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Senator Sara Feigenholtz
Chair, Senate Committee on Financial Institutions
Illinois State Capitol
401 S. 2nd St
Springfield, IL 62701

RE: Opposition to SB2234 – Consumer Protections for Small Business Act

Chair Feigenholtz, Vice Chair Ellman, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association representing the payments industry, I appreciate the opportunity to share our broad concerns with SB2234.

ETA supports disclosures that promote transparency and accountability for small business borrowers. However, ETA is concerned that providers have not had ample opportunity to review significant amendments put forth to Committee prior to the date of this hearing. ETA respectfully requests that any action on SB2234 be delayed so that stakeholders have an opportunity to properly assess how the legislation may impact their business, and to provide additional time for thoughtful and meaningful discussions between providers and legislators.

Small businesses are the backbone of the economy and have different needs and objectives than consumers. In response, providers of commercial financing to small businesses have developed credit products specifically designed to meet those needs and objectives. ETA supports maintaining choice in small business financing, however, SB2234, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect. Therefore, ETA would like to work with the committee to incorporate changes to the current bill and oppose SB2234 as currently drafted.

ETA's concerns with SB2234 can be summarized as follows:

Rules to be adopted by the Department: Several states have adopted, or have begun the legislative process to adopt, commercial financing disclosures laws. If each state has its own set of requirements, (1) providers may not be able to comply in time and may be forced to cease lending in certain states, and (2) small businesses will be confused by the varying requirements. As a result, ETA recommends that SB2234 require the Department to (a) adopt rules substantially the same as the regulations adopted by the New York State Department of Financial Services regarding commercial financing; and (b) approve the use of commercial financing disclosure forms approved for use in other states with commercial financing disclosure requirements that are substantially similar to or exceed the requirements of this Act.

Civil Cause of Action: ETA appreciates the removal of the civil action as a penalty from the current version of SB2234. However, it appears that the term "civil action" is still referenced in Sections 84(b)(6) and 95(3)(B). ETA requests that any reference to a "civil action" that was previously in Section 90 be removed as to not cause confusion.

Penalties: The penalty provision in Section 84 drastically depart from other states in both the amount and type and will only serve to increase costs to small business owners of any proposed and enacted commercial financial disclosure laws across the nation. The cumulative burden and penalties of these sections could cause many providers to cease offering access to financing to small businesses in Illinois. These sections should be removed in their entirety and replaced with similar penalty and enforcement provisions as those stated in the New York or California commercial finance laws. Additionally, the 10-day requirement in Sections 84(h) and 110(c) to request a hearing is too short and we would request at least a 30-day period.

Licensure Requirement: ETA proposes a licensure requirement that would be applicable only to providers of commercial financing. To the extent that a licensure requirement is proposed, it should be expanded to also cover brokers of commercial financing. SB2234 would also impose reporting requirements that are unclear and lack specific guidance. For example, a provider must disclose the financing amount and disbursement (if different than financing amount) for sales-based financing, but only provide the financing amount for closed-end financings. Moreover, providers have had very little time to examine the requirements and properly assess the impact of SB2234 to their business. ETA urges policymakers to remain thoughtful and forward-thinking in how to best support industry's on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative financial products and services. As such, ETA recommends the committee does not move the bill forward to allow time for providers to review all of the included requirements in depth, and to allow time for collaboration amongst a variety of stakeholders.

Database Requirements & Fees: Section 155 establishes a database system and requires providers to submit financing information to the database. ETA and its members have concerns over the logistics of the database, including, but not limited to, ease of use and access for providers, the need for increased cybersecurity measures, the submission processes, and burden and speed of updates to the system. ETA encourages legislators to remove this requirement and gather feedback from stakeholders on the feasibility of this provision.

- Many small amount or short-term credit opportunities are available in the state of Illinois, which presents questions about the usefulness of providing information to a collective database. Moreover, requiring fees in these circumstances may cause providers of credit to weigh the feasibility of offering a specific loan.

Annualized Percentage Rate:

- **APR as applied to Commercial Financing**: ETA is concerned that SB2234, by mandating an annual percentage rate or estimated annual percentage rate (collectively "APR") disclosure for commercial financing, will create significant confusion and uncertainty for Illinois small businesses trying to make informed decisions about the cost of financing products. The Truth in Lending Act ("TILA") was enacted strictly for consumer transactions, not commercial transactions and does not take into account the unique payment features of sales-based financing products, which do not have a fixed term, fixed

payments, or have an absolute right to repay. The Consumer Financial Protection Bureau stated that because these types of products do not have a defined term or a periodic payment amount, it would require a funding company to assume or estimate parts of the APR formula, which only increases complexity.

- **Alternative Measurement:** ETA urges the committee to consider Total Cost of Capital ("TCC") as the method for disclosing the cost of financing products, which is an important factor that matters to small business owners.

