

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 474

A bill to regulate the business of providing deferred presentment service transactions; to require the licensing of providers of deferred presentment service transactions; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 1

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

4 Sec. 2. (1) As used in this act:

5 (a) "Applicant" means a person seeking a license to engage in
6 the business of providing deferred presentment service
7 transactions under this act.

8 (b) "Check" means a draft payable on demand and drawn on a
9 bank, savings bank, savings and loan association, or credit

1 union. Check includes any negotiable instrument that represents
2 evidence of an obligation to pay even though it is described on
3 its face by another term.

4 (c) "Commissioner" means the commissioner of the office of
5 financial and insurance services or his or her authorized
6 representative.

7 (d) "Customer" means an individual who inquires into the
8 availability of or applies for a deferred presentment service
9 transaction or a drawer who enters into a deferred presentment
10 service transaction.

11 (e) Subject to subsection (2), "deferred presentment service
12 transaction" means a transaction between a licensee and a
13 customer under which the licensee agrees to do all of the
14 following:

15 (i) Pay to the customer an agreed-upon amount in exchange for
16 a fee.

17 (ii) Hold 1 or more of the customer's checks for a period of
18 time before negotiation, redemption, or presentment of the
19 checks.

20 (f) "Drawee" means a bank, savings bank, savings and loan
21 association, credit union, or other person upon which a check is
22 drawn.

23 (g) "Drawer" means a customer who enters into a deferred
24 presentment service transaction with a licensee.

25 (h) "Executive officer" means an officer or director of a
26 licensee or any other individual who has the authority to
27 participate in the direction, directly or indirectly, through 1

1 or more persons, or the management of a licensee.

2 (i) "Licensee" means a person licensed to engage in the
3 business of providing deferred presentment service transactions
4 under this act.

5 (j) "Maturity date" means the date on which a drawer's check
6 is to be redeemed, presented for payment, or entered into the
7 check-clearing process in a deferred presentment service
8 transaction.

9 (k) "Office" means the office of financial and insurance
10 services of the department of labor and economic growth.

11 (l) "Person" means an individual, partnership, association,
12 corporation, limited liability company, or other legal entity
13 except a governmental entity.

14 (2) Deferred presentment service transaction does not include
15 a delay in presentment of a loan repayment check, at the request
16 of the borrower, by a person licensed or registered under the
17 consumer financial services act, 1988 PA 161, MCL 487.2051 to
18 487.2072, the regulatory loan act, 1939 PA 21, MCL 493.1 to
19 493.24, the secondary mortgage loan act, 1981 PA 125, MCL 493.51
20 to 493.81, the motor vehicle sales finance act, 1950 (Ex Sess) PA
21 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to 493.114,
22 the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, or
23 the mortgage brokers, lenders, and servicers licensing act, 1987
24 PA 173, MCL 445.1651 to 445.1684.

25 ARTICLE 2

26 Sec. 11. (1) Except as provided in subsection (2), a person
27 shall not engage in the business of providing deferred

1 presentment service transactions without a license under this
2 article. A separate license is required for each location from
3 which the business of providing deferred presentment service
4 transactions are conducted.

5 (2) This act does not apply to a state or nationally
6 chartered bank or a state or federally chartered savings and loan
7 association, savings bank, or credit union whose deposits or
8 member accounts are insured by an agency of the United States
9 government.

10 Sec. 12. To obtain a license, an applicant shall satisfy
11 all of the following requirements:

12 (a) Have and maintain net worth of at least \$50,000.00 for
13 each licensed location, subject to a maximum of \$250,000.00 in
14 required net worth for any 1 licensee.

15 (b) Demonstrate to the commissioner that the applicant has
16 the financial responsibility, financial condition, business
17 experience, character, and general fitness to reasonably warrant
18 a belief that the applicant will conduct its business lawfully
19 and fairly. In determining whether this subdivision is
20 satisfied, and for the purpose of investigating compliance with
21 this article, the commissioner may review any of the following:

22 (i) The relevant business records and the capital adequacy of
23 the applicant.

24 (ii) The competence, experience, integrity, and financial
25 ability of any person who is a member, partner, director,
26 officer, or a shareholder with 10% or more interest in the
27 applicant.

1 (iii) Any record regarding the applicant, or any person
2 referred to in subparagraph (ii), of any criminal activity,
3 fraud, or other act of personal dishonesty, an act, omission, or
4 practice that constitutes a breach of a fiduciary duty, or any
5 suspension, removal, or administrative action by any agency or
6 department of the United States or any state.

7 Sec. 13. (1) An applicant shall submit an application for a
8 license to the commissioner. Each application for a license
9 shall be in writing and under oath, in a form prescribed by the
10 commissioner, and shall include all of the following
11 information:

12 (a) The name, street address, and telephone number of the
13 business location within this state from which the applicant will
14 offer deferred presentment service transactions, if available.

15 (b) The legal name, residence, street address, and telephone
16 number and business address of the applicant and, if the
17 applicant is a partnership, association, or corporation, of each
18 officer and each person who directly or indirectly owns or
19 controls 10% or more of the ownership interest in the applicant.

20 (c) If the applicant will not operate a physical business
21 location in this state or if in addition to the location
22 described in subdivision (a) the applicant will make deferred
23 presentment service transactions by other means, a detailed
24 description of the manner in which deferred presentment service
25 transactions will be offered to customers in this state.

26 (d) Any other information the commissioner considers
27 necessary under this act.

1 (2) An applicant shall include an application fee in an
2 amount determined by the commissioner with the application
3 described in subsection (1).

4 Sec. 14. (1) A licensee shall pay a license fee, in an
5 amount determined by the commissioner under subsection (2),
6 within 60 days of submitting its license application, and then
7 annually.

8 (2) The commissioner shall annually establish a schedule of
9 license fees based upon each licensee's business volume, number
10 of locations, and any other business factors considered
11 reasonable by the commissioner in order to generate funds
12 sufficient to pay, but not to exceed, the office's reasonably
13 anticipated costs of administering this act. A licensee shall
14 pay the actual travel, lodging, and meal expenses incurred by
15 office employees who travel out of state to examine the records
16 of or investigate the licensee.

