Date of Hearing: April 19, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2511 (Skinner) – As Amended: March 25, 2010

SUBJECT: Deferred deposit transactions: recipients of unemployment benefits.

SUMMARY: Prohibits a deferred deposit transaction (DDT) from being made to a person receiving unemployment benefits unless the interest charged for the ddt does not exceed a 36% annual percentage rate (APR). Specifically, this bill:

1) Defines APR as having the same meaning as set forth in Section 1606 of Title 15 of the United States Code.

2) Defines "Interest" as all charges payable directly or indirectly by a borrower to a deferred deposit transaction, including any fee including a returned check fee, check cashing fee, and any ancillary product sold in connection with the DDT.

EXISTING FEDERAL LAW

1) Defines "APR" and provides formula for its computation. (Title 15 USC Section 1606).

2) Imposes a 36% APR on consumer extended to members of the military and their dependents and prohibits the use of a personal check as a contingent requirement in a loan transaction. (10 USC Sec. 987.)

EXISTING STATE LAW

1) Establishes the California Deferred Deposit Transaction Law (CDDTL) (also known as the Payday Loan Law, Financial Code Section 23000 et seq.). The CDDTL:

   a) Applies to any person that makes a transaction in which the payday lender defers depositing a customer's personal check until a specific date, pursuant to a written agreement;

   b) Does not apply to a state- or federally-chartered bank, thrift, savings association, or industrial loan company;

   c) Requires applicants who wish to become payday lenders to submit an application for each location, an application fee of $200, and to submit to various other requirements including a background check, and prohibits anyone from engaging in the business of payday lending without a license from the Department of Corporations;

   d) Allows lenders to defer the deposit of a customer's personal check for up to 31 days; limits the maximum value of the check to $300; limits the maximum fee to 15% of the face amount of the check; and requires payday lenders to distribute a notice to customers prior to entering into any payday loan transaction that includes information about the loan and loan charges and a listing of the borrower's rights;

e) Requires each payday loan agreement to be in writing in the font size of 10 point or greater, written in the same language that is used to advertise and negotiate the loan, signed by both the borrower and the lender's representative, and provided by the lender to the borrower, as specified;

f) Allows payday lenders to grant borrowers an extension of time or a payment plan to repay an existing payday loan, but prohibits the lender from charging any additional fee in connection with the extension or payment plan;

g) Requires each licensee to maintain a net worth of at least $25,000 at all times; and,

h) Prohibits payday lenders from entering into a payday loan with a customer who already has a payday loan outstanding, and from doing any of the following:

   i) Accepting or using the same check for a subsequent transaction;

   ii) Permitting a customer to pay off all or a portion of one payday loan with the proceeds of another;

   iii) Entering into a ddt with a person lacking the capacity to contract;

   iv) Accepting any collateral or making any payday loan contingent on the purchase of insurance or any other goods or services;

   v) Altering the date or any other information on a check, accepting more than one check for a single payday loan, or taking any check on which blanks are left to be filled in after execution;

   vi) Engaging in any unfair, unlawful, or deceptive conduct or making any statement that is likely to mislead in connection with the business of DDTs;

   vii) Offering, arranging, acting as an agent for, or assisting a deferred deposit originator in any way in the making of a DDT unless the deferred deposit originator complies with all applicable federal and state laws and regulations;

2) Provides that licensees who violates the payday loan law are subject to suspension or revocation of their licenses, and that violations of the payday loan law are subject to civil penalties of $2,500 per violation;

3) Specifies that anyone that violates any provision of Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) or any provision of Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, violates the California payday loan law. (Financial Code, Section 22345)

4) Provides that a person that refuses to offer a payday to a member of the military is not in violation of the Military and Veterans Code provision relating to discrimination against members of the military. (Financial Code, Section 23038).

FISCAL EFFECT: Unknown

COMMENTS:

This bill arrives to the committee via a Los Angeles Times article, *Payday Lenders Giving Advances on Unemployment Checks*, which revealed that payday lenders have been offering payday advances for consumers receiving unemployment benefits. Typically, in a payday loan transaction the borrower provides proof of income through a recent pay stub. The LA Times article details how payday lenders are now offering loans by accepting unemployment checks as proof of income. Close to 1.4 million California residents are receiving unemployment benefits, with an average benefit of $300 per week, only 30% of the average wage of an employed worker.

