

STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Senator Garcia

ENROLLED SENATE BILL No. 474

AN ACT 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:

ARTICLE 1

Sec. 1. This act shall be known and may be cited as the “deferred presentment service transactions act”.

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

(a) “Applicant” means a person seeking a license to engage in the business of providing deferred presentment service transactions under this act.

(b) “Check” means a draft payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union. Check includes any negotiable instrument that represents evidence of an obligation to pay even though it is described on its face by another term.

(c) “Commissioner” means the commissioner of the office of financial and insurance services or his or her authorized representative.

(d) “Customer” means an individual who inquires into the availability of or applies for a deferred presentment service transaction or a drawer who enters into a deferred presentment service transaction.

(e) Subject to subsection (2), “deferred presentment service transaction” means a transaction between a licensee and a customer under which the licensee agrees to do all of the following:

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

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

(f) “Drawee” means a bank, savings bank, savings and loan association, credit union, or other person upon which a check is drawn.

(g) “Drawer” means a customer who enters into a deferred presentment service transaction with a licensee.

(h) “Executive officer” means an officer or director of a licensee or any other individual who has the authority to participate in the direction, directly or indirectly, through 1 or more persons, or the management of a licensee.

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

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

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

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

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

ARTICLE 2

Sec. 11. (1) Except as provided in subsection (2), a person shall not engage in the business of providing deferred presentment service transactions without a license under this article. A separate license is required for each location from which the business of providing deferred presentment service transactions are conducted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. (1) After the commissioner receives a completed license application, the commissioner shall investigate to determine whether the requirements of this act are satisfied. If the commissioner finds that the requirements of this act are satisfied, the commissioner shall issue to the applicant a license to engage in deferred presentment service transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) If the licensee agreed that the violation occurred, the amount of restitution that was paid to any customer under this act.

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

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

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

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

Sec. 21. (1) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

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

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

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

(2) If the commissioner contracts with a third party provider, the commissioner shall consider cost of service and ability to meet all the requirements of this section in selecting a single database provider under subsection (1). In selecting the third party provider, the commissioner shall give strong consideration to the database provider's ability to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions, provide additional credit information relevant to a customer's ability to pay, and provide additional tools in the administration and enforcement of this act. A third party provider shall only use the data collected under this act as prescribed in this act and the contract with the office and for no other purpose.

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

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

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

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

(c) Provide information necessary to ensure licensee compliance with any requirements imposed by the federal office of foreign asset control under federal law.

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

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

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

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

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

(5) When the database provider receives notification that a deferred presentment service transaction is closed under section 33a, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the commissioner or database provider receives notification.

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

(7) If a licensee ceases offering deferred presentment service transactions, the database provider shall designate all open transactions with that licensee as closed in the database 60 days after the date the licensee ceases offering those transactions, unless the licensee reports to the commissioner or database provider before the expiration of the 60-day period which of its transactions remain open and the specific reason each transaction remains open and the licensee provides to the commissioner a reasonably acceptable plan that outlines how the licensee will continue to update the database following the ceasing of its operations. The commissioner shall promptly approve or disapprove the plan and immediately notify the licensee of his or her decision. If the plan is disapproved, the licensee may submit a new plan or may submit a modified plan for the licensee to follow. If at any time the commissioner reasonably determines that a licensee that has ceased its operations is not updating the database in accordance with its approved plan, the commissioner shall immediately close or instruct the database provider to immediately close all remaining transactions attributable to that licensee.

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

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

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

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

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

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

ARTICLE 3

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

- "1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.
2. You should use this service only to meet short-term cash needs.
3. State law prohibits us from entering into a transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.
4. If you enter into a transaction with us, we must immediately give you a copy of your signed agreement.
5. We must pay the proceeds of a transaction to you in cash if you request it.

6. State law entitles you to the right to cancel an agreement and receive a refund of the fee. To do this, if you enter into a transaction today, you must notify us and return the money you receive by the time this office closes tomorrow or on our next business day if we are not open tomorrow.
7. State law prohibits us from renewing an agreement for a fee. You have to pay any other agreement in full before obtaining additional money from us.
8. State law prohibits us from using any criminal process to collect on an agreement.
9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442.”.

