

INVITATION FOR COMMENTS
PROPOSED CHANGES UNDER THE
CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW
(Additions shown by underline and deletions shown by strikethrough)

1. Section 2022 is adopted to read:

§ 2022. License Application: Out-of-State Business Locations.

(a) A deferred deposit originator license for a business location outside this state may be issued if the applicant agrees in writing in the license application to do either of the following, at the Commissioner's discretion:

(1) Make the licensee's books, accounts, papers, records and files available to the Commissioner or the Commissioner's representatives in this state, or

(2) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or the Commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23024, Financial Code.

2. Section 2023 is adopted to read:

§ 2023. Definition of Deferred Deposit Originator.

A deferred deposit originator means any person who in subdivisions (d) or (f) of Section 23001 of the Financial Code, conducts deferred deposit transaction business, or arranges a deferred deposit transaction for a deferred deposit originator, acts as an agent for a deferred deposit originator, or assists or helps facilitate a deferred deposit originator in the origination of a deferred deposit transaction, or offers to make a deferred deposit transaction under a name that differs from the deferred deposit originator that ultimately makes the deferred deposit transaction and collects personal

information from prospective customers, in this state by originating business from or directing business to this state.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23001 and 23005, Financial Code.

3. Section 2023.1 is adopted to read:

§ 2023.1. Prohibition Against Transfer of License or Business Location.

(a) A deferred deposit originator shall not assign, lease, rent, sell or otherwise transfer a license or a business location to any person in any manner that allows the making of a deferred deposit transaction at the business location as a separate business from the deferred deposit originator.

(b) A deferred deposit originator shall control and supervise any person who offers, arranges, assists, or acts as an agent in the making of a deferred deposit transaction at the business location.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23018 and 23037, Financial Code.

4. Section 2023.2 is adopted to read:

§ 2023.2. Definition of Employee.

(a) An employee for purposes of determining a licensee in subdivision (d) of Financial Code section 23001, is defined as:

(1) An individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(2) Whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23001, Financial Code.

5. Section 2024 is adopted to read:

§ 2024. Officers, Directors, Partners, Managing Members and Other Persons: Maintenance of Current List with Commissioner: Information Required.

A deferred deposit originator shall at all times maintain on file with the Commissioner a current list of officers, directors, partners in the case of a partnership, managing members in the case of a limited liability company, persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity shares, persons responsible for operations at licensed locations, and any other person making operational or management decisions at the place of business. Changes in partnerships are limited to the conditions set forth in subdivision (b) of Section 23018 of the Financial Code. In the event of any change in the officers, directors, partners or other persons named in the application, a deferred deposit originator shall file with the Commissioner an amendment to the application containing the same information concerning the new person(s) as is required in the application, within ten business days from the date of the change.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23010 and 20311, Financial Code.

6. Amend Section 2025 to read:

§ 2025. Books and Records: Standards for Keeping.

(a) For purposes of this section, the term “long form application” means the initial application submitted to the Department to conduct deferred deposit transactions in California under Section 2020 of these rules.

(b) A licensee shall maintain the following books, records and accounts at the licensed place of business provided in its long form application, provided that records maintained at the each additional location are available at the licensed location within 24 hours of request: records demonstrating minimum net worth requirements in compliance with Section 23007 of the Financial Code including quarterly unaudited balance sheets, records demonstrating surety bond requirements in compliance with Section 23013 of the Financial Code, a list of licensed locations by address and license number, the advertising file as provided in subsection (f), bank or other financial institution statements, and any other records ~~identified by written demand~~ upon request of the Commissioner.

(c)(1) Except as provided in subsection (e), records to be maintained at each licensed business location for each deferred deposit transaction shall include at least the following: the deferred deposit transaction agreement, evidence of the check, written disclosure(s) used to provide notice in compliance with subdivision (c) of Section 23035 of the Financial Code, record of any and all extensions of time or payment plans for repayment of an existing deferred deposit transaction, record of time periods for each transaction, record of transaction fees and charges, and record of transaction payments.

(2) Records to be maintained at each licensed business location may include the advertising file as provided in subsection (f) and bank or other financial institution statements, in lieu of maintaining these records as set forth in subsection (b).

