

HOUSE BILL No. 4985

July 16, 2003, Introduced by Reps. Tobocman, Gielegem, Bieda, Pappageorge, Hunter, Byrum, Hopgood and Woodward and referred to the Committee on Commerce.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

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

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

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

1 (d) "Deferred deposit loan" means a transaction under a
2 written agreement between a licensee and the issuer of a check in
3 which the licensee, for a fee, service charge, or other
4 consideration, accepts a check dated on the date it was written
5 and agrees to hold it for a period of days before deposit or
6 presentment, or accepts a check dated subsequent to the date it
7 was written, and agrees to hold the check for deposit until the
8 date written on the check.

9 (e) "Fund" means the deferred presentment fund created in
10 section 10.

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

13 (g) "Office" means the office of financial and insurance
14 services.

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

18 Sec. 3. (1) Except as provided in section 4, a person shall
19 not engage in the business of providing deferred deposit loans
20 for consideration without first obtaining a license under this
21 act. A person who violates this subsection is guilty of a felony
22 punishable by imprisonment for not more than 10 years or a fine
23 of not more than \$50,000.00, or both.

24 (2) The commissioner shall maintain a list of licensees,
25 which shall be available to interested persons and the public.
26 The commissioner shall create a toll-free telephone number
27 through which a person may obtain information about licensees and

1 the complaint process.

2 (3) The commissioner shall establish a complaint process
3 through which an aggrieved person or any member of the public may
4 file a complaint against a licensee or nonlicensee who violates
5 this act. The commissioner shall hold hearings upon the request
6 of a party to the complaint, make findings of fact, and
7 conclusions of law. The commissioner may issue cease and desist
8 orders, refer the matter to the appropriate law enforcement
9 agency for prosecution under this act, or suspend or revoke a
10 license granted under this act.

11 Sec. 4. (1) Except as provided in subsection (3), this act
12 does not apply to the cashing of checks by any of the following:

13 (a) A state or national chartered bank or a state or federal
14 chartered credit union, savings and loan association, or savings
15 bank.

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

17 (c) A foreign bank agency, as defined in section 1202 of the
18 banking code of 1999, 1999 PA 276, MCL 487.11202.

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

22 (3) To the extent that a bank, savings and loan association,
23 savings bank, credit union, or other state or federally regulated
24 financial institution is exempt by other state or federal laws
25 from this act regarding limitations on interest and rates, all
26 other provisions of this act apply except the requirement of
27 licensing.

1 Sec. 5. (1) A person seeking a license to engage in the
2 business of providing deferred deposit loans in this state shall
3 file an application with the commissioner in writing and under
4 oath that includes all of the following:

5 (a) The name and exact address of the applicant and the name
6 and address of 1 of the following:

7 (i) If the applicant is a corporation, its officers and
8 directors.

9 (ii) If the applicant is an association, its officers and
10 directors.

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

12 (iv) If the applicant is a limited liability company, either
13 its manager or managers if managed by a manager or managers, or
14 its members.

15 (v) If the applicant is any other legal entity, its manager
16 or other person designated to control the operation of that legal
17 entity.

18 (b) A copy of a certificate of an assumed name, if
19 applicable.

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

21 (i) If the applicant is a corporation, a copy of the articles
22 of incorporation and bylaws.

23 (ii) If the applicant is a partnership, a copy of any
24 partnership agreement and partnership certificate.

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

27 (iv) If the applicant is an association, a copy of any

1 organizational documents of the association.

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

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

7 (b) Furnish financial statements to the office, in a form
8 satisfactory to the commissioner, showing the applicant has
9 working capital in excess of \$5,000.00 for each of the
10 applicant's business locations and cash in excess of \$25,000.00.

11 (c) Furnish a \$50,000.00 surety bond for each of the
12 applicant's business locations issued by a bonding company or
13 insurance company authorized to do business in this state and in
14 a form satisfactory to the commissioner, to secure the
15 performance of the obligations of the applicant with respect to
16 the receipt of money in connection with the cashing of checks.

