AMENDED IN SENATE APRIL 1, 2013

SENATE BILL No. 515

Introduced by Senator Jackson
(Coauthor: Senator Beall)

February 21, 2013

An act to amend Sections ~~23001 and 23026 of~~ *23026, 23035, and 23036 of, and to add Section 23036.5 to,* the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 515, as amended, Jackson. Deferred deposit transactions.

Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the Commissioner of Corporations *until July 1, 2013, and thereafter by the Senior Deputy Commissioner of Business Oversight for the Division of Corporations,* of persons engaged in the business of originating or making deferred deposit transactions, as defined. Existing law requires a licensee to file an annual report with the commissioner, on or before March 15 of each year. *Under existing law, the licensee's annual report is confidential and not open to public inspection.* Existing law requires the commissioner to prepare an annual consolidated report based upon specified information received from licensees. Existing law authorizes the commissioner to suspend or revoke the license of a license that fails to file the annual report. Existing law makes a willful violation of the California Deferred Deposit Transaction Law a crime.

Under existing law, a licensee may defer the deposit of a customer's check for up to 31 days, regardless of the check amount. Existing law requires a licensee to provide a notice to the customer regarding the deferred deposit transaction, containing specified information, including

an example of all charges and fees that would be charged on at least a $100 and a $200 deferred deposit transaction, payable in 14 and 30 days, respectively. Existing law also authorizes a licensee to offer an extension of time, or a payment plan, for the repayment of a deferred deposit transaction under specified circumstances.

This bill would revise the period for which a licensee could defer a customer's check, depending on the amount of the check. The bill would require the notification provided to the customer to set forth an example of charges and fees charged on a $100, $200, and $300 deferred deposit payable in 30, 60, or 90 days, respectively. The bill would impose specified underwriting duties on licensees, to determine a customer's likely ability to repay a deferred deposit transaction when due. The bill would also prohibit a licensee from entering into a deferred deposit transaction with a customer if it would result in the customer entering into more than 4 deferred deposit transactions in a 12-month period.

This bill would delete existing repayment extension procedures, and instead require a licensee to offer an installment payment option, as specified, to a customer who notifies the licensee that he or she is unable to repay a deferred deposit transaction amount when due. The bill would delete the provisions that make a licensee's annual report to the commissioner confidential and exempt from public inspection. The bill would revise the required contents of the licensees' and commissioner's annual reports described above to include, among other things, prescribed information relating to installment plans entered into by a licensee.

Existing law prohibits a licensee from entering into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.

This bill instead would prohibit a licensee from entering into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect with any licensee, as specified.

This bill would require the commissioner to develop and implement a common database to provide licensees with real-time access, via an Internet connection, to specified information relating to deferred deposit transaction customers. Records in the database would not be open to public inspection. The bill would prescribe the duties of licensees, the database provider, and the commissioner in connection with the creation

and operation of the database, and additionally would make various conforming changes. The bill would authorize the database provider, pursuant to rules adopted by the commissioner, to charge a fee for entering data into the database.

Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Because a willful violation of the bill's requirements would be a crime, 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.

~~The Governor's Reorganization Plan No. 2 of the 2011–12 Regular Session provides that, on and after July 1, 2013, the responsibilities of the Department of Corporations and the Commissioner of Corporations shall be transferred to the Department of Business Oversight and the Deputy Commissioner of Business Oversight for the Division of Corporations.~~

~~This bill instead would require a licensee to file the annual report described above by March 20 of each year. The bill would make additional changes to conform with the Governor's Reorganization Plan No. 2.~~

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

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

~~SECTION 1. Section 23001 of the Financial Code is amended to read:~~

~~23001. As used in this division, the following terms have the following meanings:~~

~~(a) "Deferred deposit transaction" means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.~~

~~(b) "Commissioner" means the Deputy Commissioner of Business Oversight for the Division of Corporations.~~

~~(c) "Department" means the Department of Business Oversight.~~

~~(d) "Licensee" means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, "licensee" does not include a state or 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.~~

~~SEC. 2.~~

SECTION 1. Section 23026 of the Financial Code is amended to read:

23026. On or before March ~~20~~ *15* of each year, beginning March 2006, each licensee shall file an annual report with the commissioner pursuant to procedures that the ~~deputy~~ commissioner shall establish. ~~The licensee's annual report shall be kept confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and any regulations adopted thereunder.~~ The annual consolidated report shall be prepared by the ~~deputy~~ commissioner and made available to the public. For the previous calendar year, these reports shall include the following:

(a) The total number and dollar amount of deferred deposit transactions made by the licensee.

(b) The total dollar amount of fees paid by customers who entered into deferred deposit transactions.

~~(b)~~

(c) The total number of individual customers who entered into deferred deposit transactions.

(d) The total number of individual borrowers who entered into short-term consumer loan transactions, by gross monthly income, in categories to be established by the commissioner.

~~(c)~~

(e) The minimum, maximum, and average amount of deferred deposit transactions.

~~(d)~~

(f) The *minimum, maximum, and* average annual percentage rate of deferred deposits.

