

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Mendoza

February 23, 2009

An act to amend Sections 23001, 23027, and 23035 of, and to add Sections 23005.5, 23010.5, 23016.5, and 23036.5 to, the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as amended, Mendoza. Deferred deposit transactions.

Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in the business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from making false, misleading, or deceptive advertisements regarding its business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from placing an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses that it is licensed by the Department of Corporations. Existing law authorizes the commissioner to require a licensee to maintain a file of its advertisements for a period of 90 days. Existing law provides that a customer who enters into a deferred deposit transaction shall not be subject to criminal penalties for failure to comply with the terms of a deferred deposit transaction agreement. *Existing law authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days and provides that the face*

amount of the check shall not exceed \$300. 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, as specified. A willful violation of the California Deferred Deposit Transaction Law is a crime.

This bill would require specified applicants for licensure under the California Deferred Deposit Transaction Law, including, but not limited to, corporations, partnerships, and sole proprietorships, to include in their applications fingerprints and a completed statement of identity and questionnaire, as specified, for certain individuals, and other information, as specified. The bill would require a licensee to notify the department in writing of changes to the individuals named in the licensee's original application for licensure or if the licensee or any of those individuals has been found to have violated the laws of another state relative to deferred deposit transactions. The bill would also require a licensee to notify the department in writing when offering a new product or service that will generate more than 5% of the revenues of an office. The bill would make advertisements on the Internet by a licensee subject to the provisions regulating deferred deposit transaction advertisements and would require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use. *The bill would authorize the face amount of a check for a deferred deposit transaction to be up to \$500.* The bill would prohibit a deferred deposit transaction customer from being threatened with criminal penalties for a failure to comply with the terms of an agreement and would prohibit a licensee from referring or delivering a check taken in a deferred deposit transaction to a prosecutor or other law enforcement official for purposes of collection or criminal prosecution unless that information is requested as part of an investigation. The bill would require a specified notice that is separate and distinct from the deferred deposit transaction agreement to be provided to and initialed by a customer before entering into the agreement. The bill would require the notice to inform the customer that he or she may rescind a deferred deposit transaction at no cost by notifying the licensee and returning the proceeds of the transaction within a specified time period. The bill would require that, if the deferred deposit transaction is conducted over the Internet, the customer shall agree in the written agreement to conduct the transaction and to receive notices and the agreement electronically. The bill would

also require a licensee, when conducting deferred deposit transactions over the Internet, to make notices and the agreement available to a customer in a format that may be downloaded and printed or, if the customer is unable to download that information, to mail the documents to the customer within 24 hours of the transaction. *The bill would require a licensee to annually pay a fee to the commissioner of 5 cents for each deferred deposit transaction paid in full in the previous calendar year and would require the money from these fees to be used by the commissioner to provide financial literacy education programs relative to deferred deposit transactions.* The bill would authorize a customer who is unable to repay a deferred deposit transaction to elect, once in any 12-month period, to repay the deferred deposit transaction to the licensee pursuant to an extended payment plan, as specified. The bill would require a customer to be notified of his or her right to an extended payment plan. Because a willful violation of the bill's provisions by a licensee 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. Section 23001 of the Financial Code is amended
- 2 to read:
- 3 23001. As used in this division, the following terms have the
- 4 following meanings:
- 5 (a) "Deferred deposit transaction" means a transaction whereby
- 6 a person defers depositing a customer's personal check until a
- 7 specific date, pursuant to a written agreement for a fee or other
- 8 charge, as provided in Section 23035.
- 9 (b) "Commissioner" means the Commissioner of Corporations.
- 10 (c) "Department" means the Department of Corporations.
- 11 (d) "Licensee" means any person who offers, originates, or
- 12 makes a deferred deposit transaction, who arranges a deferred
- 13 deposit transaction for a deferred deposit originator, who acts as

1 an agent for a deferred deposit originator, or who assists a deferred
2 deposit originator in the origination of a deferred deposit
3 transaction. However, “licensee” does not include a state or
4 federally chartered bank, thrift, savings association, industrial loan
5 company, or credit union. “Licensee” also does not include a retail
6 seller engaged primarily in the business of selling consumer goods,
7 including consumables, to retail buyers that cashes checks or issues
8 money orders for a minimum fee not exceeding two dollars (\$2)
9 as a service to its customers that is incidental to its main purpose
10 or business. “Licensee” also does not include an employee regularly
11 employed by a licensee at the licensee’s place of business. An
12 employee, when acting under the scope of the employee’s
13 employment, shall be exempt from any other law from which the
14 employee’s employer is exempt.