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

19 Sec. 6. After an applicant files an application and
20 complies with section 5(2), the commissioner shall investigate
21 the financial responsibility, financial and business experience,
22 and character and general fitness of the applicant. If the
23 commissioner finds these factors and qualities meet the
24 requirements of this act and reasonably warrant the belief that
25 the applicant's business will be conducted honestly, fairly,
26 equitably, carefully, efficiently, and in a manner commanding the
27 confidence and trust of the community, the commissioner shall

1 issue to the person a license to engage in the business of
2 providing deferred deposit loans.

3 Sec. 7. On or before January 1 of each year, a licensee
4 shall pay a license renewal fee of \$250.00 for its principal
5 business location, and \$100.00 for each additional business
6 location, and submit a renewal application in the form prescribed
7 by the commissioner. The commissioner shall renew the license
8 if, after considering all relevant factors and any comments or
9 complaints about the licensee, the commissioner determines the
10 licensee is in compliance with this act.

11 Sec. 8. (1) A licensee shall conduct the business of
12 providing deferred deposit loans only at locations approved by
13 the commissioner.

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

17 Sec. 9. (1) The commissioner shall not deny, suspend, or
18 revoke a license issued under this act before notice is sent to
19 the applicant or licensee setting forth in writing the reasons
20 for the denial, suspension, or revocation. Within 5 days after
21 receipt of the notice, the applicant or licensee may make written
22 demand for a hearing. The commissioner shall hear and determine
23 the matter as provided under the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.201 to 24.328. The applicant or
25 licensee may appeal the order of the commissioner within 30 days
26 from the date of the order to the circuit court as provided under
27 the administrative procedures act of 1969, 1969 PA 306,

1 MCL 24.201 to 24.328. If an appeal is taken from an order
2 revoking a license, the effect of the order may be stayed by the
3 court pending the final determination of the appeal.

4 (2) For the purpose of investigating violations of this act
5 or securing information lawfully required under this act, the
6 commissioner shall annually, and may at any other time he or she
7 considers appropriate, either personally or by designated
8 employees or agents, examine the books, accounts, records, and
9 files of a licensee or an agent of a licensee. A licensee shall
10 pay the commissioner an examination fee of \$200.00 per day for
11 each of the commissioner's designated employees or agents engaged
12 in an examination under this subsection.

13 (3) In addition to the examinations described in subsection
14 (2), the commissioner may conduct investigations and hearings as
15 the commissioner considers necessary to determine whether a
16 licensee or other person has violated this act, or whether a
17 licensee has conducted business in a manner that justifies
18 suspension or revocation of its license.

19 (4) The commissioner and his or her duly designated
20 representatives shall have and be given access to the offices and
21 places of business, books, accounts, papers, records, files,
22 safes, and vaults of all persons examined or investigated under
23 this section.

24 (5) The commissioner may subpoena witnesses, documents,
25 papers, books, records, and other evidence in a matter over which
26 the commissioner has jurisdiction, control, or supervision. The
27 commissioner may administer oaths and affirmations to a person

1 whose testimony is required.

2 Sec. 10. (1) The commissioner shall promulgate rules that
3 are necessary for the administration of this act under the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328.

6 (2) A deferred presentment fund is created in the state
7 treasury. The commissioner shall deposit all money received by
8 the commissioner from applicants and licensees under this act in
9 the fund. Subject to legislative appropriation, money in the
10 fund shall be used by the office only for expenses incurred in
11 the supervision, examination, and regulation of licensees and
12 administering this act. Money in the fund shall not revert to
13 the general fund at the close of the fiscal year but shall remain
14 in the fund.

15 Sec. 11. (1) A licensee shall maintain accurate and
16 complete books, accounts, and records of its deferred deposit
17 loan business in a form satisfactory to the office, and shall
18 preserve the books, accounts, and records for not less than 3
19 years.

20 (2) No later than March 1 of each year, a licensee shall file
21 with the commissioner an annual report that includes all of the
22 following:

23 (a) The resources, assets, and liabilities of the licensee at
24 the beginning and the end of the reporting period.

25 (b) The income, expense, gain, loss, and a reconciliation of
26 surplus or net worth with the balance sheets, and the ratios of
27 the profits to the assets reported.