Under California law a payday loan transaction provides that 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), so the customer nets $255. Licensees may charge one non-sufficient funds fee, capped at $15, for checks that are returned by a customer's bank. 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, though enforcement of this provision faces many obstacles. 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 post their fees and charges clearly and in plain view at their business locations. Additionally, and often a major point of confusion is that payday loans may not be "rolled over," meaning that the borrower could pay additional finance charges to extend the loan. In the research of payday loans "rollovers" are often a description for when a borrower pays off a loan and immediately takes out a new loan.

Consumer organizations highlight that payday loans are a "debt trap" meaning that the borrower gets stuck in a cycle of debt leading to further deficits in personal income. For example, if the borrower doesn't have $255 today for expenses then will the borrower have the extra money after paying their regular bills to pay back the loan in two weeks when the loan comes due? In many cases, the borrower simply takes out additional loans, back-to-back, in an attempt to make up the lack of personal funds.

The bill currently under consideration is not the first time that a specific class of payday loan borrowers are offered a 36% APR. On October 1, 2007 Section 670 of the John Warner National Defense Authorization Act of 2007 (Public Law 109-364) became law. Section 670 caps the interest rate on consumer loans to members of the military to 36% and, among others things, prohibits a creditor from using a check or other method of access as security for a loan obligation. At the same time, Congress was considering this change, the legislature heard and the governor signed AB 7 (Lieu), Chapter 358, Statutes of 2007, which modified state law to conform to the federal legislation. The effect of the federal law was to effectively ban payday loans to members of the military through the prohibition on using a personal check as collateral for the loan. AB 7, in additional to conforming changes, provided a safe harbor to payday lenders from the state's statutes that prevent financial service entities from discriminating against members of the military on the basis of their membership in the armed forces. Committee staff is not aware of any studies or other data that demonstrate how the aforementioned state and federal laws have changed the borrowing habits of members of the armed forces.

Payday loan alternatives.

What payday loan alternatives exist for consumers? Over the last 30 years consumer lending has undergone a significant shift in that most depository financial institutions moved away from offering small dollar personal loans. It appears that in some cases the small consumer loan business is beginning to find its way back into the branches of banks and credit unions. However, it would be fair to say that a major gap still exists in the small dollar consumer loans market place. That niche is currently dominated by payday lenders. Some of these products, such as payday advances tied to checking or savings accounts offered by banks and credit unions would appear to be a step in the right direction that offer consumers a viable alternative.

Several credit unions in California have started offering payday loan type products. For example, Patelco Credit Union in San Francisco offers a revolving credit line of up to $750 with a $10 fee per withdrawal which equals a 17.8% APR. This type of loan requires at a minimum a credit check. Golden 1 Credit Union, California's largest credit union, also has a payday loan type product. Nationwide, several federal credit unions offer these products varying in loan amounts from $50 to $500 with a range of interest rates and charges. However, it is important to note that due to differences in state and federal law, state chartered credit unions in California may not offer services to non-members. Those programs that do exist in California are limited to credit union members, so the instant nature of the transaction with a payday lender is not similar to that of a credit union where the borrower must be a member and go through a loan underwriting process.

In February 2008, the Federal Deposit Insurance Corporation (FDIC) issued guidance for financial institutions to establish pilot programs for small dollar loan programs. The FDIC guidelines provided for the following parameters of the program:

1) Loan amounts of up to $1,000;

2) Amortization periods longer than a single pay cycle and up to 36 months for closed-end credit, or minimum payments that reduce principal (i.e., do not result in negative amortization) for open-end credit;

3) APRs below 36 percent;

4) No prepayment penalties;

5) Origination and/or maintenance fees limited to the amount necessary to cover actual costs; and,

6) An automatic savings component.

This pilot program began with 31 banks. While it is still early to judge the success of this program, according to the FDIC, the participating banks thus far view the program as a long-term strategy to attract new customers and new relationships.

