SENATE BILL   No. 365

Introduced by Senator Lowenthal

February 15, 2011

An act to amend Sections 23001 and 23035 of, and to add Section 23024.5 to, the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 365, as introduced, Lowenthal. Deferred deposit transactions: database: transaction recision.

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 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. A willful violation of the California Deferred Deposit Transaction Law is a crime.

This bill would require the commissioner to implement a database that enables a licensee to receive specified information regarding a consumer's history with deferred deposit transactions. The bill would require the commissioner to implement the database on or before September 1, 2012, unless specified conditions exist that do not allow for the implementation. The bill would authorize the commissioner to contract with a 3rd-party provider to operate the database. The bill would authorize the commissioner to adopt rules to establish the database and for the retention, archiving, and deletion of the information entered into, or stored by, the database. The bill would authorize the commissioner to impose a fee on licensees for the reasonable regulatory

costs of the commissioner associated with the administration of the database, as specified. The bill would impose various requirements on licensees relative to information that would be required to be reported to the database, if it is developed and implemented. The bill would also authorize customers to rescind a deferred deposit transaction at no cost if the customer notifies the licensee of the intent to rescind and returns the proceeds of the transaction, as specified. Because a willful violation of these requirements 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.

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
14 an agent for a deferred deposit originator, or who assists a deferred
15 deposit originator in the origination of a deferred deposit
16 transaction. However, "licensee" does not include a state or
17 federally chartered bank, thrift, savings association, industrial loan
18 company, or credit union. "Licensee" also does not include a retail
19 seller engaged primarily in the business of selling consumer goods,
20 including consumables, to retail buyers that cashes checks or issues

1 money orders for a minimum fee not exceeding two dollars ($2)
2 as a service to its customers that is incidental to its main purpose
3 or business. "Licensee" also does not include an employee regularly
4 employed by a licensee at the licensee's place of business. An
5 employee, when acting under the scope of the employee's
6 employment, shall be exempt from any other law from which the
7 employee's employer is exempt.
8   (e) "Person" means an individual, a corporation, a partnership,
9 a limited liability company, a joint venture, an association, a joint
10 stock company, a trust, an unincorporated organization, a
11 government entity, or a political subdivision of a government
12 entity.
13   (f) "Deferred deposit originator" means a person who offers,
14 originates, or makes a deferred deposit transaction.
15   *(g) "Database" means the database described in Section*
16 *23024.5.*
17   *(h) "Database provider" means one of the following:*
18   *(1) A third-party provider selected by the commissioner pursuant*
19 *to Section 23024.5 to operate the statewide database.*
20   *(2) The commissioner, if the commissioner has not selected a*
21 *third-party provider pursuant to Section 23024.5.*
22   SEC. 2. Section 23024.5 is added to the Financial Code, to
23 read:
24   23024.5. (a) The commissioner shall, on or before September
25 1, 2012, implement a common database with real-time access
26 through an Internet connection for licensees as provided in this
27 section, unless implementing the database by that date would be
28 financially impracticable for the commissioner to design and
29 operate a database or because a contract with a qualified third-party
30 provider has not been entered into. The database shall be accessible
31 to the department and licensees to verify whether any deferred
32 deposit transactions are outstanding for a particular person. Before
33 entering into a deferred deposit transaction, a licensee shall
34 accurately and promptly submit to the database any data in the
35 format that the commissioner may require by rule or order,
36 including the customer's name, social security number or
37 employment authorization alien number, address, driver's license
38 number, amount of the transaction, date of transaction, date that
39 the completed transaction is closed, and any additional information
40 required by the commissioner. The commissioner may adopt rules