~~(e)~~

(g) The ~~average~~ *distribution of the* number of days of *the terms of* deferred deposit transactions*, in a format to be established by the commissioner*.

~~(f)~~

(h) The total number and dollar amount of returned checks.

~~(g)~~

(i) The total number and dollar amount of checks recovered.

~~(h)~~

(j) The total number and dollar amount of checks charged off.

(k) The total number of installment plans entered into.

(l) The minimum, maximum, and average length of installment plans entered into.

(m) The number of borrowers entering into each permissible number of deferred deposit transactions, from one transaction to four transactions, in the previous calendar year.

(n) Any other information that the commissioner believes is relevant or useful.

SEC. 2. Section 23035 of the Financial Code is amended to read:

23035. (a) ~~A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section.~~ The face amount of ~~the~~ *a customer's personal* check shall not exceed three hundred dollars ($300). *A licensee may defer the*

deposit of the customer's personal check for a period of not less than 30 days for a face amount of up to one hundred dollars ($100), not less than 60 days for a face amount of one hundred one dollars ($101) to two hundred dollars ($200), inclusive, and not less than 90 days for a face amount of two hundred one dollars ($201) to three hundred dollars ($300), inclusive, pursuant to this section. Each deferred deposit transaction shall be made pursuant to a written agreement as described in subdivision (e) that has been signed by the customer and by the licensee or an authorized representative of the licensee.

(b) A licensee is prohibited from making a deferred deposit transaction to a customer if making that deferred deposit transaction would result in a customer entering into more than four deferred deposit transactions from all licensees in any 12-month period.

(c) A licensee shall underwrite each deferred deposit transaction to determine a customer's ability to pay the face amount of the check when due, and shall not enter into a deferred deposit transaction if the licensee determines, through its underwriting, that the customer's total monthly debt service payments, at the time the transaction is entered, including the amount of the deferred deposit transaction for which the customer is being considered, and across all outstanding forms of credit that can be independently verified by the licensee, exceed 50 percent of the customer's gross monthly income.

(1) The licensee shall seek information and documentation pertaining to all of a customer's outstanding debt obligations during the application for a deferred deposit transaction, including loans that are self-reported by the customer but not available through independent verification. The licensee shall verify that information using a credit report from at least one of the three major credit bureaus or through other available electronic debt verification services that provide reliable evidence of a customer's outstanding debt obligations.

(2) The licensee shall not be required to consider loans from friends or family, for purposes of debt-to-income ratio evaluation.

~~(b)~~

(d) A customer who enters into a deferred deposit transaction and offers a personal check to a licensee pursuant to an agreement

shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement.

~~(c)~~

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

(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.

(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, *commonly referred to as a payday loan,* 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.

~~(d)~~

(f) 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~~ *($100),* two-hundred-dollar ~~($200)~~ *($200), and three-hundred-dollar ($300)* deferred deposit transaction, payable in ~~14 days and 30~~ *30 days, 60 days, and 90* days, respectively, giving the corresponding annual percentage rate. The information may be provided in a chart as follows:

Amount Provided	Fee	Amount of Check	~~14-day APR~~ *30-day APR*	~~30-day APR~~ *60-day APR*	*90-day APR*
$100	XX	XXX	XXX	XXX	*XXX*
$200	XX	XXX	XXX	XXX	*XXX*
$300	*XX*	*XXX*	*XXX*	*XXX*	*XXX*

~~(e)~~

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

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

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

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

(4) The customer's name and address.

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

(6) The ~~payment plan, or extension~~ *installation plan*, if applicable as allowed under subdivision ~~(c)~~ *(b)* of Section 23036.

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

(8) Disclosure of any returned check charges.

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

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

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

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

(13) Any other information that the commissioner shall deem necessary by regulation.

~~(f)~~

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

~~(g)~~

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

~~(h)~~

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

(1) A hold harmless clause.

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

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

(4) Any acceleration provision.

(5) Any unconscionable provision.

~~(i)~~

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

SEC. 3. Section 23036 of the Financial Code is amended to read:

23036. (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.

~~(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan. A licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of Section 23037.~~

(b) (1) (A) If a customer notifies a licensee, on or before the date that the transaction is due, that the customer is unable or will be unable to repay a deferred deposit transaction when due, the licensee shall inform the customer that the customer may convert the deferred deposit transaction to an installment plan. The licensee shall convert the deferred deposit transaction to an installment plan at the customer's request.

(B) Each agreement for an installment plan shall be in writing and acknowledged by both the customer and the licensee. The licensee may not assess any other fee, interest charge, or other charge on the customer as a result of converting the small loan into an installment plan. The installment plan shall provide for the payment of the total of payments due on the deferred deposit transaction over a period not less than 90 days for a deferred deposit transaction of one hundred dollars ($100) or less, not less than 180 days for a deferred deposit transaction of between one hundred one dollars ($101) and two hundred dollars ($200), inclusive, and not less than 270 days for a deferred deposit transaction of between two hundred one dollars ($201) and three hundred dollars ($300), inclusive.

(C) The customer may pay the total amount due at any time. The licensee may not charge any penalty, fee, or charge to the customer for prepayment of the loan installment plan by the customer.