17 (3) Money received under this act shall be deposited in the
18 state treasury and credited to the office to be used only for the
19 operation of the office.

20 (4) In addition to the license fee required under
21 subsection (1), a licensee shall furnish a \$50,000.00 surety bond
22 to secure the performance of its obligations, issued by a bonding
23 company or insurance company authorized to do business in this
24 state and in a form satisfactory to the commissioner.

25 Sec. 15. (1) After the commissioner receives a completed
26 license application, the commissioner shall investigate to
27 determine whether the requirements of this act are satisfied. If

1 the commissioner finds that the requirements of this act are
2 satisfied, the commissioner shall issue to the applicant a
3 license to engage in deferred presentment service transactions.

4 (2) A licensee shall post a copy of its license in a
5 conspicuous location at the place of business of the licensee.

6 Sec. 16. (1) A license issued under this article is not
7 transferable or assignable.

8 (2) The prior written approval of the commissioner is
9 required for the continued operation of a licensee if there is a
10 change in control of that licensee. The commissioner may require
11 information considered necessary to determine whether a new
12 application is required. The person that requests the approval
13 shall pay the cost incurred by the commissioner in investigating
14 the change of control request.

15 (3) A licensee shall do all of the following:

16 (a) At least 15 days before providing deferred presentment
17 service transactions at any new location or under section
18 13(1)(c), provide written notice to the commissioner on a form
19 prescribed by the commissioner of the name, street address, and
20 telephone number of the new location or the detailed description
21 required in section 13(1)(c).

22 (b) At least 15 days before discontinuing deferred
23 presentment service transactions at any existing location or
24 under section 13(1)(c), provide written notice to the
25 commissioner on a form prescribed by the commissioner of the
26 name, street address, and telephone number of the discontinued
27 location or the detailed description of the services required in

1 section 13(1)(c).

2 (4) A licensee shall comply with any request for information
3 or documentation made by the commissioner under this act and
4 shall comply with any reasonable written time deadlines imposed
5 by the commissioner on that request.

6 (5) As used in this section, "control" means 1 of the
7 following:

8 (a) For a corporation, direct or indirect ownership of, or
9 the right to control, 10% or more of the voting shares of the
10 corporation, or the ability of a person to elect a majority of
11 the directors or otherwise effect a change in policy.

12 (b) For any entity other than a corporation, the ability to
13 change the principals of the organization, whether active or
14 passive.

15 Sec. 17. The commissioner may determine and identify by
16 order or rule events that may occur to a licensee that require
17 the licensee to file a written report with the commissioner
18 describing the event and its expected impact on the activities of
19 the licensee, on a form prescribed by the commissioner for the
20 event.

21 Sec. 18. A license issued under this article shall expire
22 on September 30 of each year unless earlier suspended,
23 surrendered, or revoked under this act. A licensee may renew a
24 license for a 12-month period by submitting an application that
25 shows continued compliance with this act, in a form prescribed by
26 the commissioner, and paying the license renewal fee to the
27 commissioner.

1 Sec. 19. (1) The commissioner may issue orders and rules
2 that he or she considers necessary to enforce and implement this
3 article. The commissioner shall make a copy of any order or rule
4 issued under this subsection available to each licensee within a
5 reasonable time after issuance.

6 (2) A licensee shall do all of the following:

7 (a) At any time that any information previously submitted to
8 the commissioner under this act is no longer accurate, promptly
9 file in writing with the commissioner a correction of the
10 information.

11 (b) Provide an annual written report of its business
12 operations, including business volume and other information on
13 the business of providing deferred presentment service
14 transactions. If requested by the commissioner, the licensee
15 shall provide additional written reports of those business
16 operations within a reasonable time after the commissioner's
17 request.

18 (c) Every February 1, May 1, August 1, and November 1,
19 report to the commissioner on a form prescribed by the
20 commissioner all of the following:

21 (i) The number of customers who during the preceding
22 calendar quarter notified the licensee of a violation of this
23 act.

24 (ii) A breakdown of the number of times the licensee agreed
25 that a violation of this act occurred and the number of times
26 that the licensee did not agree that a violation occurred.

27 (iii) If the licensee agreed that the violation occurred,

1 the amount of restitution that was paid to any customer under
2 this act.

3 (iv) Any other information the commissioner considers
4 necessary under this act.

5 (3) To assure compliance with this act, the commissioner may
6 examine the relevant business, books, and records of any
7 licensee. The licensee shall pay the cost of the examination.

8 Sec. 20. (1) Each licensee shall keep and use in its
9 business any books, accounts, and records the commissioner
10 requires under this act. A licensee shall preserve the books,
11 accounts, and records for at least 3 years, unless applicable
12 state or federal law concerning record retention requires a
13 longer retention period.

14 (2) If a licensee files a suspicious activity report with an
15 agency of the federal government, the licensee shall also within
16 24 hours file a copy of the suspicious activity report with the
17 department of state police. The licensee may file the suspicious
18 activity report with the department of state police in any manner
19 allowed by federal law or regulation or in any other manner
20 acceptable to the department of state police. Except for a
21 violation of section 5318(g) of title 31 of the United States
22 Code, 31 USC 5318, a licensee or a director, officer, employee,
23 or agent of the licensee is not liable in any civil or
24 governmental action for filing a copy of a suspicious activity
25 report under this subsection or failing to notify a customer or
26 any other person of the filing.

27 Sec. 21. (1) If the commissioner determines that an

1 applicant is not qualified to receive a license, the commissioner
2 shall notify the applicant in writing that the application has
3 been denied, stating the basis for denial.

4 (2) If the commissioner denies an application, or if the
5 commissioner fails to act on an application within 60 days after
6 the filing of a properly completed application, or within a
7 longer time period agreed to by the commissioner and the
8 applicant, the applicant may submit a written demand to the
9 commissioner for a hearing before the commissioner on the
10 question of whether the commissioner should grant a license. If
11 a hearing is held, the commissioner shall reconsider the
12 application, and issue a written order granting or denying the
13 application after the hearing.

14 (3) A person engaged in the business of providing deferred
15 presentment service transactions in this state on the effective
16 date of this act may continue to conduct that business until the
17 commissioner acts on its application. The person shall comply
18 with articles 3 and 4 during that time period.