1   to administer and enforce the provisions of this section and to
2   assure that the database is used by licensees in accordance with
3   this section.
4   (b) The commissioner may impose a fee on licensees for the
5   reasonable regulatory costs of the commissioner associated with
6   the administration of the database, not to exceed three dollars ($3)
7   per transaction. One-half of this fee may be charged to the
8   customer.
9   (c) The commissioner may operate the database or may contract
10 with a third-party provider to operate the database. If the
11 commissioner contracts with a third-party provider for the operation
12 of the database, all of the following shall apply:
13 (1) The commissioner shall ensure that the third-party provider
14 selected as the database provider operates the database pursuant
15 to the provisions of this section.
16 (2) The commissioner shall consider cost of service and ability
17 to meet all the requirements of this section in selecting a third-party
18 provider as the database provider.
19 (3) In selecting a third-party provider the commissioner shall
20 consider those providers that have demonstrated similar systems
21 that are operational in two or more states.
22 (4) In selecting a third-party provider, the commissioner shall
23 consider the third-party provider's ability to prevent fraud, abuse,
24 and other unlawful activities associated with deferred deposit
25 transactions and provide additional tools for the administration
26 and enforcement of this division.
27 (5) The third-party provider shall use the data collected under
28 this section for the purposes set forth in this section and pursuant
29 to the contract with the department and for no other purpose.
30 (6) If the third-party provider violates this section, the
31 commissioner may terminate the contract and the third-party
32 provider may be prohibited from becoming a party to any other
33 state contracts.
34 (7) A person injured by the third-party provider's violation of
35 this section may maintain a civil cause of action against the
36 third-party provider and may recover actual damages plus
37 reasonable attorney's fees and court costs.
38 (8) The commissioner may require that the third-party provider
39 collect from the licensee the fee authorized under subdivision (b)
40 and transmit the fee to the commissioner no later than the first day

1 of each month. The third-party provider shall deposit any fee
2 collected in a separate escrow account in a federally insured
3 financial institution and shall hold the fee deposited in trust for
4 the State of California.
5   (d) The database shall allow a licensee accessing the database
6 to do all of the following:
7   (1) Verify whether a customer has any open deferred deposit
8 transactions with any licensee that have not been closed.
9   (2) Provide information necessary to ensure licensee compliance
10 with any requirements imposed by the United States Treasury
11 Office of Foreign Assets Control and the United States Treasury
12 Office of Financial Crimes Enforcement Network.
13   (3) Track and monitor the number of customers who notify a
14 licensee of violations of this division, the number of times a
15 licensee agreed that a violation occurred, the number of times that
16 a licensee did not agree that a violation occurred, the amount of
17 restitution paid, and any other information the commissioner
18 requires by rule or order.
19   (e) While operating the database, the database provider shall
20 do all of the following:
21   (1) Establish and maintain a process for responding to
22 transaction verification requests due to technical difficulties
23 occurring with the database that prevent a licensee from accessing
24 the database through the Internet, including, but not limited to,
25 multiple call centers located in the United States by the third-party
26 provider.
27   (2) Comply with any applicable federal and state provisions to
28 prevent identity theft.
29   (3) Provide accurate and secure receipt, transmission, and
30 storage of customer data.
31   (4) Meet the requirements of this section.
32   (f) When the database provider receives notification that a
33 deferred deposit transaction has been closed, the database provider
34 shall designate the transaction as closed in the database
35 immediately, but in no event after 11:59 p.m. on the day the
36 database provider receives notification.
37   (g) The database provider shall automatically designate a
38 deferred deposit transaction as closed in the database five days
39 after the transaction maturity date unless a licensee reports to the
40 database provider before that time that the transaction remains

1 open because of the customer's failure to make payment; because
2 the customer's payment instrument or an electronic redeposit is
3 in the process of clearing the banking system; because the
4 customer's payment instrument is being returned to the deferred
5 deposit service business licensee for insufficient funds, a closed
6 account, or a stop payment order; or because of any other factors
7 determined by the commissioner. If a licensee reports the status
8 of a transaction as open in a timely manner, the transaction remains
9 an open transaction until it is closed and the database provider is
10 notified that the transaction is closed.
11   (h) If a licensee stops offering, originating, or making deferred
12 deposit transactions, the database provider shall designate all open
13 transactions with that licensee as closed in the database 60 days
14 after the date the licensee stops offering, originating, or making
15 deferred deposit transactions, unless the licensee reports to the
16 database provider before the expiration of the 60-day period which
17 of its transactions remain open and the specific reason each
18 transaction remains open. The licensee shall also provide to the
19 commissioner a reasonably acceptable plan that outlines how the
20 licensee will continue to update the database after it stops offering,
21 originating, or making deferred deposit transactions. The
22 commissioner shall promptly approve or disapprove the plan and
23 immediately notify the licensee of the commissioner's decision.
24 If the plan is disapproved, the licensee may submit a new plan or
25 may submit a modified plan for the licensee to follow. If at any
26 time the commissioner reasonably determines that a licensee who
27 has stopped offering, originating, or making deferred deposit
28 transactions is not updating the database in accordance with its
29 approved plan, the commissioner shall immediately close or
30 instruct the database provider to immediately close all remaining
31 open transactions of that licensee.
32   (i) The response to an inquiry to the database provider by a
33 licensee shall state only that a person is eligible or ineligible for a
34 new deferred deposit transaction and describe the reason for that
35 determination. Only the person seeking the transaction may make
36 a direct inquiry to the database provider to request a more detailed
37 explanation of a particular transaction that was the basis for the
38 ineligibility determination. Any information regarding a person's
39 transaction history is confidential, is not subject to public
40 inspection, is not a public record subject to the disclosure

