



Senate Finance Committee
The Alaska State Legislature
Re: Senate Bill 39
March 25, 2025

Co-Chairs Hoffman, Olson, and Stedman, Vice Chair Merrick, and Members of the Committee:

I write to follow up on some questions the committee raised in the March 20 discussion of SB 39, a bill to simplify Alaska's consumer lending laws and close the loophole for deferred deposit transactions (commonly known as payday loans). I regret that technology issues prevented me from testifying at that hearing and thank you for the opportunity to respond in writing.

My name is Andrew Kushner and I am a senior policy counsel at the Center for Responsible Lending. CRL is a non-profit, non-partisan policy and research organization dedicated to building family wealth through curbing abusive financial practices. CRL is affiliated with the Self-Help family of credit unions, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers. We have supported efforts like SB 39 to cap interest rates at 36% or less in states across the country.

First, I would like to respond to Senator Kiehl's question about the correlation between bankruptcy rates and the availability of predatory payday loans. The study to which Senator Kiehl referred – Do Payday Loans Cause Bankruptcy?¹ – is a very interesting study that found that payday loans increase personal bankruptcy rates by a factor of two. Relying on datasets of over 140,000 individuals' payday loan applications and over 550,000 bankruptcy filings, the authors of the study found that access to payday loans significantly caused personal bankruptcy rates to increase. The authors theorized that "the bankruptcies could arise because of the cash flow burden of pressing payday finance charges" (that is, the fee that borrowers must repay on payday).

This study is powerful evidence of the harms of payday loans. Although payday and other predatory lenders claim to provide borrowers with quick and easy cash for occasional needs, the evidence of harm to borrowers from these loans is well established

¹ Paige M. Skiba, Do Payday Loans Cause Bankruptcy?, 62 Journal of Law & Economics. 485 (2019), available at <https://scholarship.law.vanderbilt.edu/faculty-publications/1128>

and vast. The industry's very business model is trapping consumers in a cycle of debt. Nationally, 75% of payday loan fees are generated by people stuck in more than 10 loans a year.² In short, unaffordable credit is a feature, not a bug, of the predatory lender business model.

As far as I am aware, the Do Payday Loans Cause Bankruptcy? study is the only study to look at the correlation between bankruptcy rates and the availability of payday loans. No research has been done, as far as I'm aware, into any changes in bankruptcy rates after states repeal payday loan statutes or limit the loans to 36% APR.

Second, I would like to respond to the argument from opponents of SB 39 that payday loans are necessary for access to credit. Thirty-six percent rate caps are rapidly becoming the norm. In 2006, Congress passed a 36% rate cap in the Military Lending Act for active-duty military and their dependents. Voters subsequently overwhelmingly passed 36% rate caps in South Dakota, Colorado, and Nebraska in 2016, 2018, and 2020, respectively. State legislatures in Illinois, New Mexico, and Minnesota then passed interest rate cap bills in 2021, 2022, and 2023, respectively. SB 39 would put Alaska in line with laws applicable to active-duty military and in place in over a third of the states.

The experiences of the military and these 20 states confirm that the sky does not fall once lenders are prohibited from charging predatory interest rates. Many states without payday loans have never had them and have repeatedly rejected proposals to legalize them in their states. For other states that once had payday loans but now do not, borrowers are protected from predatory interest rates while at the same time healthy credit markets still exist, where consumers can get access to safe, responsible credit in times of need.

To take just one example, I am aware that opponents of SB 39 have argued that New Mexicans have had trouble accessing credit since that state's 36% law went into effect. That is inaccurate. A review of New Mexico's most recent annual report for licensed lenders shows:

- 54 active licenses for making secured loans under the state's Small Loan Act (SLA);
- 75 active licenses for making unsecured loans under the SLA;
- 102 active licenses for making secured loans under the states' Banking Institutions Small Loan Act (BILA); and

² Consumer Financial Protection Bureau. Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings (2013), available at https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

- 117 active licenses for making unsecured loans under the BILA.³

In total, lenders made more than \$438 million in loans in 2023 (principal) to more than 252,000 borrowers. New Mexico is far from the credit desert of predatory lenders' imagination.

