



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

**CONSENT REPORT**  
May 5, 2009

Honorable Members of the  
Law and Legislation Committee

**Subject: Legislative Positions: Oppose HR 1214, the Payday Loan Reform Act of 2009 and AB 377 (Mendoza) related to Deferred Deposit Transactions; Support S 500 and HR 1608 with regard to Protecting Consumers from Unreasonable Credit Rates and Consumer Credit Transactions**

**Location/Council District:** Citywide

**Recommendation:** Adopt an oppose position on HR 1214 and AB 377 related to predatory payday loan practices. Adopt a support position on S 500 and HR 1608 related to protecting consumers from unreasonable credit rates.

**Contact:** Patti Bisharat, Director of Governmental Affairs, 916-808-8197.

**Presenters:** n/a

**Department:** Office of the City Manager

**Division:** Legislative Affairs

**Organization No:** 09100

## **Description/Analysis**

**Issue:** HR 1214, The Payday Loan Reform Act, does not offer the reforms needed for this predatory industry. The bill would legalize payday lending at an allowable 391% annual interest rate. Legalizing payday lending at triple digit rates runs counter to President Obama's promise to cap payday lending and other loans at 36 percent annual rates and to existing protections provided by Congress to Service members and their families. Additionally, this legislation fails to address the fundamental problem with the payday lending model, which requires the borrower to repay the entire principle and interest from a single paycheck in just two weeks, hence ensuring that the typical borrower cannot pay back a loan without needing to take out another.

Representative Maxine Waters, a Democrat from California, assessed the Guttierrez bill correctly when she said: "We've got to resist any attempt to make it look as if we are cracking down, when in fact we are opening the door to more abuse."

AB 377 (Mendoza) fails to address the debt trap created by predatory payday lending. The bill provides for internet lending as well as costly re-payment plans. It does not offer the needed reforms of capping the APR at 36%, extending the loan term to 31 days, adopting the FDIC annual loan limit, imposing and automatic payment plan with at least six monthly installments and expanding equitable remedies. For these reasons, staff recommends that the Committee adopt an oppose position on AB 377 along with the California Reinvestment Coalition, the Association of Community Organizations for Reform Now (ACORN) and the Center for Responsible Lending.

S 500 and HR 1608 cap interest rates for consumer credit at 36 percent annually. They eliminate the abuses that rely on high fees, interest and other devices to charge extremely high annual rates – sometimes 400 percent and higher – to trap consumers in a cycle of debt that they can never pay off. These bills are supported by over 100 Federal and State organizations.

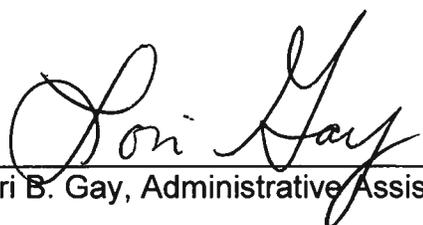
**Policy Considerations:** Opposing HR 1214 and AB 377, and supporting S 500 and HR 1608, is consistent with the City's operational principle of creating economic vitality for all Sacramento residents. These positions are consistent with the committee's vote to approve an ordinance regulating the number and distribution of check cashing and payday loan facilities in our neighborhoods and the committee's stated interest in protecting all consumers, particularly those in low income areas especially hard hit during the economic downturn.

**Environmental Considerations:** None.

**Rationale for Recommendation:** According to ACORN, using payday loans doubles the risk that a borrower will end up in bankruptcy within two years, doubles the risk of being seriously delinquent on credit card payments, and makes it less likely that consumers can pay other bills and get healthcare. Payday loan use also increases the likelihood that consumers' bank accounts will be closed involuntarily. Given the lower bank account penetration rate for minority consumers, this product undermines progress being made to bring unbanked consumers into mainstream financial services. HR 1214 is opposed by the California Reinvestment Coalition, ACORN, Americans for Fairness in Lending, Consumer Action, the Consumer Federation of America, the Consumers Union, the National Association of Consumer Advocates, the National Consumer Law Center, the National Fair Housing Alliance, the National Community Reinvestment Coalition, the U.S. Federation of State Public Interest Research Groups and others.

**Financial Considerations:** Opposing HR 1214 and AB 377 and supporting S 500 and HR 1608 presents no fiscal impact to the City.

**Emerging Small Business Development (ESBD):** n/a

Respectfully Submitted by:   
Lori B. Gay, Administrative Assistant

Approved by:  *for*  
Patti Bisharat  
Director of Governmental Affairs

Recommendation Approved:

  
RAY KERRIDGE  
City Manager

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**Attachment 1 - Draft Opposition Letter**

May 5, 2009

The Honorable Luis V. Gutierrez  
2266 Rayburn House Office Bldg  
Washington, D.C. 20515

Dear Representative Gutierrez:

The City of Sacramento opposes HR 1214. The so-called Payday Loan Reform Act is anything but what it claims. The bill would legalize payday lending at an allowable 391% annual interest rate. Legalizing payday lending at triple digit rates runs counter to President Obama's promise to cap payday lending and other loans at 36 percent annual rates and to existing protections provided by Congress to Service members and their families. Additionally, this legislation fails to address the fundamental problem with the payday lending model, which requires the borrower to repay the entire principle and interest from a single paycheck in just two weeks, hence ensuring that the typical borrower cannot pay back a loan without needing to take out another.

Opposing this legislation is consistent with the City's operational principle of creating economic vitality for all Sacramento residents. This opposition is consistent with the committee's vote to approve an ordinance regulating the number and distribution of check cashing and payday loan facilities in our neighborhoods and the committee's stated interest in protecting all consumers, particularly those in low income areas especially hard hit during the economic downturn.

According to the Association of Community Organizations for Reform Now (ACORN), using payday loans doubles the risk that a borrower will end up in bankruptcy within two years, doubles the risk of being seriously delinquent on credit card payments, and makes it less likely that consumers can pay other bills and get healthcare. Payday loan use also increases the likelihood that consumers' bank accounts will be closed involuntarily. Given the lower bank account penetration rate for minority consumers, this product undermines progress being made to bring unbanked consumers into mainstream financial services. For these reasons and others, the City of Sacramento opposes HR 1214.

Sincerely,

**SANDY SHEEDY, CHAIR**  
Law & Legislation Committee

cc: Honorable Barbara Boxer  
Honorable Dianne Feinstein  
Honorable Doris Matsui  
John Freshman, Troutman Sanders

May 5, 2009

**Attachment 2 – Draft Opposition Letter**

May 5, 2009

The Honorable Kevin De León, Chair  
Assembly Committee on Appropriations  
State Capitol, Room 2114  
Sacramento, CA 95814

**Re: Assembly Bill 377 (Mendoza): Oppose**

Dear Chairman De León:

The City of Sacramento opposes AB 377 (Mendoza), addressing deferred deposit transactions, commonly known as payday lending. We oppose the existing provisions of the bill relating to internet lending, as well as the payment plan provision. The bill fails to implement a rate cap in the range of 36% APR, which is the only true and complete way to spring the debt trap. Additionally, the bill fails to: 1) extend the loan term to 31 days; 2) adopt the FDIC annual loan limit; 3) impose an automatic payment plan with at least six monthly installments; and 4) expand equitable remedies.

