

AMENDED IN SENATE MAY 16, 2000

AMENDED IN SENATE APRIL 24, 2000

**SENATE BILL**

**No. 1501**

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**Introduced by Senator Perata**

February 15, 2000

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An act to amend Sections 1789.30, 1789.31, 1789.35, and 1789.37 of, to repeal Section 1789.33 of, and to add Title 1.6G (commencing with Section 1789.50) to Part 4 of Division 3 of the Civil Code, relating to deferred deposit loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1501, as amended, Perata. Deferred deposit loans.

Existing law governs the services provided by check cashers, including deferred deposit transaction services, as defined. Existing law also authorizes the Attorney General to bring a civil action for a violation of these provisions. A person who has been injured by a violation of these provisions may bring an action to recover damages and a court may award punitive damages if the court determines by clear and convincing evidence that the breach or violation was willful.

This bill would authorize a city attorney or the district attorney, in addition to the Attorney General, to bring a civil action for a violation of these provisions.

The bill would also remove references to direct deposit transactions contained in the above provisions and instead enact the Deferred Deposit Loan Act. The Deferred Deposit Loan Act would prohibit any person from engaging in or offering to engage in the business of making deferred deposit



loans, as defined, without first obtaining a license from the Department of ~~Justice~~ *Financial Institutions*. The act would, among other things, establish requirements for obtaining that license, including the requirement that the applicant secure a \$25,000 surety bond. The act would require a licensee to file a prescribed annual report regarding transactions governed by the act, which the Department of ~~Justice~~ *Financial Institutions* would analyze and forward to the Legislature. The act would also require the Department of ~~Justice~~ *Financial Institutions* to maintain a toll-free telephone number that consumers may call with complaints, and would require the Department of ~~Justice~~ *Financial Institutions* to develop notices and information that a licensee would be required to provide to consumers. The act would require that these notices and the deferred deposit loan agreement be written in languages other than English in certain instances. The act would impose limits on the fees, interest rate, number, and amount of deferred deposit loan transactions that a licensee may transact with a consumer. The act would provide that if the consumer enters into a consecutive transaction, as defined, the consumer may elect to participate in an optional repayment plan, as specified. The act would specify activities that a licensee is prohibited from pursuing in connection with a deferred deposit transaction, including threatening to use criminal process to collect on a deferred deposit check and attempting to collect damages pursuant to a civil action for a dishonored check. The act would also provide for civil remedies and impose criminal penalties for a violation of its provisions. By creating new crimes, 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 1789.30 of the Civil Code is  
2 amended to read:

3 1789.30. Every check casher, as applicable to the  
4 services provided, shall post a complete, detailed, and  
5 unambiguous schedule of all fees for (a) cashing checks,  
6 drafts, money orders, or other commercial paper serving  
7 the same purpose, (b) the sale or issuance of money  
8 orders, and (c) the initial issuance of any identification  
9 card. Each check casher shall also post a list of valid  
10 identification which is acceptable in lieu of identification  
11 provided by the check casher. The information required  
12 by this section shall be clear, legible, and in letters not less  
13 than one-half inch in height. The information shall be  
14 posted in a conspicuous location in the unobstructed view  
15 of the public within the check casher's premises.

16 SEC. 2. Section 1789.31 of the Civil Code is amended  
17 to read:

18 1789.31. As used in this title, a "check casher" means  
19 a person or entity that for compensation engages, in  
20 whole or in part, in the business of cashing checks,  
21 warrants, drafts, money orders, or other commercial  
22 paper serving the same purpose. "Check casher" does not  
23 include a state or federally chartered bank, savings  
24 association, credit union, or industrial loan company.  
25 "Check casher" also does not include a retail seller  
26 engaged primarily in the business of selling consumer  
27 goods, including consumables, to retail buyers that cashes  
28 checks or issues money orders for a minimum flat fee not  
29 exceeding two dollars (\$2) as a service to its customers  
30 that is incidental to its main purpose or business.

31 SEC. 3. Section 1789.33 of the Civil Code is repealed.

32 SEC. 4. Section 1789.35 of the Civil Code is amended  
33 to read:

34 1789.35. (a) A check casher shall not charge a fee for  
35 cashing a payroll check or government check in excess of  
36 3 percent if identification is provided by the customer, or  
37 3<sup>1</sup>/<sub>2</sub> percent without the provision of identification, of the  
38 face amount of the check, or three dollars (\$3),



1 whichever is greater. Identification, for purposes of this  
2 section, is limited to a California driver's license, a  
3 California identification card, or a valid United States  
4 military identification card.