19 Sec. 22. (1) On or before December 31, 2004, the
20 commissioner shall develop, implement, and maintain a statewide,
21 common database that has real-time access through an internet
22 connection, is accessible at all time to licensees, and to the
23 commissioner for purposes of subsections (10) and (11), and meets
24 the requirements of this section. The commissioner [may]
25 contract with a single third party provider to operate the
26 database pursuant to the provisions of this section. [If the
commissioner contracts with a third party provider for the operation of
the database, the]
27 commissioner shall ensure that the third party provider operates

1 the database pursuant to the provisions of this section.

2 (2) [If the commissioner contracts with a third party provider, the]
commissioner shall consider cost of service and

3 ability to meet all the requirements of this section in selecting
4 a single database provider under subsection (1). In selecting
5 the third party provider, the commissioner shall give strong
6 consideration to the database provider's ability to prevent
7 fraud, abuse, and other unlawful activity associated with
8 deferred presentment transactions, provide additional credit
9 information relevant to a customer's ability to pay, and provide
10 additional tools in the administration and enforcement of this
11 act. A third party provider shall only use the data collected
12 under this act as prescribed in this act and the contract with
13 the office and for no other purpose.

14 (3) A third party provider and a licensee may voluntarily
15 enter into a contract in which the third party provider obtains,
16 from that licensee only, the same data that the licensee is
17 required by this section to provide to the state database.

18 (4) A database provided under subsection (1) shall allow a
19 licensee accessing the database to do all of the following:

20 (a) Check a customer's social security number and report to
21 the commissioner or licensee if that social security number is
22 invalid, was issued within the 5-year period preceding the date
23 of the inquiry, or is issued to a deceased individual.

24 (b) Verify whether a customer has any open deferred
25 presentment service transactions with any licensee that have not
26 been terminated.

27 (c) Provide information necessary to ensure licensee

1 compliance with any requirements imposed by the federal office of
2 foreign asset control under federal law.

3 (d) If that information is available in the database, provide
4 additional credit information relevant to a customer's ability to
5 pay if the commissioner determines that this is appropriate and
6 reasonable under this act. The database provider may make this
7 additional data available to licensees at their option and sole
8 expense. This additional data may include any of the following:

9 (i) Past performance data on deferred presentment service
10 transactions that the customer has entered into within or outside
11 of this state.

12 (ii) Inquiry information from deferred presentment services
13 providers outside of this state that indicate that the customer
14 has entered into deferred presentment service transactions
15 outside of this state.

16 (iii) Any other data the commissioner determines by rule as
17 appropriate, necessary, and reasonable under this act.

18 (e) Track and monitor the number of customers who notify a
19 licensee of violations of this act, the number of times a
20 licensee agreed that a violation occurred, the number of times
21 that a licensee did not agree that a violation occurred, the
22 amount of restitution paid, and any other information the
23 commissioner considers necessary under this subdivision.

24 (5) When the database provider receives notification that a
25 deferred presentment service transaction is closed under section
26 33a, the database provider shall designate the transaction as
27 closed in the database immediately, but in no event after 11:59

1 p.m. on the day the commissioner or database provider receives
2 notification.

3 (6) The database provider shall automatically designate a
4 deferred presentment service transaction as closed in the
5 database 5 days after the transaction maturity date unless a
6 licensee reports to the database provider before that time that
7 the transaction remain open because of the customer's failure to
8 make payment; that the transaction is pending because the
9 customer's check or an electronic redeposit is in the process of
10 clearing the banking system; or that the transaction remains open
11 because the customer's check is being returned to the licensee
12 for insufficient funds, a closed account, or a stop payment
13 order, or any other factors determined by the commissioner. If a
14 licensee reports the status of a transaction as open or pending
15 in a timely manner, the transaction remains an open transaction
16 until it is closed under section 33a and the commissioner is
17 notified that the transaction is closed under that section.

18 (7) If a licensee ceases offering deferred presentment
19 service transactions, the database provider shall designate all
20 open transactions with that licensee as closed in the database 60
21 days after the date the licensee ceases offering those
22 transactions, unless the licensee reports to the commissioner or
23 database provider before the expiration of the 60-day period
24 which of its transactions remain open and the specific reason
25 each transaction remains open and the licensee provides to the
26 commissioner a reasonably acceptable plan that outlines how the
27 licensee will continue to update the database following the

1 ceasing of its operations. The commissioner shall promptly
2 approve or disapprove the plan and immediately notify the
3 licensee of his or her decision. If the plan is disapproved, the
4 licensee may submit a new plan or may submit a modified plan for
5 the licensee to follow. If at any time the commissioner
6 reasonably determines that a licensee that has ceased its
7 operations is not updating the database in accordance with its
8 approved plan, the commissioner shall immediately close or
9 instruct the database provider to immediately close all remaining
10 transactions attributable to that licensee.

11 (8) The response to an inquiry to the database provider by a
12 licensee shall only state that a person is eligible or ineligible
13 for a new deferred presentment service transaction and describe
14 the reason for that determination. Only the person seeking the
15 transaction may make a direct inquiry to the database provider to
16 request a more detailed explanation of a particular transaction
17 that was the basis for the ineligibility determination. Any
18 information regarding any person's transactional history is
19 confidential, is not subject to public inspection, and is not a
20 public record subject to the disclosure requirements of the
21 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

22 (9) The database provider may charge licensees a fee for
23 access to the database, in amounts approved by the commissioner.

24 (10) The commissioner may access the database provided under
25 subsection (1) only for the purposes of this act and shall not
26 have access to the additional data available to licensees under
27 subsection (4)(d).

1 (11) The commissioner shall investigate violations of and
2 enforce this section. The commissioner shall not delegate its
3 responsibilities under this subsection to the database provider
4 or any other third party provider.

5 (12) The commissioner may promulgate rules to administer and
6 enforce this section and to ensure that the database is used by
7 licensees in the manner required under this act.

8 (13) As used in this section and section 33a, "database
9 provider" means the third party provider designated by the
10 commissioner under subsection (1).

