

AMENDED IN SENATE APRIL 5, 2011

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 amended, 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, *and would require certain disclosures in that regard*. 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

company, or credit union. "Licensee" also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum fee not exceeding two dollars (\$2) as a service to its customers that is incidental to its main purpose or business. "Licensee" also does not include an employee regularly employed by a licensee at the licensee's place of business. An employee, when acting under the scope of the employee's employment, shall be exempt from any other law from which the employee's employer is exempt.

(e) "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) "Deferred deposit originator" means a person who offers, originates, or makes a deferred deposit transaction.

(g) "Database" means the database described in Section 23024.5.

(h) "Database provider" means one of the following:

(1) A third-party provider selected by the commissioner pursuant to Section 23024.5 to operate the statewide database.

(2) The commissioner, if the commissioner has not selected a third-party provider pursuant to Section 23024.5.

SEC. 2. Section 23024.5 is added to the Financial Code, to read:

23024.5. (a) The commissioner shall, on or before September 1, 2012, implement a common database with real-time access through an Internet connection for licensees as provided in this section, unless implementing the database by that date would be financially impracticable for the commissioner to design and operate a database or because a contract with a qualified third-party provider has not been entered into. The database shall be accessible to the department and licensees to verify whether any deferred deposit transactions are outstanding for a particular person. Before entering into a deferred deposit transaction, a licensee shall accurately and ~~promptly~~ *immediately* submit to the database any data in the format that the commissioner may require by rule or order, including the customer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, date that

1 the completed transaction is closed, and any additional information
2 required by the commissioner. *A licensee shall promptly correct*
3 *any incorrect data entered into the database that was previously*
4 *submitted.* The commissioner may adopt rules to administer and
5 enforce the provisions of this section and to ~~assure~~ *ensure* that the
6 database is used by licensees in accordance with this section.

7 (b) The commissioner may impose a fee on licensees for the
8 reasonable regulatory costs of the commissioner associated with
9 the administration of the database, not to exceed three dollars (\$3)
10 per transaction. One-half of this fee may be charged to the
11 customer.

12 (c) The commissioner may operate the database or may contract
13 with a third-party provider to operate the database. If the
14 commissioner contracts with a third-party provider for the operation
15 of the database, all of the following shall apply:

16 (1) The commissioner shall ensure that the third-party provider
17 selected as the database provider operates the database pursuant
18 to the provisions of this section.

19 (2) The commissioner shall consider cost of service and ability
20 to meet all the requirements of this section in selecting a third-party
21 provider as the database provider.

22 ~~(3) In selecting a third-party provider the commissioner shall~~
23 ~~consider those providers that have demonstrated similar systems~~
24 ~~that are operational in two or more states.~~

25 ~~(4)~~

26 (3) In selecting a third-party provider, the commissioner shall
27 consider the third-party provider's ability to prevent fraud, abuse,
28 and other unlawful activities associated with deferred deposit
29 transactions and provide additional tools for the administration
30 and enforcement of this division.

31 ~~(5)~~

32 (4) The third-party provider shall use the data collected under
33 this section for the purposes set forth in this section and pursuant
34 to the contract with the department and for no other purpose.

35 ~~(6)~~

36 (5) If the third-party provider violates this section, the
37 commissioner may *immediately* terminate the contract and the
38 third-party provider may be prohibited from becoming a party to
39 any other state contracts.

40 ~~(7)~~

(6) A person injured by the third-party provider's *willful* violation of this section may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs.

(8)

(7) The commissioner may require that the third-party provider collect from the licensee the fee authorized under subdivision (b) and transmit the fee to the commissioner no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the State of California.

(d) The database shall allow a licensee accessing the database to do all of the following:

(1) Verify whether a customer has any open deferred deposit transactions with any licensee that have not been closed.

