



MEMORANDUM IN OPPOSITION

May 13, 2016

BILL NUMBER: A.9634/S.6985

SPONSORS: Assemblymember Rodriguez / Senator Savino

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: New Economy Project opposes A.9634/S.6985, which would permit New York check cashers to make loans. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. 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 long successfully fought to keep out of our state. New Economy Project opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

For years, the check-cashing industry has been trying 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. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned

anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. 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 an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for...safe and sound lending operations."

The bill would also permit check cashers to provide "conduit services" as well as "any other financial service permitted in this state." "Conduit services," however, are undefined in any current federal or state lending laws. 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 broad, 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.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. A.9634/S.6985 flies in the face of these critical public enforcement actions. 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, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

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 – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject A.9634/S.6985 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 already 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.

New Economy Project urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.