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

10 (c) A check casher shall provide a receipt to the  
11 customer for each transaction.

12 (d) A check casher may charge a fee for cashing a  
13 personal check, as posted pursuant to Section 1789.30, in  
14 an amount not to exceed 12 percent of the face value of  
15 the check.

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

26 (f) A willful violation of this section is a misdemeanor.

27 (g) Any person who is injured by any violation of this  
28 section may bring an action for the recovery of damages,  
29 an equity proceeding to restrain and enjoin those  
30 violations, or both. The amount awarded may be up to  
31 three times the damages actually incurred, but in no  
32 event less than the amount paid by the aggrieved  
33 consumer to a person subject to this section. If the  
34 plaintiff prevails, the plaintiff shall be awarded  
35 reasonable attorney's fees and costs. If a court determines  
36 by clear and convincing evidence that a breach or  
37 violation was willful, the court, in its discretion, may  
38 award punitive damages in addition to the amounts set  
39 forth above.



1 SEC. 5. Section 1789.37 of the Civil Code is amended  
2 to read:

3 1789.37. (a) Every owner of a check casher's business  
4 shall obtain a permit from the Department of Justice to  
5 conduct a check casher's business.

6 (b) All applications for a permit to conduct a check  
7 casher's business shall be filed with the department in  
8 writing, signed by the applicant if an individual or by a  
9 member or officer authorized to sign if the applicant is a  
10 corporation or other entity, and shall state the name of  
11 the business, the type of business engaged in, and the  
12 business address. Each applicant shall be fingerprinted.

13 (c) Each applicant for a permit to conduct a check  
14 casher's business shall pay a fee not to exceed the cost of  
15 processing the application, fingerprinting the applicant,  
16 and checking or obtaining the criminal record of the  
17 applicant, at the time of filing the application.

18 (d) Each applicant shall annually, beginning one year  
19 from the date of issuance of a check casher's permit, file  
20 an application for renewal of the permit with the  
21 department, along with payment of a renewal fee not to  
22 exceed the cost of processing the application for renewal  
23 and checking or obtaining the criminal record of the  
24 applicant.

25 (e) The department shall deny an application for a  
26 permit to conduct a check casher's business, or for  
27 renewal of a permit, if the applicant has a felony  
28 conviction involving dishonesty, fraud, or deceit,  
29 provided the crime is substantially related to the  
30 qualifications, functions, or duties of a person engaged in  
31 the business of check cashing.

32 (f) The department shall adopt regulations to  
33 implement this section, and shall determine the amount  
34 of the application fees required by this section. The  
35 department shall prescribe forms for the applications and  
36 permit required by this section, which shall be uniform  
37 throughout the state.

38 (g) In any action brought by a city attorney or district  
39 attorney to enforce a violation of this section, any owner  
40 of a check casher's business who engages in the business



1 of check cashing without holding a current and valid  
2 permit issued by the department pursuant to this section  
3 is subject to a civil penalty, as follows:

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

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

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

17 (i) All civil penalties, forfeited bail, or fines received  
18 by any court pursuant to this section shall, as soon as  
19 practicable after the receipt thereof, be deposited with  
20 the county treasurer of the county in which the court is  
21 situated. Fines and forfeitures so deposited shall be  
22 disbursed pursuant to the Penal Code. Civil penalties so  
23 deposited shall be paid at least once a month as follows:

24 (1) Fifty percent to the Treasurer by warrant of the  
25 county auditor drawn upon the requisition of the clerk or  
26 judge of the court, to be deposited in the State Treasury  
27 on order of the Controller.

28 (2) Fifty percent to the city treasurer of the city, if the  
29 offense occurred in a city, otherwise to the treasurer of  
30 the county in which the prosecution is conducted.

31 Any money deposited in the State Treasury under this  
32 section which is determined by the Controller to have  
33 been erroneously deposited therein shall be refunded,  
34 subject to approval of the State Board of Control prior to  
35 the payment of the refund, out of any money in the State  
36 Treasury which is available by law for that purpose.