(d) The records required under subsections (b) and (c) may be retained and provided to the Commissioner in electronic format provided that:

(1) The electronic records are maintained and provided in a format that allows the Commissioner complete access to all of the books, accounts and records. The electronic records must be provided to the Commissioner in a software format that is acceptable to the Commissioner. The deferred deposit originator shall ensure that the Commissioner and his or her authorized representatives have the ability to download and print any or all of the records that are stored and maintained electronically.

(2) A deferred deposit originator shall provide any and all of the records maintained in electronic format in printed form if the electronic records are not in a format that enables the Commissioner to determine if the licensee is complying with the California Deferred Deposit Transaction Law or rules, or upon the request of the Commissioner or his or her authorized representatives.

(3) The electronic records shall be maintained in a media that ensures reliable, credible, accurate and auditable records.

(4) A deferred deposit originator may elect to retain a copy of a customer's check or an image of the customer's check in electronic format as evidence of the check in subsection (c)(1).

(5) If a copy of a customer's check is not retained as provided in paragraph (4) of this subsection, the deferred deposit originator shall maintain the following information that is available from the customer's check:

(A) Maker(s), e.g., the account holder(s)

(B) Amount

(C) Date

(D) Check number

(E) Name of the financial institution

(F) Account number and routing number

(G) Name of the individual signing the check

(6) In the case of electronic transfer from a customer's bank account to repay a transaction, the deferred deposit originator shall maintain the same information in paragraphs (4) or (5) of this subsection as evidence of the customer's check.

(7) In the case of electronic transfer from a deferred deposit originator-offered bank-issued prepaid debit card to repay a transaction, the deferred deposit originator shall maintain the same information in paragraphs (4) or (5) of this subsection, and the last four digits of the prepaid debit card number and the card expiration date as evidence of check.

(e) A licensed ~~location~~ ^{entity} may maintain records older than 90 days at a location other than the licensed location, provided that the records are made available to the Commissioner within 48 hours of a request. Upon request, a licensee shall provide the Commissioner with the address of the location of the books, records and accounts maintained at a location other than the licensed location, and, if applicable, the identity of the person with custody of the records.

(f) A licensee shall maintain a file of all advertising copy for a period of 90 days from the date of its use.

(g) A licensee shall maintain records for two years from the last entry on a deferred deposit transaction record.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23007, 23013, 23024, 23027, 23035, 23036, 23037, 23046 and 23048, Financial Code.

7. Amend Section 2026 to read:

§ 2026. Maintenance of Books and Records.

A deferred deposit originator shall maintain ~~its~~ and use complete books, accounts and records in accordance with generally accepted accounting principles and good business practices.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23024 and 23046, Financial Code.

8. Section 2030.1 is adopted to read:

§2030.1. Criminal Actions and Violations: Report to Commissioner.

A deferred deposit originator shall immediately report in writing to the Commissioner any violation of the provisions of the California Deferred Deposit Transaction Law or rules, and the laws and regulations governing deferred deposit transactions of a foreign jurisdiction, and any criminal action filed by a regulatory or law enforcement agency of this jurisdiction or another jurisdiction against the deferred deposit originator or its directors, officers or management personnel.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23010, 23011 and 23052, Financial Code.

9. Subchapter 13, Article 4, Section 2030.20 is adopted to read:

Article 4. Deferred Deposit Transactions

§ 2030.20. Prohibition Against Criminal Prosecution.

A deferred deposit originator shall not:

(a) threaten a customer with criminal prosecution to collect a returned check, ACH (Automated Clearing House) or other electronic transfer or withdrawal, or a

declined prepaid debit card transaction made in conjunction with a deferred deposit transaction, or

(b) refer or threaten to refer a customer to law enforcement, including a District Attorney, prosecutor or a prosecutor's check diversion program established pursuant to Section 1001.60 of the Penal Code, to collect a returned check, ACH or other electronic transfer or withdrawal, or a declined prepaid debit card transaction made in conjunction with a deferred deposit transaction.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

10. Section 2030.21 is adopted to read:

§ 2030.21. Notice.

(a) Before entering into a deferred deposit transaction, a deferred deposit originator shall provide to a customer the written notice required in subdivision (c) of Section 23035 of the Financial Code.

(b) This written notice shall be a separate document from the written agreement required in subdivision (e) of Section 23035 of the Financial Code.

(c) A deferred deposit originator shall require a customer to sign the written notice to acknowledge the customer's receipt of the notice.

