Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Monique Limón, Chair
AB 3010 (Limón) – As Amended March 19, 2018

SUBJECT: California Deferred Deposit Transaction Law

SUMMARY: Makes changes to the California Deferred Deposit Transaction Law (CDDTL) limiting borrowers to one deferred deposit transaction (payday loan) at a time and authorizes the Department of Business Oversight (DBO) to track and enforce this provision. Specifically, **this bill**:

1) Prohibits a licensed lender from entering into a payday loan with a customer that has a current payday loan with any other lender.

2) Authorizes the Commissioner of DBO to develop, operate and maintain an Internet Web site and common database to record each payday loan for the purpose of preventing violations of the provision in (1) above. The database shall:

   a) Allow licensed lenders real-time access to information on payday loans entered into the database by all licensed lenders.

   b) Require the retention of data in the database only as necessary to ensure statutory compliance.

3) Allows the Commissioner to enter into a contract with a database provider to develop, operate or maintain the database, as specified. The contract shall contain provisions that:

   a) Require the data be archived for one year after it has been entered and allows the Commissioner access to archived information.

   b) Require the database provider to ensure the data and all information remains confidential, as specified.

4) Requires that on or after July 1, 2019, a licensed lender, before entering into any payday loan contract, shall conduct a search on the database to ensure that the customer does not have any outstanding payday loans. If the customer does have an outstanding payday loan, the lender shall ***not*** enter into an additional payday loan contract.

5) Requires lenders, after determining a customer has no outstanding payday loans and a new payday loan agreement has subsequently been entered into, to submit all information regarding the customer and the transaction that the Commissioner determines is necessary to record the transaction. That information shall include, but is not limited to the following:

   a) Identifying information regarding the applicant, including the applicant's date of birth and one of the following:

      i) The applicants social security number

      ii) The applicant's alien registration number

iii) The applicant's individual tax identification number.

b) Identifying information regarding the terms of the payday loan, including the amount of the check, the amount of money received by the customer, the date of the transaction, the date the customer's check will be cashed and the fees associated with the payday loan.

6) Requires that on or after July 1, 2019 a licensed lender shall immediately update the database with any action relevant to the payday loan transaction including, but not limited to, the following:

   a) Imposition of a returned check fee.

   b) A payment default.

   c) A due date extension.

   d) Entering into a repayment plan.

   e) The charge off of a debt.

   f) Entering into a settlement.

   g) The referral or sale of a payday loan to a third party for collection.

   h) Any action brought in court, as specified.

7) Lenders shall record when a payday loan is paid in full, as specified, and shall correct any incorrect data previously entered into the database. If technical problems prevent access to the database, a lender shall enter all required information on the next business day when access is restored. Lenders shall maintain generally accepted security safeguards to protect confidential information. The information contained within the database is confidential and not available for public inspection.

8) The Commissioner may release aggregate data maintained in the database (excluding personal data) if the commissioner finds that the release is in the public interest.

EXISTING LAW: Establishes the CDDTL (Financial Code Section 23000 et seq.), administered by DBO. The CDDTL requires the licensing of payday lenders, sets a maximum of $300 for any payday loan, establishes a one-loan-at-a-time per lender policy and provides for the administration and oversight of the program by DBO.

California Finance Law (CFL) provides rate caps for loans between $300 and $2,500 that generally range between 12% and 20% depending on the amount and terms of the loan.

Additionally, a pilot program was established within the California Finance Law (CFL) (Financial Code Sections 22365 et seq.). Generally speaking, the pilot program authorizes lenders who have been vetted by DBO to charge somewhat higher interest rates and fees on loans of principal amounts up to $2,500 than are allowed under the CFL.

FISCAL EFFECT: Unknown

COMMENTS: This bill seeks to accomplish two basic goals: 1) extending the current policy of one-loan-at-a-time per lender to one-loan-at-a-time from all lenders, and 2) establishing a real-time database for both lenders and DBO to use as a tool to prevent violations of the one-loan-at-a-time policy.

History

In 1996, the emergence of the check cashing industry presented the Legislature with a choice. Either focus on the nature of the check and treat check cashing services as simply that, a service, or treat the delayed deposit of the check as a loan and bring the industry in under the California Finance Law. Ultimately, the Legislature recognized the unique nature of the industry and the service it provided to California consumers and created a new regulatory framework for payday lending. Clear statutory authority for offering payday loans was established through the creation of the CDDTL via SB 1959, (Calderon, Chapter 682, Statutes of 1996).

SB 1959 permitted check cashers to defer deposit on payday loans made by the check casher. These transactions were originally regulated by the State Department of Justice (DOJ). SB 898 (Perata, Chapter 777, Statutes of 2002), shifted the responsibility for administering payday lending from the DOJ to the Department of Corporations, now known as DBO.

By creating the CDDTL, the Legislature chose not to bring payday lending under the CFL and instead set a limit of $300 as the maximum size of a payday loan and prohibited any lender from making more than one loan to a borrower at a time. As noted in the existing law section above, lending above $300 remains governed by the CFL.