Third, I would like to address the representations made at the hearing about section 3 of the bill, its anti-evasion provision. That provision is designed to combat “rent-a-bank” lending, where an online non-bank lender routes its loans through a bank in order to try to take advantage of the bank’s ability to preempt state interest rate limits (a federal statute allows state-chartered banks to make loans at the interest rate allowed in their home state to borrowers in other states, even if the loan interest rate exceeds the limits in the borrower’s state).⁴

Section 3 of the bill simply provides that, in instance where the non-bank lender designs and effectively controls the lending program (including, for example, when the non-bank online lender has the “predominant economic interest” in the loan proceeds), the non-bank lender is the true lender and not the state-chartered bank. Notably, this language is not some novel outlier. Legislatures in Maine, New Mexico, Washington, Connecticut, and Illinois have passed identical, or nearly identical, language in recent years.

Moreover, states do not need to tolerate predatory online “rent-a-bank” lenders to ensure a healthy loan market. An interest-rate cap of 36% is actually squarely in the middle of a ranking of states’ interest rate cap policy choices.⁵ There is a thriving ecosystem of lenders who operate at or below that threshold, and it is not just consumer advocates that would say this. The American Fintech Counsel (“AFC”), the trade group that calls itself the “premier trade association representing the largest financial technology (Fintech) companies and innovative banks,” does not admit lenders that lend above 36% APR.⁶ AFC has even announced its support for a nationwide 36% interest rate limit on all loans.⁷

³ 2023 New Mexico Small Loan Act Annual Report, New Mexico Regulation and Licensing Department, Financial Institutions Division (2024) at 2, available at <https://api.realfile.rtsclients.com/PublicFiles/1ee897135beb4b1c82715d36398de4c5/a3585761-9c35-45ef-a656-66018b3ad12a/2023%20New%20Mexico%20Small%20Loan%20Act%20Annual%20Report.pdf>

⁴ For more information about rent-a-bank lending please see Stop High-Cost Lenders from Evading State Laws: An Overview of Rent-a-Bank Schemes & the Simple DIDMCA Opt-Out Solution, CRL (2023), available at <https://www.responsiblelending.org/research-publication/stop-high-cost-lenders-evading-state-laws-overview-rent-bank-schemes-simple>

⁵ High Cost Rent-a-Bank Watchlist, National Consumer Law Center (“NCLC”) (Sept. 2024), available at <https://www.nclc.org/resources/high-cost-rent-a-bank-loan-watch-list/>

⁶ Our Mission, AFC, available at <https://www.fintechcouncil.org/our-mission>

⁷ Federal: American Fintech Council (AFC) Announces Support For New Legislation To Create 36 Percent Interest Rate Cap On Consumer Loans (October 31, 2023), available at

Indeed, my understanding is that section 3 of the bill was negotiated with representatives of AFC. It is only the most predatory, unscrupulous online lenders that oppose such a standard. The committee should not be misled into believing that the opponents of the bill who spoke on section 3 represent the financial services industry as a whole.

Once again, thank you for the opportunity to provide these written comments and for your attention to this issue. Should you have additional questions, please contact me at andrew.kushner@responsiblelending.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Kushner". The signature is fluid and cursive, with the first name "Andrew" and last name "Kushner" clearly distinguishable.

Andrew Kushner
Senior Policy Counsel
Center for Responsible Lending

Alaska State Senate

Senator Forrest Dunbar



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Juneau, Alaska 99801
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March 26, 2025

The Honorable Lyman Hoffman
Co-Chair, Senate Finance Committee
Alaska State Capitol, Room 518
Juneau, AK 99801

The Honorable Bert Stedman
Co-Chair, Senate Finance Committee
Alaska State Capitol, Room 516
Juneau, AK 99801

The Honorable Donny Olson
Co-Chair, Senate Finance Committee
Alaska State Capitol, Room 508
Juneau, AK 99801

Dear Co-Chairs Hoffman, Stedman, and Olson, and Members of the Committee:

Thank you for hearing SB 39, a bill relating to payday lending practices in Alaska, on March 20th in the Senate Finance Committee. I'm writing to follow up on the questions and comments received during that hearing.

1. Senator Kaufman mentioned some discrepancies in testimony surrounding how fees and interest rates on these loans work and whether borrowers are facing a simple flat fee or if they're saddled with a more ongoing financial headwind.

By telling only half the story, opposition intentionally seeks to make payday loans seem less convoluted and long-lasting than they end up being for borrowers.

The Deferred Deposit Advances Act (AS 06.50) allows payday lenders to charge a \$5 origination fee plus 15% of the amount borrowed every two weeks. If a loan cannot be paid back in two weeks, then it can be rolled-over. When the loan is rolled over, the lender may charge another 15% on the entire balance, including both the initial principal and fees.

