ASSEMBLY BILL No. 207

Introduced by Assembly Member Dymally

January 31, 2005

An act to add Chapter 2.5 (commencing with Section 23038) to Division 10 of the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 207, as introduced, Dymally. Deferred deposit transactions.

Existing law, the California Deferred Deposit Transaction Law, prohibits a person from offering, originating, or making a deferred deposit transaction without first obtaining a license from the Commissioner of Corporations. Existing law authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days and prohibits the face amount of a check from exceeding $300. Existing law requires deferred deposit transactions to be made pursuant to a written agreement meeting certain requirements, including requiring an agreement to disclose the total amount of any fees charged for the deferred deposit transaction and to provide a specified informational notice. Existing law prohibits a fee for a deferred deposit transaction from exceeding 15% of the face amount of the check. Existing law makes a violation of these provisions a crime.

This bill would prohibit the fee for specified deferred deposit transactions from exceeding an effective annual rate greater than 10%. The bill would require a check from a customer for these deferred deposit transactions to be made payable to the actual name of the licensee. The bill would prohibit a check that has been held by a licensee for more than 31 days from being presented to a bank for payment.

Because a violation of these provisions 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:

1 SECTION 1. Chapter 2.5 (commencing with Section 23038)
2 is added to Division 10 of the Financial Code, to read:
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4 CHAPTER 2.5. ADDITIONAL REGULATIONS FOR DEFERRED
5 DEPOSIT TRANSACTIONS
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7 23038. (a) It is the intent of the Legislature in enacting this
8 chapter to provide greater regulatory oversight of the deferred
9 deposit transaction industry. It is the further intent of the
10 Legislature to guarantee that consumers have the disclosures
11 necessary to make informed decisions regarding deferred deposit
12 transactions and to gather the information necessary to inform
13 future legislative activity. Future legislative activity may include,
14 but is not limited to, changes in the fees charged to consumers,
15 specifications regarding the length of the time for deferred
16 deposit transactions, maximum amount provided to consumers
17 and the implementation of an installment product instead of a
18 deferred deposit transaction.
19 (b) In enacting this chapter it is the intent of the Legislature
20 that all persons, except those who have been exempted from the
21 definition of "licensee" contained in this division, who are
22 engaged in the business of deferred deposit transactions,
23 including, but not limited to, brokers and agents of financial
24 institutions, are subject to all provisions of this divisions.
25 23039. (a) Check means a check, draft, share draft, or other
26 instrument for the payment of money.

(b) "Payday loan or deferred deposit transaction" means a transaction in which a cash advance is made in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, in the amount of the advance plus a fee and where the parties agree that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan," "payday advance," or "deferred deposit loan."

23040. (a) A licensee may engage in a payday loan or deferred deposit transaction under this chapter. The check given in the transaction may serve as security for the payment of the loan. A person who negotiates, arranges, or acts as an agent for an authorized lender in a payday loan or deferred deposit transaction shall be licensed and may charge an amount that does not exceed an effective annual rate of greater than 10 percent.

(b) A licensee may engage in a payday loan or deferred deposit transaction with a term of not less than seven days.

23041. (a) If a check is accepted, a licensee shall require that the check be made payable to the actual name of the company printed on the license and the check shall be dated the day the loan is made.

(b) The transaction shall be documented by a written agreement signed by the borrower and the licensee. The agreement shall contain the name of the licensee, the transaction date, the amount of the check, a statement of the total amount charged, expressed both as a dollar amount and as an annual percentage rate (APR), and the earliest date on which the check may be deposited. The agreement shall also contain a notice containing the information described in paragraph (4) of subdivision (c) of Section 23035. Additionally, the lender shall provide a notice to the consumer that reads as follows: "This cash advance is not intended to meet long- term financial needs. This loan should only be used to meet immediate short-term cash needs. Renewing the loan rather than paying the debt in full when due will require the payment of additional charges."

(c) The borrower shall have a right to prepay the loan and redeem the check at any time prior to the due date. If the loan is prepaid in full, the licensee must refund any unearned finance charges.

(d) A check may not be held for more than 31 days and then subsequently presented to the bank for payment.

(e) A licensee shall post a notice of the fee schedule for engaging in a payday loan or deferred deposit transaction.

23042. A licensee may accept a check to secure payment of a payday loan or deferred deposit transaction if the licensee complies with the following sections:

(a) A licensee and a borrower may renew a loan, but the loan must be converted from a single payment balloon loan to a declining balance installment note. Alternatively, the payday loan or deferred deposit transaction may be renewed without limitation to the number of renewals where the effect of the total amount of charge would not exceed the total amount of an effected annual rate of greater than 10 percent.

(b) A payday loan or deferred deposit transaction constitutes a credit relationship for all purposes, including collection. If a borrower defaults, including the return of the check to the licensee from a financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the debt.

(c) A licensee shall make a good faith effort to assess the borrower's ability to repay the payday loan or deferred deposit transaction under the loan terms.

SEC. 2. 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.

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