May 1, 2018

Carol Smith, President
Heartland Center for Jobs and Freedom, Inc.
4047 Central St.
Kansas City, MO 64111

Dear Ms. Smith,

In your role as President of the Heartland Center for Jobs and Freedom, Inc., you have asked me for my analysis of the portions of S.B. No. 832 that would amend the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 to 407.307.

The National Consumer Law Center (NCLC) is a non-profit research and advocacy organization that focuses on consumer justice and economic security for low-income people. I am NCLC’s Deputy Director and one of the two co-authors of our 956-page treatise Unfair and Deceptive Acts and Practices (9th ed. 2016), which analyzes the statutory provisions and judicial decisions interpreting each state’s equivalent of Missouri’s Merchandising Practices Act. I am also the author of the report Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws (March 2018), available at www.nclc.org/issues/how-well-do-states-protect-consumers.html, which surveys and evaluates the strength of UDAP statutes in every state.

S.B. No. 832 would gut the MMPA, making it of little or no use to Missouri consumers. It would eviscerate protections against consumer fraud in the state. With S.B. No. 832, Missouri’s consumer protection law (which we refer to generically as an unfair and deceptive acts and practices or “UDAP” statute) would rank among the three or four worst in the nation.

Among the many provisions of S.B. No. 832 that would be harmful to consumers, five stand out:

**S.B. No. 832 would repeal consumers’ right to sue fraudsters.** S.B. No. 832 would amend the MMPA to deny consumers the right to enforce the statute if the case involved any action or transaction “otherwise permitted, approved, or regulated by the Federal Trade Commission or any other regulatory agency acting under statutory authority of this state or the
United States.” The FTC regulates almost all businesses in the United States, including deed theft scammers, used car dealers, home improvement contractors, miracle cure purveyors, fraudulent telemarketers, and other fraudsters. Between the FTC and “other regulatory agenc[ies],” there would be no businesses that would fall outside this exemption. This sweeping exemption is unprecedented in any other state and would amount to a repeal of Missouri consumers’ right to enforce the MMPA when they have been defrauded.

**S.B. No. 832 would make common consumer abuses legal.** Consumers frequently don’t know they have been defrauded until after a transaction is complete. For example, a consumer might learn that a car is a dangerous rebuilt wreck after the purchase, a lender might wrongfully foreclose on a home long after the loan was made, or a contractor might abandon a job after being paid in full. Because SB 832 would require a consumer to show that the wrongful act caused the consumer to enter into the transaction, it would no longer protect consumers who were abused or learned of abuses after the sale occurred.

**S.B. No. 832 would abandon vulnerable consumers.** One of the primary goals of consumer protection statutes like the MMPA is to protect vulnerable consumers: consumers who are infirm, impaired, unsophisticated, less than fluent in English, uneducated, or just trusting. S.B. No. 832 would deny a consumer any refund or other damages unless the consumer demonstrates that he or she “acted reasonably in light of the circumstances.” Allowing fraudsters to escape liability by blaming the victim for acting so unreasonably as to believe them would simply invite them to keep targeting vulnerable Missourians.

**S.B. No. 832 would prevent consumers from joining together to seek relief.** When a business descends to unfair and deceptive tactics, it usually does not single out just one consumer for this treatment. When a business follows a practice of deceiving its customers or treating them unfairly, it is important for consumers to be able to join together to bring suit. The cost of ferreting out proof of the business’s practices is often so time-consuming and expensive that consumers are priced out of the courthouse if they are relegated to individual suits. S.B. No. 832 would make it impossible for consumers to join together to bring suit. The bill accomplishes this by, among other things, requiring each member of a class action to present individual proof that the unfair or deceptive practice caused him or her to enter into the transaction. Requiring individual proof is likely to make almost every class action unmanageable and to negate the purpose of class actions as an enforcement mechanism.

**S.B. No. 832 would prevent courts from making consumers whole.** UDAP statutes like the MMPA are intended to give consumers the right to force a fraudulent business to reimburse them for their losses. By restricting damage awards to “out-of-pocket losses,” S.B. No. 832 would deprive the courts of authority to require a fraudulent business to make consumers whole. For example, a $50 oil change that a repair shop bungles can cause thousands of dollars of damage to a car engine, yet the court would be able to award a consumer just the $50 spent on the oil change. The bill is also worded to prevent consumers from recovering damages caused by unfair or deceptive practices that occur after the point of sale, such as refusal to make repairs, overcharges of interest or fees, wrongful repossession, or wrongful foreclosure.
The MMPA already suffers from several weaknesses in comparison to other states. It is ambiguous as to the extent that it protects consumers from unfair and deceptive practices by lenders and insurers. The civil penalty that the Attorney General can invoke for violations is just $1000 per violation, lower than all but five other states. Unlike a majority of states, the MMPA gives consumers a remedy for violations only if they have suffered “an ascertainable loss of money or property,” so it denies consumers a remedy when a business invades their privacy, verbally abuses them, or denies them information that the statute requires them to be given. Many other states avoid these weaknesses and have considerably more effective UDAP statutes.

Please let me know if you have any questions.

Very truly yours,

Carolyn L. Carter
Deputy Director