11 ARTICLE 3

12 Sec. 31. (1) A licensee shall post prominently in an area
13 designed to be seen by the customer before he or she enters into
14 a deferred presentment service transaction the following notice
15 in at least 36-point type:

16 "1. A deferred presentment service transaction is not
17 intended to meet long-term financial needs. We can only
18 defer cashing your check for up to 31 days.

19 2. You should use this service only to meet short-term cash
20 needs.

21 3. State law prohibits us from entering into a transaction
22 with you if you already have a deferred presentment service
23 agreement in effect with us or have more than one deferred
24 presentment service agreement in effect with any other
25 person who provides this service.

26 4. If you enter into a transaction with us, we must
27 immediately give you a copy of your signed agreement.

1 5. We must pay the proceeds of a transaction to you in cash
2 if you request it.

3 6. State law entitles you to the right to cancel an
4 agreement and receive a refund of the fee. To do this, if
5 you enter into a transaction today, you must notify us and
6 return the money you receive by the time this office closes
7 tomorrow or on our next business day if we are not open
8 tomorrow.

9 7. State law prohibits us from renewing an agreement for a
10 fee. You have to pay any other agreement in full before
11 obtaining additional money from us.

12 8. State law prohibits us from using any criminal process
13 to collect on an agreement.

14 9. State law entitles you to information regarding filing a
15 complaint against us if you believe that we have violated
16 the law. If you feel we are acting unlawfully, you should
17 call the Office of Financial and Insurance Services
18 toll-free at 1-877-999-6442."

19 (2) A licensee shall post prominently in an area designed to
20 be seen by the customer before he or she enters into a deferred
21 presentment service transaction a schedule of all fees and
22 charges imposed for deferred presentment service transactions in
23 at least 36-point type.

24 Sec. 32. (1) A licensee shall document a deferred
25 presentment service transaction by entering into a written
26 deferred presentment service agreement signed by both the
27 customer and the licensee.

1 (2) A licensee shall include all of the following in the
2 written deferred presentment service agreement:

3 (a) The name of the customer.

4 (b) The name, street address, facsimile number, and telephone
5 number of the licensee.

6 (c) The signature and printed or typed name of the individual
7 who enters into the deferred presentment service agreement on
8 behalf of the licensee.

9 (d) The date of the transaction.

10 (e) The amount of the check presented to the licensee by the
11 customer.

12 (f) An itemization of the fees to be paid by the customer.

13 (g) A calculation of the cost of the service fee to the
14 customer, expressed as a percentage rate per year.

15 (h) A clear description of the customer's payment obligation
16 under the agreement.

17 (i) A schedule of all fees associated with the deferred
18 presentment service transaction and include an example of the
19 amounts the customer would pay based on the amount of the
20 deferred presentment service transaction.

21 (j) The maturity date.

22 (k) A provision that the licensee will defer presentment,
23 defer negotiation, and defer entering a check into the
24 check-clearing process until the maturity date.

25 (l) A description of the process a drawer may use to file a
26 complaint against the licensee.

27 (m) The following notice in at least 12-point type:

1 "1. A deferred presentment service transaction is not
2 intended to meet long-term financial needs. We can only
3 defer cashing your check for up to 31 days.

4 2. You should use this service only to meet short-term cash
5 needs.

6 3. State law prohibits us from entering into this
7 transaction with you if you already have a deferred
8 presentment service agreement in effect with us or have
9 more than one deferred presentment service agreement in
10 effect with any other person who provides this service.

11 4. We must immediately give you a copy of your signed
12 agreement.

13 5. We must pay the proceeds of this transaction to you in
14 cash if you request it.

15 6. State law entitles you to the right to cancel this
16 agreement and receive a refund of the fee. To do this, you
17 must notify us and return the money you receive today by
18 the time this office closes tomorrow or on our next
19 business day if we are not open tomorrow.

20 7. State law prohibits us from renewing this agreement for
21 a fee. You have to pay an agreement in full before
22 obtaining additional money from us.

23 8. State law prohibits us from using any criminal process
24 to collect on this agreement.

25 9. State law entitles you to information regarding filing
26 a complaint against us if you believe that we have violated
27 the law. If you feel we are acting unlawfully, you should

1 call the Office of Financial and Insurance Services
2 toll-free at 1-877-999-6442.".

3 Sec. 33. (1) A licensee may enter into 1 deferred
4 presentment service transaction with a customer for any amount up
5 to \$500.00, and may charge the customer the service fee
6 authorized in this section and a verification fee under section
7 33a. A licensee may charge a service fee for each deferred
8 presentment service transaction. The service fee shall not
9 exceed [13.25%] of the face amount of the check or checks given by the
10 customer to the licensee for the deferred presentment service
11 transaction. A service fee is earned by the licensee on the date
12 of the transaction and is not interest.

13 (2) A licensee shall not enter into a deferred presentment
14 service transaction with a customer if the customer has an
15 outstanding deferred presentment service transaction with the
16 licensee or has more than 1 outstanding deferred presentment
17 service transaction with any other licensee. In determining
18 whether a customer has an outstanding deferred presentment
19 service transaction with the licensee or has more than 1
20 outstanding deferred presentment service transaction with any
21 other licensee, the licensee shall obtain a written
22 representation from the customer that he or she does not have an
23 outstanding deferred presentment service transaction with the
24 licensee or does not have more than 1 outstanding deferred
25 presentment service transaction with any other licensee and shall
26 independently verify the accuracy of the customer's written
27 representation by complying with section 33a. A customer who

1 enters into a transaction in violation of this subsection is not
2 entitled to the remedies provided under section 35 or through the
3 office as otherwise provided under this act with regard to that
4 transaction.

5 (3) At the time of entering into a deferred presentment
6 service transaction, a licensee shall do all of the following:

7 (a) Before the drawer signs the agreement, provide the
8 following notice to the drawer, in a document separate from the
9 agreement and in at least 12-point type:

10 "1. After signing this agreement, if you believe that we
11 have violated the law, you may do 1 of the following:

12 a. Before the close of business on the day you sign the
13 agreement, notify us in person of the violation. You must
14 provide supporting documents or other evidence of the
15 violation.