On the flip-side, other alternatives exist that may be far worse than payday loans. For example, one particular California lending entity offers a loan of $2,600 with a $75 origination fee. The repayment schedule on this loan is 36 payments of $298.94. That means that for a loan of $2,600 the interest charges if paid back over 36 payments are $8161.84. Additionally, an internet search of online payday lending sites reveals numerous entities offering online payday loans, headquartered out of the state's jurisdiction, offering payday loans as high as $1500 with fees as much as $30 to $50 dollars per hundred borrowed.

While it is important and vital that more mainstream type lending products become available to consumers, the typical options for a consumer who needs cash fast are very limited if they are not already a member of a credit union or bank that offers some type of product. In previous debates on this issue, some have suggested that borrowers could use credit cards, borrower money from family or friends, or seek out local community assistance programs. In the current economic climate, it is reasonable to assume that consumers have little credit balance left on their credit cards to meet their needs, or may not even credit cards at all. Even if they do, credit card interest rates can create debt cycles of their own.

DOC Reports.

On March 10, 2008, the DOC released two reports to fulfill its requirements under Section 23057 of the Financial Code. The two reports are titled, "California Deferred Deposit Transaction Law, California Department of Corporations, December 2007" (DOC report) and "2007 Department of Corporations Payday Loan Study, December 2007, submitted to the California Department of Corporations by Applied Management Planning Group, in conjunction with Analytic Focus" (AMPG report).

The key findings from the aforementioned reports:

1) California is home to 447 licensed payday lenders, which operate 2,403 licensed payday lending stores. A total of 338 licensees indicated to AMPG that they were actively making loans during the study period of April 15, 2006 through September 11, 2007.

2) Over two-thirds of all payday loans are made by only twelve licensees (AMPG). The largest 30 licensees made 82% of payday loans by dollar volume during 2006 (DOC).

3) Over 61% of all licensees operate only one payday loan location (AMPG).

4) Forty-nine of the state's 58 counties have at least one payday loan location. With 166 payday loan locations, the City of Los Angeles has the highest concentration of payday loan locations of any city in the state. The City of Sacramento is second, with 81 locations (AMPG).

5) Sixteen licensees (3.5%) reported making over 115,000 payday loans over the Internet during 2006 (DOC).

6) The average length of a payday loan is 16 days (DOC).

7) Most payday lenders advertise using large, conspicuous signage on the outsides of their licensed locations (DOC). Many (70%) also advertise in local telephone directories; a smaller percentage advertise in local newspapers (29%) and Internet directories (27%; AMPG).

8) Before agreeing to lend to a borrower, most licensees require the borrower to provide identification, proof of some form of income, a home address, employer's address, and checking account information. Licensees rarely conduct a credit check or verify whether the borrower has the ability to repay the loan, when their other debts and expenses are considered. Most payday loans can be obtained in under 15 minutes (DOC).

9) Most lenders accept any kind of verifiable income as proof of income, other than unemployment checks or reports of self-employment (AMPG). Payroll checks, government assistance checks, retirement checks, disability checks, annuity and/or structured settlement checks are the most common forms of income verification accepted. Although all payday loan customers are required to have and show proof of an active checking account, only 5% of licensees require that borrowers have the qualifying income deposited directly into their checking accounts (AMPG).

10) Most licensees require borrowers to complete an application for their first loan with that licensee. Future loans can be obtained without the need to complete another application, unless the applicant needs to update his or her information (DOC).

11) Cash is the most common method of distributing loan proceeds to borrowers, although the option of electronically depositing the funds into customers' bank accounts is increasing in popularity among licensees (DOC).

12) Eighty four percent of licensees' business is attributable to repeat customers (only sixteen percent comes from customers who take out only one loan). Nineteen percent of licensees' business is attributable to customers who took out more than 15 loans during the 18-month period studied by AMPG.

13) Forty one percent of licensees offer some type of bonus (either cash or gifts) to customers who refer new business to the licensees. Cash is much more common than other types of gifts. Of those who offer cash bonuses, nearly one half offer $10 or less, and just under one third offer between $20 and $25 (AMPG).

