



**Written Testimony Submitted by Texas Appleseed  
Senate Business and Commerce Committee  
Addressing CSSB 1862**

April 5, 2011

The committee substitute for SB 1862 is a step forward to address the critical need to reform payday and auto title lending in Texas. CSSB 1862:

- Requires that all payday and auto title lending businesses be treated and regulated as lenders;
- Caps the rates charged by payday and auto title loan businesses ; and
- Takes steps to address the problem of on-going borrower indebtedness caused by these high-cost, single payment loans.

Texas Appleseed has concerns with two components of the bill. First, the rate caps in the bill are much higher than current permissible rates for lenders operating under Texas consumer lending laws. The annual percentage rate for a payday loan under the bill is 391% and the rate for a fully-secured auto title loan is approximately 250%. Second, though the bill includes cycle of debt protections, the protections will likely need to be strengthened in order to meet the intended effect, to ensure that borrowers who use these short-term loans are able to repay them in a reasonable period of time.

### **Background**

Unlicensed payday and auto title loan businesses have proliferated in communities across Texas. Payday lending, already well-established in the state in 2004, has expanded significantly, with more than double the number of store locations, from 1300 in 2004 to at least 2700 locations in 2010. Auto title lending, a newer industry, has seen dramatic increases in loan volume since 2007—at a rate of over 6000%. A Texas Legislative Council analysis of liens filed on vehicles by unlicensed auto title loan stores showed an increase from just under 3,000 liens in 2007, to nearly 200,000 in 2010.

The extensive growth coupled with these businesses operating outside of the regulatory structure designed to oversee consumer lending in this state is a source of great concern. Instead of obtaining licenses as lenders or brokers, these businesses have registered as Credit Services Organizations, a designation for credit repair businesses, with none of the protections appropriate to loan businesses. For consumers, it means that there are no basic lending protections in place:

- No caps on loan charges;
- No effective limits on loan terms; and
- No provisions to ensure fair debt collection or other fair market practices.

The result is that we are now seeing annual percentage rates for these loans in excess of 500% across the state and a growing problem of borrowers trapped in a cycle of debt—making high fee payments month after month, while continuing to owe the entire original loan principal.

### **Core Principles for Reform**

Three core principles are essential to address the problems at hand:

1. Ensure that payday/auto-title lenders are regulated as consumer lenders or loan brokers, and not credit repair organizations.

2. Adopt reasonable rate and fee limitation—stop 500% APR interest rates.
3. Break the cycle of debt—so we can ensure both borrower and lender success in these short-term loans.

### **1. Ensure appropriate regulatory structure.**

*CSSB 1862 ensures that payday and auto title loan businesses in Texas are regulated as lenders. The bill makes essential changes to Texas law to close a loophole that has enabled payday and auto title lenders to operate as credit repair businesses.*

Texas is the only state where these loan businesses are operating, en masse, as credit repair businesses. The industry attempted to do the same in other states, most notably Florida, Maryland, and Michigan. In each case, either the regulator or the state legislature shut down the model, characterizing it as an attempt to evade state laws governing consumer lending. It is time for Texas to do the same.

### **2. Adopt Reasonable Rates and Fees**

Rate and fee caps are an essential part of consumer credit regulation in Texas, and payday and auto title lenders should be no exception. *CSSB 1862 includes rate caps, but we are concerned that the caps are too high. Texas Appleseed continues to support the rates established through SB 253, which simply brings payday and auto title businesses under the existing consumer loan rate and fee structures in Texas.*

### **3. Breaking the Cycle of Debt**

*CSSB 1862 has provisions with clear intent to break the cycle of debt caused by high-cost single payment consumer loans. They provide improvements over the current market, where there are no protections in place, and they could be made more effective through additional changes.* The principal repayment plan for payday loans would be vastly improved by ensuring that it is accessible to borrowers more than once per year—it should be continually available to borrowers that meet the three consecutive loan threshold. Both the payday and auto title lending repayment plans would be more beneficial to borrowers if it was specified that payments under the plans be divided into a minimum of 4 monthly installments. Under the current language, there is no explicit standard for spacing the payments.

Other approaches that are known to effectively address the cycle of debt include:

- Longer loan terms—the 7 day minimum term for a payday loans and 31 day term for larger auto title loans make it very difficult for borrowers to repay the loans in the designated term;
- Limits on the number of loans a borrower can take out, including a hard total cap, and a limit on the number of concurrent outstanding loans; and
- A real-time data base to enforce and monitor the effectiveness of cycle of debt protections.

### **Conclusion**

Texas has reached a crisis point and desperately needs payday and auto title loan reform. Not only are the loans pulling individual borrowers into deeper financial crisis, they are also draining scarce financial assistance resources, to the tune of millions of dollars per year, from nonprofit organizations and churches across the state. The negative economic impacts of the loans have led cities across the state, from Midland and Lubbock to Dallas and San Antonio, to pass resolutions asking the state to reform payday and auto title lending. *CSSB 1862 is a step forward. More steps will be needed to ensure that the provisions achieve their intent, but the bill starts the important process to create a fair and responsible payday and auto title loan market in Texas.*