16 b. At any time before signing a new deferred presentment
17 service agreement with us, notify us in writing of the
18 violation. Your written notice must state the violation
19 and provide supporting documents or other evidence of the
20 violation.

21 2. We have 3 business days to determine if we agree that we
22 have violated the law and let you know of that
23 determination.

24 3. If we agree that we have violated the law, we must
25 return your check and you must return the cash received
26 under the agreement. Additionally, for each violation, we
27 must pay you restitution equal to 5 times the amount of the

1 fee we charged you under the agreement but not less than
2 \$15.00 or more than the face amount of your check. If we
3 pay you restitution for violating the law, you cannot
4 attempt to recover more from us for that violation.

5 4. If we do not agree that we have violated the law, we may
6 present your check for payment or enter your check into the
7 check-clearing process on or after the maturing date. If
8 your check is returned to us unpaid, we may take other
9 legal steps to collect our money.

10 5. If you still believe we violated the law, you may file a
11 written complaint including supporting documents or other
12 evidence with the Office of Financial and Insurance
13 Services. The Office is required to investigate your
14 complaint and has the authority to order us to pay you
15 restitution if they agree that we violated the law. In
16 addition, the Office can order us to pay civil fines or
17 take away our right to do business. To do so, contact the
18 Office of Financial and Insurance Services toll-free at
19 1-877-999-6442."

20 (b) Provide a copy of the signed agreement to the drawer.

21 (c) Pay the proceeds under the agreement to the drawer in
22 cash if requested by the drawer. Otherwise, the licensee may pay
23 the proceeds under the agreement to the drawer in the form of the
24 licensee's business check, money order, cash, or any other valid
25 method of monetary transfer.

26 (4) At the time of entering into a deferred presentment
27 service transaction, a licensee shall not do any of the

1 following:

2 (a) Charge interest under the agreement.

3 (b) Include a maturity date that is more than 31 days after
4 the date of the transaction.

5 (c) Charge an additional fee for cashing the licensee's
6 business check if the licensee pays the proceeds to the drawer by
7 business check.

8 (d) Include a confession of judgment in the agreement.

9 (e) Except as provided in this act, charge or collect any
10 other fees for a deferred presentment service transaction.

11 (5) A licensee shall not refuse to provide a deferred
12 presentment service transaction to a customer solely because the
13 customer has exercised his or her rights under this act.

14 Sec. 33a. (1) A licensee shall verify a customer's written
15 representation under section 33(2) by doing both of the
16 following:

17 (a) If the commissioner has not implemented a database under
18 section 22 or the database described in subsection (1) is not
19 fully operational, verifying that the customer does not have an
20 outstanding deferred presentment service transaction with the
21 licensee. The licensee shall maintain a database of all of the
22 licensee's transactions at all of its locations and search that
23 database to meet its obligation under this subsection.

24 (b) If the commissioner has implemented a database under
25 section 22 and the database described in that section is fully
26 operational, accessing the database and verifying that the
27 customer does not have more than 1 open deferred presentment

1 service transaction that has not been fully repaid with any other
2 licensee. If the commissioner has not implemented a database
3 under section 22, or the database provider is unable to access
4 its data and the alternative mechanism for verification described
5 in subsection (2) is also unavailable, a licensee may rely upon
6 the written verification of the borrower in a statement provided
7 in substantially the following form in at least 10-point type:

8 "I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE
9 TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE
10 OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY
11 OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS
12 STATE.".

13 (2) The database developed under this section shall maintain
14 a process of handling transaction verification requests due to
15 technical difficulties occurring with the licensee that renders
16 the licensee unable to access the database via the internet. The
17 licensee shall maintain verification of transactions as required
18 under this act by contacting the database through this
19 alternative mechanism under this subsection, if such an
20 alternative mechanism is available.

21 (3) Upon full implementation of the statewide common
22 database, the licensee shall access the database to meet the
23 requirements of this section and the database shall be used by
24 the commissioner to administer and enforce this act.

25 (4) A licensee may charge a customer any database
26 verification fee imposed by the database provider and approved by
27 the commissioner, for entering, accessing, and verifying data in

1 the database described in section 22 to verify that a customer
2 does not have any other outstanding deferred presentment service
3 transactions with the licensee and does not have more than 1
4 outstanding deferred presentment service transactions with any
5 other licensees. A licensee may pass up to the exact amount of
6 the fee imposed under this section on to a customer under this
7 act, but shall not impose any other fee upon the customer except
8 that fee authorized in section 33(1).

9 (5) A licensee may rely on the information contained in the
10 database described in section 22 as accurate and is not subject
11 to any administrative penalty or civil liability as a result of
12 relying on inaccurate information contained in the database.

13 (6) Before entering into a deferred deposit service
14 transaction, a licensee shall submit the customer's name, social
15 security number, address, and driver license number or other
16 method of state identification, if available, the amount of the
17 transaction, the customer's check number or numbers, the date of
18 the transaction, the maturity date of the transaction, and any
19 other information reasonably required by the commissioner to the
20 database provider, in a format reasonably required by the
21 commissioner.

22 (7) When a deferred presentment service transaction is
23 closed, the licensee shall designate the transaction as closed
24 and immediately notify the database provider, but in no event
25 after 11:59 p.m. on the day the transaction is terminated. The
26 commissioner shall assess an administrative fine of \$100.00 for
27 each day that the licensee fails to notify the commissioner that

1 the transaction has been closed. It is a defense to the
2 assessment of an administrative fine that notifying the database
3 provider was not possible due to temporary technical problems or
4 to circumstances beyond the licensee's control.

5 (8) As used in this section and section 22, "closed" in
6 connection with a deferred presentment services transaction means
7 that 1 of the following has occurred concerning each of the
8 customer's checks that is the basis of the deferred presentment
9 service transaction:

10 (a) The check is redeemed by the customer by payment to the
11 licensee of the face amount of the check in cash.

12 (b) The check is exchanged by the licensee for a cashier's
13 check or cash from the customer's financial institution.

14 (c) The check is deposited by the licensee and the licensee
15 has evidence that the person has satisfied the obligation.

16 (d) The check is collected by the licensee or its agent
17 through any civil remedy available under the laws of this state.