Research has shown that the payday lending business model is designed to keep borrowers in debt, not to provide one-time assistance during a time of financial need. The high price of a payday loan and the fact that it must be paid off in one lump sum two short weeks later, virtually ensures cash-strapped borrowers will be unable to meet their basic expenses and pay off their loan with a single paycheck. Consequently, they are forced to renew the loan over and over.

The City of Sacramento is opposed to predatory lending practices, and as such we oppose AB 377.

Sincerely,

**SANDY SHEEDY, Chair**  
Law and Legislation Committee

cc: Senator Darrell Steinberg  
Senator Dave Cox  
Assembly Member Dave Jones  
Assembly Member Alyson Huber  
Assembly Member Roger Niello  
Assembly Member Tony Mendoza  
Members and Consultants, Banking & Finance Committee  
Members and Consultants, Appropriations Committee  
Mayor Johnson and Members of the City Council  
David Jones, Emanuels and Jones and Associates

**Attachment 3 - Draft Support Letter**

May 5, 2009

The Honorable Richard J. Durbin  
309 Hart Senate Bldg.  
Washington, DC 20510

The Honorable Jackie Speier  
211 Cannon House Office Bldg.  
Washington, DC 20515

Dear Senator Durbin and Representative Speier:

The City of Sacramento supports S 500 and HR 1608, legislation that would stop a wide range of lending abuses by capping interest rates for consumer credit at 36 percent annually. We believe that cleaning up the finance industry is essential to a sustainable economic recovery.

Under current payday lending practices, consumers are paying unfair and exorbitant rates for credit, especially those who have the fewest resources. These unreasonably expensive credit products drain billions from families who struggle to make ends meet, diminishing their ability to purchase products and services that would boost the economy.

We urge quick action to implement the FAIR cap to stop usurious credit rates, to protect struggling consumers, and to put all lenders under the same set of protections.

Sincerely,

**SANDY SHEEDY, CHAIR**  
Law & Legislation Committee

cc: Honorable Barbara Boxer  
Honorable Dianne Feinstein  
Honorable Doris Matsui  
John Freshman, Troutman Sanders

**Attachment 4 – Bill Text**

**Payday Loan Reform Act of 2009 (Introduced in House)**

HR 1214 IH

111th CONGRESS

1st Session

**H. R. 1214**

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and other protections for consumers, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**February 26, 2009**

Mr. GUTIERREZ (for himself, Mr. TOWNS, Mr. MEEKS of New York, Mr. CLAY, and Mr. SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

---

**A BILL**

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and other protections for consumers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Payday Loan Reform Act of 2009'.

**SEC. 2. PAYDAY LOAN DISCLOSURES AND CONSUMER PROTECTIONS.**

(a) In General- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129A the following new section:

**`SEC. 129B. MANDATORY DISCLOSURES; EXTENDED REPAYMENT PLAN; AND OTHER PROTECTIONS FOR CONSUMERS.**

`(a) Mandatory Disclosures for Payday Loans- No creditor may make a payday loan to a consumer unless--

`(1) the creditor has first provided the consumer with a copy of a written loan agreement, which shall be signed by the creditor and by the consumer and shall include the following information in English and in the language in which the loan was negotiated:

`(A) A clear and conspicuous description of the terms of the loan, including the total cost of all fees and other charges in connection with the loan stated both as a dollar amount and as an annual percentage rate, and the consumer's payment obligations under the loan;

`(B) The name, address and telephone number of the creditor making the loan, and the name of title of the individual employee of the creditor who signs the loan agreement on behalf of the creditor;

`(C) The following statements, in at least 14-point bold face type:

`(i) **'WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of this loan may be higher than loans offered by other lending institutions.'**

`(ii) `CREDIT COUNSELING AVAILABILITY: You should consider contacting an independent, non-profit credit counseling agency approved by the National Foundation for Credit Counseling (NFCC) or by a State or Federal government agency. You may obtain information on how to contact an approved counselor near you by calling NFCC at 1-800-388-2227.'

`(iii) `NO CRIMINAL PROSECUTION OR SECURITY INTEREST: You cannot be prosecuted in criminal court to collect this loan, and the creditor may not take or attempt to take an interest in any of your personal property to secure his loan.'

`(iv) `INTEREST-FREE EXTENDED REPAYMENT PLAN:'

`(I) `If you are unable to repay your loan when due, you may elect once every 6 months to repay your loan to the creditor by using an extended repayment plan that will allow you to repay your loan in at least 6 substantially equal installments as described further below with no additional finance charges, interest fees, or other charges of any kind, to the extent that you repay the loan as agreed under the repayment plan.'

`(II) `To obtain an extended repayment plan, you shall advise the creditor no later than 7 calendar days after the loan due date that you wish to enter into an extended repayment plan by returning to the office where you obtained the loan or by using whatever other method you used to obtain the loan, such as by Internet, telephone or fax, and you must promptly sign an amendment to your loan agreement reflecting the new payment schedule.'

`(III) `The 6-month period during which you may elect to use an extended repayment plans is measured from the date that you fully pay off all amounts due under 1 extended repayment plan until the date that you enter into another extended repayment plan.'

`(IV) `The creditor must allow you to repay your loan balance in at least six substantially equal installment payments. These installments must be due on or after a date on which you receive regular income except that there shall be at least 13 days between installments, and the first installment under the plan shall not be due before your next pay date that is at least 13 days after the repayment plan amendment is signed by both you and the creditor.'

`(V) `If you enter into an extended repayment plan and then default by failing to meet your payment obligations, the creditor may charge you a payment plan fee not to exceed \$25.00 and may accelerate payment of the balance remaining if allowed by applicable law.'

`(VI) `You may prepay the amount due under the extended repayment plan at any time without charge or penalty.'

`(VII) `This Federal extended repayment plan requirement supersedes any repayment plan requirements under any State law'.

`(D) Any other disclosures required by Federal law.

`(b) Additional Public Disclosures- No creditor shall make a payday loan to any consumer unless the following notices are posted conspicuously in English and Spanish and in not less than 1-inch bold print in the creditor's public lending area in each physical location, or, if the loan is made using the Internet, fax or other means, posted conspicuously on the creditor's public internet site relating to any such payday loan:

`(1) `WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions.'

`(2) `CREDIT COUNSELING AVAILABILITY: You should consider contacting an independent, non-profit credit counseling agency approved by the National Foundation for Credit Counseling (NFCC) or by a State or Federal government agency. You may obtain information on how to contact an approved counselor near you by calling the NFCC at 1-800-388-2227'.

`(3) `NO CRIMINAL PROSECUTION OR SECURITY INTEREST: You cannot be prosecuted in criminal court to collect this loan, and we may not take or attempt to take an interest in any of your personal property to secure this loan.'