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The first point to make is that statute establishes a minimum term payment for a payday loan of 14 days. However, this is just the minimum term, there is no maximum. The second point is that you cannot renew a payday loan more than two consecutive times before defaulting. Sometimes we hear lenders say that these loans are only ongoing for a six-week period, at which rate interest rates stop accruing and the loan ends. However, this is only part of the story. The six-week loan period is only for those loans that were created with the **minimum** two-week term. However, even in the event that a loan term is only for two weeks, and it is rolled over twice to make for a total of a six-week term, the story does not end there. **We know from reports from the Division of Banking and Security that the average Alaskan borrower engaging in payday lending is taking out 5.56 loans per year and this is why we see interest rates accruing for much longer than lenders make clear.**

To illustrate this point, say a borrower gets a payday loan with a loan term of two weeks and then renews it twice. However, say at the end of six weeks they're still unable to pay everything off. What we see happening is that borrowers will take out another payday loan to make that first one disappear. What this means is that now they're taking out a larger loan this second time around to cover the associated rollover fees and interest that has accrued on the original loan. We can see that the interest on the first doesn't actually disappear, the borrower now just has a new, bigger loan that is continuing to accrue interest. **So in affect, these loans are accruing interest for longer periods than 6 weeks because they're allowing people to take out new payday loans to pay off their old payday loans. In turn, we can see that the interest rate functionally ends up being more than 15% as time goes on.** We know that the average borrower in Alaska is taking out 5.56 loans per year, so we can see how much opportunity there is for these loans and the associated fees and interest rate to accrue over a much longer period of time than lenders make it seem. This is where we get estimates of APR rates between 400-500% on the original loan.

Unfortunately, the structure of fees established by Alaska's laws creates perverse incentives for payday lenders. Data from the Consumer Financial Protection Bureau shows that payday lenders earn 75% of their revenue from borrowers who take out 10 or more loans. The longer it takes a borrower to repay, the more fees the lender can collect. The less money that the borrower repays each period, the more money the lender is able to make overall. This incentivizes payday lenders to find borrowers who *cannot* afford to repay their loans. The fees on payday loans are not determined by market forces or related to the risk of the loans. They're set by statute. And the law protects lenders from the risk of default (aka non-payment) because borrowers must write a post-dated check or give the lender direct access to their bank accounts. If you miss a payment, the lender can deposit your check or withdraw funds from your bank account. When lenders are still unable to collect directly, they can pursue you in small claims. In fact, Cash America (a Texas-based payday and pawn company) was the number one plaintiff in Alaska Small Claims Court in both 2017 and 2018. The lender is likely to prevail in court. In over 75% of small

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claims court cases, the plaintiff (in this case, the payday lender) wins by default, without actually needing to prove that the defendant (in this case you, the borrower) owed them anything.

2. Senator Kaufman also brought up questions regarding the carveout for pawnshops.

We are working on an amendment right now that will tweak the language as this bill relates to pawnshops. It is our intention to hold pawnshops under a 36% APR rate for their payday loan activity, however, we don't want this legislation to affect any other type of pawnbroker activity. For example, many pawnshops conduct what are colloquially known as 'collateral loans.' These collateral loans work very differently than a payday loan; lenders take an item of collateral equal in value or greater than they loan they give to borrowers that they can pawn in the event that the loan defaults. These collateral loans are an example of business activities we don't want to affect with this legislation.

However, we also don't want to create a carveout for pawnshop licenses that would exempt them from the 36% cap on payday lending. Such an exemption would encourage payday lenders to continue operating just under a pawnshop license. Our intention is instead to hold pawnshops accountable to this legislation while conducting payday loans, and to leave the rest of their business activities unaffected.

Should any members of the committee have additional questions, please don't hesitate to contact our office. The staff contact is Rachel Levy and you can reach her at Rachel.levy@akleg.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Forrest Dunbar".

Senator Forrest Dunbar



April 7, 2025

The Honorable James Kaufman
Senate Finance Committee
Alaska State Legislature

Dear Senator Kaufman,

The Online Lenders Alliance (OLA) opposes SB 39 which would repeal the state's deferred deposit lending statute and impose a new predominant economic interest (PEI) standard on certain bank loans. On March 20, the Finance Committee held an initial hearing and heard public testimony on SB 39. During that hearing, you asked several questions of the bill sponsor, Senator Dunbar. We've reviewed Senator Dunbar's March 27 response to those questions and feel compelled to respond.

