

SENATE BILL No. 474

May 13, 2003, Introduced by Senator GARCIA and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to regulate the business of deferred presentment services; to require the licensing of providers of deferred presentment services; 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 services act".

Sec. 2. As used in this act:

(a) "Applicant" means a person seeking a license to engage in the business of providing deferred presentment services under this act.

(b) "Check" means a draft payable on demand and drawn on a 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 a deferred presentment service and includes a
9 drawer who enters into a deferred presentment service agreement.

10 (e) "Deferred presentment service" means a transaction
11 between a licensee and a customer under which the licensee agrees
12 to do all of the following:

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

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

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

21 (g) "Drawer" means a customer who enters into a deferred
22 presentment service agreement with a licensee.

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

27 (i) "Licensee" means a person licensed to engage in the

1 business of providing deferred presentment services under this
2 act.

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

7 (k) "Office" means the office of financial and insurance
8 services of the department of consumer and industry services.

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

12 ARTICLE 2

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

18 (2) A person licensed under any of the following acts is
19 exempt from the licensing requirement under this article:

20 (a) The regulatory loan act, 1939 PA 21, MCL 493.1 to
21 493.24.

22 (b) The motor vehicle sales finance act, 1950 (Ex Sess) PA
23 27, MCL 492.101 to 492.141.

24 (c) The sale of checks act, 1960 PA 136, MCL 487.901 to
25 487.916.

26 (d) The secondary mortgage loan act, 1981 PA 125, MCL 493.51
27 to 493.81.

(e) 1984 PA 379, MCL 493.101 to 493.114.

(f) The mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(g) The consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

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

(a) Have and maintain liquid assets of at least \$50,000.00 for each licensed location, subject to a maximum of \$250,000.00 in required liquid assets 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 25% 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

1 suspension, removal, or administrative action by any agency or
2 department of the United States or any state.

3 Sec. 13. Each application for a license shall be in writing
4 and under oath to the commissioner, in a form prescribed by the
5 commissioner, and shall include all of the following
6 information:

7 (a) The legal name, residence, and business address of the
8 applicant and, if the applicant is a partnership, association, or
9 corporation, of every member, officer, and director.

10 (b) The location of the registered office of the applicant.

11 (c) Other data and information the commissioner requires with
12 respect to the applicant, its directors, officers, members,
13 shareholders, managing employees, or agents.

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

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

27 (3) Money received under this act shall be deposited in the

1 state treasury and credited to the office to be used only for the
2 operation of the office.

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

8 Sec. 15. (1) When a license application is received, the
9 commissioner shall investigate to determine whether the
10 qualifications prescribed by section 12 have been satisfied. If
11 the commissioner finds that the qualifications have been
12 satisfied, the commissioner shall issue to the applicant a
13 license to engage in the deferred presentment services business.

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

16 (3) A license issued under this section shall remain in
17 effect through the remainder of the fiscal year ending September
18 30 after its date of issuance, unless earlier surrendered,
19 suspended, or revoked under this act.

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

22 (2) The prior written approval of the commissioner is
23 required for the continued operation of a deferred presentment
24 services business if there is a change in control of a licensee.
25 The commissioner may require information considered necessary to
26 determine whether a new application is required. The person that
27 requests the approval shall pay the cost incurred by the

1 commissioner in investigating the change of control request.

2 (3) A licensee shall notify the bureau 5 days before any
3 change in the licensee's business location or name.

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

6 (a) For a corporation, direct or indirect ownership, or the
7 right to control, 25% or more of the voting shares of the
8 corporation, or the ability of a person to elect a majority of
9 the directors or otherwise effect a change in policy.

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

13 Sec. 17. Within 15 days after the occurrence of any 1 of
14 the following events, a licensee shall file a written report with
15 the commissioner describing the event and its expected impact on
16 the activities of the licensee in this state:

17 (a) The filing for bankruptcy or reorganization by the
18 licensee.