14) Very few licensees accept personal checks for repayment (this despite the fact that a post-dated check is required in order to obtain a payday loan). Customers commonly pay off their loans in cash. Nearly all lenders who do accept personal checks for repayment charge non-sufficient funds (NSF) fees for returned checks (DOC and AMPG).

15) Fifty seven percent of licensees require customers to borrow at least $50. The majority of loans (63%) are between $200 and $255. Twenty lenders responded that the minimum amount they would lend was $255 (AMPG).

16) Although lenders may charge up to $45 in loan fees to lend the maximum amount of $300, 14% of lenders charge less than $45 on $300 loans. The smallest amount charged on a $300 loan was $25, corresponding to a maximum loan amount of $275 (AMPG).

17) Licensees reported making over $110 million in loans that were not repaid. Once loans have been in default for over 91 days, most lenders (72%) write the defaulted amount off as bad debt (AMPG).

18) Licensees charge off approximately 3% of their checks as bad debt (DOC). This finding contrasts with AMPG's finding that 12% of all loans outstanding in an average month are over 91 days delinquent and in default.

19) To prevent the loss of revenue due to defaulted loans, most lenders (87%) offer arrangements in which borrowers are allowed to pay back loans at a reduced rate or based on an agreed-upon schedule. Lenders reported that about 20% of loans issued during the eighteen-month study period required some type of workout arrangement (AMPG). However, less than 1% of all payday loan customers entered into formal, written payment plan arrangements during 2006 (DOC).

20) Seventeen percent of payday loan customers received only one payday loan during 2006 (DOC). DOC also found that 57% of all payday loan customers received between two and five loans during 2006, 19% received between six and twelve loans, and 4% received between thirteen and eighteen loans during 2006. Customers who take out multiple loans in a year tend to do so in a consecutive fashion (with less than five days elapsing between paying the first one off and obtaining a second one).

21) Of those borrowers who obtained more than one payday loan in the last eighteen months, 28% used multiple locations of the same payday lender; 72% used multiple lenders (AMPG).

22) Borrowers were asked whether the amount borrowed was the amount needed or the most the lender would loan. When asked in this way, 63% of borrowers said they borrowed the amount needed; 32% said they would have borrowed more, but the lender wouldn't loan it; and only 3% said that the lender offered more than the borrower needed.

23) When borrowers were asked where they obtained the rest of the money they needed if they could not obtain all they needed from the payday lender, 8% said they borrowed the money from family or friends, 8% said they did not get the rest of the money they needed, 5% waited until their next payday, 3% went to another payday lender, and less than 1% borrowed money from a bank.

24) Thirty-six percent of borrowers indicated they had used more than one payday lender. When asked why, 73% said they needed more money than one location would loan them at one time, 12% said they needed more money before the loan with the first company could be paid off, and 11% said they used one loan to pay off another.

<u>Report policy recommendations.</u>

1) Clarify and confirm that licensees cannot refer delinquent payday loans to a local prosecutor for collection of returned checks

2) Enhance the regulation of electronic transactions.

3) Improve consumer disclosures by requiring that the notice provided to borrowers prior to entering into a payday loan agreement be a separate, distinct document from the written agreement; require the licensee to have the borrower initial a copy of the notice to acknowledge receipt; and require the licensee to retain a copy of the notice with the borrower's initials acknowledging receipt in the file. .

4) Require license applicants and existing licensees to notify DOC of other business that would be or is being conducted at the licensed location.

5) Expand consumer protections for payday lending conducted Over the Internet by requiring that notices and disclosures are provided to Internet borrowers, and that borrowers can download the agreement, notices, and disclosures. Alternately, if the borrower cannot download those documents, require the licensee to mail copies to the borrower within 24 hours.

6) Require that payment plans entered into between licensees and borrowers specify the payment dates and amounts of each payment, be in writing, and be signed by the borrower.

7) Require a written agreement signed by the borrower in order to extend the due date of a loan. Provide the licensee with an option to notify the borrower by mail of the approval to extend the due date of the loan, if the borrower elects not to sign the extension agreement. Like the recommendation above, this recommendation would help avoid misunderstandings between lenders and borrowers over repayment plan terms.