Senator Dunbar's responses are based on a series of assumptions about a potential borrower's behavior and not on the basic facts about how the Deferred Deposit Advance (DDA) loan product works.

The deferred deposit advance (payday) loan product is designed to be a bridge between paychecks, with a loan duration of either two or four weeks. Regardless of the duration, the permissible fee structure is that the lender may charge up to \$15 per \$100 borrowed, with a maximum loan limit of \$500. If a borrower were to offer a loan beyond four weeks- the fee structure would still be \$15 per \$100 borrowed.

The lender does not charge interest on the loan in addition to the fee, and therefore there is no compound interest. The Truth in Lending Act (TILA) requires an Annual Percentage Rate (APR) calculation to be included in the loan disclosure despite the fact no interest is actually being charged. APR calculations are highly impacted by the duration of a loan, and a short-term loan will carry a high APR value because the calculation assumes that the borrower is making the payments for a full year – which is not possible on the deferred deposit product under Alaska law.

In Alaska, borrowers may only renew (rollover) a deferred deposit loan twice (Ch. 50 Deferred Deposit Advances -- Sec. 06.50.470). Furthermore, lenders have prohibitions on extending new loans if there is a loan outstanding. If customers are taking out more than one new loan a year, it likely reflects recurring financial needs. Lenders have repeat customers that are satisfied with the product and turn to it again when necessary. Alaska caps a deferred deposit loan at \$500, and the reality is that amount does not go far in today's world. SB 39 will not eliminate this need for credit, it will simply eliminate one of the very few options available to this group of Alaskans.

Senator Dunbar rightly states that the fee structure with the deferred deposit loan product is set by the state, however its use is driven by market forces. Approximately 30 percent of Alaskans are considered below prime because of their credit risk, which sharply limits their credit offerings. Alaskans who are able to secure credit cards carry the highest balances in the US, and Alaska's lending laws do not allow for even a modest market of credit options.

We have proposed to Senator Dunbar that the state could replace the deferred deposit product with an installment product that would allow for larger loans with longer durations and a multiple payment schedule. This would give consumers more options and flexibility than they have today. Unfortunately, there seemed to be no appreciable interest in exploring this alternative.

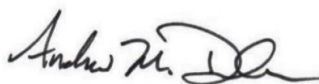
Shifting to your question about pawn loans. A pawn loan in Alaska can charge 20 percent of the amount financed every 30 days – effectively a 240% APR- with no limit on how many times the loan is renewed. A deferred deposit loan can charge \$15 per \$100 loaned and is typically due at the next pay period in either two or four weeks - and the loan can only be renewed twice. While the costs are similar, the pawn loan requires the borrower to provide something of value as collateral. Senator Dunbar's letter complains about lenders collecting on a deferred deposit loan, while saying it is okay that a pawn loan confiscates the collateral a borrower puts up to secure their loan. It is a legitimate question for policy makers as to whether pawn loans should receive preferential carve outs in Alaska statute. If DDA loans no longer deserve an exemption from Alaska's Small Loans Act, why do pawn loans? We would suggest giving consumers the option to select which is better for them.

During the hearing there was also a question about the exceedingly low volume of consumer complaints payday loans have received in Alaska. In his response, Senator Dunbar suggested that the low number was likely due to the complaint process being difficult or obscure. In fact, lenders are required to provide consumers a phone number for reporting problems directly on the loan document they sign (Ch. 50 Deferred Deposit Advances -- Sec. 06.50.510. Required disclosures before disbursement). Lenders take customer concerns very seriously, and they work with borrowers to remedy any issue they may have.

Finally, SB 39 will have immediate consequences on consumers' and small businesses' ability to access credit in Alaska. Under federal law, both federally chartered, and state-chartered banks have the ability to extend loans across state lines and these loans are facilitated with the assistance of service providers and financial technology companies. The anti-evasion and "predominant economic interest" provisions of SB 39 ignore these modern banking realities and seriously hinder both small business and consumer lending in Alaska. Commercial lending under \$25,000 is increasingly being facilitated by lenders outside of Alaska, broadening reach and leveraging better technology to service the capital needs of small businesses throughout the state.

Hopefully this letter helps address your excellent questions, and we welcome the chance to discuss this legislation further.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Duke".

Andrew Duke,
CEO
Online Lenders Alliance
Cell: 571-420-8366

cc

Senate Finance Committee Members