



Legislative UPDATE

September 16, 2016
Number 34

House Committee Hearing: Lobbyists Insinuate that Cities are Worse than Payday Lenders

The House Committee on Investments and Financial Services [met earlier this week](#) to consider its charge to “examine the short-term lending (i.e., payday and auto title loans) industry in Texas...” As frequently happens at legislature hearings, some witnesses turned their attention to cities rather than the topic at hand, payday lenders.

The usual witnesses were invited to testify. Representatives of non-profits and faith-based groups asked the legislature to step in to protect consumers from predatory lending practices. Lobbyists representing the payday lending industry and others aligned with them testified that payday loans are a needed service for those who can’t otherwise get credit.

League staff testified that one of the industry mantras has been that cities create a “patchwork quilt” of differing regulations. To diffuse that argument, the League made the City of Dallas ordinance available as an example to its members. Since 2013, every city that has adopted an ordinance – 35 to date – has patterned their own ordinance after it. Nevertheless, a lobbyist from the Texas Public Policy Foundation (TPPF) lamented city ordinances as “patchwork” in her testimony.

The hypocrisy of TPPF’s position on local regulation was also highlighted at the meeting. The TPPF representative summed it up perfectly in her testimony:

Unfortunately...there is limited capacity for Texas to be able to push back against the federal government when they intrude in matters and co-opt them from the state’s concern. However, the local push to regulate payday lending is entirely within the bounds of legislature [to stop].

According to that statement, federal overreach into state affairs is repulsive, but the state preempting cities is just peachy. The League has dubbed this effort to centralize power in Austin the “Goldilocks Doctrine.” The federal government is too hot, cities are too cold, but the State Legislature is, of course, *just right*.

The lobbyist for the association that represents payday lenders spoke about the lawsuits it “had” to file against the cities. It’s not clear why anyone “had” to file a lawsuit rather than complying with the ordinances. In any case, cities have successfully defended each lawsuit thus far.

He told the committee that “we need a ‘Texas Solution’ to the looming credit crisis we have...one that eliminates ineffective and inconsistent layers of federal, state, and local regulation.” (It appears he was referring to the “crisis” of a pending federal rule that would provide protections to consumers.)

It’s probably true that most city officials in cities that have adopted payday lending regulations would gladly cede to the state or federal government if regulations at either level provided meaningful protections from predatory lending. It’s clear that the Texas Legislature hasn’t indicated a willingness to do so, however. The fact that the federal government, which currently regulates many other financial institutions and products, is seeking to move forward on payday lending wouldn’t be considered by most consumers to be a “looming credit crisis.”

The hearing took an unexpected turn when the Executive Director of the Texas Conservative Coalition Research Institute (TCCRI) decided that city-bashing is the best way to divert attention from predatory lending practices. His statements were, at the very least, misleading.

Essentially, he claimed that an “annual percentage rate (APR)” measurement isn’t the correct way to judge whether a payday loan is predatory. (Many loans, when fees are included, exceed a 500 percent APR.) To support his argument, he told the committee that “Austin Energy charges \$25 to reconnect service after non-payment. Expressed as a 14-day loan, the service charge is equivalent to a 650 percent APR.” (The TPPF representative made a similar statement.)

In Texas, payday borrowers pay a fee of around \$23 for every \$100 borrowed. According to TCCRI’s comparison, the utility reconnection fee is much more predatory than a payday loan fee. But obtaining utility service is not a *loan*. It has *nothing* to do with borrowing money; it’s a long-term purchase of a service. Moreover, a reconnection fee is collected to cover the actual costs of reconnecting utility service and is due only if the customer becomes delinquent.

The TCCRI representative continued his diversion towards cities by stating that “the mechanisms that utilities have in place today, to rapidly disconnect people from service, even municipal owned utilities, is suggestive that one of the consequences here may be people without access to their electricity and water. That should be one of the growing concerns here.” A member of the committee then stated that “I think we ought to take a look at regulating those municipalities on those interest rates on those electricity re-hookups.”

It is flabbergasting that a hearing on payday lending became focused on city utilities. In fact, city utilities have no “mechanisms to rapidly disconnect people from service.” Because they are governmental entities, they are bound by the U.S. Constitution. That document prohibits disconnection without due process, which requires notice and an opportunity to be heard prior to disconnection.

Austin Energy, like most municipally-owned utilities, actually provides multiple customer assistance programs for customers struggling to pay their bill. For example, “[s]erious illness, a recent job loss, or other emergencies can make it difficult for some customers to pay their utility bills...[t]he Plus 1 fund helps by providing emergency financial aid to customers who are having a temporary problem paying their utility bills.” Another program allows customers to make a “payment arrangement” to have “the opportunity to pay off a past-due bill balance to keep their utility accounts in good standing.”

Perhaps certain lobbyists should consider sticking to the committee charge rather than slipping in disingenuous “city-bashing” comments at hearings.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that the City of Dallas has prepared *draft* comments to the federal Consumer Finance Protection Bureau’s proposed rule. The deadline to submit comments has been extended to October 7, 2016. For more information, visit the clearinghouse page.

Free Sign Regulation Webinar

The State and Local Legal Center and the National League of Cities have partnered to offer a [free webinar](#) on the implications of *Reed v. Town of Gilbert, Arizona*. The webinar will review how cities have modified their sign codes in the wake of *Reed* and how courts have interpreted the opinion in-and-out of the sign context.

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