15 (e) “Person” means an individual, a corporation, a partnership,
16 a limited liability company, a joint venture, an association, a joint
17 stock company, a trust, an unincorporated organization, a
18 government entity, or a political subdivision of a government
19 entity.

20 (f) “Deferred deposit originator” means a person who offers,
21 originates, or makes a deferred deposit transaction.

22 (g) “Controlling person” means any of the following:

23 (1) For a corporation, trust, or association, an individual that
24 owns or controls, directly or indirectly, 10 percent or more of the
25 equity securities of the corporation, trust or association.

26 (2) For a partnership, an individual that owns or controls,
27 directly or indirectly, 10 percent or more of the outstanding interest
28 in the partnership.

29 (h) “Supervising manager” means an individual who acts as a
30 direct supervisor for any person or persons who manage or operate
31 one or more of a licensee’s offices where deferred deposit
32 transactions are made. A supervising manager may typically work
33 under a title such as a district manager, regional manager, or a
34 similar title, and has the authority to interpret and apply the policies
35 and procedures of the applicant.

36 SEC. 2. Section 23005.5 is added to the Financial Code, to
37 read:

38 23005.5. (a) When filing an application pursuant to Section
39 23005, an applicant shall include fingerprints and a completed

1 statement of identity and questionnaire, as prescribed by the
2 commissioner, for the following:

3 (1) If the applicant is a corporation, trust, or association, each
4 officer, director and controlling person.

5 (2) If the applicant is a partnership, each general partner and
6 each controlling person.

7 (3) If the applicant is a sole proprietorship, the individual who
8 is the sole proprietor.

9 (4) Each supervising manager who manages or will manage one
10 or more offices of the applicant located in California.

11 (b) An applicant shall disclose in its application whether any
12 person named in the application, as specified in subdivision (a),
13 has, during the last 20 years, conducted a deferred deposit business
14 or similar business in any other state and, if so, the time period
15 during which that person conducted that business and whether the
16 person was found, either individually or as a representative of the
17 applicant, to have violated any provision of the applicable deferred
18 deposit transaction laws and regulations, or any similar laws and
19 regulations, of any other state.

20 (c) An applicant shall identify in its application any product or
21 service, in addition to deferred deposit transactions, that (1) the
22 applicant intends to offer in the office or offices the applicant seeks
23 to license and (2) the applicant anticipates will generate in excess
24 of 5 percent of the gross monthly revenue of any office.

25 SEC. 3. Section 23010.5 is added to the Financial Code, to
26 read:

27 23010.5. (a) A licensee shall notify the department in writing
28 of changes to persons named in the licensee's original application
29 for a license, or their successors, as follows:

30 (1) If the licensee is a corporation, trust, or association, the
31 licensee shall notify the department in writing within 10 days after
32 any change in an officer, director, or controlling person, and shall
33 submit fingerprints and a complete statement of identity and
34 questionnaire, as prescribed by the commissioner, for the new
35 officer, director or controlling person within 30 days of the date
36 of the change.

37 (2) If the licensee is a partnership, the licensee shall notify the
38 department in writing within 10 days after a change in a general
39 partner or controlling person, and shall submit fingerprints and a
40 complete statement of identity and questionnaire, as prescribed by

1 the commissioner, for the new general partner or controlling person
2 within 30 days of the change.

3 (3) If the licensee is a sole proprietorship, the licensee shall
4 notify the department in writing of an impending sale or transfer
5 and the purchaser or transferee shall obtain a valid license as
6 required prior to the sale or transfer of the business, or the licensee
7 shall surrender the license in compliance with the department's
8 procedures.

