

AMENDED IN ASSEMBLY MAY 1, 2000

AMENDED IN ASSEMBLY APRIL 4, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1973**

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**Introduced by Assembly Member Wesson**

February 18, 2000

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An act to amend Sections 1789.31, 1789.33, 1789.35, and 1789.37 of, and to add Section 1789.39 to, the Civil Code, relating to check cashers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as amended, Wesson. Check cashers: surety bonds.

Existing law defines certain terms for the provisions regulating deferred deposit transactions by check cashers.

This bill would define the term “consecutive transaction” for the above provisions to mean a deferred deposit transaction that a check casher and a customer enter into within 24 hours after a previous deferred deposit transaction.

Existing law requires that the face amount of a deferred deposit check not exceed \$300 and that a deferred deposit transaction be made pursuant to a written agreement. Existing law further provides that a customer who enters into a deferred deposit agreement shall not be subject to criminal penalty for the failure to comply with that agreement.

This bill would instead require that the face amount of a deferred deposit check may not exceed \$400 plus a fee, as

specified, that a check casher provide specified information to the Department of Justice, and that a check casher entering into a deferred deposit transaction with a customer provide the customer with a written agreement in a specified form. This bill would also allow a customer who enters into a deferred deposit agreement to rescind the transaction at no cost at any time prior to the close of the business day following the date of the transaction by paying the check casher the amount of money advanced to the customer. The bill would prohibit a check casher from engaging in specified activities in conducting a deferred deposit business.

Existing law limits the fee a check casher may charge for a deferred deposit transaction and requires a check casher to provide specified information to a customer in a deferred deposit transaction. Existing law authorizes the Attorney General to prosecute a civil action to recover civil penalties for violations of the laws relating to deferred deposit transactions.

This bill would establish a lower fee limit when the customer engages in the fifth consecutive deferred deposit ~~transactions~~ *transaction*, as defined. This bill would prohibit using one deferred deposit transaction to repay, refinance, or consolidate another deferred deposit transaction. This bill would also authorize a district attorney to prosecute a civil action to recover civil penalties for violations of the laws relating to deferred deposit transactions.

Existing law requires every owner of a check casher's business to obtain a permit from the Department of Justice to conduct a check cashing business, which the applicant is required to renew annually. Existing law also requires the applicant to pay a fee and be fingerprinted and the applicant is not permitted to conduct a check cashing business if he or she has certain felony convictions, as specified.

This bill would require every applicant for a permit to operate a check cashing business to have a surety bond of \$25,000 for the benefit of a person or persons damaged by a violation of laws regarding check cashers. The bill would prohibit the applicant from conducting a check cashing business without this bond. The bill would require that the bond be filed with the Secretary of State and would require



that the surety notify the applicant and the Secretary of State prior to the cancellation or termination of the bond, as defined. This bill would further require the applicant to cease conducting check cashing business upon the cancellation or termination of the bond unless a new surety bond is obtained and filed. The bill would require the Department of Justice to compile and make public a report, as specified, of aggregate data submitted by check cashers regarding deferred deposit transactions and to maintain a toll-free telephone number for receiving complaints from deferred deposit transaction customers.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1789.31 of the Civil Code is  
2 amended to read:

3 1789.31. (a) As used in this title, a “check casher”  
4 means a person or entity that for compensation engages,  
5 in whole or in part, in the business of cashing checks,  
6 warrants, drafts, money orders, or other commercial  
7 paper serving the same purpose. “Check casher” does not  
8 include a state or federally chartered bank, savings  
9 association, credit union, or industrial loan company.  
10 “Check casher” also does not include a retail seller  
11 engaged primarily in the business of selling consumer  
12 goods, including consumables, to retail buyers that cashes  
13 checks or issues money orders for a minimum flat fee not  
14 exceeding two dollars (\$2) as a service to its customers  
15 that is incidental to its main purpose or business.

16 (b) As used in this title, “deferred deposit” means a  
17 transaction whereby the check casher refrains from  
18 depositing a personal check written by a customer until  
19 a specific date, pursuant to a written agreement, as  
20 provided in Section 1789.33.