37 SEC. 6. Title 1.6G (commencing with Section  
38 1789.50) is added to Part 4 of Division 3 of the Civil Code,  
39 to read:

40



1 TITLE 1.6G. DEFERRED DEPOSIT LOANS

2  
3 CHAPTER 1. GENERAL PROVISIONS

4  
5 1789.50. It is the intent of the Legislature in enacting  
6 this title to ensure that deferred deposit loans are  
7 regulated in a manner that will best protect the interests  
8 of the people of the State of California. It is further the  
9 intent of the Legislature to protect consumers from  
10 misrepresentations and unfair dealings and abuses in the  
11 marketplace with respect to deferred deposit loans and  
12 to ensure that consumers receive adequate disclosure of  
13 all relevant terms. This title shall be liberally construed to  
14 achieve these purposes.

15 1789.51. This title shall be known and may be cited as  
16 the Deferred Deposit Loan Act.

17 1789.52. For purposes of this title, the following  
18 definitions apply:

19 (a) "Amount owed" means the sum of the finance  
20 charge, and the deferred deposit loan amount.

21 (b) "Check" has the meaning provided in Section 3104  
22 of the Commercial Code.

23 (c) "Consecutive transaction" means a deferred  
24 deposit transaction initiated within 72 hours of  
25 completion of a previous deferred deposit transaction.

26 (d) "Consumer" means any natural person who, singly  
27 or jointly with another consumer, enters into a deferred  
28 deposit loan.

29 (e) "Deferred deposit loan" means any arrangement  
30 conducted by any means in which a person for a fee,  
31 service charge, or other consideration, accepts a check  
32 from a consumer and provides a consumer cash or its  
33 equivalent and agrees not to offer the check for  
34 presentment for a period of time. "Deferred deposit  
35 loan" does not include any loan agreement which is  
36 entered into with a bank, savings and loan association,  
37 credit union, or other state or federally regulated  
38 financial institution that does not utilize an agency  
39 relationship with a facilitator, as defined in this section.



- 1 (f) “Deferred deposit loan amount” means the  
2 amount of cash proceeds provided to a consumer  
3 pursuant to a deferred deposit loan, exclusive of any  
4 interest, or administrative or other loan-related charge.
- 5 (g) “Department” means the Department of—Justice  
6 *Financial Institutions*.
- 7 (h) “Employee” means an individual who works for an  
8 employer, is listed on the employer’s payroll records, and  
9 is under the employer’s direction and control.
- 10 (i) “Facilitator” means any person who facilitates,  
11 enables, or acts as an agent for another person who makes  
12 deferred deposit loans. A facilitator shall be licensed  
13 pursuant to the provisions of Section 1789.60.
- 14 (j) “Finance charge” means any payment, charge, fee,  
15 cost or expense, however denominated or expressed, that  
16 a consumer contracts to pay for the privilege of obtaining  
17 a deferred deposit loan. “Finance charge” does not  
18 include the amounts, if any, for delinquency charges,  
19 attorney’s fees, court costs, or collection expenses.
- 20 (k) “Installment payment” means a partial payment  
21 on a deferred deposit loan made pursuant to Section  
22 1789.62.
- 23 (l) “Installment payment term” means a period of  
24 time for the consumer to make an installment payment,  
25 that is equal to the consumer’s payroll period or 15 days,  
26 whichever is greater. “Installment payment term” shall  
27 in no event exceed 31 days.
- 28 (m) “Licensee” means any person licensed by the  
29 Department of—Justice *Financial Institutions* under the  
30 provisions of this title to engage in deferred deposit loans.
- 31 (n) “Pay day” means the regular day on which a  
32 consumer receives a payment of earned wages, as  
33 provided in Chapter 1 (commencing with Section 200) of  
34 Part 1 of Division 2 of the Labor Code.
- 35 (o) “Pay period” means the regular period for which  
36 a consumer receives a payment of earned wages, as  
37 provided in Chapter 1 (commencing with Section 200) of  
38 Part 1 of Division 2 of the Labor Code.
- 39 (p) “Person” means any natural person, firm,  
40 partnership, association or corporation, or other entity



1 that makes a deferred deposit loan to a consumer in this  
2 state or any facilitator as defined in this section.

3 (q) “Principal” means a controlling person of an entity  
4 subject to this title, including, but not limited to, any  
5 officer, director, general partner, or person owning or  
6 controlling, directly or indirectly, 10 percent or more of  
7 the outstanding interests or equity securities of the  
8 applicant for a license, or the entity.