9 (4) A licensee shall notify the department in writing within 10
10 days after a change or addition of a supervising manager, and
11 submit fingerprints and a complete statement of identity and
12 questionnaire, as prescribed by the commissioner, for any new
13 supervising manager within 30 days of the change.

14 (b) A licensee shall notify the department in writing within 10
15 days of receiving notification that the licensee or any person named
16 as an officer, director, sole proprietor, controlling person, or
17 supervising manager has been found, either individually or as a
18 representative of the licensee, to have violated any provision of
19 the applicable deferred deposit transaction laws and regulations,
20 or any similar laws and regulations, of any other state.

21 (c) A licensee shall notify the department in writing that it
22 intends to offer a new product or service at least 10 days prior to
23 offering that product or service if the licensee anticipates that the
24 product or service will generate more than 5 percent of the gross
25 monthly revenue of any office. Any licensee that determines that
26 a product or service, other than deferred deposit transactions, is
27 generating in excess of 5 percent of the monthly gross revenue of
28 any licensed office shall notify the department in writing that it is
29 offering that product or service within 10 days of that
30 determination.

31 *SEC. 4. Section 23016.5 is added to the Financial Code, to*
32 *read:*

33 *23016.5. Commencing January 1, 2010, and annually*
34 *thereafter, each licensee shall pay a fee to the commissioner of*
35 *five cents (\$0.05) for each deferred deposit transaction paid in*
36 *full in the previous calendar year. A licensee shall not pass this*
37 *fee on to its customers. The fee required by this section shall be*
38 *used by the commissioner to provide financial literacy education*
39 *programs relative to deferred deposit transactions in California.*

1 ~~SEC. 4.~~

2 SEC. 5. Section 23027 of the Financial Code is amended to
3 read:

4 23027. (a) No licensee shall advertise, print, display, publish,
5 distribute, or broadcast, or cause or permit to be advertised, printed,
6 displayed, published, distributed or broadcast, in any manner,
7 including on the Internet, any statement or representation with
8 regard to the business subject to the provisions of this division,
9 including the rates, terms, or conditions for making or negotiating
10 deferred deposit transactions, that is false, misleading, or deceptive,
11 or that omits material information that is necessary to make the
12 statements not false, misleading, or deceptive.

13 (b) (1) No licensee shall place an advertisement disseminated
14 primarily in this state for a deferred deposit transaction or primarily
15 intended to reach California residents, including advertisements
16 on the Internet, unless the licensee, in the printed text of the
17 advertisement or the oral text in the case of a radio or television
18 advertisement, makes the following disclosure:

19
20 “[Insert licensee’s name] is licensed by the Department of
21 Corporations pursuant to the California Deferred Deposit
22 Transaction Law.”

23
24 (2) The disclosure required under paragraph (1) shall be in the
25 same language as the primary language of the advertisement. If
26 the terms “California” or “Department” are abbreviated in a printed
27 disclosure, it shall not be deemed to be a violation of this section.

28 (c) The commissioner may require that rates of charges or fees,
29 if stated by the licensee, be stated fully and clearly in the manner
30 that the commissioner deems necessary to give adequate
31 information to, or to prevent misunderstanding by, prospective
32 customers.

33 (d) No advertising copy shall be used after its use has been
34 disapproved by the commissioner and the licensee is notified in
35 writing of the disapproval.

36 (e) A licensee shall maintain a file of all advertising copy for a
37 period of two years from the date of its use. The file shall be
38 available to the commissioner upon request.

1 ~~SEC. 5.~~

2 *SEC. 6.* Section 23035 of the Financial Code is amended to
3 read:

4 23035. (a) A licensee may defer the deposit of a customer's
5 personal check for up to 31 days, pursuant to the provisions of this
6 section. The face amount of the check shall not exceed ~~three~~ *five*
7 hundred dollars ~~(\$300)~~ *(\$500)*. Each deferred deposit transaction
8 shall be made pursuant to a written agreement as described in
9 subdivision (e) that has been signed by the customer and by the
10 licensee or an authorized representative of the licensee.