1 (c) The total number of deferred deposit loans made in the
2 calendar year ending as of December 31 of the previous year.

3 (d) The total number of loans outstanding as of December 31
4 of the previous year.

5 (e) The minimum, maximum, and average dollar amount of checks
6 whose deposits were deferred in the calendar year ending as of
7 December 31 of the previous year.

8 (f) The average annual percentage rate and the average number
9 of days a deposit of a check is deferred during the calendar year
10 ending as of December 31 of the previous year.

11 (g) The total number and dollar amount of returned checks,
12 the total number and dollar amount of checks recovered, and the
13 total number and dollar amount of checks charged off during the
14 calendar year ending as of December 31 of the previous year.

15 (h) Verification that the licensee has not used the criminal
16 process or caused the criminal process to be used in the
17 collection of any deferred deposit loans or used any civil
18 process to collect the payment of deferred payment loans not
19 generally available to creditors to collect on loans in default
20 during the calendar year ending as of December 31 of the previous
21 year.

22 (i) A copy of the licensee's standard deferred deposit loan
23 agreement.

24 (j) A copy of the licensee's schedule of fees and charges.

25 Sec. 12. (1) A written agreement is required for a deferred
26 deposit loan transaction, signed by both the issuer of the check
27 and the licensee accepting the check. The licensee shall provide

1 a copy of the deferred deposit loan agreement to the issuer.

2 (2) A deferred deposit loan agreement shall authorize the
3 licensee to defer presentment or negotiation of the check until a
4 specific date that is not later than 31 calendar days following
5 the date of the transaction.

6 (3) A deferred deposit loan agreement shall include all of
7 the following information:

8 (a) The name, address, phone number of the licensee making
9 the deferred deposit loan, and the name and title of the
10 individual employee who signs the agreement on behalf of the
11 licensee.

12 (b) Disclosures required by the truth in lending act, title I
13 of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615,
14 1631 to 1635, 1637 to 1649, and 1661 to 1667f, regardless of
15 whether that act applies to deferred deposit loans.

16 (c) Disclosures required under any other laws of this state.

17 (d) A clear description of the consumer's payment obligation
18 under the loan.

19 (e) A description of the process an issuer may use to file a
20 complaint against a licensee.

21 (4) In boldfaced type, the deferred deposit loan agreement
22 shall also include all of the following:

23 (a) A statement that the licensee is obligated to defer
24 negotiation or presentment of the check until a specified date,
25 that may not be later than 31 calendar days following the date
26 the issuer signs the deferred deposit loan agreement.

27 (b) A schedule of all fees and charges associated with the

1 loan. Fees shall be expressed as a dollar amount and as an
2 annual percentage rate.

3 (c) A statement that the issuer has the right to redeem the
4 check at any time before the negotiation or presentment of the
5 check by the licensee by making payment to the licensee of the
6 full amount of the check.

7 (d) A statement that the issuer has the right to make a
8 partial payment at any time without incurring an additional fee
9 or charge.

10 (e) A statement that the licensee may not renew the deferred
11 deposit loan transaction or offer the issuer more than 1 deferred
12 deposit loan transaction at a time, and that the licensee may not
13 enter into a new deferred deposit loan agreement with the issuer
14 on the same day that issuer completes a prior deferred deposit
15 loan transaction.

16 (f) A statement that the licensee may pay the issuer in the
17 form of the licensee's business check, money order, or cash.

18 (g) A statement that the issuer has the right to rescind the
19 deferred deposit loan transaction at no cost to the issuer not
20 later than 5 p.m. on the business day following the date of the
21 transaction by paying to the licensee, in the form of cash or a
22 cash equivalent, the amount of money advanced to the issuer.

23 (h) A statement that if the issuer signs the deferred deposit
24 loan agreement, the issuer is not subject to any criminal penalty
25 for entering into the agreement and is not subject to any
26 criminal penalty if the issuer's check is dishonored, unless the
27 account on which the issuer wrote the check was closed on the

1 date the issuer signed the agreement or before the specified date
2 agreed to by the issuer and licensee for negotiation or
3 presentment of the check.