19 (b) The institution of revocation or suspension proceedings
20 against the licensee by any state or governmental authority.

21 (c) Any felony indictment of the licensee or any of its
22 members, directors, officers, or shareholders.

23 (d) Any felony conviction of the licensee or any of its
24 members, directors, officers, or shareholders.

25 (e) Any other events the commissioner may determine and
26 identify by rule.

27 Sec. 18. A license issued under this article shall expire

1 on September 30 of each year. A licensee may renew a license for
2 a 12-month period by submitting an application that shows
3 continued compliance with this act, in a form prescribed by the
4 commissioner, and paying the license renewal fee to the
5 commissioner.

6 Sec. 19. (1) The commissioner may issue orders and
7 regulations that he or she considers necessary to enforce and
8 implement this article. The commissioner shall provide a copy of
9 any order or regulation issued under this subsection to each
10 license holder at least 30 days before the date it takes effect.

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

14 Sec. 20. Each licensee shall keep and use in its business
15 any books, accounts, and records the commissioner requires under
16 this act. A licensee shall preserve the books, accounts, and
17 records for at least 2 years, unless applicable state or federal
18 law concerning record retention requires a longer retention
19 period.

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

24 (2) If the commissioner denies an application, or if the
25 commissioner fails to act on an application within 60 days after
26 the filing of a properly completed application, the applicant may
27 submit a written demand to the commissioner for a hearing before

1 the commissioner on the question of whether the commissioner
2 should grant a license. If a hearing is held, the commissioner
3 shall reconsider the application, and issue a written order
4 granting or denying the application after the hearing.

5 ARTICLE 3

6 Sec. 31. (1) A licensee shall post prominently in an area
7 designed to be seen by the customer before he or she enters into
8 a deferred presentment services agreement the following notice in
9 at least 32-point type:

10 "1. We cannot give you money if you currently have 1 or
11 more deferred presentment service agreements that have not
12 been repaid if the total of those outstanding deferred
13 presentment agreements, plus the deferred presentment
14 transaction for which you are applying, will exceed
15 \$1,000.00. Before signing an agreement with us, you will
16 have to certify that, after obtaining the deferred
17 presentment transaction from us, the total of all of your
18 outstanding deferred presentment transactions will not
19 exceed \$1,000.00.

20 2. We must immediately give you a copy of your signed
21 agreement.

22 3. State law gives you certain rights if you believe we
23 have violated the law. Please read your agreement
24 carefully and ask questions if you don't fully understand
25 those rights.

26 4. You can cancel an agreement and receive a refund of the
27 fee if you provide us with the proper notice and return the

1 money you receive today. To do this, you must notify us by
2 the time this office closes tomorrow or on our next
3 business day if we are not open tomorrow. Please read your
4 agreement for further information.

5 5. We cannot renew a deferred presentment services
6 transaction with you. You have to pay a transaction in
7 full before obtaining additional money from us.

8 6. If you feel we are acting unlawfully, you should call
9 the Office of Financial and Insurance Services toll-free at
10 1-877-999-6442.".

11 (2) A licensee shall post prominently in an area designed to
12 be seen by the customer before he or she enters into a deferred
13 presentment services agreement a schedule of all fees and charges
14 imposed for deferred presentment services in at least 32-point
15 type.

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

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

22 (a) The name of the customer.

23 (b) The name, street address, and telephone number of the
24 licensee.

25 (c) The signature of the individual who enters into the
26 deferred presentment services agreement on behalf of the
27 licensee.

1 (d) The date of the agreement.

2 (e) The amount of the check presented to the licensee by the
3 customer.

4 (f) An itemization of the fees and interest charges to be
5 paid by the customer.

6 (g) A clear description of the customer's payment obligation
7 under the agreement.

8 (h) A schedule of all fees and charges associated with the
9 loan and include an example of the amounts the issuer would pay
10 based on the amount of the loan.

11 (i) The maturity date.

