

## **THE DEFERRED PRESENTMENT SERVICES ACT**

**House Bill 4808**

**Sponsor: Rep. Michael Green**

**Committee: Insurance and Financial  
Services**

**Complete to 10-4-99**

### **A SUMMARY OF HOUSE BILL 4808 AS INTRODUCED 6-17-99**

The bill would create the Deferred Presentment Services Act in order to license and regulate an entity that accepts a check, agrees to hold it for a period of time before presentment, and pays the issuer of the check the amount of the check minus a fee. Under the bill, the maximum fee would be 18 percent of the amount paid to the check issuer. The maximum amount a licensee could pay to the check issuer in a transaction would be \$500. The maximum period a licensee could defer presentment or negotiation of a check would be 31 calendar days. The issuer of the check would have the right to redeem the check from the licensee at any time prior to the negotiation or presentment by making payment to the licensee of the full amount of the check. The bill also contains the following provisions.

#### Deferred Presentment Transactions

– Each deferred presentment transaction would have to be documented by written agreement signed by both the issuer of the check and the licensee, with the agreement to contain the name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed both as a dollar amount and as an annual percentage rate. The agreement would authorize the licensee to defer presentment or negotiation of the check until a specific date. Before a licensee could negotiate or present a check for payment, the check would have to be endorsed with the actual name under which the licensee was doing business.

– The amount paid by the licensee to the issuer of the check could be paid by the licensee's business check, money order, or cash. No additional fee could be charged for cashing the licensee's check. The licensee would have to post a notice in a conspicuous location in its place of business containing a description of the charges imposed by the licensee for the presentment service.

– A licensee could not more than four times renew, roll-over, or otherwise consolidate a deferred presentment transaction with the proceeds of another deferred presentment transaction made by the same licensee and check-issuer. Once the issuer of a check had completed a deferred presentment transaction with a licensee, he or she could enter into a new agreement for deferred presentment services with the licensee. A transaction would be considered completed when a check was presented for payment or deposited, or was redeemed by the check-issuer.

## Licensing and Regulation

– A person could not engage in the business of deferred presentment services without having first obtained a license; a separate license would be required for each location where business was conducted. Licensing would be by the commissioner of the Financial Institutions Bureau.

– To obtain a license, an applicant would have to have to maintain liquid assets of at least \$50,000 per licensed location, up to a maximum of \$250,000 required liquid assets per licensed entity. An applicant would also have to have the financial responsibility, financial condition, business experience, character, and general fitness to reasonably warrant the belief that the applicant's business would be conducted lawfully and fairly. The FIB commissioner could review the relevant business records and capital adequacy of the applicant; the competence, experience, integrity, and financial ability of a member, partner, director, officer, or shareholder with 25 percent or more interest in the applicant; and any record of any criminal activity, fraud, or other act of personal dishonesty, an act, omission, or practice that constituted a breach of fiduciary duty, or any suspension, removal, or administrative action by any agency or department of the United States or any state.

– Each application for a license would have to be accompanied by a non-refundable \$500 application and investigation fee that would become the license fee for the first year, if the application was approved. (This fee would be for each location.) The applicant would also have to submit a balance sheet and income statement for the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principles by a CPA or CPA firm. For a newly created entity, the commissioner could accept a balance sheet accompanied by a projected income statement demonstrating that the licensee would have adequate capital after payment of start-up costs.

– Licenses would expire on September 30 of each year and could be renewed for a 12-month period upon payment of a \$500 renewal fee and an application showing continued compliance with the new act. A license would have to be posted conspicuously at the place of business of the licensee. A license would not be transferable, and the prior written approval of the commissioner would be required for the continued operation of a business whenever there was to be a change in control. A licensee would also have to notify the FIB five days before any change in the licensee's business location or name.

– If the commissioner determined an applicant was not qualified to receive a license, he or she would notify the applicant and state the basis for the denial. The applicant could then make a written demand for a hearing. In the event of a hearing, the commissioner would reconsider the application and, after the hearing, issue a written order granting or denying the application. (An applicant could also get a hearing if the commissioner failed to act on an application within 60 days.)

– A licensee would have to file a written report with the commissioner within 15 days of one of the following occurrences, describing the event and its expected impact: the filing for bankruptcy or reorganization; revocation or suspension proceedings against the licensee by any state or governmental authority; any felony indictment of the licensee or any of its members, directors, officers, or shareholders; and other events identified by rule.

– The commissioner could issue orders and regulations considered necessary to enforce and implement the new act. A copy of any order or regulation would have to be mailed to each license holder at least 30 days before it took effect. The commissioner could annually examine the relevant business, books, and records of any licensee, with the examination costs paid by the licensee. Each licensee would be required to keep and use any books, accounts, and records required by the commissioner and preserve them for at least two years.

– The commissioner could, after notice and hearing, suspend or revoke any license if he or she found that the licensee had knowingly or through lack of due care: failed to pay the annual license fee or an examination fee; committed any fraud, engaged in any dishonest activities, or made any misrepresentation; violated the new act or any rule or order or violated any other law in the course of business; made a false statement in the license application or failed to give a true reply to a question in the application; or demonstrated incompetency or untrustworthiness. If the reason for the revocation or suspension of a licensee's license at any one location was of general application to all locations, the commissioner could revoke and suspend all licenses. Notice and hearings would be in accordance with the Administrative Procedures Act.

– If, after notice and hearing, the commissioner found that a person had violated the new act or an administrative regulation issued under the act, the commissioner could: order the person to cease and desist; require the refund of any fees collected; or order the person to pay to the commissioner a civil penalty of not more than \$1,000 for each transaction in violation of the act or for each day that a violation had occurred and continued.

Analyst: C. Couch

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