(d) The deferred deposit originator shall retain a copy of the signed notice in its books and records.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

11. Section 2030.21.1 is adopted to read:

§ 2030.21.1. Written Agreement.

(a) A deferred deposit originator shall include in the written agreement required in subdivision (e) of Section 23035 of the Financial Code the following statement:

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

(b) The written agreement shall also include the information required in Sections 2030.23, 2030.41, 2030.43 and 2030.49 of these rules.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

12. Section 2030.22 is adopted to read:

§ Section 2030.22. Disbursement of Proceeds to a Customer.

(a) A deferred deposit originator shall provide a customer with the option to receive the proceeds from a deferred deposit transaction by at least one of the following:

(1) Disbursement in cash,

(2) Paper check made by the deferred deposit originator,

(3) Electronic transfer to the customer's bank account, provided that the deferred deposit originator makes disbursements by electronic means, or

(4) Electronic transfer to a deferred deposit originator-offered bank-issued prepaid debit card, provided that the deferred deposit originator offers a prepaid debit card in accordance with Sections 2030.49, 2030.50 and 2030.51 of these rules.

(b) A deferred deposit originator shall not originate a deferred deposit transaction with a customer unless the customer holds a checking account with a financial

institution and the customer provides a new personal paper check to the deferred deposit originator for each transaction.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

13. Section 2030.23 is adopted to read:

§ 2030.23. Customer's Right to Request Other Payment Options.

(a) The written agreement required in subdivision (e) of Section 23035 of the Financial Code shall include the following statements:

(1) The customer has a right to request an extension of time and a payment plan for an existing deferred deposit transaction, and

(2) The deferred deposit originator shall not charge any additional fee or charge for an extension of time or a payment plan, for the repayment of an existing transaction.

(b) A licensee is not required upon a customer's request to provide to a customer either a payment plan or an extension agreement.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23036, Financial Code.

14. Section 2030.24 is adopted to read:

§ Section 2030.24. Internet Deferred Deposit Transactions.

(a) The provisions of the California Deferred Deposit Transaction Law, Division 10, commencing with Section 23000 of the Financial Code and Chapter 3, Title 10, Subchapter 13 of the California Code of Regulations shall apply to deferred deposit transaction business conducted over the Internet.

(b) A deferred deposit originator that accepts information or applications for a deferred deposit transaction over the Internet must comply with all of the following:

(1) Before entering into any transaction, a deferred deposit originator shall obtain the customer's agreement to conduct the transaction over the Internet by either:

(A) Requiring the customer to print from the deferred deposit originator's website an agreement to conduct the transaction over the Internet, and to return to the deferred deposit originator by electronic mail or fax the agreement signed and dated by the customer, or

(B) If the agreement on the deferred deposit originator's website requires the customer's e-signature and e-date, the deferred deposit originator shall provide to the customer by electronic mail a copy of the signed and dated agreement.

(C) The customer's agreement in subparagraphs (A) and (B) of this paragraph shall be maintained in the deferred deposit originator's books and records.

(2) A copy of the California Deferred Deposit Transaction Law license in subdivision (a) of Section 23018, notices in subdivision (d) of Section 23035, and fee schedule in Section 23019 of the Financial Code shall be posted in a conspicuous place on the deferred deposit originator's website.

(3) A deferred deposit originator shall include a link to the license information in Section 2030.60 of these rules on all pages of the deferred deposit originator's website.

(4) The notice in subdivision (c) of Section 23035 of the Financial Code shall be made available to the customer on the deferred deposit originator's website prior to the customer entering into a deferred deposit transaction.

(5) A deferred deposit originator shall require a customer to electronically acknowledge that the notice in subsection (b)(4) of this rule was made available to the

customer before entering into the deferred deposit transaction and the deferred deposit originator shall retain a copy of the electronic acknowledgement.

(6) A deferred deposit originator shall allow a customer to download and print from the deferred deposit originator's website the fee schedules and notices in subsections (b)(2) and (b)(4) of these rules and the written agreement in subdivision (e) of Section 23035 of the Financial Code.

(7) A deferred deposit originator shall electronically mail to the customer at no charge a copy of the fee schedule, notices or any written agreements to the customer at the consummation of the transaction.