8) Require licensees to prominently disclose that borrowers have the right to request a written extension agreement and payment plan.

9) Require that specific language be used in payday loan advertising to disclose one's licensure by the DOC, and require that all advertising disclosures be in the same language as the advertising itself.

10) Require (rather than authorize) the use of a specific chart to compare payday loan fees and related cost information. Existing law requires licensees to post a schedule of all charges and fees, as specified, and provides an example of one way in which the information may be presented.

11) Require license applicants to list each person in charge of a payday lending location, and require that person to submit fingerprint information and a historical profile through a Statement of Identify and Questionnaire (SIQ). Require the licensee to notify DOC within ten days of a change in the person responsible for the location, and to submit new fingerprint information and an SIQ for that person. Require each licensee to notify DOC at least 60 days prior to a change of its officers, directors, or any other persons named in the application.

12) Confirm DOC's jurisdictional nexus over payday lending activities by stating that a payday lender is subject to the CDDTL when it conducts deferred deposit transaction business "in this state."

13) Expand the grounds for barring, suspending, or censuring persons managing or controlling payday lenders, and for denying, suspending, or revoking licenses

14) Allow DOC to issue administrative orders to prevent unsafe and injurious practices, and make these orders effective within 30 days, if no hearing is requested by the person(s) accused. Allow DOC to suspend or revoke a license for failing to maintain a surety bond, as required by law, through more expedient administrative orders.

15) Increase the civil penalty for violating the payday loan law from $2,500 to $10,000 per violation. Allow administrative penalties of up to $2,500 per violation to be levied and collected through specified administrative hearing procedures.

16) Require the preparation and retention of accurate records and reports by licensees.

17) Authorize the Commissioner to subpoena all books and records of payday lenders.

18) Allow DOC to seek a court order to enforce any administrative decision awarding restitution, administrative penalties other than citations, and cost recovery, without having to file a civil suit and motion for summary judgment.

19) Provide that a citation is deemed final if the cited licensee fails to request a hearing within 30 days of receiving the citation. Allow DOC to issue a citation to assess an administrative penalty, not to exceed $2,500 per violation (rather than $2,500 per citation).

20) Streamline DOC's ability to void loans and order fees forfeited. Clarify that DOC has the authority to order the voiding of loans and the forfeiture of fees by administrative order, rather than by pursuing a civil suit.

21) Change the payday loan origination fee from a percentage of the face value of the check to a flat fee.

22) Increase the maximum amount of a payday loan from $300 to another amount, such as $500 or $750.

23) Adjust fees based on the loan amount, with a sliding scale that reduces the fee as the amount borrowed goes up.

24) Prohibit a licensee from entering into a deferred deposit transaction with a customer during the period-of-time that the customer has an outstanding deferred deposit transaction with another licensee.

25) Restrict a customer from having a payday loan outstanding with any payday lender for more than three months during a twelve-month period.

26) Require licensees to offer a payment plan with a minimum of six equal, monthly installment payments to all borrowers who have had continuous (consecutive) loans for three months, and prohibit licensees from charging customers any additional fees or interest in connection with the payment plan.

27) Require all licensees to use a uniform database to record all transactions in real time

What does 36% APR mean?

Obviously, rates caps for payday loans are the subject of contentious debates between consumer advocates and payday lending representatives. Consumer advocates contend that a 36% APR cap will provide borrowers with an affordable product, while industry representatives contend that such caps will effectively shut down business. In other states that have passed 36% caps, payday lending has virtually disappeared, or in some cases, such as Ohio, payday lenders have sought new licensees to offer similar products, thereby circumventing the restrictions. Based on a video clip found at http://www.responsiblelending.org/payday-lending/tools-resources/payday-lending-a-400.html, at least some on the consumer side think and potentially hope that a 36% cap is unsustainable for the payday loan industry. At the four minute and fifty-six second mark of the video clip the narrator says:

> "…Arizona will be the 16th state to eliminate payday lending by enforcing an interest rate cap of 36%..."