Definitions:

- **Specific Offer:** ETA proposes SB2234 adopt the definition of "specific offer" used in the New York commercial financing disclosure law and should be limited to written offers.
- **Interest Accrued:** The legislation references "interest accrued," without definition. Clarifications are necessary to provide certainty of the bill's requirements and to help ensure the ability to provide accurate and meaningful disclosures.
- **Recipient:** The definition of "recipient" should be limited to businesses that are principally managed or directed from Illinois, and providers should be permitted to rely on either (1) a representation from the recipient, or (2) the business address provided by the recipient. This would parallel the approach taken by New York.
- **Total Repayment Amount:** SB2234 defines "total repayment amount" as the "disbursement amount plus the finance charge". This definition needs to be refined to address situations where the two amounts are not the same.

Renewal Financing:

- **Disclosure Requirements:** SB2234 requires disclosures for renewal financing but provides no additional guidance on calculation or disclosure, which will likely cause confusion.
- **Double Dipping:** The bill also defines the term "double dipping," which is not a formal term and fails to consider how renewal financing works in practice. Therefore, ETA suggests replacing the "double dipping" question with a statement that "part of your renewal financing will be used to pay-off your current financing with [name of provider]."

Open-End Financing: Section 78 requires the disclosure of the credit limit along with the amount to be drawn at the time the offer is extended. There are two issues here. Firstly, it is not always known what the initial draw will be at the time the specific offer is presented to the recipient because the recipient is only selecting a credit limit at the time and not a credit limit plus initial draw. Secondly, it appears that the entire disclosure for an open-end product is based on the assumption that the total credit limit is being drawn. Therefore, it does not make sense to include the initial draw requirement and we would request that be deleted and the entire disclosure be based on the entire credit limit.

Sales-Based Financing APR Reporting

- Section 76 (3) of SB2234 requires that "the provider shall provide notice to the Secretary on which method the provider intends to use across all instances of sales-based financing offered in calculating the estimated annual percentage rate pursuant to this Section." It is unclear how this information would be helpful or the purpose of this notice requirement in all instances, given that the annual APR reporting is required only when the opt-in method is used to calculate APR, and in those cases SB2234 already requires the Commissioner to establish the method and contents of that reporting. In other words, given that SB2234 contemplates providers who use the opt-in method to provide substantive reporting, whether the provider uses the historical or opt-in method will be implicitly apparent from compliance with that requirement, without the need to impose a separate obligation on providers to merely provide notice of method used. ETA proposes that no notice is required for providers who elect the historical method, similar to other states that have enacted commercial financing disclosure laws.
- Moreover, the lack of precise definitions for this requirement would have to apply across multiple scenarios. For example, if a recipient decides to pay off a sales-based financing early for any reason, such as the recipient's desire to obtain a new loan or a sudden increase in the recipient's cash flow, the actual APR will vary (possibly significantly) from the original estimated APR. Additionally, if a loan were to become charged off or subject to a workout arrangement, the actual APR will vary (possibly significantly) from the original estimated APR. ETA is unclear as to how this requirement would result in producing meaningful data. ETA strongly opposes this requirement and any similar requirement, which could result in a false appearance that a provider is significantly underestimating the APR.
- Finally, the requirement for providers to notify the Banking Commissioner which method the provider has chosen is ambiguous for sales-based financing disclosures. Specifically, the requirement does not state whether providers must do this one time or on a recurring basis, nor does it state what obligations provider have if they choose to change their APR calculation method in the future. Neither the California nor New York disclosure laws include such a provision, and it should be removed from SB2234.

TILA Disclosure Exemption: The New York commercial financing disclosure law ("CFDL") provides that the definition of "commercial financing" *(b) does not include any transaction in which a financier provides a disclosure required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., that is compliant with such Act.* This provision should be incorporated into SB2234 as it prevents the unnecessary duplication of disclosures from providers who already provide TILA compliant disclosures in commercial financing transactions, and it encourages uniformity across the country, which reduces the burden of complying with the different disclosures in each state.

Signature Requirement: Section 55 of SB2234 requires the provider to obtain the recipient's signature "before authorizing the recipient to proceed further with the commercial financing application" whereas the New York law requires the recipient to sign "prior to consummating a

commercial financing". SB2234 should be amended to reflect the same language as the New York law.

Broker Fee Disclosure: Currently, is not clear if SB2234 requires disclosure of all fees paid to brokers. ETA believes such disclosure is essential to providing full information to recipients.

Application of Law to Business Owners: Section 65 (5) provides authority for the Department to adopt "Rules appropriate for the protection of consumers in this State." Since the statute applies to business owners and not consumers, we request that "business owners" replace "consumers."

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Given how the uncertain inflationary economy continues to threaten the survival of many Illinois small businesses, and the amount of time provided for review, now is not the time to pass legislation that would threaten their commercial financing options by creating burdensome and confusing barriers for small business lending providers. Therefore, ETA urges the committee to reject SB2234 in its current form and welcomes the opportunity to work with the sponsor and proponents with thoughtful deliberation to develop a legislative proposal that is clear, fair, and uniform and that all parties can support.

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Respectfully Submitted,

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