(2) Provide information necessary to ensure licensee compliance with any requirements imposed by the ~~United States Treasury Office of Foreign Assets Control and the United States Treasury Office of Financial Crimes Enforcement Network.~~

~~(3) Track and monitor the number of customers who notify a licensee of violations of this division, the number of times a licensee agreed that a violation occurred, the number of times that a licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the commissioner requires by rule or order. Office of Foreign Assets Control of the United States Department of the Treasury and the Office of Financial Crimes Enforcement Network of the United States Department of the Treasury.~~

(e) While operating the database, the database provider shall do all of the following:

(1) Establish and maintain a process, *including, but not limited to, a toll-free telephone number* for responding to transaction verification requests due to technical difficulties occurring with the database that prevent a licensee from accessing the database through the Internet, including, but not limited to, multiple call centers located in the United States by the third-party provider.

(2) Comply with any applicable federal and state provisions to prevent identity theft.

1 (3) Provide accurate and secure receipt, transmission, and
2 storage of customer data.

3 (4) Meet the requirements of this section.

4 (5) *Track and monitor the number of customers who notify the*
5 *department of violations of this division, the number of times a*
6 *licensee agreed that a violation occurred, the number of times that*
7 *a licensee did not agree that a violation occurred, the amount of*
8 *restitution paid, and any other information the commissioner*
9 *requires by rule or order.*

10 (f) When the database provider receives notification that a
11 deferred deposit transaction has been closed, the database provider
12 shall designate the transaction as closed in the database
13 ~~immediately, but in no event after 11:59 p.m. on the day the~~
14 ~~database provider receives notification.~~ immediately.

15 (g) *The database provider shall immediately notify the*
16 *department if it is experiencing any technical difficulties that*
17 *prevent a licensee from entering into the database all transactions*
18 *undertaken during that time.*

19 (g)

20 (h) The database provider shall automatically designate a
21 deferred deposit transaction as closed in the database five days
22 after the transaction maturity date unless a licensee reports to the
23 database provider before that time that the transaction remains
24 open because of the customer's failure to make payment; because
25 the customer's payment instrument or an electronic redeposit is
26 in the process of clearing the banking system; because the
27 customer's payment instrument is being returned to the deferred
28 deposit service business licensee for insufficient funds, a closed
29 account, or a stop payment order; or because of any other factors
30 determined by the commissioner. If a licensee reports the status
31 of a transaction as open in a timely manner, the transaction remains
32 an open transaction until it is closed and the database provider is
33 notified that the transaction is closed.

34 (h)

35 (i) If a licensee stops offering, originating, or making deferred
36 deposit transactions, the database provider shall designate all open
37 transactions with that licensee as closed in the database 60 days
38 after the date the licensee stops offering, originating, or making
39 deferred deposit transactions, unless the licensee reports to the
40 database provider before the expiration of the 60-day period which

1 of its transactions remain open and the specific reason each
2 transaction remains open. The licensee shall also provide to the
3 commissioner a reasonably acceptable plan that outlines how the
4 licensee will continue to update the database after it stops offering,
5 originating, or making deferred deposit transactions. The
6 commissioner shall promptly approve or disapprove the plan and
7 immediately notify the licensee of the commissioner's decision.
8 If the plan is disapproved, the licensee may submit a new plan or
9 may submit a modified plan for the licensee to follow. If at any
10 time the commissioner reasonably determines that a licensee who
11 has stopped offering, originating, or making deferred deposit
12 transactions is not updating the database in accordance with its
13 approved plan, the commissioner shall immediately close or
14 instruct the database provider to immediately close all remaining
15 open transactions of that licensee.

16 (i)

17 (j) The response to an inquiry to the database provider by a
18 licensee shall state only that a person is eligible or ineligible for a
19 new deferred deposit transaction and describe the reason for that
20 determination. Only the person seeking the transaction may make
21 a direct inquiry to the database provider, *by calling a toll-free*
22 *telephone number*, to request a more detailed explanation of a
23 particular transaction that was the basis for the ineligibility
24 determination. Any information regarding a person's transaction
25 history is confidential, is not subject to public inspection, is not a
26 public record subject to the disclosure requirements of the
27 California Public Records Act, is not subject to discovery,
28 subpoena, or other compulsory process, except in an administrative
29 or legal action arising under this division, and shall not be disclosed
30 to any person other than the commissioner.