9 (r) “Unpaid balance” means the difference between  
10 the amount owed, and any and all installment payments  
11 made pursuant to Section 1789.62.

12  
13 CHAPTER 2. LICENSING  
14

15 1789.60. (a) No person shall engage in or offer to  
16 engage in the business regulated by this title without a  
17 current license issued by the department. The following  
18 shall be required by the department as a condition of  
19 licensure and license renewal:

20 (1) That neither the applicant nor any principal of the  
21 applicant has been convicted of or pleaded nolo  
22 contendere to a crime.

23 (2) That the applicant has provided a sworn statement  
24 that the applicant will not violate, or in the case of license  
25 renewal has not violated, any applicable state law when  
26 collecting payment or attempting to collect payment of  
27 deferred deposit loans made in this or any other state.

28 (3) That the applicant pay a nonrefundable fee  
29 established by the department, in an amount sufficient to  
30 cover the costs of the background check and the  
31 administration of the program, but not to exceed  
32 \_\_\_\_\_.

33 (4) That the applicant secure a surety bond in the  
34 amount of twenty-five thousand dollars (\$25,000),  
35 payable to the department and issued by an insurer  
36 authorized to do business in this state. A copy of the bond,  
37 including any and all riders and endorsements executed  
38 subsequent to the effective date of the bond, shall be filed  
39 with the department pursuant to procedures which the  
40 department shall establish, and shall be used for the

1 recovery of expenses, fines, and fees levied by the  
2 department in accordance with this division or for  
3 damages or penalties due to consumers as the result of a  
4 licensee’s violation of the requirements of this title.

5 (5) That the applicant pay the cost of an examination  
6 at a fee of seventy-five dollars (\$75) per hour for each  
7 examiner whenever the department determines that an  
8 examination or audit of the licensee is warranted, plus the  
9 travel expenses of any examiner required by the  
10 examination or audit to travel out of state.

11 (6) That the applicant provide any other information  
12 the department deems necessary to carry out this section.

13 (b) Each license shall be issued for a term of one year.  
14 Licenses shall be renewed pursuant to the requirements  
15 set forth in subdivision (a).

16 (c) Not more than one place of business shall be  
17 maintained under the same license, but the department  
18 may issue more than one license to the same licensee  
19 upon compliance with all the provisions of this title  
20 governing issuance of a single license.

21 ~~(d) The Pursuant to a hearing conducted by the Office~~  
22 ~~of Administrative Hearings, the department may revoke,~~  
23 ~~suspend, or deny the renewal of a license for any violation~~  
24 ~~of this title according to procedures that the department~~  
25 ~~may establish. If the department finds, after due notice~~  
26 ~~and hearing, or opportunity for hearing, that any licensee,~~  
27 ~~or an officer, agent, employee, or representative thereof,~~  
28 ~~has violated any of the provisions of this title or any other~~  
29 ~~procedures that the department may establish, or has~~  
30 ~~failed to comply with the regulations adopted by the~~  
31 ~~department, or has failed or refused to make its reports~~  
32 ~~to the department, or has furnished false information to~~  
33 ~~the department, the department may issue an order~~  
34 ~~revoking or suspending the right of the licensee and the~~  
35 ~~officer, agent, employee or representative to do business~~  
36 ~~in this state as a licensee. or any other regulation adopted~~  
37 ~~by the department as authorized pursuant to this title.~~  
38 Nothing in this subdivision shall be construed to prohibit  
39 the imposition of any additional administrative remedies



1 by the department *as authorized under law* or to preempt  
2 any civil or criminal liability of the licensee.

3 (e) The department shall maintain a list of licensees  
4 that shall be available to interested persons and the public  
5 upon request.

6 (f) The department shall establish a complaint process  
7 whereby a consumer ~~or any member of the public~~ may  
8 file a complaint against a licensee or employee who  
9 violates any provision of this title. The department shall  
10 maintain a toll-free telephone number to receive calls  
11 from consumers regarding complaints and concerns  
12 related to this title.

13 (g) The department shall investigate complaints and  
14 hold hearings as it deems appropriate. ~~The department~~  
15 *All hearings shall be conducted through the Office of*  
16 *Administrative Hearings, which* may make findings of  
17 fact, conclusions of law, issue cease and desist orders,  
18 citations, or administrative fines, *as authorized under law.*  
19 *The hearings shall be open to the public. The department*  
20 *may* refer the matter to the appropriate law enforcement  
21 agency for prosecution under this title, ~~and suspend or~~  
22 ~~revoke a license granted under this title. The proceedings~~  
23 ~~shall be open to the public.~~

24 (h) The department shall develop a list of  
25 representative examples of the dollar cost of loans and  
26 payment terms to illustrate loan structures for  
27 dissemination by licensees.