`(4) `INTEREST-FREE EXTENDED REPAYMENT PLAN: If you are unable to repay your loan as agreed, we are required by Federal law to allow you to enter into an extended repayment plan, at least once every 6 months, that will allow you to repay the loan in at least 6 equal installments without being charged any additional finance charges, interest fees or other charges of any kinds as long as you notify us of your desire to enter into such a plan no later than seven calendar days after the loan due date. This Federal repayment plan requirement supersedes any repayment plan requirements under any State law.'.

`(c) Mandatory Extended Repayment Plan-

`(1) IN GENERAL- No creditor may make a payday loan to any consumer unless the creditor offers the consumer an extended repayment plan that meets the following requirements:

`(A) The extended repayment plan is offered at least once in any 6-month period, if the consumer advises the creditor no later than 7 calendar days after the loan due date that the consumer is unable to repay the loan as agreed and wants to enter into an extended repayment plan.

`(B) To qualify for such an extended repayment plan, the consumer may be required to return to the office where the consumer obtained the loan or use whatever method (e.g., Internet, telephone, fax) the consumer used to obtain the loan, and the consumer shall promptly sign an amendment to the loan agreement reflecting the new repayment schedule.

`(C) Under the extended repayment plan, the creditor allows the consumer to repay the consumer's loan balance in at least 6 equal installments due coinciding on the consumer's periodic pay dates, to the extent that there shall be at least 13 days between installments, and the first installment under the plan is not be due before the consumer's next pay date that is at least 13 days after the repayment plan amendment is signed by both the consumer and the creditor.

`(D) The creditor may extend the length of time between installments.

`(E) The consumer may prepay the amount due under the extended repayment plan at any time without charge or penalty.

`(F) The consumer may not be charged additional finance charges, interest fees, or other charges of any kind; however, if the consumer enters an extended repayment plan and then defaults by failing to meet the consumer's payment obligations, the creditor may charge a repayment plan fee not to exceed \$25.00 and may accelerate payment of the balance remaining if allowed by applicable law.

`(2) CONFLICT OF LAWS PROVISION- The requirements of this subsection regarding extended repayment plans shall supersede any repayment plan requirements under any State law.

`(d) Additional Protections for Consumers- It shall be unlawful for a payday lender to--

`(1) require a consumer to pay interest and fees that, combined, total more than 15 cents for every dollar loaned in connection with a payday loan;

`(2) threaten or seek to have the consumer prosecuted in criminal court to collect the loan;

`(3) take or attempt to take an interest in any of the consumer's personal property to secure the loan;

`(4) file or initiate a legal proceeding of any kind, including a lawsuit or arbitration, against a consumer to collect on a loan that is the subject of an extended repayment plan, or construe the loan to be in default unless the consumer has failed to repay the loan as agreed under the terms of the repayment plan;

- `(5) take any power of attorney;
  - `(6) include in the loan documents--
    - `(A) a confession of judgment clause;
    - `(B) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer, unless the waiver is included in an arbitration clause allowed by subparagraph (C) of this paragraph; and
    - `(C) a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers;
  - `(7) make a payday loan to a consumer who has an outstanding loan obligation to the creditor under an extended repayment plan, or for at least 13 days until after the outstanding loan obligation to the creditor under any such repayment plan is paid in full;
  - `(8) knowingly accept payment in whole or in part for any obligation under an extended repayment plan based on funds obtained from another payday loan;
  - `(9) enter into any agreement with a consumer pursuant to which the consumer seeks or purports to waive the consumer's rights under this section or any claim or defense arising out of the loan contract;
  - `(10) charge or attempt to collect, attorney's fees, court costs, or arbitration costs incurred in connection with the collection of a payday loan;
  - `(11) rollover a payday loan;
  - `(12) make more than 1 payday loan at the same time to a consumer;
  - `(13) fail to give the consumer, after each payment by the consumer, a signed, dated, receipt showing the amount paid and the balance due on the loan; and
  - `(14) sell any insurance of any kind in connection with the making or collecting of a payday loan.
- `(e) Rescission- A consumer may cancel future payment obligations on a payday loan, without cost or finance charges by informing the creditor in writing, no later than the end of the 2nd business day following the day on which the payday loan agreement was executed, that the consumer wants to rescind the loan and by returning the cash amount of the principal of the loan to the creditor.
- `(f) Definitions- For purposes of this section, the following definitions shall apply:
- `(1) CHECK- The term `check' means a negotiable instrument as defined in Article 3 of the Uniform Commercial Code, which is drawn on a financial institution.
  - `(2) CREDITOR- Notwithstanding the definition of the term `creditor' in section 103, the term `creditor'--
    - `(A) means a person who makes or offers payday loans; and
    - `(B) includes--
      - `(i) any affiliate of a creditor that offers or makes a payday loan, buys a whole or partial interest in a payday loan,

arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party; and

(ii) any other person or entity that is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding the requirements of this section.

(3) PAYDAY LOAN; LOAN- The term 'payday loan' or 'loan' means a closed-end credit transaction, unsecured by any interest in the consumer's personal property and excluding any credit card transaction under an open end consumer credit plan, with a term of 91 or fewer days in which the amount financed does not exceed \$2,000 with a finance charge exceeding an annual percentage rate of 36 percent, and the consumer--

(A) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument for more than 1 day; or

(B) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account (by electronic fund transfer or remotely created check) after 1 or more days.

(4) ROLLOVER- The term 'rollover' means the extension of an outstanding loan by the payment of only a fee.

(5) EXTENDED REPAYMENT PLAN- The term 'extended repayment plan' means an installment plan under which a consumer who is unable to repay a payday loan on the loan date due and who complies with applicable requirements established under this section may repay the creditor the outstanding balance of the loan in at least 6 substantially equal payments, on or after a date on which the consumer receives regular income, without being charged any additional finance charges, interest fees or other charges of any kind.

(6) The term 'repayment plan requirements under any State law' means any installment plan required by any State that allows the consumer to repay a payday loan over an extended period in several installments instead of on the due date specified in the original loan agreement.

(g) Civil Liability; Remedies; Applicability-

(1) CIVIL MONEY PENALTY- Notwithstanding the provisions of section 130(a), any person that violates this section, or seeks to enforce an agreement made in violation of this section, shall be subject to, for each such violation, a civil money penalty not to exceed \$10,000.00.

(2) PENALTIES NOT EXCLUSIVE OF OTHER PENALTIES- The remedies and rights provided under this section are in addition to and do

not preclude any remedy otherwise available under law to the person claiming relief under any other provision of law, other than section 130(a).

`(3) AVAILABILITY AS DEFENSE- Notwithstanding any statute of limitations or repose, a violation of this section may be raised as a matter of defense by recoupment or set off to an action to collect any payday loan.

`(4) SCOPE OF APPLICATION- The provisions of the section apply to any person or entity that seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

`(h) State Attorneys General Enforcement- The appropriate State attorney general may bring an action to enforce this section and to obtain injunctive relief in any United States district court or any other court of competent jurisdiction, not later than 3 years after the date of the violation.'

(b) Clerical Amendment- The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after section 129 the follow new items:

`129A. Fiduciary duty of servicers of pooled residential mortgages.