It seems relevant to note that at the time the Legislature adopted a one-loan-at-a-time per lender policy the physical availability of payday lending stores was considerably less than what it is today. Additionally, online payday lending which is easily accessible today simply did not exist then.

It seems reasonable to assume that at the time the Legislature adopted this policy they believed that one-loan-at-a-time per lender meant that no borrower would end up with more than one payday loan at any given time.

The Legislature over two decades ago could not have foreseen the explosion in payday loan access points that we have today. The problem of borrowers taking out multiple payday loans at the same time (loan stacking) was a concern of the Legislature then and is a significant issue before the Legislature today. The central purpose of this bill is to prevent loan stacking.

Payday loan stacking undermines consumer protections contained within the CFL

As discussed above, loan stacking is the practice of a borrower taking out multiple payday loans at the same time. When the Legislature established a separate section for payday lending in the Financial Code it seems clear that they were establishing a boundary of $300, below which a payday loan can be made, and above which loan activity is governed by the CFL. Today a borrower can incur payday loan debt at a level that far exceeds the $300 limit established by the Legislature. Accessing online payday lending and visiting multiple payday loan stores, which have become ever-present in many neighborhoods throughout the state, has given borrowers the

ability to create payday loan debt at an unprecedented level. A borrower can take out 4 payday loans (or more) at a time incurring $1200 in payday loan debt in a single day. A loan of this size in 1996 was covered by provisions contained within the CFL, *as it still is today*. Those CFL provisions include consumer protections such as interest rate caps, fee caps and underwriting (determining the ability of a consumer to repay) and are present in lending between $300 and $2,500 in the pilot program under the CFL. These protections are not required within the limited scope of payday lending. To fully understand the impacts of loan stacking it is important to understand another statutory work-around that borrowers engage in, "loan sequencing".

Loan sequencing undermines the value of a payday loan

Current statute prohibits a lender from entering in to a second payday loan with a borrower until such time as the first payday loan is paid off. This prohibition prevents borrowers who cannot pay off a payday loan from simply paying a loan fee and rolling over a loan for an additional pay period. The idea here is to prevent a borrower from paying a succession of payday loan fees without ever reducing the principal of the loan. Those who oppose payday lending refer to this as a "debt trap". Studies have shown that borrowers engage in a sequencing practice where a payday loan is incurred, paid off when the borrower gets paid and then a new payday loan is incurred within a short time thereafter. Data collected by DBO reveals that of the 11.5 million payday loans reported for 2016, 83% were subsequent transactions made by the same borrower. Of these subsequent borrowers, nearly 2/3 of the loans were made on the same day as the previous loan pay off. This sequence of taking out a payday loan, paying off the loan and then taking out a new payday loan is a proxy for loan rollovers which are prohibited by law for individual lenders. Although technically legal, sequencing has the same effect of eroding the value of a loan through a series of loan fee payments that do not reduce the loan principal as described below.

Example 1: Sequencing One Loan

(Two Week Pay Period)

Loan Dates	Re-loan Principal Balance	Fees Paid Cumulative	Net Loan Proceeds
Jan. 1	$300	$45	$255
Jan. 16	$300	$90	$210
Feb. 1	$300	$135	$165
Feb. 16	$300	$180	$120
Mar. 1	$300	$225	$75
Mar 16	$300	$270	$30
Apr. 1	$300	$315	Negative $15

Example 2: Sequencing Four Loans (Two Week Pay Period)

Loan Dates	Re-Loan Principal Balance	Fees Paid Cumulative	Net Loan Proceeds
Jan. 1	$1,200	$180	$1020
Jan. 16	$1,200	$360	$840
Feb. 1	$1,200	$540	$660
Feb. 16	$1,200	$720	$480
Mar. 1	$1,200	$900	$300
Mar. 16	$1,200	$1080	$120
Apr. 1	$1,200	$1260	Negative $60

For a borrower that finds they are unable to pay back the payday loan upon receiving their next paycheck, the results can be serious. Multiple loans sequenced over several pay periods can lead to a significant drain on a borrowers finances without reducing the principal amount of the loan (or loans).

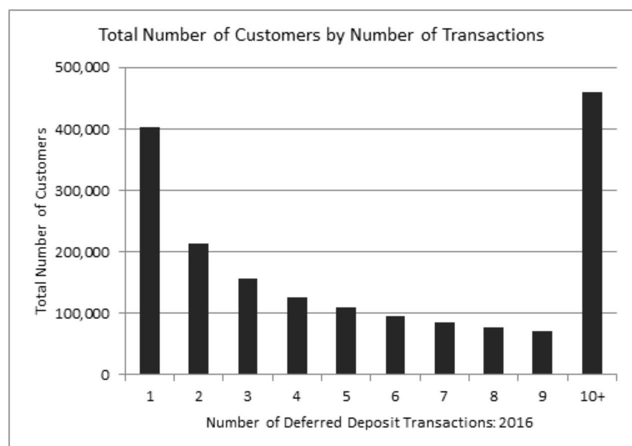
Interested parties on all sides are concerned *where borrowers will go* if loan stacking is prohibited. One thing seems clear from looking at the charts above, providing access to capital through payday loans to borrowers that do not have the ability to pay them back in a timely manner *does not really provide access to capital*. The rapid erosion of the benefits of a loan through sequencing and made more serious by stacking multiple loans across multiple lenders seems to support the Legislature's decision to include greater consumer protections for loans larger than those offered through payday loans.