28 (i) The department shall develop a notice for  
29 distribution to consumers by licensees which informs the  
30 consumer about his or her rights and responsibilities  
31 related to deferred deposit loans. The notice shall include,  
32 but not be limited to, notice of the following:

33 (1) That the consumer is borrowing money that will be  
34 repaid when the check is cashed.

35 (2) That the consumer may repay the loan at any time  
36 before the check is cashed.

37 (3) Information about the payment structure for  
38 deferred deposit loans.

39 (4) That if the consumer cannot repay the loan, or if  
40 the consumer's checking account has insufficient funds to



1 pay the check, the consumer may be charged an  
2 additional fee of up to fifteen dollars (\$15) or the actual  
3 amount charged to the check casher by his or her  
4 financial institution, whichever is less.

5 (5) That the consumer cannot be prosecuted in a  
6 criminal action for passing a bad check or be threatened  
7 with prosecution.

8 (6) That the lender may allow an extension of time for  
9 repayment, but if the lender agrees to an extension, it  
10 cannot charge any additional fee of any kind.

11 (7) Any additional information that the department  
12 may deem necessary.

13 (j) On or before January 1, 2002, the department shall  
14 forward a report to the Legislature, including the  
15 information required pursuant to this section, as well as  
16 an analysis of that information, including, but not limited  
17 to, growth and trends in the industry, the impact on  
18 consumers, whether consumers are taking loans  
19 simultaneously from multiple licensees, and the  
20 feasibility of tracking these loans.

21 (k) The department shall also make and file annually  
22 as a public record a composite of the annual reports by  
23 licensees and any comments on the reports that it deems  
24 to be in the public interest.

25 (l) The department shall adopt regulations and  
26 procedures as reasonably necessary to implement the  
27 provisions of this title.

28

29 CHAPTER 3. DUTIES OF LICENSEE

30

31 1789.61. (a) Each licensee shall keep and use books,  
32 accounts, and records that will enable the department to  
33 determine if the licensee is complying with the provisions  
34 of this title and shall maintain any other records as  
35 required by the department. The department or a  
36 designee of the department may examine those records  
37 at any reasonable time. All records shall be kept for four  
38 years following the last entry on a loan and according to  
39 generally accepted accounting procedures, which means  
40 that an examiner shall be able to review the



1 recordkeeping and reconcile each consumer loan with  
2 documentation maintained in the consumer's loan file  
3 records.

4 (b) Each licensee shall file an annual report with the  
5 department pursuant to procedures which the  
6 department shall establish. These reports shall include,  
7 but not be limited to, the following information from the  
8 previous calendar year:

9 (1) The total number of deferred deposit loans made.

10 (2) The total number of individual customers.

11 (3) The total number of consumers who chose the  
12 optional payment plan provided for by Section 1789.62.

13 (4) The total number of deferred deposit loans  
14 outstanding.

15 (5) The minimum, maximum, and average dollar  
16 amount of deferred deposit loans.

17 (6) The average annual percentage rate, and the  
18 average length, in days, of deferred deposit loans.

19 (7) The actual number of repeat consumers.

20 (8) The actual number of transactions entered into  
21 with each customer during the calendar year.

22 (9) The average—~~annual~~ income as disclosed by the  
23 consumer pursuant to Section 1789.62 *for each of the*  
24 *following pay periods: one week, two weeks, and one*  
25 *month.*

26 (10) The total number and dollar amount of returned  
27 checks, the total number and dollar amount of checks  
28 recovered, and the total number and dollar amount of  
29 checks charged off as of December 31 of the previous  
30 year.

31 (11) A sworn statement that the licensee has not used  
32 the criminal process or caused the criminal process to be  
33 used in the collection of any deferred deposit loans or  
34 used any civil process to collect the payment of deferred  
35 payment loans not generally available to creditors to  
36 collect on loans in default during the calendar year  
37 ending as of December 31 of the previous year.

38 (12) Any additional information which the  
39 department deems appropriate.



1 (13) The licensee shall attest in writing to the accuracy  
2 of the information contained in the required annual  
3 reports.

4 (c) In no case shall a licensee or an employee of the  
5 licensee do any of the following:

6 (1) Engage in the business of deferred deposit lending  
7 unless the department has first issued a valid license to the  
8 licensee.

9 (2) Enter into more than one deferred deposit loan at  
10 a time with the same consumer.

11 (3) Accept or use the same check for a subsequent  
12 transaction, or permit a consumer to pay off all or a  
13 portion of one deferred deposit loan with the proceeds of  
14 another deferred deposit loan.

15 (4) Use any deceptive or unfair means to induce a  
16 consumer to tender the entire amount owed for the  
17 purpose of entering into another deferred deposit loan  
18 agreement with that consumer as an alternative to  
19 satisfying the obligation of a deferred deposit loan by  
20 means of installment payments. ~~If a consumer tenders  
21 payment for the entire amount owed and on or about the  
22 same day enters into another deferred deposit loan with  
23 the same licensee, it shall be presumed that the licensee  
24 has violated this subdivision. This presumption shall be a  
25 rebuttable presumption affecting the burden of proof.~~

26 (5) Attempt to use the check provided by the  
27 consumer in a deferred deposit transaction as security, or  
28 accept any collateral for a deferred deposit loan.

29 (6) Sell any insurance of any kind whether or not sold  
30 in connection with the making or collecting of a deferred  
31 deposit loan.

32 (7) Enter into a deferred deposit transaction with a  
33 minor.

34 (8) Threaten to use or use the criminal process to  
35 collect a deferred deposit loan.

36 (9) Threaten to use or use any civil process to collect  
37 a deferred payment loan if that process is not generally  
38 available to creditors to collect on loans in default.

39 (10) Alter the date or any other information on the  
40 check.



1 (11) Offer any benefit or incentive to a consumer in  
2 return for the consumer referring other potential  
3 borrowers to the licensee, including, but not limited to,  
4 discounts, rebates, credits on any existing or subsequent  
5 deferred deposit loan.

6 (12) Engage in any unfair, unlawful, or deceptive  
7 conduct or make any untrue or misleading statement in  
8 connection with the business of deferred deposit lending,  
9 including any violation of this title.

10 (d) A licensee or an assignee of the licensee may not  
11 commence an action pursuant to the provisions of Section  
12 1719 on a check provided for a deferred deposit loan.

13 (e) A licensee shall at all times be legally responsible  
14 for the good conduct in the business of his or her  
15 employees or agents.

16 (f) According to procedures that the department shall  
17 establish, the following information shall be included in  
18 notices to be posted by a licensee in each location of the  
19 licensee's business at which deferred deposit loans are  
20 made:

21 (1) A statement disclosing that the licensee cannot use  
22 the criminal process against a consumer to collect any  
23 deferred deposit loan.

24 (2) A schedule of interest and fees to be charged on  
25 representative loans, including the actual dollar amount  
26 charged and the corresponding annual percentage rate,  
27 based on information developed by the department.

28 (g) (1) The notice required by this section and the  
29 deferred deposit loan agreement required by Section  
30 1789.62 shall be written in the same language as  
31 principally used in any oral discussions or negotiations  
32 leading to execution of the loan agreement.

33 (2) The notices required by paragraph (2) of  
34 subdivision (a) and by Section 1789.62 shall be in English,  
35 Spanish, and any other language in which a significant  
36 amount of deferred deposit loan business is conducted at  
37 that location.

38



CHAPTER 4. RIGHTS AND RESTRICTIONS FOR DEFERRED DEPOSIT LOANS

1789.62. (a) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a notice prepared by the department pursuant to Section 1789.60 regarding the consumer's rights, including the toll-free telephone number of the department for receiving calls regarding consumer complaints and concerns. The notice shall be signed and dated by the consumer, and a copy provided to the consumer. The original shall be kept on file by the licensee.

(b) Before entering into a deferred deposit loan with a consumer, the licensee shall require the consumer to provide proof of ~~income, including annual~~ income. No licensee shall enter into a deferred deposit loan the amount of which exceeds 25 percent of the consumer's earned wages for a pay period, or more than three hundred dollars (\$300), whichever is less.

(c) (1) Every agreement for a deferred deposit loan shall be contained in a single document which shall set forth all of the agreements of the licensee and the consumer with respect to the rights and obligations of each party.

(2) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan document.

(3) Every deferred deposit loan agreement shall be in at least 10-point type. The deferred deposit loan agreement shall clearly and conspicuously contain all of the following:

(A) The name, address, and telephone number of the licensee making the deferred deposit loan, and the name of the individual employee who signs the agreement on behalf of the licensee.

(B) An itemization of the fees and interest charges to be paid by the consumer, including a representation of the fees in terms of an annual percentage rate.

(C) Disclosures required by the federal Truth-in-Lending Act (15 U.S.C. Sec. 1601 et seq.),



1 regardless of whether that act applies to the particular  
2 deferred deposit loan.

3 (D) A clear description of the consumer’s payment  
4 obligations under the loan.

5 (E) In a manner that is more conspicuous than the  
6 other information provided in the loan document and  
7 that is in at least 14-point ~~bold typeface~~ *boldface type*, the  
8 following statement: “You cannot be prosecuted or  
9 threatened with prosecution in a criminal action to  
10 collect this loan.” The notice shall be located immediately  
11 above the space reserved for the consumer’s signature.

12 (4) Under no circumstances shall a deferred deposit  
13 loan agreement include any of the following:

14 (A) A hold harmless clause.

15 (B) A confession of judgment clause.

16 (C) A waiver of the right to a jury trial, if applicable,  
17 in any action brought by or against a consumer.

18 (D) A mandatory arbitration clause.

19 (E) Any assignment of or order for payment of wages  
20 or other compensation for services.

21 (F) A provision in which the consumer agrees not to  
22 assert any claim or defense arising out of the loan  
23 agreement.

24 (d) A deferred deposit loan transaction shall be  
25 structured as follows:

26 (1) The maximum loan amount shall be 25 percent of  
27 the consumer’s earned wages for the consumer’s pay  
28 period or three hundred dollars (\$300), whichever is less.

29 (2) The finance charge on a deferred deposit loan may  
30 not exceed ~~15~~ 12 percent of the deferred deposit loan  
31 amount.

32 (3) To obtain a deferred deposit loan, a consumer shall  
33 provide to a licensee one check made payable to the  
34 licensee in the amount equal to the sum of the deferred  
35 deposit loan amount and the finance charge on that  
36 deferred deposit loan. At the time a consumer and  
37 licensee enter into a deferred deposit loan, the licensee  
38 may not accept more than one check. The licensee may  
39 not offer for presentment a check written by a consumer  
40 to obtain a deferred deposit loan until the end of the



1 consumer’s pay period, as defined in Section 1789.52. If a  
2 consumer does not have a regular pay period, the pay  
3 period shall be deemed to be at least 15 days.

4 (4) The deferred deposit loan agreement shall set  
5 forth a schedule for repayment.

6 (5) If a consumer enters into a consecutive  
7 transaction, the consumer may choose to participate in  
8 an optional repayment plan provided for in this section.

9 (A) The consumer shall repay the full amount owed in  
10 four installment payments.

11 (B) ~~The consumer shall tender to the licensee an~~  
12 ~~amount in cash equal to each of the first three installment~~  
13 ~~payments.~~ At the time of payment of each of the first  
14 three installment payments, the consumer shall provide  
15 to the licensee ~~another~~ *sufficient cash to satisfy the*  
16 *installment payment due and a new check made payable*  
17 to the licensee in the amount of the remaining unpaid  
18 balance. In exchange for the consumer’s new check, the  
19 licensee shall return to the consumer the check  
20 previously being held pursuant to the deferred deposit  
21 loan agreement.

22 (C) The first installment payment term shall  
23 commence on the date upon which the licensee and a  
24 consumer enter into a deferred deposit loan agreement.  
25 The first installment payment shall be due and payable on  
26 the final day of the first installment payment term, or on  
27 the consumer’s next regularly scheduled payday,  
28 whichever is later. In no event shall an installment  
29 payment term exceed 31 days. Each subsequent  
30 installment payment term thereafter shall commence on  
31 the day the prior installment payment became due and  
32 payable. Each installment payment thereafter shall be  
33 due and payable on the final day of that installment  
34 payment term.

35 (D) To satisfy the obligation of the fourth installment  
36 payment, the consumer may either:

37 (i) Inform a licensee to present for payment the  
38 consumer’s check being held pursuant to the deferred  
39 deposit loan agreement.



1 (ii) Tender to the licensee an amount in cash equal to  
2 the final installment payment in exchange for the  
3 consumer's check being held pursuant to the deferred  
4 deposit loan agreement.

5 (E) A consumer may pay an amount greater than the  
6 minimum required for each installment payment at any  
7 time on or before the due date of the installment  
8 payment. Payment by a consumer prior to the due date  
9 of an installment payment shall not alter the due date of  
10 the next installment payment as provided for in this  
11 subdivision.

12 (F) If a consumer fails to make a required installment  
13 payment in a timely manner as provided for in this  
14 section, the consumer shall be in default of the deferred  
15 deposit loan agreement.

16 (G) After each payment is made, the licensee shall  
17 give to the person making the payment a signed, dated  
18 receipt showing the amount paid and the balance due on  
19 the loan.

20 (e) A consumer subject to a deferred deposit loan  
21 agreement may at any time satisfy the agreement by  
22 either of the following:

23 (1) ~~Authorizing—Providing written authorization to a~~  
24 licensee to present the consumer's check for payment on  
25 a date other than that set forth in the agreement. The  
26 licensee shall ~~record in the consumer's loan file the date~~  
27 ~~and time when the consumer gave the authorization~~  
28 *keep a copy of the written authorization in the*  
29 *consumer's loan file.* The licensee shall not offer a  
30 consumer's check for presentment without that  
31 authorization from the consumer.

32 (2) Tendering to the licensee the entire amount owed  
33 in cash in exchange for the consumer's check being held  
34 pursuant to the deferred deposit loan agreement.

35 1789.63. Upon the receipt of the check from the  
36 consumer for a deferred deposit loan, the licensee shall  
37 immediately stamp the back of the check with an  
38 endorsement that states: "This check is being negotiated  
39 as part of a deferred deposit loan made pursuant to



1 Section 1789.62 of the Civil Code and is not subject to the  
2 provisions of Section 1719 of the Civil Code.”

3 1789.64. If there are insufficient funds to pay a check  
4 on the date of presentment, a licensee may charge a fee,  
5 not to exceed the lesser of fifteen dollars (\$15) or the fee  
6 imposed upon the licensee by the financial institution.  
7 The licensee shall not collect more than one such fee with  
8 respect to a particular check even if the check has been  
9 deposited more than once. A fee charged pursuant to this  
10 subdivision is a licensee’s exclusive charge for late  
11 payment.

12  
13 CHAPTER 5. REMEDIES  
14

15 1789.67. (a) The remedies provided herein are  
16 cumulative and apply to licensees and their employees.

17 (b) The violation of any provision of this title, or any  
18 regulation adopted thereunder, except as the result of  
19 accidental or bona fide error of computation, renders the  
20 loan void, and the person shall have no right to collect,  
21 receive, or retain any principal, interest, or other charges  
22 whatsoever with respect to the loan.

23 (c) A consumer damaged by a violation of this title is  
24 entitled to recover all of the following:

- 25 (1) Actual damages.
- 26 (2) Civil penalties of two thousand dollars (\$2,000) per  
27 violation.
- 28 (3) The consumer’s reasonable attorney’s fees and  
29 costs.
- 30 (4) If a court determines by clear and convincing  
31 evidence that a breach or violation was willful, the court,  
32 in its discretion, may award punitive damages in addition  
33 to the amounts set forth above.
- 34 (5) Equitable relief as the court deems proper.

35 (d) Any person, including any member, officer, or  
36 director of a licensee, who willfully violates any provision  
37 of this title is guilty of a misdemeanor.

38 (e) Any waiver or modification of the provisions of this  
39 title by the consumer shall be void and unenforceable as  
40 contrary to public policy.



1 (f) The rights, remedies, and penalties established by  
2 this title are cumulative to the rights, remedies, or  
3 penalties established under other laws.

4 (g) If any portion of this title or the application thereof  
5 to any person or circumstances is held invalid, that  
6 invalidity shall not affect other provisions or applications  
7 of the title that can be given effect without the invalid  
8 provision or application, and to this end the provisions of  
9 this title are severable.

10 SEC. 7. No reimbursement is required by this act  
11 pursuant to Section 6 of Article XIII B of the California  
12 Constitution because the only costs that may be incurred  
13 by a local agency or school district will be incurred  
14 because this act creates a new crime or infraction,  
15 eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section  
17 17556 of the Government Code, or changes the definition  
18 of a crime within the meaning of Section 6 of Article  
19 XIII B of the California Constitution.