18 (e) The check is collected by means of a repayment plan
19 agreed upon by the customer and the licensee or as the result of
20 credit counseling where the licensee is paid the amount agreed
21 upon by the licensee under that plan.

22 Sec. 34. (1) A licensee shall not renew a deferred
23 presentment service agreement. A licensee may extend a deferred
24 presentment service agreement only if the licensee does not
25 charge a fee in connection with the extended transaction. A
26 licensee who extends an agreement under this subsection shall not
27 create a balance owed above the amount owed on the original

1 agreement.

2 (2) A licensee shall not present a check for payment before
3 the maturity date. In addition to the remedies and penalties
4 under this act, a licensee that presents a check for payment
5 before the maturity date is liable for all expenses and damages
6 caused to the drawer and the drawee as a result of the
7 violation.

8 (3) A drawer satisfies his or her obligation under a deferred
9 presentment service agreement when the check the licensee is
10 holding is paid by the drawee or is redeemed by the drawer by
11 paying to the licensee an amount equal to the full amount of the
12 check.

13 Sec. 35. (1) No later than the close of business on the day
14 he or she signed a deferred presentment service agreement, a
15 drawer who believes that a licensee has violated this act may
16 notify the licensee in person that the licensee has violated the
17 act. The drawer shall identify the nature of the violation and
18 provide documentary or other evidence of the violation at that
19 time.

20 (2) At any time before signing a new deferred presentment
21 service agreement with a licensee, a drawer who believes that the
22 licensee has violated this act in connection with a deferred
23 presentment service transaction may deliver to the licensee a
24 notice in writing that the licensee has violated the act. The
25 drawer shall identify the nature of the violation and include
26 documentary or other evidence of the violation in the notice.

27 (3) No later than the close of the third business day after

1 receipt of a notice under subsection (1) or (2), the licensee
2 shall determine if it has violated the law as alleged in the
3 notice.

4 (4) If the licensee determines that it has violated the law,
5 it shall return to the drawer the check or checks it received in
6 the deferred presentment service transaction and any service fee
7 paid by the drawer to the licensee. The drawer shall deliver to
8 the licensee cash or a cash equivalent in an amount equal to the
9 amount of cash the drawer received in the transaction. In
10 addition, the licensee shall make restitution to the drawer for
11 each violation in an amount equal to 5 times the amount of the
12 fee charged in the deferred presentment service transaction, but
13 not less than \$15.00 or more than the face amount of the drawer's
14 check. A licensee that makes restitution for a violation under
15 this subsection is not subject to any other remedy provided for a
16 violation under this act with respect to that violation. A
17 licensee that makes restitution for a violation under this
18 subsection shall immediately notify the commissioner of that
19 action. The licensee shall give the commissioner detailed
20 information about the terms of the deferred presentment service
21 transaction and shall provide other information requested by the
22 commissioner.

23 (5) If the licensee determines that it did not violate the
24 law, the licensee shall immediately notify the commissioner and
25 the drawer of that determination. The licensee shall give the
26 commissioner detailed information about the terms of the deferred
27 presentment service transaction and shall provide other

1 information requested by the commissioner. The licensee shall
2 include in the notification to the drawer that the drawer has the
3 right to file a written complaint with the office if he or she
4 does not agree with the determination that the licensee did not
5 violate the law. The licensee shall include in the notice
6 detailed information on how the drawer can contact the office to
7 obtain a complaint form.

8 (6) A drawer who receives a notice of determination by the
9 licensee that it did not violate the law may file a written
10 complaint with the office on a form prescribed by the
11 commissioner. The drawer shall include with the complaint
12 documentary or other evidence of the violation.

13 (7) If the licensee has otherwise complied with this section
14 and has determined that it did not violate the law, the licensee
15 may present the check for payment on or after the maturity date.
16 If a check presented for payment under this subsection is not
17 honored, a licensee may initiate any lawful collection effort.

18 (8) The commissioner shall promptly investigate a complaint
19 filed by a drawer under this section. If after investigating the
20 drawer's complaint, the commissioner concludes that the licensee
21 violated this act, the commissioner may order the licensee to
22 make restitution to the drawer in an amount equal to 3 times the
23 amount provided for in subsection (4), but not less than \$45.00
24 or more than 3 times the full amount of the check. A licensee
25 ordered to pay restitution under this subsection is also subject
26 to any other applicable penalties and remedies available under
27 this act for the violation.

1 Sec. 36. (1) A drawer may rescind a deferred presentment
2 service agreement without cost to the drawer and for any reason
3 if the drawer, not later than the close of business on the
4 business day following the date of the deferred presentment
5 service transaction, delivers to the licensee cash or a cash
6 equivalent in an amount equal to the amount of cash the drawer
7 received in the transaction. The licensee shall return to the
8 drawer the check or checks received in the transaction and any
9 service fee paid by the drawer to the licensee. A drawer who
10 rescinds an agreement under this section is not eligible for
11 restitution under section 35 with regard to the rescinded
12 agreement.

13 (2) A drawer may redeem a check from the licensee holding the
14 check in a deferred presentment service transaction at any time
15 before the maturity date. A licensee shall return the check to
16 the drawer upon receipt of cash or its equivalent in the full
17 amount of the check. A licensee shall not contract for or
18 collect a charge for accepting partial payments from the customer
19 if the full amount is paid by the maturity date.

20 Sec. 37. (1) A licensee shall endorse a check given to it
21 by a drawer with the actual name under which the licensee is
22 doing business before the licensee negotiates or presents the
23 check for payment.

24 (2) A licensee may contract for and collect a returned check
25 charge that does not exceed \$25.00 if 1 or more of a drawer's
26 checks that the licensee is holding in a deferred presentment
27 service transaction are returned by the drawee due to

1 insufficient funds, a closed account, or a stop payment order.
2 The licensee may only contract for and collect 1 returned check
3 charge under this subsection in a transaction with a customer.
4 In addition to the charge authorized by this section, a licensee
5 may exercise any other remedy available under any law applicable
6 to the return of a check because of a closed account or a stop
7 payment order.

8 (3) A drawer is not subject to any criminal penalty for
9 entering into a deferred presentment service transaction and is
10 not subject to any criminal penalty in the event the drawer's
11 check is dishonored.