4 (i) A statement that if the issuer's check is returned to the
5 licensee from a payor financial institution due to insufficient
6 funds, closed account, or a stop payment order, the licensee may
7 contract to collect a returned check charge not to exceed \$25.00,
8 and that the licensee may not collect any other fees or charges
9 from the issuer for a returned check or a default by the issuer
10 of the deferred deposit loan agreement.

11 (j) Any other information or statement required by the
12 commissioner.

13 Sec. 13. A licensee of a deferred deposit loan transaction
14 shall provide the following notice in a prominent place on each
15 deferred deposit loan agreement in at least 10-point type:

16 "(A) A DEFERRED DEPOSIT LOAN TRANSACTION IS NOT INTENDED TO
17 MEET LONG-TERM FINANCIAL NEEDS.

18 (B) YOU SHOULD USE A DEFERRED DEPOSIT LOAN TRANSACTION ONLY
19 TO MEET SHORT-TERM CASH NEEDS."

20 Sec. 14. (1) In addition to an administration fee of \$5.00
21 per deferred deposit loan, a licensee may charge a service fee
22 for each deferred deposit loan transaction that does not exceed
23 an amount that would equate to a 50% annual interest rate on the
24 amount paid by the licensee to the issuer of the check.

25 (2) A licensee shall not charge or collect any other fees or
26 charges for a deferred deposit loan transaction.

27 Sec. 15. (1) A deferred deposit loan shall have a minimum

1 term of no less than 2 weeks and an issuer is permitted to make
2 partial payments on the loan at any time, without charge.

3 (2) The maximum amount of the deferred deposit loan shall not
4 exceed \$500.00 and not be less than \$50.00.

5 (3) After each payment made, in full or in part, on any loan,
6 the licensee shall give to the person making the payment a
7 signed, dated receipt showing the amount paid and the balance due
8 on the loan.

9 (4) Upon receipt of the check from the issuer for a deferred
10 deposit loan, the licensee shall immediately stamp the back of
11 the check with an endorsement that states: "This check is being
12 negotiated as part of a deferred deposit loan and any holder of
13 this check takes it subject to all claims and defenses of the
14 maker."

15 (5) A check written by a consumer in a deferred deposit loan
16 shall be made payable to the licensee.

17 Sec. 16. (1) A licensee shall not have more than 1
18 outstanding deferred deposit loan transaction with any issuer at
19 the same time, and the face value of the deferred deposit loan
20 shall not exceed \$500.00, exclusive of the service fee authorized
21 by section 14.

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

25 "STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING AT ANY 1
26 TIME DEFERRED DEPOSIT LOANS TOTALING MORE THAN \$500.00 (EXCLUDING
27 APPLICABLE SERVICE FEES). FAILURE TO OBEY THIS LAW COULD CREATE

1 FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.".

2 (3) An issuer shall not renew, extend, refinance, or
3 consolidate a deferred deposit loan transaction.

4 Sec. 17. (1) After an issuer of a check has completed a
5 deferred deposit loan transaction with a licensee, the issuer
6 shall not enter into a new agreement for a deferred deposit loan
7 with that licensee for at least 24 hours.

8 (2) A licensee shall not enter into a deferred deposit loan
9 transaction with an issuer of a check if the issuer has any
10 outstanding deferred deposit loan transactions with the licensee
11 or with any other licensee. A licensee shall require an issuer
12 of a check to represent in writing that the issuer does not have
13 any outstanding deferred deposit loan transactions with the
14 licensee or with any other licensee.

15 (3) A licensee shall also take such other actions, including,
16 but not limited to, electronic searches, to ensure that an issuer
17 is in compliance with this section.

18 Sec. 18. A licensee shall pay the proceeds from a deferred
19 deposit loan transaction to the issuer of the check in the form
20 of the licensee's business check, money order, or cash. A
21 licensee shall not charge any additional fee for cashing the
22 licensee's business check.

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

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

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

3 Sec. 21. A licensee may contract for and collect a returned
4 check charge not to exceed \$25.00. A licensee shall not collect
5 any other fees for a returned check or the default by an issuer
6 under a deferred deposit loan agreement.

