

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 503 (Substitute S-1)
Sponsor: Senator Valde Garcia
Committee: Banking and Financial Institutions

Date Completed: 5-30-01

CONTENT

The bill would create the "Deferred Presentment Services Act" to do the following:

- **Prohibit a person from engaging in the business of deferred presentment service without first registering with the Commissioner of the Office of Financial and Insurance Services (OFIS).**
- **Establish registration criteria and procedures.**
- **Set a \$500 registration fee and a \$250 fee for each additional business location.**
- **Require a deferred presentment service transaction to be documented by a written agreement.**
- **Limit the fees that a registrant could charge.**
- **Limit the number of outstanding transactions permitted.**
- **Prohibit the renewal, extension, or refinancing of a transaction.**
- **Require registrants to give certain notices.**
- **Establish payment requirements.**
- **Establish a civil infraction penalty for transactions conducted in violation of the bill.**

The term "deferred presentment service" would mean a transaction under a written agreement between a person and the issuer of a check in which the person accepted a check from the issuer dated on the date it was written, agreed to hold the check for a period of time before negotiation or presentment, and paid the issuer the amount of the check less the fee permitted under the bill.

The following is a detailed description of the bill.

Deferred Presentment Service Registration

A person seeking to engage in the business of deferred presentment service in the State would have to file a registration with the OFIS Commissioner. The registration would have to be in writing and under oath and include the following:

- The name and exact address of the registrant, and the name and address of its officers and directors, if the registrant were a corporation or an association; the name and address of its partners, if the registrant were a partnership; the name and address of either its manager or managers (if applicable) or its members, if the registrant were a limited liability company; or the name and address of its manager or other person designated to control the operation of that legal entity, if the registrant were any other legal entity.
- A copy of a certificate of an assumed name, if applicable.
- A copy of the articles of incorporation and bylaws, if the registrant were a corporation; a copy of any partnership agreement and partnership certificate, if the registrant were a partnership; a copy of the articles of organization and operating agreement, if the registrant were a limited liability company; or a copy of any organizational documents, if the registrant were an association.

When filing the registration, the registrant would have to do all of the following:

- Pay the OFIS a nonrefundable registration fee of \$500 for one business location, and \$250 for each additional business location.
- Furnish to the OFIS financial statements showing that the registrant had working capital in excess of \$5,000 for each of the registrant's business locations and cash in excess of \$25,000 per location.
- Furnish a \$5,000 surety bond for each of the registrant's business locations to secure the performance of the obligations of the registrant with respect to the receipt of money in connection with the cashing of checks.
- File an appointment of the Commissioner as the agent for service of process in the State.

If a person filed a registration that complied with all of the above, the Commissioner would have to accept the registration and place the person on a list maintained by the Commissioner of registrants providing deferred presentment services in the State. If a person filed a registration that, in the judgment of the Commissioner, did not substantially comply with all of the above, the Commissioner would have to reject the registration and advise the person in writing of the deficiencies of the attempted registration.

A registrant could conduct the business of deferred presentment service only at locations listed in the registration. A registration would not be transferable, but with the prior written approval of the Commissioner, the registrant could change its name or principal address.

Registration Renewal

By January 1 of each year, a registrant would have to pay a license renewal fee of \$250 for its principal business location, and \$100 for each additional business location, and submit a renewal registration in the form prescribed by the OFIS Commissioner. The Commissioner would have to renew the registration if, after considering all relevant factors and any comments or complaints about the registrant, the Commissioner determined that the registrant complied with the bill.

Registration Issuance or Denial

The Commissioner could not deny, suspend, or revoke a registration before notice was sent to the registrant setting forth in writing the

reasons for the denial, suspension, or revocation. Within five days after receiving the notice, the registrant could make written demand for a hearing. The Commissioner with reasonable promptness would have to hear and determine the matter as provided by the Administrative Procedures Act (APA). If the registrant considered itself aggrieved by the Commissioner's order, the registrant could appeal within 30 days from the date of the order to the circuit court in the manner provided by the APA. If an appeal were taken from an order revoking a registration, the effect of the order could be stayed by the court pending the final determination of the appeal.

The Commissioner could conduct investigations and hearings as he or she considered necessary to determine whether a registrant or other person had violated the bill, or whether a registrant had conducted business in a manner that justified suspension or revocation of its registration. The Commissioner could subpoena witnesses, documents, papers, books, records, and other evidence in a matter over which the Commissioner had jurisdiction, control, or supervision.

Transaction

Written Agreement. A deferred presentment service transaction would have to be documented by a written agreement signed by both the issuer of the check and the registrant accepting the check. The written agreement would have to contain the name of the registrant, 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 written agreement would have to authorize the registrant to defer presentment or negotiation of the check until a specific date, which could not be later than 31 calendar days following the date of the transaction.

Notice. A registrant would have to provide the following notice in a prominent place on each deferred presentment service agreement:

- A) A deferred presentment service transaction is not intended to meet long-term financial needs.
- B) You should use a deferred presentment service transaction

only to meet short-term cash needs.

C) You will be required to pay additional fees if you renew the deferred presentment service transaction rather than pay the debt in full when due.

Fee. A registrant could charge a service fee for each deferred presentment service transaction. The fee could not exceed an amount equal to 18% of the amount paid by the licensee to the issuer of the check. The fee would have to be considered fully earned as of the date of the transaction and would not be considered interest. No other fees or charges could be charged or collected by the registrant for the deferred presentment service transaction.

The maximum aggregate amount a registrant could pay to the issuer of a check in a transaction would be \$1,000. A check held by a registrant in connection with a deferred presentment service transaction could not exceed \$1,000, plus the service fee authorized above.

A registrant offering deferred presentment service transactions would have to post at the point of sale a notice of the charges imposed for the transactions.

Outstanding Transactions. A registrant could not have more than two outstanding deferred presentment service transactions with any issuer at the same time. The aggregate face value of all outstanding deferred presentment service checks held by a registrant from any one issuer could not exceed \$1,000 excluding the authorized service fee. A registrant providing a deferred presentment service transaction would have to provide the following notice in a prominent place on each deferred presentment service agreement: "State law prohibits you from having outstanding at any 1 time deferred presentment transactions totaling more than \$1,000.00 (excluding applicable service fees). Failure to obey this law could create financial hardship for you and your family."

Renewal. A deferred presentment service transaction could not be renewed, extended, or refinanced. Once the issuer of the check had completed a deferred presentment service transaction with a registrant, the issuer could enter into a new agreement for deferred presentment services with that registrant.

Rescission or Redemption

The issuer of a check held in connection with a deferred presentment services transaction could rescind the transaction at no cost and for any reason if the issuer delivered to the registrant, by 5 p.m. on the business day following the transaction, cash or a cash equivalent in an amount equal to the amount of the issuer's check less the fee charged by the registrant.

The issuer of a check would have the right to redeem it from the registrant holding the check at any time before the negotiation or presentment of the check by paying the full amount of the check in the form of cash or its equivalent.

Payment

A deferred presentment service transaction would be completed when a check was presented for payment, deposited, or redeemed by the issuer by paying the full amount of the check to the registrant holding the check.

A registrant would have to pay the proceeds from a deferred presentment service transaction to the issuer of the check in the form of the registrant's business check, money order, or cash. No additional fee could be charged by a registrant for cashing the registrant's business check. If the issuer requested to be paid in cash, the registrant would have to pay the proceeds from the transaction to the issuer in cash. Before a registrant could negotiate or present a check for payment, it would have to be endorsed with the actual name under which the registrant was doing business.

If a check written in connection with a deferred presentment service transaction were returned to a registrant from a financial institution due to insufficient funds, a closed account, or a stop payment order, the registrant would have the right to exercise all civil and criminal means available and allowed by law to collect the face value of the check. The registrant could contract for and collect a returned check charge not exceeding \$25 plus any court costs, including reasonable attorney fees, incurred as a result of the returned check. No other fees could be collected as a result of a returned check or the default by the issuer under a deferred presentment service agreement.

Exemptions

The bill would not apply to the cashing of checks by any of the following: a State or national chartered bank or a State or Federal chartered credit union, savings and loan association, or savings bank; a department or agency of a state or the United States; a foreign bank agency, as defined by the Banking Code; or a corporation or limited liability company with offices or franchises in at least 20 states engaged in the business of cashing checks. The bill also would not apply to the receipt of money by an incorporated telegraph company at an office of the company for immediate transaction by telegraph.

Rules

The bill would allow the Commissioner to promulgate rules for the administration of the bill under the APA. The rules could provide for the designation by the Commissioner of a trade organization to serve as a self-regulatory body of the deferred presentment services industry in the State.

The self-regulatory body could perform various duties including performing periodic audits to ensure registrants' compliance with the bill; collecting and filing with the Commissioner complaints from consumers about registrants' deferred presentment services activity; and developing and enforcing industry best practices or other codes of conduct that required registrants to provide deferred presentment services in a manner that was responsible and fair to consumers.

The administrative rules could require registrants to maintain membership in good standing with the self-regulatory body and could suspend or revoke the designation of a trade association as the self-regulatory body if the Commissioner determined that the self-regulatory body had not carried out its duties substantially in the manner prescribed by the rules.

Other Provisions

A registrant would have to maintain accurate and complete books, accounts, and records of its deferred presentment service business in a form satisfactory to the OFIS, and would have to preserve the books, accounts, and records for at least three years.

A registrant could conduct any other types of business allowed by law at a location where the registrant offered deferred presentment services.

A registrant could not engage in unfair or deceptive acts, practices, or advertising in connection with a deferred presentment service transaction.

A registrant who violated the bill would be guilty of a civil infraction punishable by a fine of up to \$1,000. Each transaction conducted in violation of the bill would be a separate violation.

The issuer of a check who entered into a deferred presentment service agreement would not be subject to any criminal penalty for entering into the agreement and further would not be subject to any criminal penalty in the event the issuer's check was dishonored, unless the account on which the check was written was closed on the date of the transaction or before the agreed-upon negotiation date.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would create an additional category of registration for the Office of Financial and Insurance Services. The additional responsibilities associated with this change would be offset by the additional revenue collected through the newly created registration fees.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.