MEMORANDUM IN OPPOSITION TO

S.6121 / A.7907
May 19, 2017

BILL NUMBER: S.6121 / A.7907

SPONSORS: Senator Savino / Assemblymember Crespo

TITLE OF BILL: AN ACT to amend the banking law, in relation to conduit services

STATEMENT OF OPPOSITION: This bill would allow check cashers to partner with out-of-state and nationally-chartered banks to facilitate loans in excess of New York’s usury laws.

Although the bill states that check cashers would not be able to assist with loans exceeding “prevailing usury provisions,” this statement has no actual legal bearing on what check cashers can do.

As a matter of federal law, banks chartered by the federal government, and out-of-state banks insured by the federal government, need not abide by New York State’s civil usury cap of 16% or criminal usury cap of 25%. The bill’s language would therefore be legally unenforceable against any and all national banks and federally-insured out-of-state banks.

Thus, check cashers that partner with these banks would simply grease the wheels for loans that exceed New York’s usury caps. These high-interest loans will inherently target borrowers who already use check cashing services — primarily low-income New Yorkers of color.

Even if banks do not intend to partner with check cashers to offer high-interest loans, the bill would allow check cashers themselves to impose substantial fees on borrowers, essentially transforming the loans into predatory products. There is nothing in this bill that establishes any caps on fees, such as application fees, or on commissions. If check cashers are not legally required to assess the likelihood of approval before charging loan application fees, they could profit even when borrowers are rejected. Furthermore, commission from banks could incentivize check cashers to prepare and submit applications containing false financial information. All in all, this bill is an invitation to predatory lending and fraud.

Although the bill states that “conduit services” agreements would be subject to the approval of the New York State Superintendent of Financial Services, there is no guarantee of perpetually vigilant supervision.

Our usury caps are essential to protecting low-income households and small businesses from high-cost and unscrupulous lending practices. The State Legislature, the Governor, the Attorney General, and various enforcement agencies have commendably fought against attempts to circumvent our usury caps and bring high-interest lending to New York. This bill would undermine these efforts.

New Economy Project believes that passage of this bill, together with S.5920 (Savino) / A. 7705 (Rodriguez), would put New Yorkers’ financial security in jeopardy. Considering the political climate, and the threats to consumer protection at the federal level, this is an especially inadvisable time to weaken or thwart what we have fought so hard for in New York State.

For the above reasons, New Economy Project strongly opposes this legislation.

Please contact Andy Morrison at andy@neweconomynyc.org or 212.680.5100 with any questions.