21 (c) As used in this title, “consecutive transaction”  
22 means a deferred deposit transaction in which the check  
23 casher enters into a new deferred deposit transaction



1 with the same customer within 24 hours after a previous  
2 deferred deposit transaction is completed.

3 SEC. 2. Section 1789.33 of the Civil Code is amended  
4 to read:

5 1789.33. (a) A check casher may defer the deposit of  
6 a personal check written by a customer for up to 30 days,  
7 pursuant to the provisions of this section. The face  
8 amount of the check shall not exceed four hundred dollars  
9 (\$400) plus the fee as provided in subdivision (a) of  
10 Section 1789.35. Each deferred deposit shall be made  
11 pursuant to a written agreement that has been signed by  
12 the customer and by the check casher or an authorized  
13 representative of the check casher. The written  
14 agreement shall contain a statement of the total amount  
15 of any fees charged for the deferred deposit, expressed  
16 both in United States currency and as an annual  
17 percentage rate (APR). The written agreement shall  
18 authorize the check casher to defer deposit of the  
19 personal check until a specific date not later than 30 days  
20 from the date the written agreement was signed and  
21 executed. The written agreement shall not permit the  
22 check casher to accept collateral.

23 (b) A customer who enters into a deferred deposit  
24 agreement and offers a personal check to a check casher  
25 pursuant to that agreement shall not be subject to any  
26 criminal penalty for the failure to comply with the terms  
27 of that agreement.

28 (c) A check casher who defers deposit of a personal  
29 check pursuant to this title shall provide by March 31 of  
30 the year following the deferred deposit transaction the  
31 following information to the Department of Justice:

32 (1) The total number and amount of deposits deferred  
33 in the previous year.

34 (2) The total number of deferred deposits outstanding  
35 as of December 31 of the previous year.

36 (3) The minimum, maximum, and average amount of  
37 deferred deposits and fees in the previous year.

38 (4) The total number of checks that could not be  
39 collected upon.

40 (5) The total number of checks collected upon.



1 (6) The average number of days a deposit check is  
2 deferred.

3 (7) The total number and amount of returned checks.

4 (d) A check casher may not engage in unfair or  
5 deceptive acts, practices, or advertising in the conduct of  
6 a deferred deposit business.

7 (e) A customer who enters into a deferred deposit  
8 agreement and offers a personal check pursuant to the  
9 agreement may rescind the deferred deposit transaction  
10 at no cost to the customer at any time prior to the close  
11 of business on the business day immediately following the  
12 date of the transaction by paying to the check casher, in  
13 cash, the amount of money advanced to the customer.

14 (f) A check casher shall collect past due accounts in a  
15 professional and lawful manner. A check casher shall not  
16 use unlawful threats, intimidation, or harassment to  
17 collect accounts.

18 (g) The check casher shall provide a written  
19 agreement to each customer who enters into a deferred  
20 deposit transaction. The written agreement shall be in at  
21 least 10-point type and shall be in substantially the  
22 following form:

23  
24 DEFERRED DEPOSIT SERVICE AGREEMENT &  
25 DISCLOSURE STATEMENT

26  
27 CREDITOR: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

28 CUSTOMER: \_\_\_\_\_ TELEPHONE NO. : \_\_\_\_\_

29 CHECK NO. : \_\_\_\_\_

30 DEFERRED DEPOSIT DATE:  
31 \_\_\_\_\_

32 DEFERRED DEPOSIT FEE:\* DISCLOSURE #: \_\_\_\_\_

33 U.S. \$ \_\_\_\_\_

34 DISCLOSURES UNDER FEDERAL RESERVE REGULATION Z  
35



1	ANNUAL	FINANCE	AMOUNT	TOTAL OF
2	PERCENTAGE	CHARGE	FINANCED	PAYMENT
3	RATE			
4	The cost of your	The dollar	The amount of	The amount you
5	credit as a	amount the	credit provided	will have paid
6	yearly rate.	credit will cost	to you or on	after you have
7		you.	your behalf.	made all
8				payments as
9				scheduled.
10	_____%	\$ _____	\$ _____	\$ _____
11	Your payment schedule will be:			
12				
13	Number of Payments	Amount of Payments	When Payments	
14			are Due	
15				
16				
17	Prepayment: If you pay off early, you will not be entitled to a refund of			
18	part of the finance charge. See the agreement below for additional in-			
19	formation about nonpayment and default.			
20				
21	Itemization of the Amount Financed of \$ _____			
22	\$ _____ Amount given to you directly.			
23	\$ _____ Prepaid finance charge.			
24				



AGREEMENT

Pursuant to this Agreement, you authorize The Company to defer deposit of the personal check identified above by Check Number until the Deferred Deposit Date set forth above. The fee for the deferred deposit is set forth above expressed both in U.S. currency and as an annual percentage rate. You acknowledge receipt of the "Amount Given to You Directly" shown above, and represent that you have not entered into an earlier deferred deposit agreement with The Company that is still in effect. You agree not to close the account that the check, draft, or electronic debit is drawn on, or take any other action to forestall the payment of the check, draft, or electronic debit. If, after deposit, the check is returned to us unpaid for any reason: (1) you agree to pay The Company a returned check charge of \$25; and (2) you authorize The Company to initiate electronic or paper debits to the checking account at the institution on which the check, which is ~~the~~ subject to the Agreement, is drawn. This authorization remains in full force and effect until The Company has received written notice of its termination, and until ~~the~~ The Company has had a reasonable opportunity to act on this authorization. The Company is not permitted to accept collateral in connection with this service.

Caution: It is important that you read the contract thoroughly before you sign it.

You acknowledge that you have read this ~~agreement~~ Agreement completely before signing below, and you have received a copy of this ~~agreement~~ Agreement.

_____	_____
Customer Signature	Date
By _____	_____
Authorized Representative	Date

We promote the responsible use of deferred deposit by our customers. We do not permit customers to continually pay fees for a single Deferred Deposit, as such practices lead to high costs for a single Deferred Deposit. High costs for a single Deferred Deposit are not in the best interest of our customers or The Company. Therefore, all Deferred Deposits must be paid in full on or before the agreed deposit date.



1 SEC. 3. Section 1789.35 of the Civil Code is amended  
2 to read:

3 1789.35. (a) A check casher shall not charge a fee for  
4 cashing a payroll check or government check in excess of  
5 3 percent if identification is provided by the customer, or  
6 3.5 percent without the provision of identification, of the  
7 face amount of the check, or three dollars (\$3),  
8 whichever is greater. Identification, for purposes of this  
9 section, is limited to a California driver's license, a  
10 California identification card, or a valid United States  
11 military identification card.

12 (b) A check casher may charge a fee of no more than  
13 ten dollars (\$10) to set up an initial account and issue an  
14 optional identification card for providing check cashing  
15 services. A replacement optional identification card may  
16 be issued at a cost not to exceed five dollars (\$5).

17 (c) A check casher shall provide a receipt to the  
18 customer for each transaction. When any customer enters  
19 into four consecutive deferred deposit agreements, the  
20 check casher shall provide the customer with information  
21 on credit counseling programs in the check casher's  
22 service area.

23 (d) Subject to the limitations of Section 1789.33, a  
24 check casher may charge a fee for cashing a personal  
25 check, as posted pursuant to Section 1789.30, for  
26 immediate deposit in an amount not to exceed 12 percent  
27 of the face value of the check, or for deferred deposit in  
28 an amount not to exceed 15 percent of the of the amount  
29 advanced. A check casher may not charge a fee of more  
30 than 12 percent of the amount advanced on the fifth  
31 consecutive deferred deposit transaction, as provided for  
32 in subdivision (e).