11 (b) A customer who enters into a deferred deposit transaction
12 and offers a personal check to a licensee pursuant to an agreement
13 shall not be subject to, or threatened with, any criminal penalty
14 for the failure to comply with the terms of that agreement. It is a
15 violation of this division for a licensee to refer or deliver a check
16 taken in a deferred deposit transaction to a prosecutor or other law
17 enforcement official for purposes of collection or criminal
18 prosecution, unless the prosecutor or law enforcement official
19 requests the check as part of an investigation not initiated by the
20 licensee.

21 (c) Before entering into a deferred deposit transaction, licensees
22 shall distribute to customers a notice that is distinct and separate
23 from the deferred deposit transaction agreement. The notice may
24 be included with a loan application or other information, provided
25 that it is clear and conspicuously disclosed. A customer shall initial
26 the notice to acknowledge receipt of a copy and the licensee shall
27 retain the initialed copy. This separate notice shall include, but not
28 be limited to, the following:

29 (1) Information about charges for deferred deposit transactions.

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

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

35 (4) The department's toll-free telephone number for receiving
36 calls regarding customer complaints and concerns.

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

39 (6) That the check is being negotiated as part of a deferred
40 deposit transaction made pursuant to Section 23035 of the Financial

Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

(7) That the customer may rescind a deferred deposit transaction at no cost by notifying the licensee that he or she wishes to rescind the transaction and by returning the proceeds of the transaction to the licensee no later than the end of the next business day following the date on which the deferred deposit transaction was made.

(8) That if the customer is unable to repay the deferred deposit transaction, the customer may request an extended payment plan as allowed under Section 23036.5. This notice shall read as follows:

“If you are unable to repay a deferred deposit agreement when due, you may be eligible to request an extended payment plan at no additional cost. You must request the plan from us before the due date of your deferred deposit transaction and sign an amendment to the deferred deposit agreement. You qualify for an extended payment plan from us once in any 12-month period.”

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

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

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

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

1 (3) Notice of the customer's right to an extended payment plan
2 as allowed under Section 23036.5 that states as follows:

3
4 "If you are unable to repay a deferred deposit agreement when
5 due, you may be eligible to request an extended payment plan at
6 no additional cost. You must request the plan from us before the
7 due date of your deferred deposit transaction and sign an
8 amendment to the deferred deposit agreement. You qualify for an
9 extended payment plan from us once in any 12-month period."

10
11 (e) An agreement to enter into a deferred deposit transaction
12 shall be in writing and shall be provided by the licensee to the
13 customer. The written agreement shall authorize the licensee to
14 defer deposit of the personal check, shall be signed by the
15 customer, and shall include all of the following:

16 (1) A full disclosure of the total amount of any fees charged for
17 the deferred deposit transaction, expressed both in United States
18 currency and as an APR as required under the Federal Truth In
19 Lending Act and its regulations.

20 (2) A clear description of the customer's payment obligations
21 as required under the Federal Truth In Lending Act and its
22 regulations.

23 (3) The name, address, and telephone number of the licensee.

24 (4) The customer's name and address.

25 (5) The date to which deposit of check has been deferred (due
26 date).

27 (6) The payment plan, or extension, if applicable as allowed
28 under subdivision (c) of Section 23036.

29 (7) Notice of the customer's right to an extended payment plan
30 as allowed under Section 23036.5 that states as follows:

31
32 "If you are unable to repay a deferred deposit agreement when
33 due, you may be eligible to request an extended payment plan at
34 no additional cost. You must request the plan from us before the
35 due date of your deferred deposit transaction and sign an
36 amendment to the deferred deposit agreement. You qualify for an
37 extended payment plan from us once in any 12-month period."

38
39 (8) Notice of the customer's right to rescind the transaction
40 without cost by notifying the licensee that he or she wishes to

1 rescind the transaction and by returning the proceeds of the
2 transaction to the licensee no later than the end of the business day
3 immediately following the date on which the deferred deposit
4 transaction was made.

5 (9) An itemization of the amount financed as required under
6 the Federal Truth In Lending Act and its regulations.

7 (10) Disclosure of any returned check charges.