(8) The fee schedule, notices and written agreement shall be accessible to the customer on the Internet until at least 30 days after the loan is repaid in full.

(9) Any advertisement on the Internet shall include the license information required in Section 2030.60 of these rules.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23001, 23005, 23018, 23019, 23027 and 23035, Financial Code.

15. Section 2030.25 is adopted to read:

§ 2030.25. Prohibition Against Simultaneous Transactions to Same Customer.

A deferred deposit originator having common ownership with another deferred deposit originator is presumed to have knowledge of any existing deferred deposit transaction agreement with a customer of the other deferred deposit originator, and shall be prohibited from entering into an agreement for a deferred deposit transaction with any customer who has an existing agreement with any deferred deposit originator having common ownership, for purposes of determining a violation of subdivision (c) of Financial Code section 23036.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23036, Financial Code.

16. Subchapter 13, Article 5, Section 2030.40 is adopted to read:

Article 5. Repayment of Deferred Deposit Transactions

§ 2030.40. Customer's Option for Repayment.

(a) A deferred deposit originator shall provide a customer with the option to repay the deferred deposit transaction on the due date by at least one of the following:

(1) Cash payment,

(2) Deposit of the customer's paper check in the financial institution,

(3) Electronic transfer from the customer's bank account, provided that the deferred deposit originator accepts payment of loans by electronic means, or

(4) Electronic transfer from a deferred deposit originator-offered bank-issued prepaid debit card, provided that the deferred deposit originator offers a prepaid debit card in accordance with Sections 2030.49, 2030.50 and 2030.51 of these rules.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035.

17. Section 2030.41 is adopted to read:

§ 2030.41. Depositing of Checks.

A deferred deposit originator shall describe in the written agreement required in subdivision (e) of Section 23035 of the Financial Code, the manner in which a customer's check will be deposited (e.g., manually or electronically) and the specific date of deposit.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

18. Section 2030.42 is adopted to read:

§ 2030.42. Dishonored Checks.

(a) A deferred deposit originator shall adopt policies for the redeposit of a customer's check after the initial deposit is dishonored by a financial institution that are consistent with the policies established by financial institutions and the rules published by the National Automated Clearing House Association.

(b) A deferred deposit originator may manually redeposit a customer's check only three times for full payment after being dishonored by a financial institution, at initial presentation on the due date of the transaction and at two re-presentations any time after the due date of the deferred deposit transaction subject to Section 2030.43.

(c) A deferred deposit originator may electronically redeposit a customer's check after being dishonored by a financial institution subject to Sections 2030.43, 2030.44 and 2030.45 of these rules.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section, 23035 of the Financial Code.

19. Section 2030.43 is adopted to read:

§ 2030.43. Non Sufficient Funds Fee.

(a) A deferred deposit originator may charge a single one-time fee of up to fifteen dollars (\$15) pursuant to subdivision (e) of Section 23036 of the Financial Code, for the return of a dishonored check by a financial institution. The fee may be charged pursuant to a payment plan, provided that the fee was not already charged in conjunction with the original deferred deposit transaction.

(b) A deferred deposit originator is prohibited from charging the fee unless the customer's check, whether manually or electronically deposited, is in fact dishonored and returned by the financial institution.

(c) A deferred deposit originator is prohibited from charging the fee by electronic transfer from a customer's bank account unless disclosed in the written agreement or authorized in a separate writing by the customer.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23036, Financial Code.

20. Section 2030.44 is adopted to read:

§ 2030.44. Electronic Transfer to Repay a Deferred Deposit Transaction.

(a) A deferred deposit originator shall provide a customer with the option to repay a deferred deposit transaction on the due date by deposit of the customer's paper check in the financial institution or by electronic transfer from the customer's bank account, if the deferred deposit originator accepts payment by electronic means.

(b) The customer's written authorization is required for a deferred deposit originator to electronically transfer payment from a customer's bank account.

(c) Nothing in this section shall require a deferred deposit originator to accept payment of a deferred deposit transaction by electronic means.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

21. Section 2030.45 is adopted to read:

§ 2030.45. Limit on Electronic Transfers from Customer's Account.

(a) A deferred deposit originator may authorize a financial institution to electronically transfer from a customer's bank account only three times for full payment, at initial presentation on the due date of the deferred deposit transaction and if there are insufficient funds in the customer's account on the due date of the transaction, at two re-presentations as provided in subsection (b), or for partial payment only with the customer's written consent as provided in subsection (c).

