

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1158

Introduced by Assembly Member Charles Calderon

February 18, 2011

An act to amend Section ~~23027~~ 23035 of the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1158, as amended, Charles Calderon. Deferred deposit ~~transactions; advertising.~~ *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, as defined. Existing law ~~prohibits a licensee from placing an advertisement disseminated primarily in this state for a deferred deposit transaction unless the advertisement discloses that the licensee is licensed by the Department of Corporations. Existing law authorizes the commissioner to require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use and requires the file to be made available to the commissioner upon request~~ *authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days, prohibits the face amount of the check from exceeding \$300, and requires each deferred deposit transaction to be made pursuant to a written agreement. A willful violation of the California Deferred Deposit Transaction Law is a crime.*

~~This bill would prohibit a licensee from placing an advertisement primarily intended to reach California residents, including advertisements on the Internet, unless the advertisement discloses that the licensee is licensed by the department, as specified. The bill would also authorize the commissioner to require licensees to maintain a file of all advertising copy currently in use and to retain that advertising copy for a period of 2 years from the date of its use instead authorize the face amount of a check for a deferred deposit transaction to be up to \$500.~~

~~Because a willful violation of the these provisions by a licensee would be a crime under the California Deferred Deposit Transaction Law, 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-no*.

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~~ *five*
- 6 hundred dollars ~~(\$300)~~ *(\$500)*. Each deferred deposit transaction
- 7 shall be made pursuant to a written agreement as described in
- 8 subdivision (e) that has been signed by the customer and by the
- 9 licensee or an 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

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

- 1 (1) A full disclosure of the total amount of any fees charged for
- 2 the deferred deposit transaction, expressed both in United States
- 3 currency and as an APR as required under the Federal Truth In
- 4 Lending Act and its regulations.
- 5 (2) A clear description of the customer’s payment obligations
- 6 as required under the Federal Truth In Lending Act and its
- 7 regulations.
- 8 (3) The name, address, and telephone number of the licensee.
- 9 (4) The customer’s name and address.
- 10 (5) The date to which deposit of check has been deferred (due
- 11 date).
- 12 (6) The payment plan, or extension, if applicable as allowed
- 13 under subdivision (c) of Section 23036.
- 14 (7) An itemization of the amount financed as required under
- 15 the Federal Truth In Lending Act and its regulations.
- 16 (8) Disclosure of any returned check charges.
- 17 (9) That the customer cannot be prosecuted or threatened with
- 18 prosecution to collect.
- 19 (10) That the licensee cannot accept collateral in connection
- 20 with the transaction.
- 21 (11) That the licensee cannot make a deferred deposit transaction
- 22 contingent on the purchase of another product or service.
- 23 (12) Signature space for the customer and signature of the
- 24 licensee or authorized representative of the licensee and date of
- 25 the transaction.
- 26 (13) Any other information that the commissioner shall deem
- 27 necessary by regulation.
- 28 (f) The notice required by subdivision (c) shall be written and
- 29 available in the same language principally used in any oral
- 30 discussions or negotiations leading to execution of the deferred
- 31 deposit agreement and shall be in at least 10-point type.
- 32 (g) The written agreement required by subdivision (e) shall be
- 33 written in the same language principally used in any oral
- 34 discussions or negotiations leading to execution of the deferred
- 35 deposit agreement; shall not be vague, unclear, or misleading and
- 36 shall be in at least 10-point type.
- 37 (h) Under no circumstances shall a deferred deposit transaction
- 38 agreement include any of the following:
- 39 (1) A hold harmless clause.
- 40 (2) A confession of judgment clause or power of attorney.

1 (3) Any assignment of or order for payment of wages or other
2 compensation for services.

3 (4) Any acceleration provision.

4 (5) Any unconscionable provision.

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

12 ~~SECTION 1. Section 23027 of the Financial Code is amended~~
13 ~~to read:~~

14 ~~23027. (a) No licensee shall advertise, print, display, publish,~~
15 ~~distribute, or broadcast, or cause or permit to be advertised, printed,~~
16 ~~displayed, published, distributed or broadcast, in any manner, any~~
17 ~~statement or representation with regard to the business subject to~~
18 ~~the provisions of this division, including the rates, terms, or~~
19 ~~conditions for making or negotiating deferred deposit transactions,~~
20 ~~that is false, misleading, or deceptive, or that omits material~~
21 ~~information that is necessary to make the statements not false,~~
22 ~~misleading, or deceptive.~~

23 ~~(b) No licensee shall place an advertisement disseminated~~
24 ~~primarily in this state for a deferred deposit transaction or primarily~~
25 ~~intended to reach California residents, including advertisements~~
26 ~~on the Internet, unless the licensee, in the printed text of the~~
27 ~~advertisement or the oral text in the case of a radio or television~~
28 ~~advertisement, makes the following disclosure:~~

29 -
30 ~~"[Insert name of licensee] is licensed by the Department of~~
31 ~~Corporations pursuant to the California Deferred Deposit~~
32 ~~Transaction Law."~~

33 -
34 ~~(e) The commissioner may require that rates of charges or fees,~~
35 ~~if stated by the licensee, be stated fully and clearly in the manner~~
36 ~~that the commissioner deems necessary to give adequate~~
37 ~~information to, or to prevent misunderstanding by, prospective~~
38 ~~customers.~~

1 ~~(d) No advertising copy shall be used after its use has been~~
2 ~~disapproved by the commissioner and the licensee is notified in~~
3 ~~writing of the disapproval.~~

4 ~~(e) The commissioner may require licensees to maintain a file~~
5 ~~of all advertising copy currently in use and to retain that advertising~~
6 ~~copy for a period of two years from the date of its use. The file~~
7 ~~shall be available to the commissioner upon request.~~

8 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
9 ~~Section 6 of Article XIII B of the California Constitution because~~
10 ~~the only costs that may be incurred by a local agency or school~~
11 ~~district will be incurred because this act creates a new crime or~~
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~
14 ~~the Government Code, or changes the definition of a crime within~~
15 ~~the meaning of Section 6 of Article XIII B of the California~~
16 ~~Constitution.~~