8 (11) That the customer cannot be prosecuted or threatened with
9 prosecution to collect.

10 (12) That the licensee cannot accept collateral in connection
11 with the transaction.

12 (13) That the licensee cannot make a deferred deposit transaction
13 contingent on the purchase of another product or service.

14 (14) If the transaction is being conducted over the Internet, that
15 the customer agrees to conduct the transaction electronically and
16 to receive the required notices and agreement electronically.

17 (15) Signature space for the customer and signature of the
18 licensee or authorized representative of the licensee and date of
19 the transaction.

20 (16) Any other information that the commissioner shall deem
21 necessary by regulation.

22 (f) The notice required by subdivision (c) shall be written and
23 available in the same language principally used in any oral
24 discussions or negotiations leading to execution of the deferred
25 deposit agreement and shall be in at least 10-point type.

26 (g) The written agreement required by subdivision (e) shall be
27 written in the same language principally used in any oral
28 discussions or negotiations leading to execution of the deferred
29 deposit agreement; shall not be vague, unclear, or misleading and
30 shall be in at least 10-point type.

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

33 (1) A hold harmless clause.

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

35 (3) Any assignment of or order for payment of wages or other
36 compensation for services.

37 (4) Any acceleration provision.

38 (5) Any unconscionable provision.

39 (i) If the licensee sells or otherwise transfers the debt at a later
40 date, the licensee shall clearly disclose in a written agreement that

1 any debt or checks held or transferred pursuant to a deferred deposit
2 transaction made pursuant to Section 23035 are not subject to the
3 provisions of Section 1719 of the Civil Code and that no customer
4 may be required to pay treble damages if the check or checks are
5 dishonored.

6 (j) If a licensee conducts a deferred deposit transaction with a
7 customer over the Internet, the notices required in subdivisions (c)
8 and (d) and the agreement required in subdivision (e) shall be
9 provided to the customer electronically and shall be available for
10 the customer to download and print. If the customer is unable to
11 download these documents, the licensee shall mail the notices and
12 agreement to the customer within 24 hours of the Internet
13 transaction. Deferred deposit transactions conducted over the
14 Internet shall comply with the Uniform Electronic Transactions
15 Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of
16 Division 3 of the Civil Code).

17 ~~SEC. 6.~~

18 *SEC. 7.* Section 23036.5 is added to the Financial Code, to
19 read:

20 23036.5. (a) Subject to the terms and conditions contained in
21 this section, a customer who is unable to repay a deferred deposit
22 transaction when due may elect once in any 12-month period to
23 repay the deferred deposit transaction to the licensee by means of
24 an extended payment plan. The 12-month period is measured from
25 the date the customer fully pays all amounts due under one
26 extended payment plan with the licensee until the date that the
27 customer enters into another extended payment plan with the
28 licensee.

29 (b) To request an extended payment plan, the customer, before
30 the due date of the outstanding deferred deposit transaction, shall
31 request the plan and sign an amendment to the deferred deposit
32 transaction agreement that memorializes the plan's terms.

33 (c) The extended payment plan's terms shall allow the customer,
34 at no additional cost, to repay the outstanding deferred deposit
35 transaction, including any fee due, in at least four ~~substantially~~
36 ~~equal~~ installments. *Unless otherwise agreed by the customer and*
37 *licensee, payment plan installments shall all be substantially equal*
38 *in amount.* Each plan installment shall be due on or after a date on
39 which the customer receives regular income. The customer may
40 prepay an extended payment plan in full at any time without

1 penalty. The licensee shall not charge the customer any interest or
2 additional fees during the term of the extended payment plan. A
3 licensee shall not engage in collection activities or make any
4 additional deferred deposit transactions to the customer while the
5 customer continues to make timely payments in accordance with
6 the extended payment plan.

7 (d) If the customer fails to pay any extended payment plan
8 installment when due, the customer shall be in default of the
9 payment plan and the licensee may immediately accelerate payment
10 on the remaining balance. Upon default, the licensee may take
11 action to collect all amounts due.

12 ~~SEC. 7.~~

13 *SEC. 8.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.