`129B. Mandatory disclosures; extended repayment plan; and other protections for consumers.'

(c) Effective Date-

(1) IN GENERAL- The amendments made by this Act shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act and shall apply to all loans initiated on or after such date.

(2) REGULATIONS- The Board of Governors of the Federal Reserve System may prescribe regulations before the end of the 180-day period referred to in paragraph (1) to the extent necessary to implement the amendments made by this Act to the extent such regulations become effective as of the end of such period.

**Attachment 5 – Bill Text**

**Protecting Consumers from Unreasonable Credit Rates Act of 2009 (Introduced in Senate)**

S 500 IS

111th CONGRESS

1st Session

**S. 500**

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

**IN THE SENATE OF THE UNITED STATES**

February 26, 2009

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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**A BILL**

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Protecting Consumers from Unreasonable Credit Rates Act of 2009'.

**SEC. 2. FINDINGS.**

Congress finds that--

- (1) attempts have been made to prohibit usurious interest rates in America since colonial times;
- (2) at the State level, 15 states and the District of Columbia have enacted broadly applicable usury laws that protect borrowers from high-cost payday loans and many other forms of credit, while 34 states and the District of Columbia have limited annual interest rates to 36 percent or less for 1 or more types of consumer credit;
- (3) at the Federal level, in 2006, Congress enacted a Federal 36 percent annualized usury cap for service members and their families for covered credit products, as defined by the Department of Defense, which curbed payday, car title, and tax refund lending around military bases;
- (4) notwithstanding such attempts to curb predatory lending, high-cost lending persists in all 50 States due to loopholes in State laws, safe harbor laws for specific forms of credit, and the exportation of unregulated interest rates permitted by preemption;
- (5) due to the lack of a comprehensive Federal usury cap, consumers annually pay approximately \$17,500,000,000 for high-cost overdraft loans, as much as \$8,600,000,000 for storefront and online payday loans, and nearly \$900,000,000 for tax refund anticipation loans;
- (6) cash-strapped consumers pay on average 400 percent annual interest for payday loans, 300 percent annual interest for car title loans, up to 3,500 percent for bank overdraft loans, 50 to 500 percent annual interest

for loans secured by expected tax refunds, and higher than 50 percent annual percentage interest for credit cards that charge junk fees; (7) a national maximum interest rate that includes all forms of fees and closes all loopholes is necessary to eliminate such predatory lending; and (8) alternatives to predatory lending that encourage small dollar loans with minimal or no fees, installment payment schedules, and affordable repayment periods should be encouraged.

### SEC. 3. NATIONAL MAXIMUM INTEREST RATE.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

#### SEC. 141. MAXIMUM RATES OF INTEREST.

(a) In General- Notwithstanding any other provision of law, no creditor may make an extension of credit to a consumer with respect to which the fee and interest rate, as defined in subsection (b), exceeds 36 percent.

(b) Fee and Interest Rate Defined-

- (1) IN GENERAL- For purposes of this section, the fee and interest rate includes all charges payable, directly or indirectly, incident to, ancillary to, or as a condition of the extension of credit, including--
- (A) any payment compensating a creditor or prospective creditor for--
    - (i) an extension of credit or making available a line of credit, such as fees connected with credit extension or availability such as numerical periodic rates, annual fees, cash advance fees, and membership fees; or
    - (ii) any fees for default or breach by a borrower of a condition upon which credit was extended, such as late fees, creditor-imposed not sufficient funds fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overdraft fees, and over limit fees;
  - (B) all fees which constitute a finance charge, as defined by rules of the Board in accordance with this title;
  - (C) credit insurance premiums, whether optional or required; and
  - (D) all charges and costs for ancillary products sold in connection with or incidental to the credit transaction.

(2) TOLERANCES-

- (A) IN GENERAL- With respect to a credit obligation that is payable in at least 3 fully amortizing installments over at least 90 days, the term 'fee and interest rate' does not include--
- (i) application or participation fees that in total do not exceed the greater of \$30 or, if there is a limit to the credit line, 5 percent of the credit limit, up to \$120, if--
    - (I) such fees are excludable from the finance charge pursuant to section 106 and regulations issued thereunder;
    - (II) such fees cover all credit extended or renewed by the creditor for 12 months; and



`(g) Relation to State Law- Nothing in this section may be construed to preempt any provision of State law that provides greater protection to consumers than is provided in this section.

`(h) Civil Liability and Enforcement- In addition to remedies available to the consumer under section 130(a), any payment compensating a creditor or prospective creditor, to the extent that such payment is a transaction made in violation of this section, shall be null and void, and not enforceable by any party in any court or alternative dispute resolution forum, and the creditor or any subsequent holder of the obligation shall promptly return to the consumer any principal, interest, charges, and fees, and any security interest associated with such transaction. Notwithstanding any statute of limitations or repose, a violation of this section may be raised as a matter of defense by recoupment or setoff to an action to collect such debt or repossess related security at any time.

`(i) Violations- Any person that violates this section, or seeks to enforce an agreement made in violation of this section, shall be subject to, for each such violation, 1 year in prison and a fine in an amount equal to the greater of--

`(1) 3 times the amount of the total accrued debt associated with the subject transaction; or

`(2) \$50,000.

`(j) State Attorneys General- An action to enforce this section may be brought by the appropriate State attorney general in any United States district court or any other court of competent jurisdiction within 3 years from the date of the violation, and such attorney general may obtain injunctive relief.'

#### SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR OPEN END CREDIT PLANS.

Section 127(b)(6) of the Truth in Lending Act (15 U.S.C. 1637(b)(6)) is amended by striking 'the total finance charge expressed' and all that follows through the end of the paragraph and inserting 'the fee and interest rate, displayed as 'FAIR', established under section 141.'

**Attachment 6 – Bill Text**

HR 1608 IH

111th CONGRESS

1st Session

H. R. 1608

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 19, 2009

Ms. SPEIER (for herself and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protecting Consumers from Unreasonable Credit Rates Act of 2009'.

SEC. 2. FINDINGS.

The Congress finds as follows:

- (1) Attempts have been made to prohibit usurious interest rates in America since colonial times.
- (2) At the State level, 15 States and the District of Columbia have enacted broadly applicable usury laws that protect borrowers from high-cost payday loans and many other forms of credit, while 34 States and the District of Columbia have limited annual interest rates to 36 percent or less for 1 or more types of consumer credit.
- (3) At the Federal level, in 2006, the Congress enacted a Federal 36 percent annualized usury cap for service members and their families for covered credit products, as defined by the Department of Defense, which curbed payday, car title, and tax refund lending around military bases.
- (4) Notwithstanding such attempts to curb predatory lending, high-cost lending persists in all 50 States due to loopholes in State laws, safe harbor laws for specific forms of credit, and the exportation of unregulated interest rates permitted by preemption.
- (5) Due to the lack of a comprehensive Federal usury cap, consumers annually pay approximately \$17,500,000,000 for high-cost overdraft loans, as much as \$8,600,000,000 for storefront and online payday loans, and nearly \$900,000,000 for tax refund anticipation loans.
- (6) Cash-strapped consumers pay on average 400 percent annual interest for payday loans, 300 percent annual interest for car title loans, up to 3,500 percent for bank overdraft loans, 50 to 500 percent annual interest for loans secured by expected tax refunds, and higher than 50 percent annual percentage interest for credit cards that charge junk fees.

