Date of Hearing: August 27, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
AB 3148 (Chen) – As Amended August 5, 2024

SUBJECT: Deferred deposit transactions: assessments

SUMMARY: Modifies the formula for the annual assessment paid by California Deferred Deposit Transaction Law (CDDTL) licensees.

Specifically, **this bill**:

1) Changes the cost allocation methodology for CDDTL licensees from assessments based on the number of licensed locations to assessments based on the pro rata volume of deferred deposit transactions made by a licensee.

2) Establishes a minimum assessment of $500 per licensed location per year.

EXISTING LAW:

1) Provides the CDDTL, a licensing framework administered by the Department of Financial Protection and Innovation (DFPI) that regulates the provision of deferred deposit transactions (more commonly known as “payday loans”). (Division 10 of the Financial Code, commencing with Section 23000)

2) Requires each licensee to pay its pro rata share of all costs and expenses incurred by DFPI in administering the DDTL, as specified. Provides that the assessment is based on the number of locations. (Financial Code Section 23016)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal.

COMMENTS:

1) <u>Purpose</u>

According to the author:

> AB 3148 creates fairness by basing payday lender license fees on the volume of business they conduct in California, as opposed to the number of locations the licensee operates. As the number of brick-and-mortar locations has decreased, it is only fair that fees are assessed by the volume of business conducted in state.

2) <u>Background: Payday lending in California</u>

A deferred deposit transaction, commonly known as a payday loan, involves the consumer giving the lender (referred to as an originator under the CDDTL) a personal check for the desired amount. The lender provides the consumer with the funds, minus an agreed-upon fee, and defers depositing the check for a specified period.

Under the CDDTL, the personal check cannot exceed $300, and the lender's fee cannot exceed 15% of the check amount. For instance, if a borrower gives a $300 check and the lender charges the maximum fee of 15 percent, the borrower will receive $255. The payday loan term cannot exceed 31 days.

The payday lending industry has seen a consistent decline over the last decade or so. According to DFPI’s annual report, the number of licensed locations has dropped 65.1%, from 2,058 locations in 2013 to 719 in 2022. While nearly half of payday loans issued in California are now made online, which can help explain the reduced number of locations, the number of issued loans is also declining. Between 2013 and 2022, the number of originated loans declined from 12.2 million to 5.4 million.

3) Background: Role of annual assessments

The DFPI typically does not receive support from the state General Fund and relies heavily on revenue collected directly from licensees through annual assessments and cost recoveries. DFPI’s licensees, including state-chartered banks, credit unions, money transmitters, mortgage lenders, and debt collectors, all contribute to the costs of regulation, though the specific formula for each licensee type may vary.

The CDDTL’s formula is based on the number of licensed locations. According to data provided by DFPI staff, in 2022-23 total assessment revenue equaled roughly $1.7 million, with each location paying around $2,300. Currently, this cost allocation method favors online-only lenders over those with physical locations in the state. Online-only payday lenders, which operate without brick-and-mortar locations, hold just one license. In contrast, lenders with physical locations must obtain a separate license for each site. As a result, lenders with physical locations face higher regulatory costs, even if they issue fewer loans than online lenders.

4) What does AB 3148 do?

AB 3148 was gut-and-amended in the Senate to replace the bill’s prior contents with a new proposed formula for payday lender assessments. Under this new formula, the volume of lending activity would determine the assessment instead of the number of licensed locations. For example, a licensee with just one physical location issuing $10 million in payday loans would pay a greater share of DFPI’s administrative costs than a lender with five locations issuing $1 million in payday loans across all five locations. This new formula raises a number of policy considerations:

- Fairness. AB 3148, by redistributing which licensees pay more in assessments, will result in winners and losers. A key consideration is whether this is a fair and defensible outcome. There are a number of factors that suggest AB 3148’s new formula will result in an acceptable distribution of costs for CDDTL licensees.

  First, other programs administered by DFPI already use formulas similar to what AB 3148 proposes. For example, California Financing Law (CFL) licensees pay an assessment based on the gross income received from their CFL-related activities, an assessment that reflects overall lending activity.

Second, this new formula will lead to higher costs for those licensees with a greater ability to pay. Simply put, loan volume is a better indicator of a licensee's resources, whereas the number of locations is not. Many lenders relying on physical storefronts generate fewer payday loans than online-only lenders, yet they pay more in annual assessments.

- DFPI budget. AB 3148 does not increase aggregate assessment levels or otherwise modify the amount of revenue allowed to be collected, since assessments are based on DFPI's reasonable costs of administering the CDDTL. However, given that one stated rationale for this measure is that increasing program costs are leading to higher assessments for small licensees, an important consideration is why DFPI costs are not going down as the payday lending industry shrinks. After all, DFPI now oversees an industry that is less than half the size it was ten years ago.

  One explanation is that across all its programs, DFPI's programmatic costs have increased in recent years due to higher personnel costs. However, the Legislature may in the future want to explore whether the consistent annual decline in the number of licensees and loan volume calls for a shift in department resources toward other programs, especially those with an operating deficit.

5) Arguments in support

The California Financial Service Providers writes:

> [CFSP] represents approximately 60% of all CDDTL licensed locations including both storefront and online providers. CFSP members deliver critical products and services – including small-dollar consumer loans, check cashing, pre-paid cards, money transfers, and electronic bill payments, among others – to meet California's consumers' ever-changing needs and expectations.
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> Current law requires fees for CDDTL licensees to be paid based on the number of locations the licensee has in the state of California. While CDDTL transactions have decreased overall, the number of brick-and-mortar locations for CDDTL transactions has significantly declined over the last several years, while online transactions have continued to grow over the same period.
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> At the same time, DFPI costs to administer the CDDTL program have continued to rise. The current fee structure has led to an increase in fees for licensees with brick-and-mortar locations, regardless of the volume of business conducted at each of these locations, as compared to the number of transactions conducted via online.
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> AB 3148 addresses the issue described above by requiring DFPI to assess fees to CDDTL licensees based on the volume of business conducted by the licensee in the state versus the number of locations the licensee may have.

REGISTERED SUPPORT / OPPOSITION:

Support

California Financial Service Providers

Opposition

None on file.

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