33 (e) A check casher shall not enter into an agreement  
34 for a deferred deposit with a customer during the period  
35 of time that an earlier written agreement for a deferred  
36 deposit for the same customer is in effect. A deferred  
37 deposit transaction may not be repaid, refinanced, or  
38 consolidated with the proceeds of another deferred  
39 deposit transaction. On the fifth consecutive deferred  
40 deposit transaction, a check casher may not offer the



1 customer a deferred deposit for more than 50 percent of  
2 the amount of the fourth consecutive deferred deposit.  
3 When the fifth consecutive deferred deposit transaction  
4 is collected upon, the check casher shall wait three  
5 business days before offering the customer another  
6 deferred deposit transaction.

7 (f) A check casher who enters into a deferred deposit  
8 agreement and accepts a check passed on insufficient  
9 funds, or any assignee of that check casher, shall not be  
10 entitled to recover damages in any action brought  
11 pursuant to, or governed by, Section 1719.

12 (g) For a transaction pursuant to Section 1789.33, a fee  
13 not to exceed ~~twenty five dollars (\$25)~~ *fifteen dollars*  
14 *(\$15)* may be charged for the return of a dishonored  
15 check by a depository institution. The fee may be  
16 collected by a check casher who holds a valid permit  
17 issued pursuant to Section 1789.37, when acting under the  
18 authority of that permit.

19 (h) No amount in excess of the amounts authorized by  
20 this section shall be directly or indirectly charged by a  
21 check casher pursuant to a deferred deposit agreement.

22 (i) Any person who violates any provision of this  
23 section shall be liable for a civil penalty not to exceed two  
24 thousand dollars (\$2,000) for each violation, which shall  
25 be assessed and recovered in a civil action brought in the  
26 name of the people of the State of California by the  
27 Attorney General or a district attorney in any court of  
28 competent jurisdiction. Any action brought pursuant to  
29 this subdivision shall be commenced within four years of  
30 the date on which the act or transaction upon which the  
31 action is based occurred.

32 (j) A willful violation of this section is a misdemeanor.

33 (k) Any person who is injured by any violation of this  
34 section may bring an action for the recovery of damages,  
35 an equity proceeding to restrain and enjoin those  
36 violations, or both. The amount awarded may be up to  
37 three times the damages actually incurred, but in no  
38 event less than the amount paid by the aggrieved  
39 consumer to a person subject to this section. If the  
40 plaintiff prevails, the plaintiff shall be awarded



1 reasonable attorney's fees and costs. If a court determines  
2 by clear and convincing evidence that a breach or  
3 violation was willful, the court, in its discretion, may  
4 award punitive damages in addition to the amounts set  
5 forth above.

6 SEC. 4. Section 1789.37 of the Civil Code is amended  
7 to read:

8 1789.37. (a) Every owner of a check casher's business  
9 shall obtain a permit from the Department of Justice to  
10 conduct a check casher's business.

11 (b) All applications for a permit to conduct a check  
12 casher's business shall be filed with the department in  
13 writing, signed by the applicant if an individual or by a  
14 member or officer authorized to sign if the applicant is a  
15 corporation or other entity, and shall state the name of  
16 the business, the type of business engaged in, whether the  
17 applicant intends to enter into deferred deposit  
18 agreements, and the business address. Each applicant  
19 shall be fingerprinted.

20 (c) Each applicant for a permit to conduct a check  
21 casher's business shall pay a fee not to exceed the cost of  
22 processing the application, fingerprinting the applicant,  
23 and checking or obtaining the criminal record of the  
24 applicant, at the time of filing the application.

25 (d) Each applicant for a permit to conduct a check  
26 casher's business shall maintain a bond issued by a surety  
27 company admitted to do business in this state. The  
28 principal sum of the bond shall be twenty-five thousand  
29 dollars (\$25,000). A copy of the bond shall be filed with  
30 the Secretary of State.

31 (1) The bond required by this section shall be in favor  
32 of, and payable to, the people of the State of California  
33 and shall be for the benefit of a person or persons  
34 damaged by a violation of this title.

35 (2) (A) An applicant may not conduct any check  
36 cashing business without having a current surety bond in  
37 the amount prescribed by this section and without filing  
38 a copy of the bond with the Secretary of State.