Unlike the CDDTL, the CFL, which governs loans above $300, requires lenders to evaluate a borrower's ability to repay along with additional consumer protections that seek to protect borrowers from incurring debt that they are not able to pay back.

Data

Each year DBO is required to conduct a survey of payday lenders to collect up-to-date information on licensed lenders activities in order to assess the financial health and compliance practices of California's payday loan industry. The most recent data available is the 2016 annual report titled, "The California Deferred Deposit Transaction Law Annual Report and Industry Survey (report)."

It is important to remember that the data provided to DBO comes directly from the lenders and does not include any borrower identification that would allow for tracking borrower activity across multiple lenders. The following chart shows borrower activity as seen from a single lender perspective aggregated for all lenders.



The clear implication of what this chart shows us is that the original intention of the payday loan program, namely using the payday loan for a one-time short-term emergency, is no longer the case. As can be seen, more people take out greater than 10 payday loans per year than do those that take out a single loan.

What this chart does not show us is how often and to what extent a single borrower accesses payday loans across multiple lenders. A single borrower can borrow 6 payday loans from lender A, 3 loans from lender B and 1 loan from a third lender C, only to be counted as 3 separate borrowers at three separate payday loan lenders.

This lack of lending transparency is what allows individuals to take out multiple loans across multiple lenders and far exceed the $300 limit established by the Legislature for the payday loan program. The creation of a real-time database as provided in this bill will allow both lenders and the DBO to track borrower activity and prevent loan stacking.

Consumer Financial Protection Bureau (CFPB)

The CFPB is a federal consumer protection agency. In November of 2017, the CFPB issued a final rule for, "Payday, Vehicle Title, and Certain High-Cost Installment Loans."

This final rule contained a provision dealing with payday lending that once implemented would prohibit any payday lender in any state from entering into a loan agreement with a borrower if that borrower has an outstanding payday loan. The rule also contained provisions that would create a national real-time data base to ensure compliance with the one-loan-at-a-time policy. Once in effect, this rule becomes the law of the land.

This rule was developed and finalized under the Obama administration. It is unclear if the current administration will seek to repeal the rule or simply chose not to enforce its provisions. There is currently legislation in Congress to repeal the rule, but again, it is unclear whether or not Congress will act upon it.

According to the author, it is the uncertainty over the commitment of the current administration to enforce these rules that has led the author to introduce this legislation to protect California consumers.

Opposition to one-loan-at-a-time

To the extent that borrowers are engaging in borrowing behavior where they take out multiple payday loans at the same time, restricting borrowers to one-loan-at-a-time will reduce the total volume of payday loans made each year. As noted above, it is difficult to determine the full extent to which this practice is used and therefore the impact on the industry. Additionally, it is difficult to determine if the reduction in loan volume will be felt uniformly across all lenders favoring brick and mortar stores over online lenders or visa versa.

The CFPB, when examining the implementation of a one-loan-at-a-time policy in Virginia, noted a significant reduction in loan activity. However, after five years they found that the physical proximity to an active payday lending store was not significantly greater than had existed prior to the one-loan-at-a-time policy. The number of storefronts was reduced but more than enough storefronts remained to meet the needs of borrowers.

Opposition to the database

The primary concern of lenders with the database is cost. Data collection and oversight activities by DBO are paid for through fees assessed on licensed lenders. Establishing and maintaining the database and the additional activities required by DBO to enforce the one-loan-at-a-time policy will increase cost to the department which will be passed on to the lenders through license fees. Additionally, lenders will be required to gather and report more date than is currently required. It seems reasonable to assume that loan processing costs will increase.

HEARINGS IN OTHER COMMITTEES:

This bill will be heard in the Assembly policy Committee on Privacy and Consumer Protection as well as, the Assembly fiscal Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Reinvestment Coalition
Coalition for Humane Immigrant Rights
Consumers for Auto Reliability and Safety
Consumers Union
East Bay Community Law Center
Law Foundation of Silicon Valley
Mission Economic Development Agency
New Economics for Women
Public Counsel
San Francisco Office of Financial Empowerment

Opposition

Beach Financial, LLC
California Financial Service Providers
Cashback Loans
Check Into Cash Inc.
CURO
ER Financial, LLC
Evolution Lending

Analysis Prepared by: William Herms / B. & F. / (916) 319-3081