Furthermore, a March 27, 2010 Los Angeles Times Article, "Bill Would Cap Payday Loan Interest for Jobless", made the following reference:

> "Assemblywoman Nancy Skinner (D-Berkeley) introduced a bill that would cap interest rates for loans to the jobless at a percentage so low it would all but eliminate the advances."

It would appear that the goal of this legislation is not to provide a cheaper product for unemployed borrowers, but to ban payday lending to these borrowers entirely.

While an APR disclosure is required per federal law (Truth in Lending Act), it may not be the best indicator of the costs with short-term loan products. At best, it is a blunt instrument. As mentioned earlier, the APR on a $255 payday loan plus a $45 dollar fee is 460%. What is the actual amount of charges a borrower would pay at 36% APR? First, under current law the face amount of the check from the borrower to the lender can not exceed $300. Without a tweak to the face amount of the check under current law the potential math in not as precise as it could be, so the example will use the maximum amount of face value of the check under the current law as the starting point. Under this bill, a payday loan of $300 to an unemployed borrower at 36% APR would equate to a fee of approximately $4.15. To additionally put the APR calculation into perspective, if a consumer goes to an ATM outside their financial institution's network and withdraws $20 and assume a $2.50 fee (fairly common), the APR for that transaction is 4,562%. Additionally, if a consumer bounces a $100 check and assume that the overdraft fee is $36 (industry median) and that the fee is paid through the normal cycle of the customers checking account within 30 days, the APR for that transaction is 438%.

Arguments in support.

The Center for Responsible Lending writes in support:

"Recently, the *Los Angeles Times* reported that “[t]he payday loan industry has found a new and lucrative source of business: the unemployed.” According to Department of Labor statistics, the average Californian receiving unemployment insurance benefits receives $317.59 per week, or $1,270.36 per month, a mere 31.6% of the average wage in California. What does this mean? It means that Californians receiving unemployment insurance benefits have already taken a substantial cut in their take-home pay, already need to re-budget and prioritize their expenses and certainly are not served by replacing that income with debt having annual interest rates of 459%.

Given the high price of a payday loan and the short term for payoff (2 weeks), it is almost certain that struggling borrowers will be unable to meet their basic expenses and pay off their loan when the next unemployment check comes. With unemployment income only a third of pre-unemployed income, without a more affordable 36% APR interest rate, the likelihood of these borrowers being unable to pay off the payday loan and quickly becoming trapped in debt is all that much higher."

The California Reinvestment Coalition also writes in support:

"Our organization supports restrictions on the practices of payday lenders because thy industry's model of making expensive (459% APR), small-dollar, short-term loans virtually guarantees that customers will fall into an inescapable cycle of debt, a phenomenon that has been well documented through public data and numerous studies. Moreover, we believe that public benefit resources should assist people facing financial hardships, not enable predatory payday lenders to further profit off of peoples' adverse circumstances."

Arguments in opposition.

The California Financial Service Providers (CFSP) write in opposition:

"This bill would restrict the amount a licensee can charge on a differed deposit transaction loan to 36% APR. This means a licensee would make $1.38 per $100 for a two week deferred deposit transaction. A licensee would make less return on a loan than would be made by simple cashing a government check. This bill creates what amounts to a ban on offering deferred deposit loan transactions to anyone who is receiving unemployment benefits because each such loan would require the licensee to lose money. A licensee's costs, such as paying rent, staff, borrowing money and paying utilities and taxes, result in an average cost per loan far in excess of what could be earned."

CFSP, as well as, Check Into Cash and Axcess Financial raise in their opposition issues related to the federal Equal Credit Opportunity Act (ECOA) and Regulation B (Federal Reserve regulation that implements ECOA). ECOA prohibits discrimination in lending based on the source of the borrowers income. Specifically, ECOA was implemented to address discrimination against borrower who receive some form of public assistance, as defined, such as Social Security. The basis of this argument is that because AB 2511 effectively prohibits the offering of a payday loan to unemployed borrowers, payday lenders would be in violation of ECOA because they would have to deny credit based on the source of income.

Questions.

1) Why 36% APR? Does any data exist that provides context and support for why a 36% APR is better than some other number?