31 (j)

32 (k) The commissioner may access the database ~~only~~ for purposes
33 of an ~~investigation, examination~~ *examination, investigation*, or
34 enforcement action concerning an individual database provider,
35 licensee, customer, or other person, *or for legislative and policy*
36 *review*.

37 (k)

38 (l) The commissioner shall investigate and enforce any violations
39 of this section and shall not delegate that responsibility to any
40 third-party provider.

1 (m) *The commissioner shall require a licensee to do all of the*
2 *following:*

3 (1) *Immediately report any technical difficulties that prevent*
4 *the licensee from immediately entering into the database all*
5 *transactions undertaken during that time.*

6 (2) *Use the vendor's toll-free telephone number to obtain*
7 *authorization for each transaction during the time that the licensee*
8 *is experiencing technical difficulties.*

9 (3) *Obtain authorization from the department if the licensee*
10 *needs additional time to meet the requirement of entering the*
11 *information in the database.*

12 ~~(t)~~

13 (n) (1) The commissioner shall make a determination that the
14 database is fully operational and shall send written notification of
15 the following to each licensee subject to the provisions of this
16 section:

17 (A) That the database has been implemented.

18 (B) The exact date that the database shall be considered
19 operational for the data entry requirement set forth in paragraph
20 (2).

21 (2) A licensee shall promptly and accurately enter into the
22 database all transactions undertaken by the licensee upon receipt
23 of the written notification that the database has been implemented.

24 ~~(m)~~

25 (o) The commissioner may, by rule or order, do all of the
26 following:

27 (1) Require that data be retained in the database only as required
28 to ensure licensee compliance with this section.

29 (2) Require that deferred deposit transaction data in the database
30 be archived within 365 days after the transaction is closed, unless
31 needed for a pending enforcement or legal action.

32 (3) Require that any identifying customer information be deleted
33 from the database when data are archived.

34 (4) Require that data in the database concerning a deferred
35 deposit transaction be deleted from the database three years after
36 the transaction is closed or, if any administrative, legal, or law
37 enforcement action is pending, three years after the administrative,
38 legal, or law enforcement action is completed, whichever is later.

39 ~~(n)~~

1 (p) The commissioner may maintain access to data archived
2 under this section for examination, investigation, *enforcement*, or
3 legislative or policy review.

4 (~~o~~)

5 (q) A licensee may rely on the information contained in the
6 database as accurate and shall not be subject to any administrative
7 penalty or civil liability as a result of relying on inaccurate
8 information contained in the database, provided the licensee
9 accurately and promptly submits any required data before entering
10 into a deferred deposit transaction with a customer.

11 (~~p~~)

12 (r) The commissioner ~~may~~ *shall* use the database to administer
13 and enforce this division.

14 SEC. 3. Section 23035 of the Financial Code is amended to
15 read:

16 23035. (a) A licensee may defer the deposit of a customer's
17 personal check for up to 31 days, pursuant to the provisions of this
18 section. The face amount of the check shall not exceed three
19 hundred dollars (\$300). Each deferred deposit transaction shall be
20 made pursuant to a written agreement as described in subdivision
21 (f) that has been signed by the customer and by the licensee or an
22 authorized representative of the licensee.

23 (b) A customer may rescind a deferred deposit transaction at
24 no cost by notifying the licensee that he or she wishes to rescind
25 the transaction and returning the proceeds of the transaction to the
26 licensee no later than the end of the next business day following
27 the day on which the deferred deposit transaction was made. The
28 licensee shall make reasonable and accessible provisions for a
29 customer to contact the licensee in a timely manner, for purposes
30 of notifying the licensee of his or her intent to rescind the
31 transaction and return the loan proceeds.

