying+Limitation+Amendment+Act+of+2017+Support+Letter.pdf>.

does not, however, appear to give the Attorney General direct civil enforcement authority for the consumer protection provisions in Title II. At the October 3 hearing, Benjamin Wiseman, Director of the Attorney General's Office of Consumer Protection, recommended that the Committee add broader and more direct Attorney General enforcement authority to the bill. We fully support that recommendation.

We also suggest that the Committee consider adding a private right of action to Title II or, alternatively, including language in the bill that would tie its consumer protection provisions to the private right of action already provided in the Consumer Protection Procedures Act.

### **Conclusion**

Legal Aid and Tzedek DC would be pleased to work with committee staff and other key stakeholders, including DISB and the Attorney General's Office of Consumer Protection, to address our recommendations and other potential improvements to B22-0432 as it works its way through the legislative process.