12 (j) The licensee's agreement to defer presentment, defer
13 negotiation, or defer entering the check into the check-clearing
14 process until the maturity date.

15 (k) A description of the process a drawer may use to file a
16 complaint against the licensee.

17 (l) The following notice in at least 12-point type:

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

21 2. You should use this service only to meet short-term cash
22 needs.

23 3. State law prohibits us from entering into this
24 transaction with you if you already have 1 or more deferred
25 presentment service agreements in effect with any other
26 person providing this service if the total of those
27 outstanding deferred presentment agreements, plus the

1 deferred presentment transaction for which you are
2 applying, will exceed \$1,000.00. By signing this
3 agreement, you certify to us that, after obtaining a
4 deferred presentment transaction from us, the total of your
5 outstanding deferred presentment transactions will not
6 exceed \$1,000.00.

7 4. We must immediately give you a copy of your signed
8 contract.

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

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

15 B. On or before the fifth business day after you sign the
16 agreement, notify us in writing delivered by mail or in
17 person of the violation. Your written notice must state
18 the violation and provide supporting documents or other
19 evidence of the violation.

20 6. We have three business days to determine if we agree
21 that we have violated the law and let you know of that
22 determination.

23 7. If we agree that we have violated the law, we must
24 return your check and you must return the cash received
25 under the agreement. Additionally, for each violation, we
26 must pay you restitution equal to five times the amount of
27 the fee we charged you under the agreement but not less

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

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

9 9. If you still believe we violated the law, you may file
10 a written complaint including supporting documents or other
11 evidence with the Office of Financial and Insurance
12 Services. The office is required to investigate your
13 complaint and has the authority to order us to pay you
14 restitution if they agree that we violated the law. In
15 addition, the office can order us to pay civil fines or
16 take away our right to do business.

17 10. You may cancel this agreement at no cost and for any
18 reason if you notify us in writing by the close of business
19 tomorrow or on our next business day if we are not open
20 tomorrow. You must deliver to us cash in an amount equal
21 to the amount you received under the agreement and we must
22 return your check including any fees paid by you.

23 11. State law prohibits us from renewing this agreement.
24 We cannot extend this transaction with you for any
25 additional fees. After you have redeemed your check or it
26 has been paid by your bank, savings bank, savings and loan
27 association, credit union, or other person, you may enter

1 into a new agreement for a deferred presentment service
2 with us.

3 12. State law prohibits us from using any criminal process
4 to collect on this deferred presentment service
5 agreement.".

6 (3) A licensee may include a mandatory arbitration provision
7 in the written deferred presentment services agreement. If a
8 written deferred presentment services agreement contains a
9 mandatory arbitration provision, all of the following apply:

10 (a) The arbitration provision shall disclose the name of the
11 person that administers the arbitration program and the telephone
12 number, street address, and any website of that person.

13 (b) Any arbitrator selected shall be competent, qualified,
14 independent, and impartial, and shall disclose any circumstance
15 likely to affect his or her impartiality, including, but not
16 limited to, any bias, financial interest, or personal interest or
17 any past or present relationship, arbitration experience, or
18 other experience with the licensee or customer.

19 (c) The arbitration provision shall allow each party to the
20 deferred presentment services agreement the right to proceed in a
21 small claims division of the district court or a small claims
22 court for any dispute or claim within the scope of that court's
23 jurisdiction.

24 (d) If a licensee receives written notice from a customer
25 that he or she intends to submit a claim to arbitration but is
26 unable to pay the filing fee or any other administrative cost
27 required to institute an arbitration proceeding, the licensee

1 shall pay that fee or administrative cost, or \$500.00, whichever
2 is less, to the administrator of the arbitration program
3 administrator.

4 (e) The arbitrator shall hold the arbitration proceeding in
5 the county in which the consumer resides, or at another location
6 to which the consumer and licensee agree.

7 (f) The arbitrator shall make his or her decision in
8 writing.

