

AMENDED IN ASSEMBLY JUNE 1, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1534

**Introduced by Assembly Members Nunez and Jones
(Principal coauthor: Assembly Member Bass)**

February 23, 2007

An act to amend ~~Section~~ *Sections 23035, 23036, and 23057* of, and to add *Section 23038* to, the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1534, as amended, Nunez. ~~Deferred deposit transactions: Commissioner of Corporations report.~~ *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 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 but prohibits the licensee from imposing any fee or charge in conjunction with the extension or payment plan.* Existing law requires the commissioner to, by December 1, 2007, report to the Governor and the Legislature on its implementation of the California Deferred Deposit Transaction Law. *A willful violation of the California Deferred Deposit Transaction Law is a crime.*

This bill would *require that a deferred deposit transaction customer be allowed to utilize an extension of time, or a payment plan, at least once in a 12-month period and to rescind, at no cost, a deferred deposit*

transaction agreement on or before the close of the following business day, and would require the agreement to inform the customer of those rights. The bill would require a licensee to implement specified procedures, pursuant to regulations adopted by the commissioner, to inform consumers of the intended uses of deferred deposit transaction services. The bill would also require an additional report to be provided to the Governor and the Legislature by December 1, 2008, that would include specified information on deferred deposit transaction customers and the advertising practices of licensees.

Because a willful violation of the bill’s provisions would be a crime, this 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: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23035 of the Financial Code is amended
- 2 to read:
- 3 23035. (a) A licensee may defer the deposit of a customer’s
- 4 personal check for up to 31 days, pursuant to the provisions of this
- 5 section. The face amount of the check shall not exceed three
- 6 hundred dollars (\$300). Each deferred deposit transaction shall be
- 7 made pursuant to a written agreement as described in subdivision
- 8 (e) that has been signed by the customer and by the licensee or an
- 9 authorized representative of the licensee.
- 10 (b) A customer who enters into a deferred deposit transaction
- 11 and offers a personal check to a licensee pursuant to an agreement
- 12 shall not be subject to any criminal penalty for the failure to comply
- 13 with the terms of that agreement.
- 14 (c) Before entering into a deferred deposit transaction, licensees
- 15 shall distribute to customers a notice that shall include, but not be
- 16 limited to, the following:
- 17 (1) Information about charges for deferred deposit transactions.

1 (2) That if the customer’s check is returned unpaid, the customer
2 may be charged an additional fee of up to fifteen dollars (\$15).

3 (3) That the customer cannot be prosecuted in a criminal action
4 in conjunction with a deferred deposit transaction for a returned
5 check or be threatened with prosecution.

6 (4) The department’s toll-free telephone number for receiving
7 calls regarding customer complaints and concerns.

8 (5) That the licensee may not accept any collateral in conjunction
9 with a deferred deposit transaction.

10 (6) That the check is being negotiated as part of a deferred
11 deposit transaction made pursuant to Section 23035 of the Financial
12 Code and is not subject to the provisions of Section 1719 of the
13 Civil Code. No customer may be required to pay treble damages
14 if this check does not clear.

15 (d) The following notices shall be clearly and conspicuously
16 posted in the unobstructed view of the public by all licensees in
17 each location of a business providing deferred deposit transactions
18 in letters not less than one-half inch in height:

19 (1) The licensee cannot use the criminal process against a
20 consumer to collect any deferred deposit transaction.

21 (2) The schedule of all charges and fees to be charged on those
22 deferred deposit transactions with an example of all charges and
23 fees that would be charged on at least a one-hundred-dollar (\$100)
24 and a two-hundred-dollar (\$200) deferred deposit transaction,
25 payable in 14 days and 30 days, respectively, giving the
26 corresponding annual percentage rate. The information may be
27 provided in a chart as follows:

28

29 Amount	Fee	Amount of Check	14-day APR	30-day APR
30 Provided				
31 \$100	XX	XXX	XXX	XXX
32 \$200	XX	XXX	XXX	XXX

33
34 (e) An agreement to enter into a deferred deposit transaction
35 shall be in writing and shall be provided by the licensee to the
36 customer. The written agreement shall authorize the licensee to
37 defer deposit of the personal check, shall be signed by the
38 customer, and shall include all of the following:

39 (1) A full disclosure of the total amount of any fees charged for
40 the deferred deposit transaction, expressed both in United States

- 1 currency and as an APR as required under the Federal Truth In
- 2 Lending Act and its regulations.
- 3 (2) A clear description of the customer’s payment obligations
- 4 as required under the Federal Truth In Lending Act and its
- 5 regulations.
- 6 (3) The name, address, and telephone number of the licensee.
- 7 (4) The customer’s name and address.
- 8 (5) The date to which deposit of check has been deferred (due
- 9 date).
- 10 (6) The payment plan, or extension, if applicable as allowed
- 11 under subdivision ~~(e)~~ (b) of Section 23036.
- 12 (7) An itemization of the amount financed as required under
- 13 the Federal Truth In Lending Act and its regulations.
- 14 (8) Disclosure of any returned check charges.
- 15 (9) That the customer cannot be prosecuted or threatened with
- 16 prosecution to collect.
- 17 (10) That the licensee cannot accept collateral in connection
- 18 with the transaction.
- 19 (11) That the licensee cannot make a deferred deposit transaction
- 20 contingent on the purchase of another product or service.
- 21 *(12) That the customer shall be allowed to utilize an extension*
- 22 *of time, or a payment plan, at least once in a 12-month period.*
- 23 *(13) The customer has the right to rescind, at no cost, a deferred*
- 24 *deposit transaction agreement on or before the close of the*
- 25 *following business day.*
- 26 ~~(12)~~
- 27 (14) Signature space for the customer and signature of the
- 28 licensee or authorized representative of the licensee and date of
- 29 the transaction.
- 30 ~~(13)~~
- 31 (15) Any other information that the commissioner shall deem
- 32 necessary by regulation.
- 33 (f) The notice required by subdivision (c) shall be written and
- 34 available in the same language principally used in any oral
- 35 discussions or negotiations leading to execution of the deferred
- 36 deposit agreement and shall be in at least 10-point type.
- 37 (g) The written agreement required by subdivision (e) shall be
- 38 written in the same language principally used in any oral
- 39 discussions or negotiations leading to execution of the deferred

1 deposit agreement; shall not be vague, unclear, or misleading and
2 shall be in at least 10-point type.

3 (h) Under no circumstances shall a deferred deposit transaction
4 agreement include any of the following:

5 (1) A hold harmless clause.

6 (2) A confession of judgment clause or power of attorney.

7 (3) Any assignment of or order for payment of wages or other
8 compensation for services.

9 (4) Any acceleration provision.

10 (5) Any unconscionable provision.

11 (i) If the licensee sells or otherwise transfers the debt at a later
12 date, the licensee shall clearly disclose in a written agreement that
13 any debt or checks held or transferred pursuant to a deferred deposit
14 transaction made pursuant to Section 23035 are not subject to the
15 provisions of Section 1719 of the Civil Code and that no customer
16 may be required to pay treble damages if the check or checks are
17 dishonored.

18 *SEC. 2. Section 23036 of the Financial Code is amended to*
19 *read:*

20 23036. (a) A fee for a deferred deposit transaction shall not
21 exceed 15 percent of the face amount of the check.

22 (b) A licensee may allow an extension of time, or a payment
23 plan, for repayment of an existing deferred deposit transaction but
24 may not charge any additional fee or charge of any kind in
25 conjunction with the extension or payment plan. *A customer shall*
26 *be allowed to utilize an extension of time, or a payment plan, at*
27 *least once in a 12-month period.* A licensee that complies with the
28 provisions of this subdivision shall not be deemed to be in violation
29 of subdivision (g) of Section 23037.

30 (c) A licensee shall not enter into an agreement for a deferred
31 deposit transaction with a customer during the period of time that
32 an earlier written agreement for a deferred deposit transaction for
33 the same customer is in effect.