12 Sec. 38. (1) A licensee shall maintain each deferred
13 presentment service agreement until the expiration of 3 years
14 after the date the deferred presentment service agreement is
15 satisfied and make available for examination by the commissioner
16 deferred presentment service agreements and all related documents
17 in its possession or control including, but not limited to, any
18 applications, credit reports, employment verifications, or loan
19 disclosure statements.

20 (2) Notwithstanding any other provision of this act, a
21 licensee shall preserve and keep available for examination by the
22 commissioner all documents pertaining to a rejected application
23 for a deferred presentment service transaction for any period of
24 time required by law.

25 Sec. 39. A licensee shall not do any of the following:

26 (a) Enter into a tying arrangement through which the
27 licensee conditions the sale of 1 financial service to a consumer

1 on the agreement by the consumer to purchase 1 or more other
2 financial services from the licensee or an affiliate or
3 subsidiary of the licensee.

4 (b) Knowingly permit a person to violate an order that has
5 been issued under this act or any other financial licensing act
6 that prohibits that person from being employed by, an agent of,
7 or a control person of the licensee.

8 ARTICLE 4

9 Sec. 41. (1) A customer may file a written complaint with
10 the office on a form prescribed by the commissioner regarding a
11 licensee. The customer shall include with the complaint
12 documentary or other evidence of the violation or activities of
13 the licensee. The commissioner shall investigate a complaint
14 filed by a customer under this subsection.

15 (2) The commissioner may investigate or conduct examinations
16 of a licensee and conduct hearings as the commissioner considers
17 necessary to determine whether a licensee or any other person has
18 violated this act, or whether a licensee has conducted business
19 in a manner that justifies suspension or forfeiture of its
20 authority to engage in the business of providing deferred
21 presentment service transactions in this state.

22 (3) The commissioner may subpoena witnesses and documents,
23 papers, books, records, and other evidence in any manner over
24 which the commissioner has jurisdiction, control, or
25 supervision. The commissioner may administer oaths to any person
26 whose testimony is required. If a person fails to comply with a
27 subpoena issued by the commissioner or to testify with respect to

1 any matter concerning which the person may be lawfully
2 questioned, the commissioner may petition the circuit court for
3 Ingham county to issue an order requiring the person to attend,
4 give testimony, or produce evidence.

5 Sec. 42. (1) If in the opinion of the commissioner a
6 licensee is, has, or is about to engage in a practice that poses
7 a threat of financial loss or threat to the public welfare, or
8 is, has, or is about to violate this article, state or federal
9 law, or an applicable rule or regulation, the commissioner may
10 serve a notice of intention to issue a cease and desist order. A
11 notice served under this section shall contain a statement of the
12 facts constituting the alleged practice or violation and shall
13 fix a time and place for a hearing at which the commissioner will
14 determine whether to issue an order to cease and desist against
15 the licensee.

16 (2) A licensee that fails to appear at a hearing under
17 subsection (1) consents to the issuance of the cease and desist
18 order. If a licensee consents, or upon the record made at the
19 hearing the commissioner finds that the practice or violation
20 specified in the notice has been established, the commissioner
21 may serve upon the licensee an order to cease and desist from the
22 practice or violation. The order may require the licensee and
23 its executive officers, employees, and agents to cease and desist
24 from the practice or violation and to take affirmative action to
25 correct the conditions resulting from the practice or violation.

26 (3) Except to the extent it is stayed, modified, terminated,
27 or set aside by the commissioner or a court, a cease and desist

1 order is effective on the date of service. A cease and desist
2 order issued with the consent of the licensee is effective at the
3 time specified in the order and remains effective and enforceable
4 as provided in the order.

5 Sec. 43. (1) The commissioner may, after notice and
6 hearing, suspend or revoke any license if the commissioner finds
7 that the licensee has knowingly or through lack of due care done
8 any of the following:

9 (a) Failed to pay the annual license fee imposed by this
10 article, or an examination fee imposed by the commissioner under
11 this article.

12 (b) Committed any fraud, engaged in any dishonest activities,
13 or made any misrepresentations.

14 (c) Violated this act or any rule or order issued under this
15 act or has violated any other law in the course of the licensee's
16 dealings as a licensee.

17 (d) Made a false statement in the application for the license
18 or failed to give a true reply to a question in the application.

19 (e) Demonstrated incompetency or untrustworthiness to act as
20 a licensee.

21 (f) Engaged in a pattern or practice that poses a threat of
22 financial loss or threat to the public welfare.

23 (2) If the reason for revocation or suspension of a
24 licensee's license at any 1 location is of general application to
25 all locations operated by a licensee, the commissioner may revoke
26 or suspend all licenses issued to a licensee.

27 (3) The commissioner shall comply with the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
2 concerning any notice or hearing under this section. A notice
3 served under this section shall contain a statement of the facts
4 constituting the violation or pattern of practice and shall fix a
5 time and place at which the commissioner will hold a hearing to
6 determine whether the commissioner should issue an order to
7 suspend or terminate 1 or more licenses of the licensee.

8 (4) If a licensee fails to appear at a hearing under
9 subsection (1), the licensee consents to the issuance of the
10 order to suspend or terminate 1 or more licenses of the
11 licensee. If a licensee consents, or upon the record made at the
12 hearing the commissioner finds that the pattern of practice or
13 violation specified in the notice has been established, the
14 commissioner may serve upon the licensee an order suspending or
15 terminating 1 or more licenses of the licensee.

16 (5) Except to the extent it is stayed, modified, terminated,
17 or set aside by the commissioner or a court, an order suspending
18 or terminating 1 or more licenses of the licensee is effective on
19 the date of service. An order suspending or terminating 1 or
20 more licenses of the licensee issued with the consent of the
21 licensee is effective at the time specified in the order and
22 remains effective and enforceable as provided in the order.

23 Sec. 44. (1) If the commissioner finds that a person has
24 violated this act, state or federal law, or an applicable rule or
25 regulation, the commissioner may order the person to pay a civil
26 fine of not less than \$1,000.00 or more than \$10,000.00 for each
27 violation. However, if the commissioner finds that a person has

1 violated this act and that the person knew or reasonably should
2 have known that he or she was in violation of this act, the
3 commissioner may order the person to pay a civil fine of not less
4 than \$5,000.00 or more than \$50,000.00 for each violation. The
5 commissioner may also order the person to pay the costs of the
6 investigation.