(7) A national maximum interest rate that includes all forms of fees and closes all loopholes is necessary to eliminate such predatory lending.

(8) Alternatives to predatory lending that encourage small dollar loans with minimal or no fees, installment payment schedules, and affordable repayment periods should be encouraged.

SEC. 3. NATIONAL MAXIMUM INTEREST RATE.

(a) In General- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

'SEC. 140A. MAXIMUM RATES OF INTEREST.

'(a) In General- Notwithstanding any other provision of law, no creditor may extend of credit to a consumer for which the fee and interest rate, as defined in subsection (b), exceeds 36 percent.

'(b) Fee and Interest Rate Defined-

'(1) IN GENERAL- For purposes of this section, the term 'fee and interest rate' includes all charges payable, directly or indirectly, incident to, ancillary to, or as a condition of the extension of credit, including--

'(A) any payment compensating a creditor or prospective creditor for--

'(i) an extension of credit or making available a line of credit, such as fees connected with credit extension or availability such as numerical periodic rates, annual fees, cash advance fees, and membership fees; or

'(ii) any fees for default or breach by a borrower of a condition upon which credit was extended, such as late fees, creditor-imposed not sufficient funds fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overdraft fees, and over limit fees;

'(B) all fees which constitute a finance charge, as defined by rules of the Board in accordance with this title;

'(C) credit insurance premiums, whether optional or required; and

'(D) all charges and costs for ancillary products sold in connection with or incidental to the credit transaction.

'(2) TOLERANCES-

'(A) IN GENERAL- With respect to a credit obligation that is payable in at least 3 fully amortizing installments over at least 90 days, the term 'fee and interest rate' does not include--

'(i) application or participation fees that in total do not exceed the greater of \$30 or, if there is a limit to the credit line, 5 percent of the credit limit, up to \$120, if--

'(I) such fees are excludable from the finance charge pursuant to section 106 and regulations issued under such section;

'(II) such fees cover all credit extended or renewed by the creditor for 12 months; and

'(III) the minimum amount of credit extended or available on a credit line is equal to \$300 or more;

'(ii) a late fee charged as authorized by State law and by the agreement that does not exceed either \$20 per late payment or \$20 per month; or

'(iii) a creditor-imposed not sufficient funds fee charged when a borrower tenders payment on a debt with a check drawn on insufficient funds that does not exceed \$15.

'(B) ADJUSTMENTS FOR INFLATION- The Board may adjust the amounts of the tolerances established under this paragraph for inflation over time, consistent with the primary goals of protecting consumers and ensuring that the 25 percent fee and interest rate limitation is not circumvented.

'(c) Calculations-

'(1) OPEN END CREDIT PLANS- For an open end consumer credit plan--

'(A) the fee and interest rate shall be calculated each month, based upon the sum of all fees and finance charges described in subsection (b) charged by the creditor during the preceding 1-year period, divided by the average daily balance; and

'(B) if the credit account has been open less than 1 year, the fee and interest rate shall be calculated based upon the total of all fees and finance charges described in subsection (b)(1) charged by the creditor since the plan was opened, divided by the average daily balance, and multiplied by the quotient of 12 divided by the number of full months that the credit plan has been in existence.

'(2) OTHER CREDIT PLANS- For purposes of this section, in calculating the fee and interest rate, the Board shall require the method of calculation of annual percentage rate specified in section 107(a)(1), except that the amount referred to in that section 107(a)(1) as the 'finance charge' shall include all fees, charges, and payments described in subsection (b)(1).

'(3) ADJUSTMENTS AUTHORIZED- The Board may make adjustments to the calculations in paragraphs (1) and (2), but the primary goals of such adjustment shall be to protect consumers and to ensure that the 25 percent fee and interest rate limitation is not circumvented.

'(d) Definition of Creditor- As used in this section, the term 'creditor' has the same meaning as in section 702(e) of the Equal Credit Opportunity Act and the definition in section 103 shall not apply.

'(e) No Exemptions Permitted- The exemption authority of the Board under section 105 shall not apply to the rates established under this section or the disclosure requirements under section 127(b)(6).

'(f) Disclosure of Fee and Interest Rate for Credit Other Than Open End Credit Plans- In addition to the disclosure requirements under section 127(b)(6), the Board may prescribe regulations requiring disclosure of the fee and interest rate established under this section in addition to or instead of annual percentage rate disclosures otherwise required under this title.

'(g) Relation to State Law- No of this section may be construed as preempting any provision of State law that provides greater protection to consumers than is provided in this section.

'(h) Civil Liability and Enforcement-

'(1) IN GENERAL- In addition to remedies available to the consumer under section 130(a)--

'(A) any payment compensating a creditor or prospective creditor, to the extent that such payment is a transaction made in violation of this section, shall be null and void, and not enforceable by any party in any court or alternative dispute resolution forum; and  
'(B) the creditor or any subsequent holder of the obligation shall promptly return to the consumer any principal, interest, charges, and fees, and any security interest associated with such transaction.

'(2) DEFENSE TO ACTION- Notwithstanding any statute of limitations or repose, a violation of this section may be raised as a matter of defense by recoupment or setoff to an action to collect any debt resulting from a transaction made in violation of this section or to repossess related security at any time.

'(i) Violations- Any person that violates this section, or seeks to enforce an agreement made in violation of this section, shall be subject to, for each such violation, 1 year in prison, or a fine in an amount equal to the greater of--

'(1) 3 times the amount of the total accrued debt associated with the subject transaction; or

'(2) \$50,000,

or both.

'(j) State Attorneys General- An action to enforce this section may be brought by the appropriate State attorney general in any United States district court or any other court of competent jurisdiction within 3 years from the date of the violation, and such attorney general may obtain injunctive relief.'

(b) Clerical Amendment- The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 140 the following new item:

'140A. Maximum rates of interest.'

**SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR OPEN END CREDIT PLANS.**

Section 127(b)(6) of the Truth in Lending Act (15 U.S.C. 1637(b)(6)) is amended by striking 'the total finance charge expressed' and all that follows through the end of the paragraph and inserting 'the fee and interest rate, displayed as 'FAIR', established in accordance with section 140A.'

**Attachment 7 – Bill Text**

BILL NUMBER: AB 377 AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY APRIL 2, 2009

INTRODUCED BY Assembly Member Mendoza

FEBRUARY 23, 2009

An act to amend Sections 23001, 23027, and 23035 of, and to add Sections 23005.5 ~~and~~ , 23010.5 , and 23036.5 to, the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as amended, Mendoza. Deferred deposit transactions. Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in the business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from making false, misleading, or deceptive advertisements regarding its business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from placing an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses that it is licensed by the Department of Corporations. Existing law authorizes the commissioner to require a licensee to maintain a file of its advertisements for a period of 90 days. Existing law provides that a customer who enters into a deferred deposit transaction shall not be subject to criminal penalties for failure to comply with the terms of a deferred deposit transaction agreement. Existing law requires an agreement to enter into a deferred deposit transaction to be in writing and to include specified information and disclosures. *Existing law authorizes a licensee to allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction, as specified.* A willful violation of the California Deferred Deposit Transaction Law is a crime.