2) How will this be enforced? Source of income verification is not required under current law, but instead, is an industry practice that is not universal. Payday lenders could simply not ask about source of income, or borrowers desperate for cash could attempt claim income from other sources.

3) Is a 36% rate cap a ban on the product for unemployed borrowers? If the motivation behind the bill is a ban on the product, then the committee may wish to consider a larger discussion and review regarding the potential ban of the product for certain classes of borrowers or even a complete ban?

4) If payday lenders believe that the 36% APR cap effectively bans lending to the unemployed, and then they refuse to provide loans to the unemployed, could they be at risk of litigation for discriminating against borrowers based on source of income?

5) Where will unemployed borrowers go to get the money they need?

6) If unemployed persons should be protected from payday lending, then what about other groups, ie: those on public assistance or social security, part-time workers, furloughed employees, borrowers in foreclosure, borrowers in bankruptcy.

7) Are there other alternatives to provide enhanced reform and regulation of payday lending short of a rate cap of 36%?

Technical issue.

AB 2511 also includes a definition of "interest" that includes any fee, including a returned check fee and any ancillary product sold in connection with the DDT transaction. For purpose of the 36% APR calculation, interest such as the aforementioned items would need to be included in the final APR calculation. In requiring that a returned check fee must be calculated as interest this bill requires the lender to assume that every transaction conducted with an unemployed borrower will result in a returned check, even though the lender will not have factual knowledge of this until after the payday loan is not paid back. Also, it may be impossible to compute a 36% APR if a returned check fee is counted as interest because in order to do the computation the lender must know the length of time between events. How would the lender be able to calculate, if a check is returned, and the length of time it would take for that to occur? Furthermore, the requirement to calculate the above mentioned items in the computation of APR is inconsistent with TILA.

Additionally, the definition of interest may require computation of potential charges as interest that are already prohibited under current law. For example, Financial Code §23037 (c) prohibits the a payday loan transaction from being contingent on the purchase of other goods and servicers, but the definition of interest in this bill would require the computation of the charges of other servicers to be included in the APR.

If the point of this legislation is to ban payday loans to the unemployed then the issues with the definition of "interest" may be a moot point.

Related legislation.

AB 377 (Mendoza), would increase the maximum value of a payday loan from $300 to $500 and would permit a payday loan customer to rescind the transaction no later than the end of the next business day. This bill would provide that a customer may elect to repay a loan using an extended repayment plan which includes at least four installments. Payday loan lenders would be required to pay a five-cent fee for each payday loan transaction to the DOC to be used for financial literacy education programs.

Would require a lender who provides a payday loan over the Internet to give the required notices and written agreement to a customer electronically and would revise advertising requirements to specify that the restrictions apply also to advertising on the Internet. This bill also contains provisions concerning notice and licensing-related requirements. Currently located in Senate Judiciary Committee.

AB 2845 (Jones, Bass & Feuer). At one point, would have capped the APR on payday loans at 36%. Was amended in Assembly Banking & Finance committee to state the intent of the Legislature to enact changes recommended in two DOC reports. Held in Assembly Rules Committee.

SB 1551 (Correa) of 2008 Would enact various changes intended to improve regulatory oversight of the payday lending based on recommendations found in the two reports referred to in this analysis. Failed passage in Senate Judiciary Committee.

AB 7 (Lieu, Chapter 358, Statutes of 2007): Gave DOC the authority to enforce specified federal protections granted to members of the military and their dependents under the Payday Lending Law.

SB 1959 (Calderon, Chapter 682, Statutes of 1996): Enacted the earliest version of a payday lending law in California. Gave regulatory authority to the California Department of Justice.

SB 898 (Perata, Chapter 777, Statutes of 2002). Enacted the Deferred Deposit Transaction Law and shifted the responsibility for administering the law to DOC;

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Californians for Community Empowerment (ACCE)
California Labor Federation
California Reinvestment Coalition (CRC)
Center for Responsible Lending (CRL)
Consumers Union
National Employment Law Project

Opposition

Axcess Financial
California Financial Service Providers (CFSP)
Check Into Cash
Community Financial Services Association of America (CFSA)

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