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

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

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

- (a) The name of the customer.
- (b) The name, street address, facsimile number, and telephone number of the licensee.
- (c) The signature and printed or typed name of the individual who enters into the deferred presentment service agreement on behalf of the licensee.
- (d) The date of the transaction.
- (e) The amount of the check presented to the licensee by the customer.
- (f) An itemization of the fees to be paid by the customer.
- (g) A calculation of the cost of the service fee to the customer, expressed as a percentage rate per year.
- (h) A clear description of the customer’s payment obligation under the agreement.
- (i) A schedule of all fees associated with the deferred presentment service transaction and include an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction.
- (j) The maturity date.
- (k) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.
- (l) A description of the process a drawer may use to file a complaint against the licensee.
- (m) The following notice in at least 12-point type:
 - “1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.
 2. You should use this service only to meet short-term cash needs.
 3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.
 4. We must immediately give you a copy of your signed agreement.
 5. We must pay the proceeds of this transaction to you in cash if you request it.
 6. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today by the time this office closes tomorrow or on our next business day if we are not open tomorrow.
 7. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us.
 8. State law prohibits us from using any criminal process to collect on this agreement.
 9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442.”.

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

(2) A licensee shall not enter into a deferred presentment service transaction with a customer if the customer has an outstanding deferred presentment service transaction with the licensee or has more than 1 outstanding deferred presentment service transaction with any other licensee. In determining whether a customer has an outstanding

deferred presentment service transaction with the licensee or has more than 1 outstanding deferred presentment service transaction with any other licensee, the licensee shall obtain a written representation from the customer that he or she does not have an outstanding deferred presentment service transaction with the licensee or does not have more than 1 outstanding deferred presentment service transaction with any other licensee and shall independently verify the accuracy of the customer's written representation by complying with section 33a. A customer who enters into a transaction in violation of this subsection is not entitled to the remedies provided under section 35 or through the office as otherwise provided under this act with regard to that transaction.

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

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

- "1. After signing this agreement, if you believe that we have violated the law, you may do 1 of the following:
 - a. Before the close of business on the day you sign the agreement, notify us in person of the violation. You must provide supporting documents or other evidence of the violation.
 - b. At any time before signing a new deferred presentment service agreement with us, notify us in writing of the violation. Your written notice must state the violation and provide supporting documents or other evidence of the violation.
2. We have 3 business days to determine if we agree that we have violated the law and let you know of that determination.
3. If we agree that we have violated the law, we must return your check and you must return the cash received under the agreement. Additionally, for each violation, we must pay you restitution equal to 5 times the amount of the fee we charged you under the agreement but not less than \$15.00 or more than the face amount of your check. If we pay you restitution for violating the law, you cannot attempt to recover more from us for that violation.
4. If we do not agree that we have violated the law, we may present your check for payment or enter your check into the check-clearing process on or after the maturing date. If your check is returned to us unpaid, we may take other legal steps to collect our money.
5. If you still believe we violated the law, you may file a written complaint including supporting documents or other evidence with the Office of Financial and Insurance Services. The Office is required to investigate your complaint and has the authority to order us to pay you restitution if they agree that we violated the law. In addition, the Office can order us to pay civil fines or take away our right to do business. To do so, contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

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

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

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

- (a) Charge interest under the agreement.
 - (b) Include a maturity date that is more than 31 days after the date of the transaction.
 - (c) Charge an additional fee for cashing the licensee's business check if the licensee pays the proceeds to the drawer by business check.
 - (d) Include a confession of judgment in the agreement.
 - (e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction.
- (5) A licensee shall not refuse to provide a deferred presentment service transaction to a customer solely because the customer has exercised his or her rights under this act.

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

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

(b) If the commissioner has implemented a database under section 22 and the database described in that section is fully operational, accessing the database and verifying that the customer does not have more than 1 open deferred presentment service transaction that has not been fully repaid with any other licensee. If the commissioner has not implemented a database under section 22, or the database provider is unable to access its data and the alternative mechanism for verification described in subsection (2) is also unavailable, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 10-point type:

“I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE.”.

