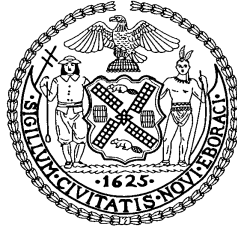


SENATE COMMITTEE AGENDA



DRAFT

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MEMORANDUM IN OPPOSITION

LEGISLATIVE REFERENCE S.3841 – by Senator Farley – Banks Committee
A.7047 – by M. of A. Heastie – Banks Committee

TITLE AN ACT to amend the banking law, in relation to enacting the "short-term financial services loan act"

SUMMARY OF PROVISIONS

This bill would remove the prohibition against licensed check cashers making loans pursuant to the Banking Law. The bill authorizes check cashers to make small-dollar loans between \$300 and \$2,000 with a term of between 90 and 180 days at a maximum rate of interest established by regulation and establishes additional standards for such loans.

REASONS FOR OPPOSITION

At the same time the City is working to connect New Yorkers to safe, affordable financial services, this bill would authorize check cashers to make potentially harmful loans to the least financially stable consumers. This legislation effectively would open up New York State to payday lending, a predatory industry that costs 12 million Americans at least \$5 billion in fees each year.

New York's ban on payday lending is effective and helps the State's residents, as New Yorkers rely less on costly loans compared to the nation as a whole. According to a national study by FINRA in 2010, 9% of individuals reported taking out at least one payday loan in the previous five years; In New York, that number is only 4%. According to the same study, fewer New Yorkers had used any type of non-bank borrowing method (18% in New York, versus 24% nationally). Fewer New Yorkers had taken out credit card cash advances or have been charged a late fee in the previous year. Further, research in states with recent payday lending bans, such as North Carolina, demonstrates that the absence of payday lending has no significant impact on credit availability. Former payday borrowers generally think banning payday lending was positive, and households have an array of more affordable options to meet their short-term credit needs.

This bill proposes a special, open-ended exemption to the State's criminal usury cap of 25% for check cashers. Similar loans in many states have APRs well into the triple digits. Recent evidence, however, demonstrates that such lending can be done profitably at APRs that are not usurious. For example, the FDIC released a report last year detailing the results of a two-year, small-dollar loan pilot program with 31 banks. It found that banks participating in the pilot made more than 34,000 loans totaling about \$40 million, with average interest rates of between 13% and 16%. This special exemption to criminal usury is not necessary and would potentially set the stage for future carve-outs from what has been a highly effective law.

Moreover, once initially set, the bill would permit the Superintendent to amend the maximum rates and fees, but only upon the petition of a substantial portion of the check casher industry. This means that any review of applicable interest rates would have a built-in bias in favor of higher rates.

This bill would enable loans to be originated by check cashers, who are not regulated or overseen for safety and soundness and other lending considerations. At a time when consumers are struggling with their finances, this bill will open the field to an industry that does not have sufficient regulatory oversight to engage in lending. In order to ensure compliance with the proposed check casher lending scheme, the State would have to considerably expand its current examination and supervision of licensed check cashers. The bill does not provide adequate resources for thorough examinations and reviews of loan documents and files for each of the State's nearly 200 licensed check cashers.

Credit unions and banks already offer emergency loans. Several New York City community development credit unions, for example, which have partnered with the City's Department of Consumer Affairs Office of Financial Empowerment on a number of banking access initiatives, already offer affordable emergency loans of up to \$500, with application fees of \$25 or less, that can be approved in less than 24 hours and do not require a credit check. In addition, the FDIC's Survey of Bank Efforts to Serve the Unbanked and Underserved, released in December 2008, found that over 44% of banks surveyed offered affordable, small-dollar loans. Programs have been implemented with great success in other states to scale up the availability of such affordable loan options. The FDIC has been working with a cross-section of key stakeholders to expand the availability of affordable small-dollar loans offered by mainstream financial institutions. Credit unions and banks are already highly regulated by state and federal regulators. Scaling up short-term loans made by these institutions is a more appropriate strategy to expand consumer access to safe, appropriate short-term loans.

The proposed legislation would roll back a longstanding and effective law that has protected New Yorkers from predatory payday lending, and would open up consumers to loans in excess of the State's criminal usury rate made by entities not regulated sufficiently to provide such services. Safe, appropriate alternatives already exist, and if the Legislature wishes to address any demand for short-term credit, such efforts should be in line with federal efforts to scale up such existing products through mainstream banks and credit unions.

Accordingly, it is urged that this bill be disapproved.

Respectfully submitted,

MICAH C. LASHER
Director

KP: 5/13/11