39 (B) Thirty days prior to the cancellation or  
40 termination of a surety bond required by this section, the



1 surety shall send a written notice of that cancellation or  
2 termination to both the applicant and the Secretary of  
3 State, identifying the bond and the date of cancellation or  
4 termination.

5 (C) If the applicant fails to obtain a new bond and file  
6 a copy of that bond with the Secretary of State by the  
7 effective date of the cancellation or termination of the  
8 former bond, the applicant shall cease to conduct any  
9 check cashing business unless and until the time as a new  
10 surety bond is obtained and a copy of that bond is filed  
11 with the Secretary of State.

12 (e) Each applicant shall annually, beginning one year  
13 from the date of issuance of a check casher's permit, file  
14 an application for renewal of the permit with the  
15 department, along with payment of a renewal fee not to  
16 exceed the cost of processing the application for renewal  
17 and checking or obtaining the criminal record of the  
18 applicant.

19 (f) The department shall deny an application for a  
20 permit to conduct a check casher's business, or for  
21 renewal of a permit, if the applicant has a felony  
22 conviction involving dishonesty, fraud, or deceit,  
23 provided the crime is substantially related to the  
24 qualifications, functions, or duties of a person engaged in  
25 the business of check cashing.

26 (g) The department shall adopt regulations to  
27 implement this section, and shall determine the amount  
28 of the application fees required by this section. The  
29 department shall prescribe forms for the applications and  
30 permit required by this section, which shall be uniform  
31 throughout the state.

32 (h) In any action brought by a city attorney or district  
33 attorney to enforce a violation of this section, any owner  
34 of a check casher's business who engages in the business  
35 of check cashing without holding a current and valid  
36 permit issued by the department pursuant to this section  
37 is subject to a civil penalty, as follows:

38 (1) For the first offense, not more than one thousand  
39 dollars (\$1,000).



1 (2) For the second offense, not more than five  
2 thousand dollars (\$5,000).

3 (i) Any person who has twice been found in violation  
4 of subdivision (h) and who, within 10 years of the date of  
5 the first offense, engages in the business of check cashing  
6 without holding a current and valid permit issued by the  
7 department pursuant to this section is guilty of a  
8 misdemeanor punishable by imprisonment in the county  
9 jail not exceeding six months, or by a fine not exceeding  
10 five thousand dollars (\$5,000), or by both.

11 (j) All civil penalties, forfeited bail, or fines received  
12 by any court pursuant to this section shall, as soon as  
13 practicable after the receipt thereof, be deposited with  
14 the county treasurer of the county in which the court is  
15 situated. Fines and forfeitures so deposited shall be  
16 disbursed pursuant to the Penal Code. Civil penalties so  
17 deposited shall be paid at least once a month as follows:

18 (1) Fifty percent to the Treasurer by warrant of the  
19 county auditor drawn upon the requisition of the clerk or  
20 judge of the court, to be deposited in the State Treasury  
21 on order of the Controller.

22 (2) Fifty percent to the city treasurer of the city, if the  
23 offense occurred in a city, otherwise to the treasurer of  
24 the county in which the prosecution is conducted.

25 Any money deposited in the State Treasury under this  
26 section which is determined by the Controller to have  
27 been erroneously deposited therein shall be refunded,  
28 subject to approval of the State Board of Control prior to  
29 the payment of the refund, out of any money in the State  
30 Treasury which is available by law for that purpose.

31 SEC. 5. Section 1789.39 is added to the Civil Code, to  
32 read:

33 1789.39. (a) The Department of Justice shall  
34 maintain a toll-free telephone number for receiving  
35 complaints from customers of check cashers conducting  
36 deferred deposit transactions.

37 (b) The Department of Justice shall compile an annual  
38 report of data submitted by check cashers as required by  
39 subdivision (c) of Section 1789.33. This data shall be  
40 aggregated and may not identify the proprietary data of



1 individual check cashers. This report shall be available to  
2 the public.

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