

SENATE BILL No. 503

May 22, 2001, Introduced by Senators GARCIA and STEIL and referred to the Committee on Banking and Financial Institutions.

A bill to regulate deferred presentment service for issued checks; to provide for licensing and fees; to prescribe the powers and duties of certain state agencies and officials; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "deferred presentment services act".

3 Sec. 2. As used in this act:

4 (a) "Applicant" means a person seeking a license under this
5 act.

6 (b) "Check" means a personal check signed by the issuer and
7 made payable to a licensee of deferred presentment services.

8 (c) "Commissioner" means the commissioner of the office of
9 financial and insurance services in the department of consumer
10 and industry services.

1 (d) "Deferred presentment service" means a transaction under
2 a written agreement between a licensee and the issuer of a check
3 in which the licensee does all of the following:

4 (i) Accepts a check from the issuer dated on the date it was
5 written.

6 (ii) Agrees to hold the check for a period of time before
7 negotiation or presentment.

8 (iii) Pays to the issuer of the check the amount of the
9 check, less the fee permitted under section 14.

10 (e) "Licensee" means a person licensed by the commissioner
11 under this act.

12 (f) "Office" means the office of financial and insurance
13 services.

14 (g) "Person" means an individual, partnership, association,
15 corporation, limited liability company, or other legal entity
16 except a governmental agency.

17 Sec. 3. Except as provided in section 4, a person shall not
18 engage in the business of deferred presentment service for a fee
19 or other consideration without first obtaining a license under
20 this act.

21 Sec. 4. (1) This act does not apply to the cashing of
22 checks by any of the following:

23 (a) A state or national chartered bank or a state or federal
24 chartered credit union, savings and loan association, or savings
25 bank.

26 (b) A department or agency of a state or the United States.

1 (c) A foreign bank agency, as defined by the banking code of
2 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

3 (d) A corporation or limited liability company with offices
4 or franchises in at least 20 states engaged in the business of
5 cashing checks.

6 (2) This act does not apply to the receipt of money by an
7 incorporated telegraph company at an office of the company for
8 immediate transmission by telegraph.

9 Sec. 5. (1) A person seeking a license to engage in the
10 business of deferred presentment service in this state shall file
11 an application with the commissioner in writing and under oath
12 that includes all of the following:

13 (a) The name and exact address of the applicant and the name
14 and address of 1 of the following:

15 (i) If the applicant is a corporation, its officers and
16 directors.

17 (ii) If the applicant is an association, its officers and
18 directors.

19 (iii) If the applicant is a partnership, its partners.

20 (iv) If the applicant is a limited liability company, either
21 its manager or managers if managed by a manager or managers, or
22 its members.

23 (v) If the applicant is any other legal entity, its manager
24 or other person designated to control the operation of that legal
25 entity.

26 (b) A copy of a certificate of an assumed name, if
27 applicable.

1 (c) One of the following, as applicable:

2 (i) If the applicant is a corporation, a copy of the arti-
3 cles of incorporation and bylaws.

4 (ii) If the applicant is a partnership, a copy of any part-
5 nership agreement and partnership certificate.

6 (iii) If the applicant is a limited liability company, a
7 copy of the articles of organization and operating agreement.

8 (iv) If the applicant is an association, a copy of any orga-
9 nizational documents of the association.

10 (2) At the time of filing the application, the applicant
11 shall do all of the following:

12 (a) Pay to the office a nonrefundable license fee of \$500.00
13 for 1 business location, and \$250.00 for each additional business
14 location.

15 (b) Furnish financial statements to the office, in a form
16 satisfactory to the commissioner, showing the applicant has work-
17 ing capital in excess of \$5,000.00 for each of the applicant's
18 business locations and cash in excess of \$25,000.00.

19 (c) Furnish a \$5,000.00 surety bond for each of the
20 applicant's business locations issued by a bonding company or
21 insurance company authorized to do business in this state and in
22 a form satisfactory to the commissioner, to secure the per-
23 formance of the obligations of the applicant with respect to the
24 receipt of money in connection with the cashing of checks.

25 (d) File an appointment of the commissioner as the agent for
26 service of process in this state.