(b) A deferred deposit originator may authorize a financial institution to electronically transfer from a customer's bank account without the customer's consent for a second and a third time in conformity with the initial electronic withdrawal. The electronic transfer shall be limited to the full amount of the transaction balance and shall occur anytime after the due date of the deferred deposit transaction.

(c) A deferred deposit originator may authorize a financial institution to electronically transfer from a customer's bank account for a partial payment of the transaction balance, with the customer's written consent only, for insufficient funds in the customer's account on the due date of the deferred deposit transaction. The electronic transfer shall occur anytime after the due date of the transaction. The customer's written authorization must be signed by the customer, and specify the date and the amount of the electronic transfer.

(d) For purposes of this section, an electronic transfer shall include a transaction that withdraws funds or causes a customer to incur a charge or fee from the customer's financial institution, but shall not include a bank service, also known as pinging, that permits a deferred deposit originator to confirm the availability of funds in a customer's account and in which a customer does not incur a bank charge or fee and no funds are withdrawn from the customer's account.

(e) A deferred deposit originator may authorize a financial institution to electronically transfer from a customer's bank account for a single one-time fee of up to fifteen dollars (\$15) for the return of a dishonored check by a financial institution, with the customer's written consent only, as provided in Section 2030.43 of these rules.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23036, Financial Code.

22. Section 2030.46 is adopted to read:

§ 2030.46. Payment Plan After Customer's Default.

(a) A payment plan entered into by a deferred deposit originator and a customer in subdivision (b) of Section 23036 of the Financial Code shall specify the payment dates and the amount of each payment, and shall be in writing and signed by the customer.

(b) The payment plan shall be maintained in the deferred deposit originator's books and records, and a copy of the signed plan shall be provided to the customer.

(c) A payment plan is defined as an agreement between a customer and a deferred deposit originator for the repayment of an existing deferred deposit transaction in one or more installments, entered into after a customer fails to repay the transaction as agreed, where the final payment occurs after the due date of the original transaction.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23036, Financial Code.

23. Section 2030.47 is adopted to read:

§ 2030.47. Extension of Transaction Due Date.

A written agreement signed by the customer is required to extend the payment date of an existing deferred deposit transaction beyond five days.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23036, Financial Code.

24. Section 2030.48 is adopted to read:

§ 2030.48. Setoff of Amounts Owed Prohibited.

A deferred deposit originator is prohibited from applying any amount owed on a deferred deposit transaction against a customer's paycheck, social security check, disability check or other check, or against any other transaction, service or product offered by the deferred deposit originator.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

25. Section 2030.49 is adopted to read:

§ Section 2030.49. Deferred Deposit Transaction – Bank-Issued Prepaid Debit Card.

(a) A deferred deposit originator may offer a bank-issued prepaid debit card at no cost to a customer to disburse proceeds from the transaction onto the card or to allow the customer to repay that same transaction using the card, at the customer's option.

(b) A bank-issued prepaid debit card for purposes of these rules means a debit card issued by a bank and offered by a deferred deposit originator to a customer, in which the availability of funds is not associated with any checking account, credit card or any other extension of credit, and no extension of credit is offered by the bank

originating the debit card. Available funds on a prepaid debit card is limited to the amount of the funds transferred or loaded onto the card.

(c) A deferred deposit originator shall not require a customer to obtain a prepaid debit card for purposes of a deferred deposit transaction, or make a deferred deposit transaction contingent on the use of a prepaid debit card under subdivision (c) of Section 23037 of the Financial Code.

(d) A deferred deposit originator is prohibited from directly or indirectly charging any fees or charges on a bank-issued prepaid debit card in conjunction with a deferred deposit transaction that are not specifically authorized under the California Deferred Deposit Transaction Law.

(e) A deferred deposit originator shall fully disclose in the written agreement required in subdivision (e) of Section 23035 of the Financial Code at the time of the deferred deposit transaction, any costs, charges and fees charged by the issuing bank for subsequent use of the prepaid debit card.

(f) A deferred deposit originator is prohibited from sharing or receiving any costs, charges or fees charged to a customer by the bank issuing the prepaid debit card, or earning any interest on any unused funds on the card.