This bill would require specified applicants for licensure under the California Deferred Deposit Transaction Law, including, but not limited to, corporations, partnerships, and sole proprietorships, to include in their applications fingerprints and a completed statement of identity and questionnaire, as specified, for certain individuals,

and other information, as specified. The bill would require a licensee to notify the department in writing of changes to the individuals named in the licensee's original application for licensure or if the licensee or any of those individuals has been found to have violated the laws of another state relative to deferred deposit transactions. The bill would also require a licensee to notify the department in writing when offering a new product or service that will generate more than ~~5 percent~~ 5% of the revenues of an office. The bill would make advertisements on the Internet by a licensee subject to the provisions regulating deferred deposit transaction advertisements and would require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use. The bill would prohibit a deferred deposit transaction customer from being threatened with criminal penalties for a failure to comply with the terms of an agreement and would prohibit a licensee from referring or delivering a check taken in a deferred deposit transaction to a prosecutor or other law enforcement official for purposes of collection or criminal prosecution unless that information is requested as part of an investigation. The bill would require a specified notice that is separate and distinct from the deferred deposit transaction agreement to be provided to and initialed by a customer before entering into the agreement. *The bill would require the notice to inform the customer that he or she may rescind a deferred deposit transaction at no cost by notifying the licensee and returning the proceeds of the transaction within a specified time period.* The bill would require that, if the *deferred deposit* transaction is conducted over the Internet, the customer shall agree in the written agreement to conduct the transaction and to receive notices and the agreement electronically. The bill would also require a licensee, when conducting deferred deposit transactions over the Internet, to make notices and the agreement available to a customer in a format that may be downloaded and printed or, if the customer is unable to download that information, to mail the documents to the customer within 24 hours of the transaction. *The bill would authorize a customer who is unable to repay a deferred deposit transaction to elect, once in any 12-month period, to repay the deferred deposit transaction to the licensee pursuant to an extended payment plan, as specified. The bill would require a customer to be notified of his or her right to an extended payment plan.* Because a willful violation of the bill's provisions by a licensee would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23001 of the Financial Code is amended to read:

23001. As used in this division, the following terms have the following meanings:

(a) "Deferred deposit transaction" means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.

(b) "Commissioner" means the Commissioner of Corporations.

(c) "Department" means the Department of Corporations.

(d) "Licensee" means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, "licensee" does not include a state or federally chartered bank, thrift, savings association, industrial loan company, or credit union. "Licensee" also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum fee not exceeding two dollars (\$2) as a service to its customers that is incidental to its main purpose or business. "Licensee" also does not include an employee regularly employed by a licensee at the licensee's place of business. An employee, when acting under the scope of the employee's employment, shall be exempt from any other law from which the employee's employer is exempt.

(e) "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) "Deferred deposit originator" means a person who offers, originates, or makes a deferred deposit transaction.

(g) "Controlling person" means any of the following:

(1) For a corporation, trust, or association, an individual that owns or controls, directly or indirectly, 10 percent or more of the equity securities of the corporation, trust or association.

(2) For a partnership, an individual that owns or controls, directly or indirectly, 10 percent or more of the outstanding interest in the partnership.

(h) "Supervising manager" means an individual who acts as a direct supervisor for any person or persons who manage or operate one or more of a licensee's offices where deferred deposit transactions are made. A supervising manager may typically work under a title such as a district manager, regional manager, or a similar title, and has the authority to interpret and apply the policies and procedures of the applicant.

SEC. 2. Section 23005.5 is added to the Financial Code, to read:

23005.5. (a) When filing an application pursuant to Section 23005, an applicant shall include fingerprints and a completed statement of identity and questionnaire, as prescribed by the commissioner, for the following:

(1) If the applicant is a corporation, trust, or association, each officer, director and controlling person.

(2) If the applicant is a partnership, each general partner and each controlling person.

(3) If the applicant is a sole proprietorship, the individual who is the sole proprietor.

(4) Each supervising manager who manages or will manage one or more offices of the applicant located in California.

(b) An applicant shall disclose in its application whether any person named in the application, as specified in subdivision (a), has, during the last 20 years, conducted a deferred deposit business or similar business in any other state and, if so, the time period during which that person conducted that business and whether the person was found, either individually or as a representative of the applicant, to have violated any provision of the applicable deferred deposit transaction laws and regulations, or any similar laws and regulations, of any other state.

(c) An applicant shall identify in its application any product or service, in addition to deferred deposit transactions, that (1) the applicant intends to offer in the office or offices the applicant seeks to license and (2) the applicant anticipates will generate in excess of 5 percent of the gross monthly revenue of any office.

SEC. 3. Section 23010.5 is added to the Financial Code, to read:

23010.5. (a) A licensee shall notify the department in writing of changes to persons named in the licensee's original application for a license, or their successors, as follows:

(1) If the licensee is a corporation, trust, or association, the licensee shall notify the department in writing within 10 days after any change in an officer, director, or controlling person, and shall submit fingerprints and a complete statement of identity and questionnaire, as prescribed by the commissioner, for the new officer, director or controlling person within 30 days of the date of the change.

(2) If the licensee is a partnership, the licensee shall notify the department in writing within 10 days after a change in a general

partner or controlling person, and shall submit fingerprints and a complete statement of identity and questionnaire, as prescribed by the commissioner, for the new general partner or controlling person within 30 days of the change.

(3) If the licensee is a sole proprietorship, the licensee shall notify the department in writing of an impending sale or transfer and the purchaser or transferee shall obtain a valid license as required prior to the sale or transfer of the business, or the licensee shall surrender the license in compliance with the department's procedures.

(4) A licensee shall notify the department in writing within 10 days after a change or addition of a supervising manager, and submit fingerprints and a complete statement of identity and questionnaire, as prescribed by the commissioner, for any new supervising manager within 30 days of the change.

(b) A licensee shall notify the department in writing within 10 days of receiving notification that the licensee or any person named as an officer, director, sole proprietor, controlling person, or supervising manager has been found, either individually or as a representative of the licensee, to have violated any provision of the applicable deferred deposit transaction laws and regulations, or any similar laws and regulations, of any other state.

(c) A licensee shall notify the department in writing that it intends to offer a new product or service at least 10 days prior to offering that product or service if the licensee anticipates that the product or service will generate more than 5 percent of the gross monthly revenue of any office. Any licensee that determines that a product or service, other than deferred deposit transactions, is generating in excess of 5 percent of the monthly gross revenue of any licensed office shall notify the department in writing that it is offering that product or service within 10 days of that determination.

SEC. 4. Section 23027 of the Financial Code is amended to read:

23027. (a) No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed or broadcast, in any manner, including on the Internet, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating deferred deposit transactions, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive.

