



April 11, 2022

The Honorable Marc Berman
California State Assembly
California State Capitol, Room 3092
Sacramento, CA 95814

R: AB 2540 (Berman) – Qualifying Accounts For Direct Deposit of Publicly Administered Funds – OPPOSE UNLESS AMENDED

Dear Assemblymember Berman,

The groups listed on this letter must respectfully oppose Assembly Bill 2540 unless amended. The bill would open a loophole closed last year under SB 497 (Limón, Statute 546 of 2021) and ***allow charges in the form of “tips” to reduce payments made by the state to the most vulnerable Californians: those who are unemployed, receive public assistance, or need help collecting child support.***

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. We work with legal services attorneys, advocates and policymakers throughout the country, including in California. NCLC was the sponsor of Senator Limón’s SB 497 last year.

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund.

Before SB 497 passed, nonbank companies were able to evade California laws that prohibit overdraft fees and credit features on prepaid cards used to receive public assistance, unemployment compensation, or state-distributed child support payments. SB 497 closed that loophole, and ***current law makes it clear that critical state payments deposited to nonbank deposit accounts¹ that target vulnerable consumers should not be subject to overdraft fees or charges, whatever they are called.***

¹ SB 497 covers two types of deposit accounts offered by nonbank companies: prepaid cards, and newer fintech banking apps that are styled as individual bank accounts. With both prepaid cards and banking apps, a nonbank company primarily provides the service but works in partnership with a bank that holds the funds. Because they claim to be offering individual bank accounts, the nonbank banking apps are not complying with the Consumer Financial Protection Bureau’s prepaid account rules, though they are essentially a form of prepaid account.

AB 2540 directly reverses protections adopted just last year and carves out a loophole for a growing form of fintech payday loans that collect fees in the form of purportedly voluntary “tips.” Under current law as amended by SB 497:

- California primarily pays unemployment benefits, public assistance and state-collected child support through state-sponsored debit cards. Some also receive these payments by direct deposit (which will soon be available for unemployment benefits).
- Only “qualifying accounts” are eligible to receive direct deposits of public assistance, child support or unemployment benefits.
- Qualifying accounts must either be (1) traditional checking or savings accounts, or (2) prepaid accounts and similar types of deposit accounts offered through nonbanks that meet certain standards. The accounts must have deposit insurance and cannot have any credit or overdraft feature unless it “has ***no fee, charge, or cost***, whether ***direct, required, voluntary, or involuntary***, or the credit or overdraft feature complies with the requirements for credit offered in connection with a prepaid account under the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) and its implementing regulations.

The word “voluntary” was used in SB 497 to prevent evasions that AB 2540 would allow.

AB 2540 would drain the funds of the most vulnerable Californians. Currently, California law under SB 497 protects the most vulnerable families: unemployed workers, families on public assistance, and single parents who have difficulty collecting their child support. The law ensures that public funds are going towards the intended purpose of supporting these vulnerable families in need. This state policy is reflected in the following code sections:

17325 of Family Code
1339.1 and 2701 of Unemployment Insurance Code
11006.2 of Welfare and Institutions Code

AB 2540 would allow nonbank companies targeting consumers who have had trouble with traditional bank accounts to use “tips” to siphon off state payments intended for the most fragile Californians. Yet the cost to an unemployed worker, family on public assistance, or single parent struggling to support a child is the same whether a payment is called voluntary or not.

AB 2540 would legitimize the use of “tips” as a disguised form of interest and undermine DFPI’s recent clarification that tips are “charges” under California law. The “tips” model is spreading. It can now be found in:

- Nonbank banking apps like Chime, Albert, Dave and MoneyLion,
- Fake earned wage access products like Earnin,
- Cash advance apps like Klover,
- Payday loan platforms like SoloFunds.

These companies use “tips” to pay for credit features while claiming that they are not subject to credit laws. It is for that reason that 79 groups, many in California, recently urged the Consumer Financial Protection Bureau (CFPB) to crack down on the “tips” evasion.² Many have urged the California Department of Financial Protection and Innovation to do the same.³

AB 2540 would exempt purportedly voluntary loan charges from the protections provided for unemployment benefits, public assistance and state-collected child support. But California law has long rejected forms of evasion that rely on a consumer’s purportedly voluntary payment. As California Chief Justice Traynor wrote: “Payments of usury are not considered voluntary, but are deemed to be made under restraint.”⁴

Companies have ways of pushing people into tipping by inserting a default tip; making it difficult to undo defaults; claiming that tips go to support “the community” or charitable causes; and taking advantage of the belief that access to credit will be cut off if they do not tip. It is impossible to police the myriad of ways in which companies that depend on tips will collect them. Moreover, calling a fee a “tip” or claiming that it is “voluntary” does not lessen the impact on families who need each cent.

Indeed, the California Department of Financial Protection and Innovation (DFPI) recently clarified that, under the Consumer Financing Law (CFL), a “charge” subject to the CFL’s credit cost protections is “any cost ‘received by a licensee’ in connection with a loan.” For companies that receive those payments, DFPI “would consider whether optional payments, such as tips or gratuities, result in payments that exceed the CFL credit cost protections when assessing whether a transaction is structured to evade the CFL.”⁵ Purportedly voluntary charges are not exempt from the cost limits in California lending law, and the state should not undermine DFPI’s position and longstanding California law by drawing a distinction between voluntary and required loan charges that reduce critical state payments.