1 requirements of the California Public Records Act, is not subject
2 to discovery, subpoena, or other compulsory process, except in an
3 administrative or legal action arising under this division, and shall
4 not be disclosed to any person other than the commissioner.
5   (j) The commissioner may access the database only for purposes
6 of an investigation, examination, or enforcement action concerning
7 an individual database provider, licensee, customer, or other person.
8   (k) The commissioner shall investigate and enforce any
9 violations of this section and shall not delegate that responsibility
10 to any third-party provider.
11   (*l*)(1) The commissioner shall make a determination that the
12 database is fully operational and shall send written notification of
13 the following to each licensee subject to the provisions of this
14 section:
15   (A) That the database has been implemented.
16   (B) The exact date that the database shall be considered
17 operational for the data entry requirement set forth in paragraph
18 (2).
19   (2) A licensee shall promptly and accurately enter into the
20 database all transactions undertaken by the licensee upon receipt
21 of the written notification that the database has been implemented.
22   (m) The commissioner may, by rule or order, do all of the
23 following:
24   (1) Require that data be retained in the database only as required
25 to ensure licensee compliance with this section.
26   (2) Require that deferred deposit transaction data in the database
27 be archived within 365 days after the transaction is closed, unless
28 needed for a pending enforcement or legal action.
29   (3) Require that any identifying customer information be deleted
30 from the database when data are archived.
31   (4) Require that data in the database concerning a deferred
32 deposit transaction be deleted from the database three years after
33 the transaction is closed or, if any administrative, legal, or law
34 enforcement action is pending, three years after the administrative,
35 legal, or law enforcement action is completed, whichever is later.
36   (n) The commissioner may maintain access to data archived
37 under this section for examination, investigation, or legislative or
38 policy review.
39   (o) A licensee may rely on the information contained in the
40 database as accurate and shall not be subject to any administrative

1 penalty or civil liability as a result of relying on inaccurate
2 information contained in the database, provided the licensee
3 accurately and promptly submits any required data before entering
4 into a deferred deposit transaction with a customer.
5 (p) The commissioner may use the database to administer and
6 enforce this division.
7 SEC. 3. Section 23035 of the Financial Code is amended to
8 read:
9 23035. (a) A licensee may defer the deposit of a customer's
10 personal check for up to 31 days, pursuant to the provisions of this
11 section. The face amount of the check shall not exceed three
12 hundred dollars ($300). Each deferred deposit transaction shall be
13 made pursuant to a written agreement as described in subdivision
14 ~~(e)~~ *(f)* that has been signed by the customer and by the licensee or
15 an authorized representative of the licensee.
16 *(b) A customer may rescind a deferred deposit transaction at*
17 *no cost by notifying the licensee that he or she wishes to rescind*
18 *the transaction and returning the proceeds of the transaction to*
19 *the licensee no later than the end of the next business day following*
20 *the day on which the deferred deposit transaction was made. The*
21 *licensee shall make reasonable and accessible provisions for a*
22 *customer to contact the licensee in a timely manner, for purposes*
23 *of notifying the licensee of his or her intent to rescind the*
24 *transaction and return the loan proceeds.*
25 ~~(b)~~
26 *(c)* A customer who enters into a deferred deposit transaction
27 and offers a personal check to a licensee pursuant to an agreement
28 shall not be subject to any criminal penalty for the failure to comply
29 with the terms of that agreement.
30 ~~(c)~~
31 *(d)* Before entering into a deferred deposit transaction, licensees
32 shall distribute to customers a notice that shall include, but not be
33 limited to, the following:
34 (1) Information about charges for deferred deposit transactions.
35 (2) That if the customer's check is returned unpaid, the customer
36 may be charged an additional fee of up to fifteen dollars ($15).
37 (3) That the customer cannot be prosecuted in a criminal action
38 in conjunction with a deferred deposit transaction for a returned
39 check or be threatened with prosecution.