34 (d) A licensee who enters into a deferred deposit transaction
35 agreement, or any assignee of that licensee, shall not be entitled
36 to recover damages for that transaction in any action brought
37 pursuant to, or governed by, Section 1719 of the Civil Code.

38 (e) A fee not to exceed fifteen dollars (\$15) may be charged for
39 the return of a dishonored check by a depository institution in a
40 deferred deposit transaction. A single fee charged pursuant to this

1 subdivision is the exclusive charge for a dishonored check. No fee
 2 may be added for late payment.

3 (f) No amount in excess of the amounts authorized by this
 4 section shall be directly or indirectly charged by a licensee pursuant
 5 to a deferred deposit transaction.

6 (g) *A licensee shall give a customer the right to rescind, at no*
 7 *cost, a deferred deposit transaction agreement on or before the*
 8 *close of the following business day.*

9 ~~(g)~~

10 (h) A licensee shall be subject to the provisions of Title 1.6C
 11 (commencing with Section 1788) of Part 4 of Division 3 of the
 12 Civil Code.

13 *SEC. 3. Section 23038 is added to the Financial Code, to read:*
 14 *23038. A licensee shall implement procedures, pursuant to*
 15 *regulations adopted by the commissioner, to inform consumers of*
 16 *the intended uses of deferred deposit transaction services. The*
 17 *regulations adopted by the commissioner shall require these*
 18 *procedures to include the placement of a customer notice on all*
 19 *marketing materials, including all television, print, radio, and*
 20 *Internet advertising, and direct mail and in-store promotional*
 21 *materials.*

22 ~~SECTION 4.~~

23 *SEC. 4. Section 23057 of the Financial Code is amended to*
 24 *read:*

25 23057. (a) On December 1, 2007, the commissioner shall
 26 report to the Governor and the Legislature on its implementation
 27 of this division. The report shall include, at a minimum,
 28 information regarding the demand for deferred deposit transactions,
 29 the growth and trends in the industry, common practices for
 30 conducting the business of deferred deposit transactions, the
 31 advertising practices of the industry, including any violations of
 32 Section 23027, and any other information the commissioner deems
 33 necessary to inform the Governor and the Legislature regarding
 34 potential legislation that may be necessary to protect the people
 35 of the State of California. The commissioner's recommendations
 36 for future action may include, but are not limited to, changes in
 37 the fees charged to consumers, specifications regarding the length
 38 of time for deferred deposit transactions, maximum amount
 39 provided to consumers, additional regulation of advertising

1 practices, and the implementation of an installment loan product
2 in lieu of a deferred deposit transaction as described in this division.

3 (b) On December 1, 2008, the commissioner shall report to the
4 Governor and the Legislature on its implementation of this division.
5 The report shall include the information set forth in subdivision
6 (a) and the following additional specific information on a
7 disaggregated basis by ZIP Code:

8 (1) The race, income, level of education, and occupation of
9 typical customers and their expected use of the proceeds of deferred
10 deposit transactions.

11 (2) The number of customers each year who enter into deferred
12 deposit transactions, the minimum, maximum, and average amount
13 of the transactions, and the number of these transactions that
14 customers ultimately fail to comply with.

15 (3) The information necessary to assess the range of advertising
16 practices being used by licensees, and an evaluation of whether
17 certain licensees are targeting certain groups of customers with
18 their products.

19 (4) The number of customers who enter into deferred deposit
20 transactions with multiple licensees simultaneously and the number
21 of simultaneous transactions entered into by these customers.

22 (5) The number of licensees who issue, and the number of
23 customers who obtain, back-to-back deferred deposit transactions,
24 including the number of consecutive transactions taken by
25 customers.

26 (c) As the commissioner conducts the studies to provide the
27 reports required in this section, licensees shall be required to supply
28 all information the commissioner deems necessary. The studies
29 shall be made public and may not include any proprietary
30 information.

31 *SEC. 5. No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *the only costs that may be incurred by a local agency or school*
34 *district will be incurred because this act creates a new crime or*
35 *infraction, eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section 17556 of*
37 *the Government Code, or changes the definition of a crime within*

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

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