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SECURED FINANCE NETWORK

March 12, 2024

Chairwoman Sara Feigenholtz and  
Members of the Financial Institutions Committee  
Illinois State Capitol Building  
401 S. 2<sup>nd</sup> Street  
Springfield, IL 62701

Re: Amendment to Senate Bill 2234

Dear Chairwoman Feigenholtz and Members of the Committee:

The Secured Finance Network is submitting these comments in opposition to the proposed State of Illinois Amended SB:2234. In particular, we are opposed to the proposed method of calculating Open-End and Factoring disclosures, applicable transaction thresholds, licensing requirements, and the creation of a Commercial Financing Database.

The Secured Finance Network ("SFNet") ([www.sfnet.com](http://www.sfnet.com)) is the international trade organization, founded in 1944, representing the asset-based lending, factoring, trade and supply chain finance industries, with 270 member organizations throughout the United States, Canada and around the world. Our members include regulated money center banks, independent finance companies, community banks, factors and leasing companies who collectively provide hundreds of billions of dollars annually in working capital financing to thousands of small- and medium-sized businesses throughout the United States, including in the State of Illinois.

We embrace the disclosure principles underlying the proposed legislation. Recipients of commercial financing proposals should have in hand all pertinent information in order to enable them to make fully informed decisions about the various financing products being offered to them. However, the proposed legislation, in our view, will not accomplish these goals.

#### **Annual Percentage Rate (APR)**

We oppose the use of APR as the sole method by which the actual financial disclosure is presented to the borrower. States such as Georgia and Florida (as well as Connecticut and Virginia where asset-based lenders and factors were exempted) have adopted a total cost of financing methodology which is easy to use and understand and provides an effective means of comparison. APR, on the other hand, is a method of reporting a closed end product and as our members offer open-ended, revolving credit and factoring, it is virtually impossible to calculate an APR that will reflect the borrower's actual experience, making this method less relevant to those small businesses seeking financing. Even following the proposed methodologies, experienced lenders know that their APR estimate is most likely incorrect since the actual rate will be based on the borrower's behavior which cannot be predicted, versus a hypothetical estimate. The result has been that some of our members have abandoned markets in California and New York as they are concerned about facing both civil and criminal penalties because they cannot accurately disclose an APR even though the rate

is characterized as an estimate. The state of California has recognized our concerns by providing a “safe harbor” protecting asset-based lenders and factors from liability for inaccurate reporting assuming the calculations were made in good faith. While SFNet prefers a total cost of financing methodology, SFNet would seek the same safe harbor protection should an APR approach be adopted.

### **Licensing**

Our members are fully transparent with their borrowers about the fees and rates they charge for factoring and asset-based financing to small and medium-sized businesses. Borrowers are represented by counsel when they negotiate the financing terms, and default rates have remained at less than 1% for decades. Ninety percent of the over half a trillion dollars of asset-based loans and factored receivables in the United States are made by regulated banks. The balance of this financing is made by independent businesses, who are able to provide the same forms of financing as the regulated banks to small businesses who do not meet bank credit requirements.

Because these products and their provision are well established with a demonstrated history of client satisfaction and alignment of interests, we do not support the establishment of an unnecessarily burdensome and costly licensing regime that would discourage independent lenders, many of whom are themselves small businesses from serving those borrowers in the small business community who are not “bankable”.

### **Database Creation**

Similarly, the establishment of a Database as described in Section 155 would add a first of its kind, wholly unnecessary, open-ended and overreaching set of reporting requirements to small, independent finance companies with undefined applications and implications. As with licensing, SFNet member companies have expressed serious concerns about this requirement which could lead some to redeploy their financing to opportunities outside of Illinois due to the potential costs and unknown risks associated with this measure. We fail to understand how this administrative burden would either protect or inform borrowers based in Illinois. SFNet therefore opposes this requirement.

### **Transaction Threshold**

As noted, clients of SFNet member Factors and Asset-Based Lenders who are eligible to borrow up to the proposed applicable threshold of \$2,500,000 are not the “mom and pop” type businesses to whom this legislation is designed to protect, but rather knowledgeable companies represented by counsel when they negotiate the terms of financing. Accordingly, we request that the threshold be reduced to \$500,000 to be more in line with the measure’s objectives.

### **Conclusion**

While SFNet is opposed to the Amended SB2234 as drafted, we remain committed to working toward a practical solution to meeting the objectives of the proposed legislation.



Richard D. Gumbrecht  
Chief Executive Officer  
Secured Finance Network