(g) A deferred deposit originator shall fully disclose in the written notice in Section 2030.21 of these rules and the written agreement required in subdivision (e) of Section 23035 of the Financial Code, in letters in bold print and not less than twice as large in height as the adjacent print, any restrictions on the ability to use the bank-issued prepaid debit card at merchant establishments.

(h) Nothing in this section shall require a deferred deposit originator to offer a bank-issued prepaid debit card.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23037, Financial Code.

26. Section 2030.50 is adopted to read:

§ Section 2030.50. Repayment of Deferred Deposit Transaction in Conjunction with a Bank-Issued Prepaid Debit Card.

(a) The repayment provisions in Article 5 of Subchapter 13 of these rules shall apply to any repayment by a customer of a deferred deposit transaction using a deferred deposit originator-offered bank-issued prepaid debit card.

(b) A deferred deposit originator shall permit a customer to use the bank-issued prepaid debit card to make a minimum of one withdrawal for the full amount of the deferred deposit transaction proceeds with no fees, charges or other costs to the customer for the withdrawal.

(c) A deferred deposit originator is prohibited from offering to a customer any bank-issued prepaid debit card that causes a customer to accumulate any revolving debt on the prepaid debit card, or on a MasterCard, Visa or any other credit card from a deferred deposit transaction.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23035 and 23036, Financial Code.

27. Section 2030.51 is adopted to read:

§ Section 2030.51. Maintenance of Records Concerning Bank-Issued Prepaid Debit Card.

(a) A deferred deposit originator shall obtain the customer's written acceptance to the disbursement of proceeds from a deferred deposit transaction on a bank-issued

prepaid debit card or to the repayment of that transaction using the bank-issued prepaid debit card. The written consent must include the last four digits of the prepaid debit card number and the card expiration date, and be signed and dated by the customer.

(b) A deferred deposit originator shall maintain the customer's transaction history report on all transactional activity concerning the proceeds from a deferred deposit transaction that were disbursed on a bank-issued prepaid debit card.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23035, Financial Code.

28. Subchapter 13, Article 6, Section 2030.60 is adopted to read:

Article 6. Advertising

§ 2030.60. License Information in Advertising.

Any advertisement in connection with a deferred deposit transaction in Section 23027 of the Financial Code shall include the following statement: "[Licensee] is licensed and regulated by the Department of Corporations", except that a deferred deposit originator may abbreviate "Department".

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23027, Financial Code.

29. Section 2030.61 is adopted to read:

§ 2030.61. Loan Disclosures Made in Advertising.

Any disclosure made in advertisement concerning a deferred deposit transaction shall be in the same language as the advertisement.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Section 23027, Financial Code.

30. Section 2030.62 is adopted to read:

§ 2030.62. Applicability of Advertising Standards to Internet.

The advertising standards, record retention requirements, and prohibition against false, misleading or deceptive information or advertisement in Section 23027 of the Financial Code shall apply to advertising on the Internet.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23027 and 23037, Financial Code.

31. Subchapter 13, Article 7, Section 2030.80 is adopted to read:

Article 7. Penalties

§ 2030.80. Administrative and Civil Penalties.

(a) In determining the amount of any administrative or civil penalty levied or assessed against any person subject to the California Deferred Deposit Transaction Law and rules for violation of any statute, rule, or order, the Commissioner may consider a variety of factors including, but not limited to the following:

(1) The nature and seriousness of the violation including actual or potential harm to the public or consumer.

(2) The number, persistence, circumstances, and extent of the violation.

(3) The length of time over which the violation occurred.

(4) Whether any substantial damage caused by the violation is susceptible to corrective action.

(5) The person's history of violations or complaints with the Department, other agencies or regulators.

(6) Whether the person's conduct was negligent, willful, or knowing, and the extent to which it was negligent, willful, or knowing.

(7) The degree of culpability.

(8) The person's financial condition including net worth and revenue, and ability to pay any penalties.

(9) The effect on the ability to continue in business.

(10) The nature and extent to which the person cooperated with the Department's investigation.

(11) Whether the person aggravated or mitigated any injury or damage caused by the violation.

(12) The nature and extent to which the person has taken corrective action to ensure that the violation will not reoccur.

(13) Such other matters as justice may require.

NOTE: Authority cited: Section 23015, Financial Code. Reference: Sections 23051 and 23058, Financial Code.