(b) (1) No licensee shall place an advertisement disseminated primarily in this state for a deferred deposit transaction or primarily intended to reach California residents, including advertisements on the Internet, unless the licensee, in the printed text of the advertisement or the oral text in the case of a radio or

television advertisement, makes the following disclosure:

"[Insert licensee's name] is licensed by the Department of Corporations pursuant to the California Deferred Deposit Transaction Law."

(2) The disclosure required under paragraph (1) shall be in the same language as the primary language of the advertisement. If the terms "California" or "Department" are abbreviated in a printed disclosure, it shall not be deemed to be a violation of this section.

(c) The commissioner may require that rates of charges or fees, if stated by the licensee, be stated fully and clearly in the manner that the commissioner deems necessary to give adequate information to, or to prevent misunderstanding by, prospective customers.

(d) No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval.

(e) A licensee shall maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

SEC. 5. Section 23035 of the Financial Code is amended to read:

23035. (a) A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars (\$300). Each deferred deposit transaction shall be made pursuant to a written agreement as described in subdivision (e) that has been signed by the customer and by the licensee or an authorized representative of the licensee.

(b) A customer who enters into a deferred deposit transaction and offers a personal check to a licensee pursuant to an agreement shall not be subject to, or threatened with, any criminal penalty for the failure to comply with the terms of that agreement. It is a violation of this division for a licensee to refer or deliver a check taken in a deferred deposit transaction to a prosecutor or other law enforcement official for purposes of collection or criminal prosecution, unless the prosecutor or law enforcement official requests the check as part of an investigation not initiated by the licensee.

(c) Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that is distinct and separate from the deferred deposit transaction agreement. The notice may be included with a loan application or other information, provided that it is clear and conspicuously disclosed. A customer shall initial the notice to acknowledge receipt of a copy and the licensee shall retain the initialed copy. This separate notice shall include, but not be limited to, the following:

- (1) Information about charges for deferred deposit transactions.
- (2) That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars (\$15).
- (3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.
- (4) The department's toll-free telephone number for receiving calls regarding customer complaints and concerns.
- (5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.
- (6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.
- (7) *That the customer may rescind a deferred deposit transaction at no cost by notifying the licensee that he or she wishes to rescind the transaction and by returning the proceeds of the transaction to the licensee no later than the end of the next business day following the date on which the deferred deposit transaction was made.*
- (8) *That if the customer is unable to repay the deferred deposit transaction, the customer may request an extended payment plan as allowed under Section 23036.5. This notice shall read as follows:*

*"If you are unable to repay a deferred deposit agreement when due, you may be eligible to request an extended payment plan at no additional cost. You must request the plan from us before the due date of your deferred deposit transaction and sign an amendment to the deferred deposit agreement. You qualify for an extended payment plan from us once in any 12-month period."*

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height:

- (1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.
- (2) The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. The information shall be provided in a chart as

follows:

Amount Provided	Fee	Amount of Check	14-day APR	30-day APR
\$100	XX	XXX	XXX	XXX
\$200	XX	XXX	XXX	XXX

*(3) Notice of the customer's right to an extended payment plan as allowed under Section 23036.5 that states as follows:*

*"If you are unable to repay a deferred deposit agreement when due, you may be eligible to request an extended payment plan at no additional cost. You must request the plan from us before the due date of your deferred deposit transaction and sign an amendment to the deferred deposit agreement. You qualify for an extended payment plan from us once in any 12-month period."*

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.

(2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.

(3) The name, address, and telephone number of the licensee.

(4) The customer's name and address.

(5) The date to which deposit of check has been deferred (due date).

(6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.

*(7) Notice of the customer's right to an extended payment plan as allowed under Section 23036.5 that states as follows:*

*"If you are unable to repay a deferred deposit agreement when due, you may be eligible to request an extended payment plan at no additional cost. You must request the plan from us before the due date of your deferred deposit transaction and sign an amendment to the deferred deposit agreement. You qualify for an extended payment plan from us once in any 12-month period."*

*(8) Notice of the customer's right to rescind the transaction without cost by notifying the licensee that he or she wishes to rescind the transaction and by returning the proceeds of the transaction to the licensee no later than the end of the business day immediately following the date on which the deferred deposit transaction was made.*

~~—(7)~~

(9) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

~~—(8)~~

(10) Disclosure of any returned check charges.

~~—(9)~~

(11) That the customer cannot be prosecuted or threatened with prosecution to collect.

~~—(10)~~

(12) That the licensee cannot accept collateral in connection with the transaction.

~~—(11)~~

(13) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

~~—(12)~~

(14) If the transaction is being conducted over the Internet, that the customer agrees to conduct the transaction electronically and to receive the required notices and agreement electronically.

~~—(13)~~

(15) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

~~—(14)~~

(16) Any other information that the commissioner shall deem necessary by regulation.

(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

(g) The written agreement required by subdivision (e) shall be written in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement; shall not be vague, unclear, or misleading and shall be in at least 10-point type.

(h) Under no circumstances shall a deferred deposit transaction agreement include any of the following:

(1) A hold harmless clause.

- (2) A confession of judgment clause or power of attorney.
- (3) Any assignment of or order for payment of wages or other compensation for services.
- (4) Any acceleration provision.
- (5) Any unconscionable provision.
- (i) If the licensee sells or otherwise transfers the debt at a later date, the licensee shall clearly disclose in a written agreement that any debt or checks held or transferred pursuant to a deferred deposit transaction made pursuant to Section 23035 are not subject to the provisions of Section 1719 of the Civil Code and that no customer may be required to pay treble damages if the check or checks are dishonored.
- (j) If a licensee conducts a deferred deposit transaction with a customer over the Internet, the notices required in subdivisions (c) and (d) and the agreement required in subdivision (e) shall be provided to the customer electronically and shall be available for the customer to download and print. If the customer is unable to download these documents, the licensee shall mail the notices and agreement to the customer within 24 hours of the Internet transaction. Deferred deposit transactions conducted over the Internet shall comply with the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code).

*SEC. 6. Section 23036.5 is added to the Financial Code , to read:*

*23036.5. (a) Subject to the terms and conditions contained in this section, a customer who is unable to repay a deferred deposit transaction when due may elect once in any 12-month period to repay the deferred deposit transaction to the licensee by means of an extended payment plan. The 12-month period is measured from the date the customer fully pays all amounts due under one extended payment plan with the licensee until the date that the customer enters into another extended payment plan with the licensee.*

*(b) To request an extended payment plan, the customer, before the due date of the outstanding deferred deposit transaction, shall request the plan and sign an amendment to the deferred deposit transaction agreement that memorializes the plan's terms.*

*(c) The extended payment plan's terms shall allow the customer, at no additional cost, to repay the outstanding deferred deposit transaction, including any fee due, in at least four substantially equal installments. Each plan installment shall be due on or after a date on which the customer receives regular income. The customer may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge the customer any interest or additional fees during the term of the extended payment plan. A licensee shall not engage in collection activities or make any additional deferred deposit transactions to the customer while the customer continues to*

*make timely payments in accordance with the extended payment plan.*

*(d) If the customer fails to pay any extended payment plan installment when due, the customer shall be in default of the payment plan and the licensee may immediately accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.*

~~SEC. 6.~~ SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**Attachment 8 – Bill Analysis**

BILL ANALYSIS

AB 377  
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Date of Hearing: April 13, 2009

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Pedro Nava, Chair  
AB 377 (Mendoza) - As Amended: April 2, 2009

SUBJECT : Deferred deposit transactions.

SUMMARY : Makes various changes to the California deferred deposit transaction law (CDDTL). Specifically, this bill :

- 1) Authorizes a customer, who is unable to repay a deferred deposit transaction (DDT) to elect, once in any 12-month period, to repay the loan to the licensee pursuant to an extended payment plan.
- 2) Specifies that an applicant for licensure, or an existing licensee within 10 days of any change, shall include fingerprints and a completed statement of identity and questionnaire for the following:
  - a) Each officer, director and controlling person, if the applicant is a corporation or trust;
  - b) Each general partner and controlling person, if the applicant is a partnership; and,
  - c) The individual who is the sole proprietor, if the applicant is a sole proprietorship.
- 3) Requires an applicant to disclose in its application whether any person named in the application has, during the last 20 years, conducted a DDT business or similar business in any other state, and if so, the time period in which that business was conducted.
- 4) Mandates that an applicant shall identify in their application, or an existing licensee must provide notice within 10 days, if the applicant or licensee intends to offer any product or service in addition to DDTs that will generate in excess of 5% of the gross monthly revenue of any office.
- 5) Provides that no licensee shall place an advertisement disseminated primarily in this state for a DDT, including internet advertising unless in the printed or oral text of the

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advertisement it makes the following disclosure, "[Insert licensee's name] is licensed by the Department of Corporations pursuant to the California Deferred Deposit Transaction Law."

- 6) Requires that the disclosure mentioned in #5 above shall be in the primary language of the advertisement.
- 7) Specifies that licensees must maintain a file of all advertising for a period of two years from the date of its first use.
- 8) Clarifies that it is a violation of the DDTL for a licensee to refer or deliver a check taken in a DDT to a prosecutor or other law enforcement official for purposes of collection or criminal prosecution, unless the prosecutor or law enforcement official requests the check as part of an investigation not initiated by the licensee.
- 9) Provides that the current notice required to be disclosed to the consumer under current law, must be disclosed to consumers in a distinct and separate form, from the DDT agreement. Additionally, requires that a copy of the notice must be initialed by the borrower and retained by the borrower.
- 10) Requires that a DDT customer must be informed of their right to rescind a transaction at no cost, no later than the end of the next business day.
- 11) Requires that a DDT customer must be informed of the right to request an extended payment plan, at least once in any 12 month period.
- 12) Provides that a notice regarding the ability to enter into a repayment plan must be posted clearly and conspicuously in an unobstructed view of the public.
- 13) Defines "controlling person" as any of the following:
  - a) For a corporation, trust, or association, an individual that owns or controls, directly or indirectly, 1- percent or more of the equity securities of the corporation, trust or association.
  - b) For a partnership, an individual that owns or control, directly or indirectly, 10 percent or more of an

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outstanding interest in the partnership.

14) Defines "supervising manager" as an individual who acts as a direct supervisor for any person or persons who manage or operate one or more of the licensee's office where DDT transactions are made. Also provides that a "supervising manager" may typically work under a title such as district manager, regional manager, or a similar title, and has the authority to interpret and apply policies and procedures of the applicant.

EXISTING STATE LAW :

1) Establishes the 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 DOC;
- 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 a type 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 deferred deposit transaction 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; or,
    - 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 :

According to the author, the intent of this bill is starting the conversation between industry, consumers and DOC regarding the future regulation of payday lending in the state. This bill incorporates several recommendations (discussed later in this analysis) that were included in two reports issued by DOC last year.

Background : A payday loan, known more formally in California as a DDT, is a short-term loan in which a borrower writes a post-dated, personal check to a lender for a specified amount, which is capped by law. The date on the check is the date on which the parties agree that the borrower will repay the loan. The lender advances the borrower the amount on the check, less the fee, which is also capped by law. The 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 lender in cash on the loan's due date, and having the lender return the original check to the borrower, without cashing it.

California enacted its earliest version of a payday lending law in 1996, and gave jurisdiction over payday lenders to the

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Department of Justice (DOJ; SB 1959, Calderon, Chapter 682, Statutes of 1996). SB 898 (Perata, Chapter 777, Statutes of 2002), enacted the CDDTL; and shifted the responsibility for administering payday lending from DOJ to the DOC.

Under the CDDTL, any 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). 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. 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 prominently at their business locations.

Costs for DOC to administer the payday loan law are borne by licensees. For fiscal year 2005-2006, licensees were each assessed \$500 per location. DOC increased the assessment during the 2006-07 fiscal year to \$941 per location.

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:

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.

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).

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

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).

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

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

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).

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).

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).

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).

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).

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.

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).

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).

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).

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).

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).

Licensees charge off approximately 3% of their checks as bad

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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.

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).

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).

Of those with more than one loan, the average borrower had 2.8 loans outstanding. The most loans taken out by an individual in the last eighteen months is 26. The most loans taken out by a family during the last eighteen months is 47 (AMPG).

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).

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.

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.

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.

Report policy recommendations.

- 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 Department of Corporations, 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.

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- 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.

\_\_\_\_\_ As mentioned earlier, the bill currently under consideration implements several recommendations from the aforementioned reports. The committee may wish to consider inquiring with the author as to other possible recommendations that may be added to the bill, or those recommendations that have already been reviewed and subsequently not included in the bill.

Certainly, payday lending has become a subject of some controversy, as several states have implemented 36% APR caps on payday loans, which in effect, eliminates the product because the costs of lending exceed the amounts that can be collected in fees. Another issue complicating small dollars loans is the virtual non-existence of consumer loans between the \$300 payday limit, and \$2500. Some credit unions have started short term loan programs very similar to payday loans, but are only open to members of the credit union, and often require direct deposit into a checking account. Obviously, a need exists for small consumer loans, and this issue will continue to need policy guidance and potential legislation.

#### Current Federal Legislation.

\_\_\_\_\_ HR 1424 authored U.S. Rep. Luis Gutierrez would establish federal regulations and parameters for payday lending nationwide. Under this bill a payday loan is defined as a closed-end credit transaction, unsecured by any interest in the consumer's personal property and excluding any credit card transaction under an open end consumer credit plan, with a term of 91 or fewer days in which the amount financed does not exceed \$2,000 with a finance charge exceeding an annual percentage rate of 36%. Additionally, this legislation requires pay day lenders to offer repayment plans

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Credit Rates Act, would impose a federal usury cap of 36 percent Annual Percentage Rate (APR) on all consumer credit transactions.

Prior State Legislation

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 the DOC reports. Held in Assembly Rules Committee.

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;

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 1551 (Correa): 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.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file.

Opposition

None on file.

\_\_\_\_ Analysis Prepared by : Mark Farouk / B. & F. / (916) 319-3081