Vulnerable Californians receiving state payments have many banking options that will not drain critical funds through tips. People concerned about overdraft fees on traditional bank accounts have multiple options under current law to receive their unemployment, public assistance or state-collected child support. Most of those payments are distributed through state debit cards that have no overdraft or NSF fees and have won praise for having few other fees.⁶ At least 20 banks and credit unions in California⁷ are among the over 200 and growing accounts nationally that are certified to meet the Bank-

² See Letter from 79 consumer, housing, civil rights, legal services, faith, community, small business, and financial organizations groups to CFPB Director Rohit Chopra at 4 (Dec. 21, 2021), <https://bit.ly/fintech-evasion-ltr>.

³ See, e.g., Comments of Center for Responsible Lending, Consumer Federation of California, National Consumer Law Center to DFPI re PRO 01-21, Registration of wage-based advances at 5-6 (Dec. 20, 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CA_DFPI_comment.pdf; Comments of National Consumer Law Center and Center for Responsible Lending to Department of Financial Protection and Innovation on PRO 02-21, Proposed Rulemaking under the California Consumer Financial Protection Law: Earned Wage Access at 8-12 (Mar. 15, 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf.

⁴ Stock v. Meech, 35 Cal.2d 809, 817, 221 P.2d 15, 20 (1950) (quoting Taylor v. Budd, 217 Cal. 262, 266, 18 P.2d 333 (1933)).

⁵ Calif. DFPI, Interpretive Letter-Flexwage, OP 8206 at 6 n.4 (Feb. 11, 2022).

⁶ See NCLC, Press Release, “Fees Dropping On State Prepaid Cards for Unemployed Workers” (July 26, 2017), <https://www.nclc.org/media-center/fees-dropping-state-prepaid-cards-unemployed-workers.html> (noting that California is among the states whose unemployment debit card received Prosperity Now’s Scorecard’s top “very strong” ranking).

⁷ See <https://joinbankon.org/accounts/>. Accounts available in California include: Alliant Credit Union Teen Checking, Ally Bank Interest Checking Account, Armed Forces Bank Safe Spending Account, Bank of America Advantage SafeBalance Banking Account, Bank of the Sierra Essential Checking, Bank OZK Freedom Advantage Checking, BMO Harris Smart Money™ Account, California Bank & Trust OnBudget Banking, Chase Secure Banking Account, Citi Access Account, Discover Bank®

On National Account Standards,⁸ with no overdraft or NSF fees and low monthly fees. People can also use any prepaid card and any banking app that complies with the Consumer Financial Protection Bureau's prepaid account rules, which were specifically designed to protect vulnerable families – the very ones impacted by this bill.

If passed, AB 2540 will not do as the author and sponsor intend: provide an opportunity for those under- or unbanked and vulnerable families to recover from the financial toll of the pandemic. Instead, new and emerging fintech products need basic protections to ensure that the service they are providing is affordable, transparent, and fair for California consumers, *which is exactly what SB 497 accomplished last year.*

Amendments to AB 2540 are needed to keep existing consumer protections intact and prevent evasions. AB 2540 is aimed at protecting the business model of its sponsor, Chime. But Chime does not need the miniscule amount of revenue, if any, that it earns through tips paid by the most vulnerable Californians receiving state payments. As noted above, most of those payments are distributed through state debit cards; few, if any, of those paid by direct deposit are paid to Chime accounts; only a subset of those are offered and use Chime's overdraft feature and pay a tip.

California should not change the law to open up a loophole that blesses the tips model. Chime can simply turn off the tips feature if it wishes to receive those state payments. While we oppose the tips model altogether, we would consider removing our opposition if changes were made to ensure that those protected by SB 497 do not pay any tips. Specifically, the bill should be amended to:

- Prohibit any tips added by default,
- Require an immediate refund if any tips are paid by recipients of unemployment benefits, public benefits recipients, or parents receiving state-collected child support, and
- Add a private right of action to ensure that the law can be enforced.

Passed last year by the California Legislature, SB 497 was built on past precedents to closely examine and crack down on evasive pricing models. The law ensures state funds are used appropriately and efficiently and makes clear that products and services offered by nonbank companies cannot evade California law governing overdraft fees, fines, and costs merely by relabeling those costs as “voluntary.” *We urge that you do not move forward with AB 2540 in its current form, but instead allow existing law to remain in place to protect vulnerable families.*

Sincerely,

Lauren Saunders
National Consumer Law Center

Cashback Debit Checking Account, Financial Partners Credit Union EZ Card Checking Account, First Bank Thrive Checking Account, Mechanics Bank Bank On Checking Account, Premier America Credit Union Smart Spending, Provident Bank eVantage Account, SCE Federal Credit Union Checkless Checking Account, Tri Counties Bank Money Smart Checking, U.S. Bank Safe Debit Account, Wells Fargo Clear Access Banking.

⁸ <https://2wvkof1mfraz2etgea1p8kiy-wpengine.netdna-ssl.com/wp-content/uploads/2020/10/Bank-On-National-Account-Standards-2021-2022.pdf>.

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