7 (2) A civil fine assessed under subsection (1) may be sued
8 for and recovered by and in the name of the commissioner and may
9 be collected and enforced by summary proceedings by the attorney
10 general. In determining the amount of a fine, the commissioner
11 shall consider the extent to which the violation was a knowing
12 and willful violation, the extent of the injury suffered because
13 of the violation, the corrective action taken by the licensee to
14 ensure that the violation will not be repeated, and the record of
15 the licensee in the complying with this act.

16 Sec. 45. (1) If in the opinion of the commissioner a person
17 has engaged in fraud, the commissioner may serve upon that person
18 a written notice of intention to prohibit that person from being
19 employed by, an agent of, or a control person of a licensee under
20 this act. As used in this subsection, "fraud" includes
21 actionable fraud, actual or constructive fraud, criminal fraud,
22 extrinsic or intrinsic fraud, fraud in the execution, in the
23 inducement, in fact, or in law, or any other form of fraud.

24 (2) A notice issued under subsection (1) shall contain a
25 statement of the facts supporting the prohibition and, except as
26 provided under subsection (7), set a hearing on a date within 60
27 days after the date of the notice. If the person does not appear

1 at the hearing, he or she is considered to have consented to the
2 issuance of an order in accordance with the notice.

3 (3) If after a hearing held under subsection (2) the
4 commissioner finds that any of the grounds specified in the
5 notice have been established, the commissioner may issue an order
6 of suspension or prohibition from being a licensee or from being
7 employed by, an agent of, or a control person of any licensee
8 under this act.

9 (4) An order issued under subsection (2) or (3) is effective
10 when served on a person. The commissioner shall also serve a
11 copy of the order upon the licensee of which the person is an
12 employee, agent, or control person. The order remains in effect
13 until it is stayed, modified, terminated, or set aside by the
14 commissioner or a reviewing court.

15 (5) After 5 years from the date of an order issued under
16 subsection (2) or (3), the person subject to the order may apply
17 to the commissioner to terminate the order.

18 (6) If the commissioner considers that a person served a
19 notice under subsection (1) poses an imminent threat of financial
20 loss to customers, the commissioner may serve upon the person an
21 order of suspension from being employed by, an agent of, or a
22 control person of any licensee. The suspension is effective on
23 the date the order is issued and, unless stayed by a court,
24 remains in effect until the commissioner completes the review
25 required under this section, and the commissioner has dismissed
26 the charges specified in the order.

27 (7) Unless otherwise agreed to by the commissioner and the

1 person served with an order issued under subsection (6), the
2 commissioner shall hold the hearing required under subsection (2)
3 to review the suspension not earlier than 5 days or later than 20
4 days after the date of the notice.

5 (8) If a person is convicted of a felony involving fraud,
6 dishonesty, or breach of trust, the commissioner may issue an
7 order suspending or prohibiting that person from being a licensee
8 and from being employed by, an agent of, or a control person of
9 any licensee under this act. After 5 years from the date of the
10 order, the person subject to the order may apply to the
11 commissioner to terminate the order.

12 (9) The commissioner shall mail a copy of any notice or order
13 issued under this section to the licensee of which the person
14 subject to the notice or order is an employee, agent, or control
15 person.

16 (10) The commissioner shall conduct a hearing under this
17 section in accordance with the administrative procedures act of
18 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after
19 the commissioner has notified the parties that the case has been
20 submitted to him or her for final decision, the commissioner
21 shall render a decision that includes findings of fact supporting
22 the decision and serve upon each party to the proceeding a copy
23 of the decision and an order consistent with the decision.

24 (11) Except for a consent order, a party to the proceeding or
25 a person affected by an order issued under this section may
26 obtain a judicial review of the order. A consent order may be
27 reviewed as provided under the administrative procedures act of

1 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order
2 under judicial review, the commissioner may terminate or set
3 aside any order. The commissioner may terminate or set aside an
4 order under judicial review with the permission of the court.

5 (12) Unless ordered by the court, the commencement of
6 proceedings for judicial review under subsection (11) does not
7 stay the commissioner's order.

8 (13) The commissioner may apply to the circuit court of
9 Ingham county for the enforcement of any outstanding order issued
10 under this section.

11 (14) Any current or former executive officer, director,
12 agent, or control person who violates a final order issued under
13 this section is guilty of a misdemeanor punishable by a fine of
14 not more than \$5,000.00 or imprisonment for not more than 1 year,
15 or both.

16 (15) A control person who is subject to an order issued under
17 this section and who meets all of the following requirements is
18 not in violation of the order:

19 (a) The control person does not in any manner, directly or
20 indirectly, participate in the control of a licensee after the
21 date the order is issued.

22 (b) The control person transfers any interest the control
23 person owns in the licensee to an unrelated third party within 6
24 months after the date the order is final.

25 (16) As used in this section, "control person" means a
26 director or executive officer of a licensee or a person who has
27 the authority to participate in the direction, directly or

1 indirectly through 1 or more other persons, of the management or
2 policies of a licensee.

3 Sec. 46. (1) A licensee who is ordered to cease and desist,
4 whose license is suspended or terminated, or who is ordered to
5 pay a fine under this act is entitled to a hearing before the
6 commissioner if a written request for a hearing is filed with the
7 commissioner not more than 30 days after the effective date of
8 the order.

9 (2) Any administrative proceedings under this act are subject
10 to the administrative procedures act of 1969, 1969 PA 306, MCL
11 24.201 to 24.328.

12 Sec. 47. The commissioner may promulgate rules under the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328, to enforce and administer this act.

15 Sec. 48. A person who provided deferred presentment service
16 transactions in this state before July 1, 2004 is considered to
17 have complied with applicable state law if the person provided
18 those transactions in substantial conformity with the rulings and
19 interpretive statements then in effect that were issued by the
20 office or its predecessor agency.

21 Enacting section 1. This act takes effect July 1, 2004.