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

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

(4) A licensee may charge a customer any database verification fee imposed by the database provider and approved by the commissioner, for entering, accessing, and verifying data in the database described in section 22 to verify that a customer does not have any other outstanding deferred presentment service transactions with the licensee and does not have more than 1 outstanding deferred presentment service transactions with any other licensees. A licensee may pass up to the exact amount of the fee imposed under this section on to a customer under this act, but shall not impose any other fee upon the customer except that fee authorized in section 33(1).

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

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

(7) When a deferred presentment service transaction is closed, the licensee shall designate the transaction as closed and immediately notify the database provider, but in no event after 11:59 p.m. on the day the transaction is terminated. The commissioner shall assess an administrative fine of \$100.00 for each day that the licensee fails to notify the commissioner that the transaction has been closed. It is a defense to the assessment of an administrative fine that notifying the database provider was not possible due to temporary technical problems or to circumstances beyond the licensee's control.

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

- (a) The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash.
- (b) The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.
- (c) The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.
- (d) The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.
- (e) The check is collected by means of a repayment plan agreed upon by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.

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

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

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

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

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

(3) No later than the close of the third business day after receipt of a notice under subsection (1) or (2), the licensee shall determine if it has violated the law as alleged in the notice.

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

(5) If the licensee determines that it did not violate the law, the licensee shall immediately notify the commissioner and the drawer of that determination. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner. The licensee shall include in the notification to the drawer that the drawer has the right to file a written complaint with the office if he or she does not agree with the determination that the licensee did not violate the law. The licensee shall include in the notice detailed information on how the drawer can contact the office to obtain a complaint form.

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

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

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

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

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

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

(2) A licensee may contract for and collect a returned check charge that does not exceed \$25.00 if 1 or more of a drawer's checks that the licensee is holding in a deferred presentment service transaction are returned by the drawee due to insufficient funds, a closed account, or a stop payment order. The licensee may only contract for and collect 1 returned check charge under this subsection in a transaction with a customer. In addition to the charge authorized by this section, a licensee may exercise any other remedy available under any law applicable to the return of a check because of a closed account or a stop payment order.

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

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

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

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

(a) Enter into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee or an affiliate or subsidiary of the licensee.

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

ARTICLE 4

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

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

(3) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in any manner over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths to any person whose testimony is required. If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the commissioner may petition the circuit court for Ingham county to issue an order requiring the person to attend, give testimony, or produce evidence.

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

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

(3) Except to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order is effective on the date of service. A cease and desist order issued with the consent of the licensee is effective at the time specified in the order and remains effective and enforceable as provided in the order.

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

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

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

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

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

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

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

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

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

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

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

Sec. 44. (1) If the commissioner finds that a person has violated this act, state or federal law, or an applicable rule or regulation, the commissioner may order the person to pay a civil fine of not less than \$1,000.00 or more than \$10,000.00 for each violation. However, if the commissioner finds that a person has violated this act and that the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the person to pay a civil fine of not less than \$5,000.00 or more than \$50,000.00 for each violation. The commissioner may also order the person to pay the costs of the investigation.

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

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

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing on a date within 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

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

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

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

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

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

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

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

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

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

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

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

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

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

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

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

(16) As used in this section, "control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee.

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

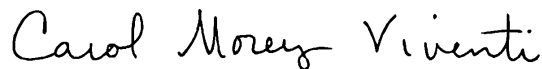
(2) Any administrative proceedings under this act are subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

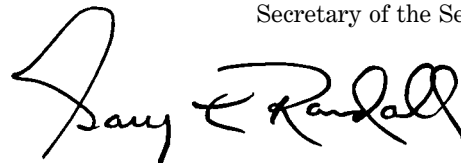
Sec. 48. A person who provided deferred presentment service transactions in this state before July 1, 2004 is considered to have complied with applicable state law if the person provided those transactions in substantial conformity with the rulings and interpretive statements then in effect that were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

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor