

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

BILL ANALYSIS



Date: ~~June 30, 2009~~ JUN 25 PM 7:09

Bill Number: A.B. 377

Bill Sponsor: Mendoza

DEPARTMENT INFORMATION

Contact: Libby Schaaf or Claudia Burgos

Department: City Council

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E-mail: LSchaaf@oaklandnet.com or cburgos@oaklandnet.com

RECOMMENDED POSITION: OPPOSE IF AMENDED

Summary of the Bill

Assembly Bill 377 would enact various changes to the California Deferred Deposit Transaction Law (CDDTL; Payday Lending Law). Changes include increasing the maximum Pay Day Loan from \$300 to \$500.

Positive Factors for Oakland

Assembly Bill 377 would make some changes to Payday Lending intended to improve the payday loan product for consumers and impose additional requirements on the payday lending industry.

Negative Factors for Oakland

The improvements proposed to Payday Lending are outweighed by the proposed increase in the maximum amount of payday loans to \$500, thereby sinking Oakland borrowers deeper into excessively priced short-term debt which they can ill afford.

Financial institutions in Oakland have joined together to launch Bank On Oakland to help connect previously unbanked families to mainstream financial institutions, creating the opportunity for families to access affordable basic financial services.

AB 377 would undermine these efforts by increasing the maximum amount of payday loans from \$300 to \$500, (with an APR of 460%) while doing nothing to ensure that such loans are provided responsibly to borrowers who can afford to pay them back. The evidence is clear that payday loans trap borrowers in a cycle of debt they can't afford. Providing larger loans would simply increase the likelihood that borrowers can't afford to pay them off, but have to pay larger fees

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every two weeks to avoid defaulting on their loans. Larger payday loans will hinder our efforts to help our families save and build assets.

Increasing Payday Loan Limits to \$500 Will Only Worsen The Debt Trap

Under existing law, the high cost of payday loans, together with the short two-week repayment term, virtually ensures that cash-strapped borrowers will not be able to meet their basic expenses and pay off their loan at their next payday. It follows, then, that increasing the amount of debt payday borrowers owe will only increase the likelihood that payday borrowers will not be able to pay off the loan at their next payday, and will be more likely to land in the debt trap.

Data from the California Budget Projectⁱ illustrates that a typical earner taking out a payday loan in California would be \$128 short of the amount necessary to meet all essential household expenses and pay off a payday loan under current law. The same borrower would be **\$328 short** under the proposal to increase the loan amount to \$500.

Income and Taxes	
Annual income before tax	\$30,000
Bi-weekly income after tax	1022
Essential Household Expenditures per 2 week period	
Food	106
Housing (including utilities)	410
Transportation	205
Healthcare	129
Total After Expenses	172
Typical Payday Loan (\$255) + Fee (\$45)	300
Pay period deficit if payday loan paid in full	-\$128

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Annual income before tax	\$30,000
Bi-weekly income after tax	1022
Essential Household Expenditures per 2 week period	
Food	106
Housing (including utilities)	410
Transportation	205
Healthcare	129
Total After Expenses	172
Proposed Payday Loan (\$425) + Fee (\$75)	500
Pay period deficit if payday loan paid in full	-\$328

Even Under Existing Law, Borrowers Are Unable to Escape the Debt Trap.

- **Most Borrowers Are Regular Users:** The average number of loans for the one million California payday borrowers in 2006 was 10, exceeding the national average of 9 per year.ⁱⁱ

- **Most Loans Go to Borrowers Caught in a Debt Trap:** Nearly 450,000 borrowers had back-to-back spells of 6 loans or more, conservatively, accounting for more than 50 percent of all loans.ⁱⁱⁱ
- **For Many Borrowers, There is No Way Out:** More than 57,147 borrowers had more than 19 consecutive transactions during 2006. These borrowers accounted for 4% of borrowers, but 25% of the 10 million loans in 2006.^{iv}
- **Very Few Borrowers Take Just One Loan:** Less than 4 percent of loans went to one time borrowers.^v

RECOMMENDED AMENDMENTS TO AB 377

Last year, a report from the Department of Corporations (DoC) confirmed that a very small part of the payday lending business in California serves borrowers' one-time emergency needs.^{vi} Key findings from the reports include:

- **Most Borrowers Are Regular Users:** The average number of loans for the one million borrowers was 10, exceeding the national average of 9 per year.^{vii}
- **Most Loans Go to Borrowers Caught in a Debt Trap:** Nearly 450,000 borrowers had back-to-back spells of 6 loans or more, conservatively, accounting for more than 50 percent of all loans.^{viii}
- **Very Few Borrowers Take Just One Loan:** Less than 4 percent of loans went to borrowers who took out just one loan and paid it back at their next payday.^{ix}
- **For Too Many Borrowers, There is No Way Out:** 57,147 borrowers had more than 19 consecutive transactions during 2006, meaning that they were paying off their "emergency" credit *every two weeks for at least nine and half months – and in some cases longer*. These borrowers accounted for just 4% of the DOC-reported 1.4 million borrowers in 2006, but more than 25% of the 10 million 2006 loans.^x

Moreover, payday lenders in California overwhelmingly located their stores in African-American and Latino neighborhoods. According to a new CRL analysis, payday operations are over twice as concentrated in these communities as compared to white neighborhoods (even when controlled for a variety of relevant factors such as income), stripping \$247 million in fees annually from these communities.^{xi} Oakland should join responsible lending advocates, including the Center for Responsible Lending, California ACORN, Greenlining Institute and California Reinvestment Coalition, in urging inclusion of all the following to provide meaningful benefits and protections to payday borrowers:

- ✓ *Adopt the FDIC's Annual Loan Limit Guidelines As Included in the Department of Corporations (DoC) Recommendations*
- ✓ *Adopt the DoC Policy Option to Extend the Minimum Loan Term to 31 Days*

- ✓ *Adopt the DoC's Automatic Payment Plan Providing Six Amortizing Installment Payments*
- ✓ *Adopt the DoC Policy Option of Expanding Equitable Remedies for Consumer Protection*

Without the adoption of all of these amendments, Oakland should urge a “no” vote on AB 377.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal** or **None** (do not review with City Council, position not required)

Known support:

Alameda Merchant's Association
California Financial Service Providers
California State Conference of the National Association for the
Advancement of Colored People
Check into Cash
Check n' Go of California

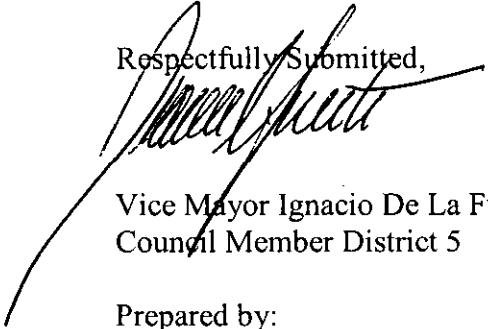
Known Opposition:

AARP
Acorn
California Conference Board of the Amalgamated Transit Union
California Labor Federation
California Reinvestment Coalition
California Teamsters Public Affairs Council
Center for Responsible Lending
Consumers Union
Engineers and Scientists of California
Greenlining Institute
International Longshore & Warehouse Union
Professional & Technical Engineers, Local 21
UNITE HERE!
United Food and Commercial Workers Union, Western States Council
Veritec

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Rules & Legislation Comte.
Date: May 28, 2009

Attach bill text and state/federal legislative committee analysis, if available.
Attached.

Respectfully Submitted,



Vice Mayor Ignacio De La Fuente
Council Member District 5

Prepared by:

Libby Schaaf, Senior Policy Advisor
Community and Economic Development
Oakland City Council

¹ Data from California Budget Project *Making Ends Meet: How Much Does it Cost to Raise a Family in California*, October, 2007, http://cbp.org/pdfs/2007/0710_mem_003.pdf

ⁱⁱ See 2007 Department of Corporations Payday Loan Study at 30, Table 1-1 (AMPG Dec. 2007), available at www.corp.ca.gov/pub/pdf/PDLStudy07C.pdf.

ⁱⁱⁱ California Deferred Deposit Transaction Law, Report to the Governor and the Legislature as Required by Financial Code Section 23057 at Table 2-1 (Dec. 2007), hereinafter "DOC Report," available at http://www.corp.ca.gov/pub/pdf/CDDTL07_Report.pdf. These estimates assume borrowers who took out 6-12 consecutive loans averaged 9 loans per spell, those who took out 13-18 consecutive loans averaged 16; and those with 19 or more consecutive loans averaged 21 loans per spell. These totals are then divided by 10.048 million, the total number of loans.

^{iv} DOC Report at Table 2-1.

^v DOC Report at 13, Table 2-1. Based on assuming 387,338 loans to single loan borrowers, and dividing by 10.048 million, the total number of loans.

^{vi} California Deferred Deposit Transaction Law, Report to the Governor and the Legislature as Required by Financial Code Section 23057 at 14 (California Department of Corporations Dec. 2007), hereinafter "DOC Report," available at http://www.corp.ca.gov/pub/pdf/CDDTL07_Report.pdf. DOC Report at 6, 13, Table 2-1.

^{vii} The number of loans in 2006 was 10,048,422 DOC Report at Table 1-1. The total number of borrower families is 1.01 million., p. ix See 2007 Department of Corporations Payday Loan Study at 30 (Applied Mgmt. & Planning Group Dec. 2007), available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07C.pdf>.

^{viii} DOC Report at Table 2-1. These estimates assume borrowers who took out 6-12 consecutive loans averaged 9 loans per spell, those who took out 13-18 consecutive loans averaged 16; and those with 19 or more consecutive loans averaged 21 loans per spell. These totals are then divided by the 10.048 million total number of loans. Figure 6 of the AMPG report shows that 50% of borrowers took out more than six loans in the 18 month period, while 19 percent of borrowers took out 16 or more loans during the study period, the largest group of borrowers in the distribution of the number of loans. See 2007 Department of Corporations Payday Loan Study at 30 (Applied Mgmt. & Planning Group Dec. 2007), available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07C.pdf>.

^{ix} DOC Report at 13, Table 2-1. This assumes that 387,338 loans went to borrowers with one loan. The number was then divided by the 10.048 million total.

^x DOC Report at Table 2-1, summary of first column of consecutive transactions.

^{xi} Wei Li, et al., "Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California" (CRL Mar. 26, 2009), available at <http://www.responsiblelending.org/issues/payday/reports/predatory-profiling.html>.

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Rules & Legislation Comte.
Date: May 28, 2009



May 29, 2009

The Honorable Ron Calderon, Chair
Senate Banking, Finance, & Insurance Committee
State Capitol, Room 407
Sacramento, CA 95814

Re: Assembly Bill 377 (Mendoza): Oppose Unless Amended

Dear Chairman Calderon:

We are writing on behalf of the undersigned with respect to Assembly Bill 377 (Mendoza), addressing deferred deposit transactions, commonly known as payday lending. We must **respectfully oppose AB 377 unless significant amendments are made to truly address the debt trap created by payday lending**. We have some concerns with the existing provisions of the bill, including those relating to internet lending, as well as the payment plan provision. Additionally, we recommend that the bill be strengthened in several ways. As discussed in more detail below, we recommend implementing the following Department of Corporations policy options, which together, would provide some important benefits to payday borrowers: 1) extending the loan term to 31 days; 2) adopting the FDIC's recommended limits that a payday borrower can be indebted each year (3 months in any 12 month period); 3) imposing an *automatic* payment plan with at least six monthly installments; and 4) expanding equitable remedies.

Payday loans are marketed as short-term, two-week loans to meet occasional, unexpected expenses. Research shows, however, that the payday lending business model is designed to – and financially dependent on – repeat borrowing and keeping borrowers in debt, not to provide one-time assistance during a time of financial need.¹ The high price of a payday loan, combined with the requirement that it must be paid off in full at the borrower's next payday virtually ensures cash-strapped borrowers will be unable to meet their basic expenses and pay off their loan with a single paycheck.² Consequently, they are forced to pay off their loan and to reborrow either immediately or within a few days repeatedly. According to CRL's research, borrowers who receive five or more loans a year account for 90 percent of payday lenders' business.³ Similarly, last year's reports from the Department of Corporations confirm that a very small part of the payday lending business in California serves borrowers' one-time emergency needs.⁴ Key findings from the reports include:

- **Most Borrowers Are Regular Users:** The average number of loans for the one million borrowers was 10, exceeding the national average of 9 per year.⁵
- **Most Loans Go to Borrowers Caught in a Debt Trap:** Nearly 450,000 borrowers had back-to-back spells of 6 loans or more, conservatively, accounting for more than 50 percent of all loans.⁶
- **Very Few Borrowers Take Just One Loan:** Less than 4 percent of loans went to borrowers who took out just one loan and paid it back at their next payday.⁷
- **For Too Many Borrowers, There is No Way Out:** 57,147 borrowers had more than 19 consecutive transactions during 2006, meaning that they were paying off their "emergency" credit *every two weeks for at least nine and half months – and in some cases longer*. These borrowers accounted for

just 4% of the DOC-reported 1.4 million borrowers in 2006, but more than 25% of the 10 million 2006 loans.⁸

Moreover, payday lenders in California overwhelmingly located their stores in African-American and Latino neighborhoods. According to a new CRL analysis, payday operations are over twice as concentrated in these communities as compared to white neighborhoods (even when controlled for a variety of relevant factors such as income), stripping \$247 million in fees annually from these communities.⁹

CONCERNS WITH AB 377

1. The Legislature Should Not Legitimize Internet Payday Lending

The undersigned have serious concerns with the provisions that address Internet transactions, particularly, Sections 23035(e)(14) and 23035(j). These provisions would simply require electronic (rather than paper) notices and subject such transactions to the general rules for electronic transactions set forth in the Uniform Electronic Transactions Act. These provisions legitimize Internet-based payday lenders, and provide a *de facto* authorization for it, where existing law is silent. These provisions will likely increase the number of payday lenders who market their products via the internet and likely increase the total volume of payday lending. The result: more Californians who are trapped in a cycle of repeated payday borrowing.

Significantly, increasing the number of lenders or their delivery channel will **not** mean lowers prices for consumers. A number of studies have found that payday lenders almost invariably charge the maximum permitted by law, regardless of the number of lenders in the market. The recent report by the Department of Corporations noted that all payday lenders in California appear to charge the maximum interest rate, which exceeds 400%.¹⁰

2. Payment Plans Have No Real Impact on the Debt Trap

Evidence from other states demonstrates that payment plans have no impact on the reducing the average annual numbers of loans or in mitigating the debt trap. As the following examples illustrate, in the states where a payment plan option is already in place, the debt trap continues for borrowers.¹¹

	<i>Ave. Loans per Borrower per Year</i>	<i>% of Loans Employing Payment Plan or Grace Period</i>	<i>% of Loans to Borrowers with 5 or More Loans/Yr.</i>	<i>% of Loans to Borrowers with 12 or More Loans/Yr.</i>
<i>Florida</i> ¹²	8	0.5%	89%	57%
<i>Oklahoma</i>	9	0.4%	91%	66%
<i>Washington</i>	8	0.8%	90%	58%
<i>National Average</i>	9		90%	62%

The experience in Washington is particularly revealing. It shows that the voluntary repayment plan there has had no significant impact on repeat borrowing and marginal impacts on the average number of loans per borrower.¹³

Washington State	<i>Without Payment Plan (2003-2004)</i>	<i>With Payment Plan (2005)</i>
<i>Ave. Loans per Borrower</i>	9.0	8.5
<i>Percentage of Loans to Borrowers with 5 or More Loans/Year</i>	91%	90%

Payment plans do not stop the debt trap for several reasons:

- **Payday lenders have little incentive to cast payment plans in a positive light.** Industry representative have admitted that it is against their economic interests to encourage payment plans.¹⁴

- **Payment plans are often more unaffordable for the trapped borrower than getting a new loan.** In California, a borrower would pay \$45 to get a new payday loan, or would pay \$75 (out of pocket) for the first installment of the payment plan (and another \$75 out of pocket three more times).

Moreover, when the average California payday borrower uses 10 loans per year (with tens of thousands using more than 19 per year), allowing one payment plan per year – even if used – will have little, if any impact on borrowers.

RECOMMENDED AMENDMENTS TO AB 377

In addition to removing the internet lending and ineffective voluntary repayment plan provisions outlined above, the DoC 2007 report acknowledged the serious problems with repeat borrowing and included a number of constructive policy options to limit the impacts of the payday debt trap. Although *a rate cap in the range of 36% APR is the only true and complete way to spring the debt trap*, in the absence of such a rate cap, the undersigned propose inclusion of the following DOC proposals to provide more meaningful benefits and protections to payday borrowers.¹⁵

1. Adopt the FDIC's Annual Loan Limit Guidelines As Included in the DoC Recommendations

The payday lending industry asserts that its product is intended for occasional, short-term use. Therefore, capping the number of loans a borrower can receive each year would be consistent with the industry's definition of responsible use. The undersigned recommend that AB 377 be amended to adopt the annual loan limit first outlined in FDIC Guidelines in 2005, and included in the DoC's recommendations last year. The FDIC Guidelines provide that a borrower should be restricted from having payday loans outstanding from any payday lender for more than three months in any 12-month period.¹⁶ As the DoC notes, adopting the FDIC rule would prevent borrowers from utilizing the payday loan as a long-term source of credit. The DoC report further acknowledged, "[W]hen payday loans are used for a long period of time, the fees charged can rapidly exceed the amount borrowed and can create a serious financial hardship for the borrower."¹⁷

2. Adopt the DoC Policy Option to Extend the Minimum Loan Term to 31 Days

The undersigned recommend amending AB 377 to include Department of Corporations policy option to extend the minimum payday loan term to 31 days.¹⁸ As noted by the DoC, this would reduce the costs of the loan, and extend the repayment period.¹⁹ Requiring payday borrowers to pay off their loan in full at their next payday, usually in 2 weeks, but often sooner, often ensures that borrowers will have to reborrow. Extending the minimum term would give many more borrowers a longer period to save and budget for repayment, without having to take out another payday loan. Moreover, the charges to the borrower for the same \$255 loan would fall from \$90 to \$45, still equivalent to an APR of 228%.

3. Adopt the DoC's Automatic Payment Plan Providing Six Amortizing Installment Payments

Although AB 377 calls for a payment plan having four installment payments, the undersigned recommend that any payment plan provision, if adopted, provide for at least six fully amortizing monthly installment payments, as recommended in the DoC Report. Moreover, any payment plan should be *automatic*, not simply offered, to all borrowers who have had 2 or more payday loans in any 45-day period.

Six installment payments will bring the payments to \$50, more in line though still in excess of the \$45 required to get a new loan in California, and will be more likely to put borrowers on track to pay off the loan without the need to get a new one. The borrower, in the borrower's sole discretion, would be permitted to prepay the obligation in whole or in part without additional charge or fee prior to the end of the scheduled term.

4. **Adopt the DoC Policy Option of Expanding Equitable Remedies for Consumer Protection**

Another of the Department of Corporations' recommendations was to expand the equitable remedies for consumers, specifically to amend Financial Code §23051 to allow the "appoint[ment] of a receiver or conservator over the payday lender's assets," and to "require the licensee to take remedial action and/or provide an accounting or audit or specified financial reports."²⁰ The undersigned recommend that AB 377 be amended to include this recommendation. As noted by the DoC, this would help prevent further harm against consumers in appropriate cases.²¹

Should you have any questions, please do not hesitate to contact any of the undersigned.

Sincerely,

Ronald Coleman, California ACORN

Brian Augusta, California Reinvestment Coalition

Paul Leonard, Center for Responsible Lending

Orson Aguilar, Executive Director
The Greenlining Institute

cc: The Honorable Tony Mendoza
Members, Senate Banking, Finance & Insurance
Eileen Newhall, Principal Consultant

¹ In addition to the data itself, industry pronouncements make this clear. For example, Dan Feehan, CEO of Cash America remarked at the 2007 Jefferies Financial Services Conference: "And the theory in the business is you've got to get that customer in, work to turn him into a repetitive customer, long-term customer, because that's really where the profitability is." See Uriah King & Leslie Parrish, "Springing the Debt Trap: Rate Caps Are Only Proven Payday Lending Reform" at 1 (CRL Dec. 13, 2007), (hereinafter "Springing the Debt Trap,") available at <http://www.responsiblelending.org/issues/payday/reports/springing-the-debt-trap.html>. Others in the industry have a similar analysis: "The financial success of payday lenders depends on their ability to convert occasional users into chronic borrowers," "This industry could not survive if the goal was for the customer to be 'one and done'. Their survival is based on the ability to create the need to return, and the only way to do that is to take the choice of leaving away." See *id.* at 10-11. Similarly, the FDIC's Center for Financial Research undertook a study of the industry based on payday lenders' proprietary data, and found that the profitability of payday lending is driven by volume, and acknowledged that "... high-frequency borrowers account for a disproportionate share of a payday store's loans and profits. See Uriah King, et al., "Financial Quicksand: Payday lending sinks borrowers in debt with \$4.2 billion in predatory fees every year" at 8 (CRL Nov. 30, 2006) (hereinafter "Financial Quicksand"), available at http://www.responsiblelending.org/pdfs/rr012-Financial_Quicksand-1106.pdf.

² "Springing the Debt Trap" at 7-8.

³ See generally "Financial Quicksand".

⁴ *California Deferred Deposit Transaction Law, Report to the Governor and the Legislature as Required by Financial Code Section 23057* at 14 (California Department of Corporations Dec. 2007), hereinafter "DOC Report," available at http://www.corp.ca.gov/pub/pdf/CDDTL07_Report.pdf. DOC Report at 6, 13, Table 2-1.

⁵ The number of loans in 2006 was 10,048,422 DOC Report at Table 1-1. The total number of borrower families is 1.01 million,, p. ix See *2007 Department of Corporations Payday Loan Study* at 30 (Applied Mgmt. & Planning Group Dec. 2007), available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07C.pdf>.

⁶ DOC Report at Table 2-1. These estimates assume borrowers who took out 6-12 consecutive loans averaged 9 loans per spell, those who took out 13-18 consecutive loans averaged 16, and those with 19 or more consecutive loans averaged 21 loans per spell. These totals are then divided by the 10.048 million total number of loans. Figure 6 of the AMPG report shows that 50% of borrowers took out more than six loans in the 18

month period, while 19 percent of borrowers took out 16 or more loans during the study period, the largest group of borrowers in the distribution of the number of loans. See *2007 Department of Corporations Payday Loan Study* at 30 (Applied Mgmt. & Planning Group Dec. 2007), available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07C.pdf>.

⁷ DOC Report at 13, Table 2-1. This assumes that 387,338 loans went to borrowers with one loan. The number was then divided by the 10.048 million total.

⁸ DOC Report at Table 2-1, summary of first column of consecutive transactions.

⁹ Wei Li, et al., "Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California" (CRL Mar. 26, 2009), available at <http://www.responsiblelending.org/issues/payday/reports/predatory-profiling.html>.

¹⁰ DOC Report at 21.

¹¹ "Springing the Debt Trap" at 14, Table 8.

¹² While Oklahoma and Washington State have formal payment plan options, Florida employs a 60-day grace period, which functions in a similar way.

¹³ "Springing the Debt Trap" at 15, Table 9.

¹⁴ An industry letter to California Assemblyman Ted Lieu argued that lenders would lose money if a significant number of borrowers used payment plans; while a CFSA representative indicated that "We lose money on [payment plans]. There's no doubt about it...we cannot offer this product...for \$16 per \$100...for 90 days." See "Springing the Debt Trap" at 15-16.

¹⁵ See generally "Springing the Debt Trap".

¹⁶ Federal Deposit Insurance Corporation, *Payday Lending Programs Revised Examination Guidance* (Mar. 1, 2005), available at <http://www.fdic.gov/news/news/financial/2005/fil1405a.html>.

¹⁷ DOC Report at 44.

¹⁸ DOC Report at 45.

¹⁹ *Id.*

²⁰ DOC Report at 41.

²¹ *Id.*

BILL NUMBER: AB 377 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 23, 2009
AMENDED IN SENATE JUNE 9, 2009
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, 23010.5, 23016.5, 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 authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days and provides that the face amount of the check shall not exceed \$300. 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% 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 currently in use for a period of 2 years from the date of its final use. The bill would authorize the face amount of a check for a deferred deposit transaction to be up to \$500. 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, district attorney's diversion program, 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 also require a licensee to make reasonable and accessible provisions for a customer to notify the licensee of his or her intent to rescind the transaction and return the loan proceeds and would require these provisions to be included with this notice. 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 require a licensee to annually pay a fee to the commissioner of 5 cents for each deferred deposit transaction paid in full in the previous calendar year and would require the money from these fees to be used by the commissioner to provide financial literacy education programs relative to deferred deposit transactions. 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 *governing lending*, 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 *governing lending*, 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 23016.5 is added to the Financial Code, to read:

23016.5. Commencing January 1, 2010, and annually thereafter, each licensee shall pay a fee to the commissioner of five cents (\$0.05) for each deferred deposit transaction paid in full in the previous calendar year. A licensee shall not pass this fee on to its customers. The fee required by this section shall be used by the

commissioner to provide financial literacy education programs relative to deferred deposit transactions in California.

SEC. 5. 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 *currently in use and shall retain that advertising copy* for a period of two years from the date of its *final* use. The file shall be available to the commissioner upon request.

SEC. 6. 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 five hundred dollars (\$500). 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 may rescind a deferred deposit transaction at no cost by notifying the licensee that he or she wishes to rescind the transaction and returning the proceeds of the transaction to the licensee no later than the end of the next business day following the day on which the deferred deposit transaction was made. The licensee shall make reasonable and accessible provisions for a customer to contact the licensee in a timely manner, for purposes of notifying the licensee of his or her intent to rescind the transaction and return the loan proceeds.

~~(b)~~

(c) 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, *district attorney's diversion program established pursuant to Section 1001.60 of the Penal Code*, 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)~~

(d) 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. *The notice shall summarize the provisions the licensee has made in accordance with subdivision (b) of Section 23035, to allow the customer to notify the licensee for purposes of rescinding the transaction and returning the loan proceeds.*
- (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)~~

(e) 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."

~~(c)~~

(f) 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.

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

(10) Disclosure of any returned check charges.

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

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

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

(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.

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

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

~~(f)~~

(g) 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)~~

(h) 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)~~

(i) 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)~~

(j) 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)~~

(k) 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. 7. 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 installments. Unless otherwise agreed by the customer and licensee, payment plan installments shall all be substantially equal in amount. 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. 8. 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.

BILL ANALYSIS

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ASSEMBLY THIRD READING
AB 377 (Mendoza)
As Amended April 2, 2009
Majority vote

BANKING & FINANCE 10-1 APPROPRIATIONS 9-0

Ayes:	Nava, Gaines, Evans, Fong, Fuentes, Mendoza, Ruskin, Swanson, Torres, Tran	Ayes:	De Leon, Ammiano, Charles Calderon, Krekorian, Fuentes, Monning, Price, Solorio, Torlakson
Nays:	Anderson		

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

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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 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. 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

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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% or more of the equity securities of the corporation, trust or association; and,
- b) For a partnership, an individual that owns or control, directly or indirectly, 10% or more of an 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. 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 Department of Corporations (DOC);
- d) Allows lenders to defer the deposit of a customer's personal check for up to 31 days; limits the maximum value

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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;

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- 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 : According to the Assembly Appropriations, DOC has indicated that costs are minor and absorbable.

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.

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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 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

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Law, California Department of Corporations, December 2007" 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.

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

FN: 0000519

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved by the Board of Supervisors and the City Attorney
City Attorney's Office

DRAFT

City Attorney's Office

2009 JUN 25 PM **OAKLAND CITY COUNCIL**

RESOLUTION No. _____ C.M.S.

INTRODUCED BY VICE MAYOR DE LA FUENTE

Resolution To Oppose Unless Amended Assembly Bill 377 (Mendoza)
Regarding Payday Lending.

WHEREAS, Assembly Bill 377, would increase the maximum amount of payday loans, and thereby sink Oakland borrowers deeper into excessively priced short-term debt which they can ill afford; and

WHEREAS, Too many of Oakland families lack the resources and assets to build a stable foundation for financial success long into the future, particularly during this period of high unemployment and financial instability; and,

WHEREAS, Financial institutions in Oakland have joined together to launch Bank On Oakland to help connect previously unbanked families to mainstream financial institutions, creating the opportunity for families to access affordable basic financial services; and,

WHEREAS, AB 377 would undermine these efforts by increasing the maximum amount of payday loans from \$300 to \$500, (with an APR of 460%) while doing nothing to ensure that such loans are provided responsibly to borrowers who can afford to pay them back; and,

WHEREAS, Evidence indicates that payday loans trap borrowers in a cycle of debt they can't afford; and that providing larger loans will simply increase the likelihood that borrowers can't afford to pay them off, but rather will have to pay larger fees every two weeks to avoid defaulting on their loans; and,

WHEREAS, Department of Corporations reports confirm that a very small part of the payday lending business in California serves borrowers' one-time emergency needs and that other key findings from the reports include:

- **Most Borrowers Are Regular Users:** The average number of loans for the one million borrowers was 10, exceeding the national average of 9 per year.
- **Most Loans Go to Borrowers Caught in a Debt Trap:** Nearly 450,000 borrowers had back-to-back spells of 6 loans or more, conservatively, accounting for more than 50 percent of all loans.
- **Very Few Borrowers Take Just One Loan:** Less than 4 percent of loans went to borrowers who took out just one loan and paid it back at their next payday.
- **For Too Many Borrowers, There is No Way Out:** 57,147 borrowers had more than 19 consecutive transactions during 2006, meaning that they were paying off their "emergency" credit every two weeks for at least nine and half months – and in some cases longer. These borrowers accounted for just 4% of the DOC-reported 1.4 million borrowers in 2006, but more than 25% of the 10 million 2006 loans; and

WHEREAS, Department of Corporations reports also confirm that Payday lenders in California overwhelmingly locate their stores in African-American and Latino neighborhoods, and that, accordingly to analysis by the Center for Responsible Lending, payday operations are over twice as concentrated in these communities as compared to white neighborhoods (even when controlled for a variety of relevant factors such as income), stripping \$247 million in fees annually from these communities; and

WHEREAS, Larger payday loans will hinder the City of Oakland's efforts to help our families save and build assets. NOW, therefore be it

RESOLVED, That the City of Oakland opposes unless amended the passage of Assembly Bill 377 (Mendoza); and, be it

FURTHER RESOLVED, That the City of Oakland urges the California Legislature to reject Assembly Bill 377 unless the following amendments are made:

- Adopt the FDIC's Annual Loan Limit Guidelines As Included in the Department of Corporations (DoC) Recommendations;
- Adopt the DoC Policy Option to Extend the Minimum Loan Term to 31 Days;
- Adopt the DoC's Automatic Payment Plan Providing Six Amortizing Installment Payments; and
- Adopt the DoC Policy Option of Expanding Equitable Remedies for Consumer Protection.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California