32 (c) A customer who enters into a deferred deposit transaction
33 and offers a personal check to a licensee pursuant to an agreement
34 shall not be subject to any criminal penalty for the failure to comply
35 with the terms of that agreement.

36 (d) Before entering into a deferred deposit transaction, licensees
37 shall distribute to customers a notice that shall include, but not be
38 limited to, the following:

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

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

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

(4) The department's toll-free telephone number for receiving calls regarding customer complaints ~~and concerns~~, *concerns, and reports of violations*.

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

(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

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

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

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

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

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

1 (3) *The customer's right to rescind a deferred deposit*
2 *transaction at no cost by notifying the licensee that he or she wishes*
3 *to rescind the transaction and returning the proceeds of the*
4 *transaction to the licensee no later than the end of the next business*
5 *day following the day on which the deferred deposit transaction*
6 *was made.*

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

12 (1) A full disclosure of the total amount of any fees charged for
13 the deferred deposit transaction, expressed both in United States
14 currency and as an APR as required under the ~~Federal~~ *federal*
15 Truth In Lending Act and its regulations.

16 (2) A clear description of the customer's payment obligations
17 as required under the ~~Federal~~ *federal* Truth In Lending Act and its
18 regulations.

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

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

21 (5) The date to which deposit of check has been deferred (due
22 date).

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

25 (7) An itemization of the amount financed as required under
26 the ~~Federal~~ *federal* Truth In Lending Act and its regulations.

27 (8) Disclosure of any returned check charges.

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

30 (10) That the licensee cannot accept collateral in connection
31 with the transaction.

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

34 (12) Signature space for the customer and signature of the
35 licensee or authorized representative of the licensee and date of
36 the transaction.

37 (13) *Disclosure of the customer's right to rescind the transaction*
38 *at no cost by notifying the licensee that he or she wishes to rescind*
39 *the transaction and returning the proceeds of the transaction to*

1 *the licensee no later than the end of the next business day following*
2 *the day on which the deferred deposit transaction was made.*

3 ~~(13)~~

4 (14) Any other information that the commissioner shall deem
5 necessary by regulation.

6 (g) The notice required by subdivision~~(e)~~ (d) shall be written
7 and available in the same language principally used in any oral
8 discussions or negotiations leading to execution of the deferred
9 deposit agreement and shall be in at least 10-point type.

10 (h) The written agreement required by subdivision~~(e)~~ (f) shall
11 be written in the same language principally used in any oral
12 discussions or negotiations leading to execution of the deferred
13 deposit agreement; shall not be vague, unclear, or misleading and
14 shall be in at least 10-point type.

15 (i) Under no circumstances shall a deferred deposit transaction
16 agreement include any of the following:

17 (1) A hold harmless clause.

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

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

21 (4) Any acceleration provision.

22 (5) Any unconscionable provision.

23 (j) If the licensee sells or otherwise transfers the debt at a later
24 date, the licensee shall clearly disclose in a written agreement that
25 any debt or checks held or transferred pursuant to a deferred deposit
26 transaction made pursuant to Section 23035 are not subject to the
27 provisions of Section 1719 of the Civil Code and that no customer
28 may be required to pay treble damages if the check or checks are
29 dishonored.

30 SEC. 4. The Legislature finds and declares that Section 1 of
31 this act imposes a limitation on the public's right to access to the
32 meetings of public bodies or the writings of public officials and
33 agencies within the meaning of Section 3 of Article I of the
34 California Constitution. Pursuant to that constitutional provision,
35 the Legislature makes the following findings to demonstrate the
36 interest protected by this limitation and the need for protecting
37 that interest:

38 In order to allow the Department of Corporations to fully
39 accomplish ~~it's~~ its goals, it is imperative to protect the interest of
40 those persons submitting information to the department to ensure

1 that any personal or sensitive business information that this act
2 requires those persons to submit is protected as confidential
3 information.

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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