

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 497 (Limón) – As Amended June 21, 2021

SENATE VOTE: 40-0

SUBJECT: Qualifying accounts for direct deposit of publicly administered funds

SUMMARY: Requires the Employment Development Department (EDD) to provide claimants the option of direct deposit for Disability Insurance (DI) and Family Temporary Disability Insurance (FTDI) payments and amends the definition of “qualifying account” that can receive direct deposits related to child support payments, public assistance payments, and DI, FTDI, and Unemployment Insurance (UI) payments. Specifically, **this bill:**

- 1) Requires EDD to provide a DI and FTDI claimant the option to receive payments by direct deposit into a qualifying account, as defined, of the recipient’s choice in addition to other alternative disbursement methods such as checks.
- 2) Modifies the definition of “qualifying account” as it pertains to direct deposit requirements for child support, public assistance, and UI payments as follows:
 - a) Clarify that the demand deposit or savings account must be at an insured depository financial institution and that the account is offered directly by the insured depository financial institution on its internet website or through its branches.
 - b) Require that a demand deposit or savings account offered by, or through, an entity other than an insured depository financial institution meet the requirements of existing law for a prepaid card account, except the account may have a credit or overdraft feature if such a feature has no fee, charge, or cost, whether direct, required, voluntary, or involuntary, or the credit or overdraft feature complies with the requirements for credit offered in connection with a prepaid account under the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) and its implementing regulations.

EXISTING STATE LAW:

- 1) Requires that if child support payments are deposited directly into an account of the recipient’s choice, the funds only be deposited into a “qualifying account” defined as a demand deposit or savings account at an insured financial institution in the name of the person entitled to the receipt of child support payments, or a prepaid card account that meets specific criteria. (Family Code Section 17325)
- 2) Requires that if UI payments are deposited directly into an account of the recipient’s choice, the funds can only be deposited into a “qualifying account” defined as a demand deposit or savings account at an insured financial institution in the name of the person entitled to the receipt of public assistance, or a prepaid card account that meets specific criteria. (UI Code Section 1339.1)

- 3) Requires that any person entitled to the receipt of public assistance payments may authorize payment to be directly deposited into a “qualifying account” at a financial institution of their choice. A “qualifying account” is defined as a demand deposit or savings account at an insured financial institution in the name of the person entitled to the receipt of public assistance, or a prepaid card account that meets specific criteria. (Welfare and Institutions Code Section 11006.2)

EXISTING FEDERAL LAW:

- 1) Establishes the Electronic Funds Transfer Act (EFTA) for the purpose of providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. (15 U.S.C. Sec. 1693 et seq.)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

According to the author:

SB 497 will prevent nonbank prepaid card companies from evading California and federal laws by relabeling their “prepaid cards” as “debit cards” in order to charge overdraft fees on consumers receiving public assistance.

This bill closes an important loophole that will protect vulnerable families, ensure state funds are used appropriately and efficiently, and make it clear that public assistance should not be subject to overdraft fees.

2) Background.

In 2013 and 2014, the Legislature enacted new rules related to the direct deposit of certain government-established cash transfers to address issues related to prepaid, reloadable cards that were the subject of significant controversy. At the time, many card users complained about the lack of protection for theft recovery and fees. Thus, AB 1280 (Pérez), Chapter 557, Statutes of 2013 and AB 2241 (Pérez), Chapter 189, Statutes of 2014, established that child support payments, cash assistance, and UI payments may only be directly deposited into a “qualifying account.” A qualifying demand deposit or savings account must be held at an insured financial institution, and a qualifying prepaid card account, used mainly when funds cannot be directly deposited into a beneficiary’s account at a financial institution, must be (1) held at an insured financial institution, (2) not be attached to any credit or overdraft feature, (3) meet certain federal guidelines for pass-through insurance, and (4) meet all EFTA requirements.

Notably, these bills did not *require* direct deposit availability for these programs. And, each of the programs affected by this bill operate differently in how they send out payments. Specifically:

a) Child support payments.

A recipient of child support payments can receive their payments through a number of options. In addition to receiving payments by check, a recipient can have their payment directly deposited into a checking or savings account or into an electronic payment card that looks and works like a pre-paid debit card. In the latter case, the child support payment is applied to the card balance each month. The recipient applies for either direct deposit option through the California State Disbursement Unit.

b) Public assistance cash grants.

Recipients of public assistance cash grant benefits such as CalWORKs, Refugee, and General assistance may choose to have their benefit deposited directly into their personal checking or savings account or have their benefits paid through EBT.

c) UI, DI, and FTDI.

EDD issues payments for DI, FTDI, and UI claims using the EDD Visa Debit Card, a prepaid debit card. EDD contracts with Bank of America as an administrative vendor to issue benefits through the cards. While EDD does not currently provide direct deposit into a recipient's checking or savings account of their choice, EDD notes that a recipient can set up a one-time or recurring direct deposit transfer to the financial institution of their choice at no cost.

3) What this bill does

The bulk of this bill's provisions relate to the definition "qualifying account" that may accept direct deposit of certain state benefits or insurance payments or child support payments. This new definition more clearly differentiates products, including checking accounts, offered through nonbank entities, and sets standards around the use of those products. As the author notes, this modified definition is meant to close a potential loophole that could expose benefit recipients to excessive overdraft fees.

While this bill's provisions related to qualifying accounts do not address a known problem with the current disbursement of state benefits, the author is correct in trying to anticipate future risks for program participants. Oversight of emerging financial products and services offered through fintech and other nonbank entities is akin to a game of Whac-a-Mole: government regulators may develop new rules around one type of product or service, but another product or service (sometimes simply a workaround of current federal or state regulations) can quickly emerge.

This bill is a response to new checking account products offered by nonbank companies that previously specialized in prepaid accounts. These companies, in response to new consumer Financial Protection Bureau (CFPB) rules limiting the use of overdraft fees on prepaid accounts, have started to introduce alternative checking account options that could levy new overdraft fees on customers. Under current state law, these checking accounts offered through nonbank entities may count as an eligible "qualifying account" despite containing fee structures that the Legislature likely intended to prevent through AB 1280 (Pérez), Chapter 557, Statutes of 2013 and AB 2241 (Pérez), Chapter 189, Statutes of 2014.

4) Direct deposit requirements.

This bill also requires EDD to provide a person entitled to receive DI or FTDI (also called Paid Family Leave) with the option to receive payments by direct deposit. This provision is similar to ones found in earlier versions of AB 74 (Gonzalez), of the 2021-2022 Legislative Session, which would have required direct deposit options for UI, DI, and FTDI payments. The Governor's May Revision also included a proposed \$11 million for EDD to develop and implement a similar direct deposit option. As of the writing of this analysis, there is not a final budget agreement. However, the author's office has indicated that if the final budget agreement and associated trailer bills include similar language as this bill's direct deposit requirement, the author will remove this provision.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Reinvestment Coalition
Californians for Economic Justice
Cameo - California Association for Micro Enterprise Opportunity
Center for Responsible Lending
Consumer Federation of California
Hope for All: Helping Others Prosper Economically
Housing and Economic Rights Advocates
National Consumer Law Center

Opposition

None on file.

Analysis Prepared by: Luke Reidenbach / B. & F. / (916) 319-3081