(D) Each licensee shall conspicuously disclose to each customer in the deferred deposit transaction agreement or note that the customer has access to an installment plan, as provided for in this subdivision. A licensee's failure to provide an installment plan in accordance with this section constitutes a violation of this division.

(2) The licensee shall return any postdated checks that the customer has given to the licensee for the original deferred deposit transaction at the initiation of the installment plan.

(3) A licensee may accept postdated checks for installment plan payments at the time the installment plan is originated. If any check accepted as payment under the installment plan is dishonored, the licensee may not charge the customer any fee for the dishonored check. If a customer defaults on the installment plan, the licensee may charge the customer a one-time installment plan default fee of twenty-five dollars ($25).

(4) A licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of Section 23037.

(c) A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect *with any licensee, as reflected by the database established pursuant to Section 23036.5*.

(d) A licensee who enters into a deferred deposit transaction agreement, or any assignee of that licensee, shall not be entitled to recover damages for that transaction in any action brought pursuant to, or governed by, Section 1719 of the Civil Code.

(e) A fee not to exceed fifteen dollars ($15) may be charged for the return of a dishonored check by a depositary institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

(g) A licensee shall be subject to the provisions of Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code.

SEC. 4. Section 23036.5 is added to the Financial Code, to read:

23036.5. (a) The commissioner, by contract with a third-party provider or otherwise, shall develop and implement a common database with real-time access, via an Internet connection, by means of which a licensee may determine all of the following:

(1) Whether a customer has an outstanding deferred deposit transaction with any licensee.

(2) Whether the customer is eligible for a loan under subdivision (b) of Section 23035 and subdivision (c) of Section 23036.

(3) Whether the customer is in an installment plan.

(4) Any other information necessary to comply with this division.

(b) Licensees shall do all of the following:

(1) Before entering into a deferred deposit transaction with a customer, determine using the database whether the customer has a deferred deposit transaction in effect with any licensee so as to comply with subdivision (c) of Section 23036.

(2) Before entering into a deferred deposit transaction, accurately and 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 the completed transaction is closed, income by category established by the commissioner, ZIP Code where the transaction occurs, gender, and any additional information required by the commissioner.

(3) Promptly correct any incorrect data entered into the database that was previously submitted.

(4) Use the database provider's toll-free telephone number to obtain authorization for each transaction during any time that the licensee is experiencing technical difficulties.

(5) Obtain authorization from the department if the licensee needs additional time to meet the requirement of entering the information in the database.

(6) Satisfy the requirements of this section.

(c) A licensee shall continue to enter and update all required information for any deferred deposit transactions subject to this division that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by this division. Within 10 business days after ceasing to make loans subject to this division, the licensee shall submit a plan for continuing compliance with this subdivision to the commissioner for approval. The commissioner shall promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this subdivision.

(d) 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 via the Internet, including, but not limited to, multiple call centers located in the United States by the third-party provider.

(2) Take all reasonable measures, including, but not limited to, complying with any applicable federal and state provisions to prevent identity theft.

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

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

(e) The commissioner shall adopt rules to administer and enforce this section and to ensure that the database is used by licensees in accordance with this section, including, but not limited to, all of the following:

(1) A rule requiring that data are retained in the database only as required to ensure licensee compliance with this section.

(2) A rule requiring that identifying borrower information be deleted from the database on a regular and routine basis, 12 months after the transaction is closed.

(3) A rule requiring the archiving of deleted data.

(4) A rule prohibiting the database from ranking the credit worthiness of a borrower.

(5) A rule requiring that data collected pursuant to this section be used only as prescribed in this section and for no other purpose.

(6) A rule authorizing imposition of a fee, per transaction, for data required to be submitted. The fee shall not exceed the reasonable costs of entering the data into the database and shall not include any costs paid by the commissioner to the provider for operating the database. The fee shall be payable to the database provider in a manner prescribed by the commissioner. A licensee may not charge a customer all or part of the fee.

(7) A rule authorizing and establishing procedures for persons to request reports and or data from the database provider, provided that any identifying customer information is removed before disclosure.

(f) The commissioner shall investigate and enforce any violation of this section and shall not delegate that responsibility to any third-party provider.

(g) The commissioner shall make a determination that the database is fully operational and shall send written notification of all of the following to each licensee subject to the provisions of this section:

(1) That the database has been implemented.

(2) The exact date that the database shall be considered operational triggering licensee's duties under subdivision (b).

(h) (1) The database established under this section shall not be considered a public record open to inspection under Section 6253 of the Government Code.

(2) Notwithstanding paragraph (1), persons may request and the database provider shall provide, reports or data from the database, provided that all identifying customer information is removed before any disclosure by the database provider.

SEC. 5. The Legislature finds and declares that Section 4 of this act, which adds Section 23036.5 to the Financial Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting the interest:

Records of deferred deposit transaction customers include personal financial information, which must be protected to avoid identity theft and other misuse. Therefore, the health and safety of the people of California are enhanced by limiting access of deferred deposit transaction data to ensure that customer information remains confidential.

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

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