7 Sec. 22. (1) A licensee shall post prominently in a
8 location designed to be seen by a customer before he or she
9 enters into a deferred deposit loan agreement the following
10 notice:

11 "1. A deferred deposit loan is not intended to meet your
12 long-term financial needs, and you should use a deferred
13 deposit loan only to meet your short-term cash needs.

14 2. A deferred deposit loan is a high rate loan and is
15 regulated by the Office of Financial and Insurance
16 Services.

17 3. Entering into more than one deferred deposit loan
18 transaction at a time with different licensees, or starting
19 a new deferred deposit loan transaction soon after
20 completing a prior deferred deposit loan transaction, is
21 not advisable and may cause you significant financial
22 hardship.

23 4. The licensee is obligated to defer negotiation or
24 presentment of the check until a specified date, that may
25 not be later than 31 calendar days following the date you
26 signed the deferred deposit loan agreement.

27 5. You have the right to redeem the check that you wrote

1 at any time before the negotiation or presentment of the
2 check by the licensee by making payment to the licensee of
3 the full amount of the check.

4 6. You have the right to make a partial payment at any
5 time without incurring an additional fee or charge.

6 7. The licensee may not renew a deferred deposit loan
7 transaction or offer you more than one deferred deposit
8 loan transaction at a time, and the licensee may not enter
9 into a new deferred deposit loan agreement with you on the
10 same day that you complete a prior deferred deposit loan
11 transaction.

12 8. The licensee may pay you in the form of the licensee's
13 business check, money order, or cash.

14 9. You have the right to rescind a deferred deposit loan
15 transaction at no cost to you not later than 5 p.m. on the
16 business day following the date of the transaction by
17 paying to the licensee, in the form of cash or a cash
18 equivalent, the amount of money advanced to you.

19 10. If you sign a deferred deposit loan agreement, you are
20 not subject to any criminal penalty for entering into the
21 agreement and are not subject to any criminal penalty if
22 your check is dishonored, unless the account on which you
23 wrote the check was closed on the date you signed the
24 agreement or before the specified date you agreed to for
25 negotiation or presentment of the check.

26 11. If your check is returned to the licensee from your
27 financial institution due to insufficient funds, closed

1 account, or a stop payment order, the licensee may contract
2 to collect a returned check charge not to exceed \$25.00.
3 The licensee may not collect any other fees or charges from
4 you for a returned check or a default by you of the
5 deferred deposit loan agreement.".

6 (2) A licensee offering deferred deposit loan transactions
7 shall post at the point of sale a notice of the charges imposed
8 for deferred deposit loan transactions.

9 Sec. 23. (1) The issuer of a check held in connection with
10 a deferred deposit loan transaction may rescind the transaction
11 at no cost and for any reason if the issuer, not later than 5
12 p.m. on the business day following the date of the transaction,
13 delivers to the licensee cash or a cash equivalent in an amount
14 equal to the amount of the issuer's check.

15 (2) The issuer of a check who enters into a deferred deposit
16 loan agreement is not subject to any criminal penalty for
17 entering into the agreement and is not subject to any criminal
18 penalty in the event the issuer's check is dishonored, unless the
19 account on which the check was written was closed on the date of
20 the transaction or before the agreed-upon negotiation date.

21 Sec. 24. A licensee may conduct any other types of business
22 allowed by law at a location where the licensee offers deferred
23 deposit loans.

24 Sec. 25. A licensee shall not engage in unfair or deceptive
25 acts, practices, or advertising in connection with a deferred
26 deposit loan transaction.

27 Sec. 26. A person injured by a licensee's violation of this

1 act may maintain a civil cause of action against the licensee and
2 may recover actual damages and an amount equal to twice the
3 service fee paid in connection with each deferred deposit loan
4 transaction that is found to violate this act, plus reasonable
5 attorney fees.

6 Sec. 27. (1) Except as provided in section 3(1), a licensee
7 that violates this act is guilty of a misdemeanor punishable by
8 imprisonment for not more than 90 days or a fine of not more than
9 \$1,000.00, or both.

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

12 Sec. 28. The attorney general has the same powers and
13 authority in enforcing this act as provided for under the
14 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to
15 445.922.