1   (4) The department's toll-free telephone number for receiving
2 calls regarding customer complaints and concerns.
3   (5) That the licensee may not accept any collateral in conjunction
4 with a deferred deposit transaction.
5   (6) That the check is being negotiated as part of a deferred
6 deposit transaction made pursuant to Section 23035 of the Financial
7 Code and is not subject to the provisions of Section 1719 of the
8 Civil Code. No customer may be required to pay treble damages
9 if this check does not clear.
10   (d)
11   (e) The following notices shall be clearly and conspicuously
12 posted in the unobstructed view of the public by all licensees in
13 each location of a business providing deferred deposit transactions
14 in letters not less than one-half inch in height:
15   (1) The licensee cannot use the criminal process against a
16 consumer to collect any deferred deposit transaction.
17   (2) The schedule of all charges and fees to be charged on those
18 deferred deposit transactions with an example of all charges and
19 fees that would be charged on at least a one-hundred-dollar ($100)
20 and a two-hundred-dollar ($200) deferred deposit transaction,
21 payable in 14 days and 30 days, respectively, giving the
22 corresponding annual percentage rate. The information may be
23 provided in a chart as follows:
24

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

30   (e)
31   (f) An agreement to enter into a deferred deposit transaction
32 shall be in writing and shall be provided by the licensee to the
33 customer. The written agreement shall authorize the licensee to
34 defer deposit of the personal check, shall be signed by the
35 customer, and shall include all of the following:
36   (1) A full disclosure of the total amount of any fees charged for
37 the deferred deposit transaction, expressed both in United States
38 currency and as an APR as required under the Federal Truth In
39 Lending Act and its regulations.

1 (2) A clear description of the customer's payment obligations
2 as required under the Federal Truth In Lending Act and its
3 regulations.
4 (3) The name, address, and telephone number of the licensee.
5 (4) The customer's name and address.
6 (5) The date to which deposit of check has been deferred (due
7 date).
8 (6) The payment plan, or extension, if applicable as allowed
9 under subdivision (c) of Section 23036.
10 (7) An itemization of the amount financed as required under
11 the Federal Truth In Lending Act and its regulations.
12 (8) Disclosure of any returned check charges.
13 (9) That the customer cannot be prosecuted or threatened with
14 prosecution to collect.
15 (10) That the licensee cannot accept collateral in connection
16 with the transaction.
17 (11) That the licensee cannot make a deferred deposit transaction
18 contingent on the purchase of another product or service.
19 (12) Signature space for the customer and signature of the
20 licensee or authorized representative of the licensee and date of
21 the transaction.
22 (13) Any other information that the commissioner shall deem
23 necessary by regulation.
24 (f)
25 *(g)* The notice required by subdivision (c) shall be written and
26 available in the same language principally used in any oral
27 discussions or negotiations leading to execution of the deferred
28 deposit agreement and shall be in at least 10-point type.
29 (g)
30 *(h)* The written agreement required by subdivision (e) shall be
31 written in the same language principally used in any oral
32 discussions or negotiations leading to execution of the deferred
33 deposit agreement; shall not be vague, unclear, or misleading and
34 shall be in at least 10-point type.
35 (h)
36 *(i)* Under no circumstances shall a deferred deposit transaction
37 agreement include any of the following:
38 (1) A hold harmless clause.
39 (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)~~
6   *(j)* If the licensee sells or otherwise transfers the debt at a later
7 date, the licensee shall clearly disclose in a written agreement that
8 any debt or checks held or transferred pursuant to a deferred deposit
9 transaction made pursuant to Section 23035 are not subject to the
10 provisions of Section 1719 of the Civil Code and that no customer
11 may be required to pay treble damages if the check or checks are
12 dishonored.
13   SEC. 4. The Legislature finds and declares that Section 1 of
14 this act imposes a limitation on the public's right to access to the
15 meetings of public bodies or the writings of public officials and
16 agencies within the meaning of Section 3 of Article I of the
17 California Constitution. Pursuant to that constitutional provision,
18 the Legislature makes the following findings to demonstrate the
19 interest protected by this limitation and the need for protecting
20 that interest:
21   In order to allow the Department of Corporations to fully
22 accomplish it's goals, it is imperative to protect the interest of
23 those persons submitting information to the department to ensure
24 that any personal or sensitive business information that this act
25 requires those persons to submit is protected as confidential
26 information.
27   SEC. 5. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

O