1 Sec. 6. After the applicant files the application and
2 complies with section 5(2), the commissioner shall investigate
3 the financial responsibility, financial and business experience,
4 and character and general fitness of the applicant. If the com-
5 missioner finds these factors and qualities meet the requirements
6 of this act and reasonably warrant the belief that the
7 applicant's business will be conducted honestly, fairly, equita-
8 bly, carefully, efficiently, and in a manner commanding the con-
9 fidence and trust of the community, the commissioner shall issue
10 to the person a license to engage in the business of deferred
11 presentment service.

12 Sec. 7. On or before January 1 of each year, a licensee
13 shall pay a license renewal fee of \$250.00 for its principal
14 business location, and \$100.00 for each additional business loca-
15 tion, and submit a renewal application in the form prescribed by
16 the commissioner. The commissioner shall renew the license if,
17 after considering all relevant factors and any comments or com-
18 plaints about the licensee, the commissioner determines the
19 licensee is in compliance with this act.

20 Sec. 8. (1) A licensee shall conduct the business of
21 deferred presentment service only at locations approved by the
22 commissioner.

23 (2) A license issued under this act is not transferable, but
24 with the prior written approval of the commissioner, the licensee
25 may change its name or principal address.

26 Sec. 9. (1) The commissioner shall not deny, suspend, or
27 revoke a license issued under this act before notice is sent to

1 the applicant or licensee setting forth in writing the reasons
2 for the denial, suspension, or revocation. Within 5 days after
3 receipt of the notice, the applicant or licensee may make written
4 demand for a hearing. The commissioner with reasonable prompt-
5 ness shall hear and determine the matter as provided by the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
7 24.328. If the applicant or licensee considers itself aggrieved
8 by the order of the commissioner, the applicant or licensee may
9 appeal within 30 days from the date of the order to the circuit
10 court in the manner provided by the administrative procedures act
11 of 1969, 1969 PA 306, MCL 24.201 to 24.328. If an appeal is
12 taken from an order revoking a license, the effect of the order
13 may be stayed by the court pending the final determination of the
14 appeal.

15 (2) The commissioner may conduct investigations and hearings
16 as the commissioner considers necessary to determine whether a
17 licensee or other person has violated this act, or whether a
18 licensee has conducted business in a manner that justifies sus-
19 pension or revocation of its license.

20 (3) The commissioner may subpoena witnesses, documents,
21 papers, books, records, and other evidence in a matter over which
22 the commissioner has jurisdiction, control, or supervision. The
23 commissioner may administer oaths and affirmations to a person
24 whose testimony is required.

25 Sec. 10. The commissioner shall promulgate rules that are
26 necessary for the administration of this act under the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328.

3 Sec. 11. A licensee shall maintain accurate and complete
4 books, accounts, and records of its deferred presentment service
5 business in a form satisfactory to the office, and shall preserve
6 the books, accounts, and records for not less than 3 years.

7 Sec. 12. (1) A deferred presentment service transaction
8 shall be documented by a written agreement signed by both the
9 issuer of the check and the licensee accepting the check.

10 (2) The written agreement shall contain the name of the
11 licensee, the transaction date, the amount of the check, and a
12 statement of the total amount of fees charged, expressed both as
13 a dollar amount and as an annual percentage rate.

14 (3) The written agreement shall authorize the licensee to
15 defer presentment or negotiation of the check until a specific
16 date, which date may not be later than 31 calendar days following
17 the date of the transaction.

18 Sec. 13. A licensee of a deferred presentment service
19 transaction shall provide the following notice in a prominent
20 place on each deferred presentment service agreement in at least
21 10-point type:

22 "(A) A DEFERRED PRESENTMENT SERVICE TRANSACTION IS NOT
23 INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

24 (B) YOU SHOULD USE A DEFERRED PRESENTMENT SERVICE TRANSAC-
25 TION ONLY TO MEET SHORT-TERM CASH NEEDS.

1 (C) YOU WILL BE REQUIRED TO PAY ADDITIONAL FEES IF YOU RENEW
2 THE DEFERRED PRESENTMENT SERVICE TRANSACTION RATHER THAN PAY THE
3 DEBT IN FULL WHEN DUE." .

4 Sec. 14. (1) A licensee may charge a service fee for each
5 deferred presentment service transaction, which shall not exceed
6 an amount equal to 18% of the amount paid by the licensee to the
7 issuer of the check. The fee shall be considered fully earned as
8 of the date of the transaction and is not considered interest.

9 (2) No other fees or charges shall be charged or collected
10 by the licensee for the deferred presentment service
11 transaction.

12 Sec. 15. The maximum amount a licensee may pay to the
13 issuer of a check in a deferred presentment service transaction
14 is \$1,000.00. A check held by a licensee in connection with a
15 deferred presentment service transaction shall not exceed the sum
16 of \$1,000.00, plus the service fee authorized by section 14.

17 Sec. 16. (1) A licensee shall not have more than 2 out-
18 standing deferred presentment service transactions with any
19 issuer at the same time. The aggregate face value of all out-
20 standing deferred presentment service checks held by a licensee
21 from any 1 issuer shall not exceed \$1,000.00, exclusive of the
22 service fee authorized by section 14.

23 (2) A licensee providing a deferred presentment service
24 transaction shall provide the following notice in a prominent
25 place on each deferred presentment service agreement in at least
26 10-point type:

1 "STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING AT ANY 1
2 TIME DEFERRED PRESENTMENT TRANSACTIONS TOTALING MORE THAN
3 \$1,000.00 (EXCLUDING APPLICABLE SERVICE FEES). FAILURE TO OBEY
4 THIS LAW COULD CREATE FINANCIAL HARDSHIP FOR YOU AND YOUR
5 FAMILY.".

6 Sec. 17. (1) A deferred presentment service transaction
7 shall not be renewed more than 3 consecutive times, after which
8 time either the issuer must pay off the deferred presentment
9 check in cash or its equivalent or the licensee must deposit the
10 issuer's check. Once the issuer of a check has completed a
11 deferred presentment service transaction with a licensee, the
12 issuer may enter into a new agreement for deferred presentment
13 services with that licensee.

14 (2) A deferred presentment service transaction is completed
15 when a check is presented for payment, deposited, or redeemed by
16 the issuer by paying the full amount of the check to the licensee
17 holding the check.

18 Sec. 18. A licensee shall pay the proceeds from a deferred
19 presentment service transaction to the issuer of the check in the
20 form of the licensee's business check, money order, or cash. No
21 additional fee may be charged by a licensee for cashing the
22 licensee's business check.

23 Sec. 19. Before a licensee may negotiate or present a check
24 for payment, the check shall be endorsed with the actual name
25 under which the licensee is doing business.

26 Sec. 20. The issuer of a check shall have the right to
27 redeem the check from the licensee holding the check at any time

1 before the negotiation or presentment of the check by paying the
2 full amount of the check in the form of cash or its equivalent.

3 Sec. 21. (1) If a check written in connection with a
4 deferred presentment service transaction is returned to a
5 licensee from a financial institution due to insufficient funds,
6 a closed account, or a stop payment order, the licensee shall
7 have the right to exercise all civil and criminal means available
8 and allowed by law to collect the face value of the check.

9 (2) The licensee may contract for and collect a returned
10 check charge not to exceed \$25.00, plus any court costs, includ-
11 ing reasonable attorney fees, incurred as a result of the
12 returned check. No other fees may be collected as a result of a
13 returned check or the default by the issuer under a deferred pre-
14 sentment service agreement.

15 Sec. 22. A licensee offering deferred presentment service
16 transactions shall post at the point of sale a notice of the
17 charges imposed for the deferred presentment service
18 transactions.

19 Sec. 23. The issuer of a check who enters into a deferred
20 presentment service agreement shall not be subject to any crimi-
21 nal penalty for entering into the agreement and further shall not
22 be subject to any criminal penalty in the event the issuer's
23 check is dishonored, unless the account on which the check was
24 written was closed on the date of the transaction or before the
25 agreed-upon negotiation date.

1 Sec. 24. A licensee may conduct any other types of business
2 allowed by law at a location where the licensee offers deferred
3 presentment services.

4 Sec. 25. A licensee shall not engage in unfair or deceptive
5 acts, practices, or advertising in connection with a deferred
6 presentment service transaction.

7 Sec. 26. (1) A licensee that violates this act is guilty of
8 a misdemeanor punishable by imprisonment for not more than 90
9 days or a fine of not more than \$1,000.00, or both.

10 (2) Each transaction conducted in violation of this act
11 shall be a separate violation under subsection (1).