

Date of Hearing: April 24, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1636 (Aguiar-Curry) – As Introduced February 17, 2017

SUBJECT: California Deferred Deposit Transaction Law: licensee annual reports

SUMMARY: Makes changes to the California Deferred Deposit Transaction Law requiring the Department of Business Oversight (DBO) to make public licensee's annual reports for inspection. Specifically, **this bill** allows the Commissioner of DBO (Commissioner) to require licensee's to include any other information in licensee's reports that the Commissioner deems reasonable.

EXISTING LAW: Requires licensees under the California Deferred Deposit Transaction Law, on or before March 15 of each year, beginning March 2006, to file an annual report with the Commissioner pursuant to procedures that the Commissioner shall establish. The licensee's annual report shall be kept confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and any regulations adopted thereunder. The annual consolidated report shall be prepared by the Commissioner and made available to the public.

FISCAL EFFECT: Unknown

COMMENTS: Under the California Deferred Deposit Transaction Law, loan originators, also known as payday lenders, are required to file an annual report with the Commissioner. According to the author's office:

Payday lenders provide Californians with an important service; offering short term loans when people don't have money to cover their expenses or an urgent need. However, when this type of loan is used by lower-income families it can quickly snowball into a financial crisis. For this reason, it is critical that members of the payday lending industry offer their services in the most responsible way.

[DBO] is responsible for providing oversight of the payday lending industry to protect consumers by ensuring that financial service providers and products operate ethically and legally. DBO is also the first line of defense against those few businesses that may not have sufficient consumer practices and safeguards.

Under existing law, individual annual reports submitted from payday lending operators are exempt from the Public Records Act. This means that no member of the public – whether a consumer, public agency, or researcher – can request or view the information submitted by any licensee. Additionally, the Commissioner of the DBO has no power to ask that additional data be included in the report, even though the payday lending industry is constantly changing and is increasingly operating online.

AB 1636 does not seek to further regulate the payday lending industry, but it does increase transparency and the ability to monitor evolving practices and products by authorizing each licensee's submitted annual report to be made public. By allowing disaggregated information to be viewed by regulators and consumers, in addition to

the consolidated summary report, AB 1636 will strengthen consumer protection by providing insight into the practices of individual payday lenders and their borrowers. This information will give the state a clearer picture about the payday loan industry and consumers' habits in practice.

Deferred Deposit Transaction Law: A payday loan, known more formally in California as a deferred deposit transaction, is a short-term loan in which a borrower writes a post-dated, personal check to a lender for a specified amount, that is capped by state law. The payday lender advances the borrower the amount on the check, less the fee, which is also capped by law. The payday lender does not cash the check at the time the loan is made. Both parties are aware that the borrower lacks sufficient funds to cover the check when the check is written. The assumption underlying the loan is that the borrower will repay the loan by the agreed-upon date, either by depositing sufficient funds in his or her checking account to cover the check, or by paying the payday lender in cash on the loan's due date, and having the lender return the original check to the borrower, without cashing it.

Under the California's payday loan law, any payday lender who makes a payday loan must be licensed. Each licensee may defer the deposit of a customer's personal check for up to 31 days. The face amount of the check presented by a borrower may not exceed \$300, and the fee charged by the licensee may not exceed 15% of the face amount of the check (\$45 on a \$300 check). This statutorily capped fee must be expressed to borrowers in the form of an Annual Percentage Rate (APR). Given the short-term nature of payday loans (average is 17 days) the average APR is 411%. However, while the APR is high on a short-term product, the dollar costs of the fee cannot exceed 15% of the face amount of the check.

Licensees may charge one non-sufficient funds fee, capped at \$15, for checks that are returned by a customer's financial institution. In addition, licensees may not directly or indirectly charge any additional fees in conjunction with a payday loan. Licensees may not enter into a payday loan with a customer who already has a payday loan outstanding and may not allow a customer to use one loan to pay off another. Licensees are also forbidden from accepting any collateral for a payday loan or making any payday loan contingent on the purchase of any goods or services. Each payday loan must be made pursuant to a written agreement. Licensees must clearly post their fees and charges at their business locations.

Arguments in Support:

Making data public that contributes to the Commissioner's annual consolidated report allows for greater transparency and accountability in government. Also, allowing the Commissioner to require additional information deemed reasonable insures the public receives all appropriate information.

Arguments in Opposition:

Concerns have been raised that the information lenders provide to the Commissioner is proprietary in nature and should not be made accessible to the public.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumers Union of U.S., Inc.

Opposition

None on file

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