9 Sec. 33. (1) A licensee may enter into a deferred
10 presentment services agreement with a customer for any amount up
11 to \$1,000.00, plus the service fee authorized in this section. A
12 licensee may charge a service fee for each deferred presentment
13 service transaction. The service fee shall not exceed 18% of the
14 amount paid by the licensee to the customer. A service fee is
15 earned by the licensee on the date of the transaction and is not
16 interest.

17 (2) A licensee shall not enter into a deferred presentment
18 service agreement with a customer if the customer has 1 or more
19 outstanding deferred presentment service agreements with the
20 licensee or with any other licensees, and the total unpaid
21 principal amount of all of the customer's loans exceeds
22 \$1,000.00. In determining whether a licensee may make a loan
23 under this subsection, the licensee may rely on a written
24 representation from the customer that he or she does not have any
25 outstanding deferred presentment service agreements with the
26 licensee or any other licensee, if the licensee independently
27 verifies the accuracy of the customer's written representation

1 through commercially reasonable means. As used in this
2 subsection, "commercially reasonable means" includes any method
3 of verification that at least includes a manual investigation or
4 an electronic query of the licensee's own records maintained at
5 all of the business locations in this state owned or operated by
6 the licensee. A customer who enters into an agreement in
7 violation of this subsection is not entitled to the remedies
8 provided under section 10 or through the office as otherwise
9 provided under this act with regard to that agreement.

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

12 (a) Provide a copy of the signed deferred presentment service
13 agreement to the drawer.

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

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

21 (a) Charge interest under the agreement.

22 (b) Include a maturity date that is more than 31 days after
23 the date of the agreement.

24 (c) Charge an additional fee for cashing the licensee's
25 business check if the licensee pays the proceeds to the drawer by
26 business check.

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

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

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

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

16 (3) A drawer satisfies his or her obligation under a deferred
17 presentment service agreement when the check the licensee is
18 holding is paid by the drawee or is redeemed by the drawer by
19 paying to the licensee an amount equal to the full amount of the
20 check. If the drawer satisfies his or her obligation under a
21 deferred presentment service agreement, the licensee or any other
22 licensee may enter into a new deferred presentment service
23 agreement with that drawer.

24 Sec. 35. (1) No later than the close of business on the day
25 he or she signed a deferred presentment service agreement, a
26 drawer who believes that a licensee has violated this act may
27 notify the licensee in person that the licensee has violated the

1 act. The drawer shall identify the nature of the violation and
2 provide documentary or other evidence of the violation at that
3 time.

4 (2) No later than 5 business days after signing a deferred
5 presentment services agreement, a drawer who believes that a
6 licensee has violated this act may deliver to the licensee a
7 notice in writing that the licensee has violated the act. The
8 drawer shall identify the nature of the violation and include
9 documentary or other evidence of the violation in the notice.

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

14 (4) If the licensee determines that it has violated the law,
15 it shall return to the drawer the check received under the
16 agreement and any service fee paid by the drawer to the
17 licensee. The drawer shall deliver to the licensee cash or a
18 cash equivalent in an amount equal to the amount of cash the
19 drawer received under the agreement. In addition, the licensee
20 shall make restitution to the drawer for each violation in an
21 amount equal to 5 times the amount of the fee charged in the
22 drawer's deferred presentment service agreement, but not less
23 than \$15.00 or more than the face amount of the drawer's check.
24 A licensee that makes restitution for a violation under this
25 subsection is not subject to any other remedy provided for a
26 violation under this act with respect to that violation.

27 (5) If the licensee determines that it did not violate the

1 law, the licensee shall immediately notify the commissioner and
2 the drawer of that determination. The licensee shall give the
3 commissioner detailed information about the terms of the deferred
4 presentment service agreement and shall provide other information
5 requested by the commissioner. The licensee shall include in the
6 notification to the drawer that the drawer has the right to file
7 a written complaint with the office if he or she does not agree
8 with the determination that the licensee did not violate the
9 law. The licensee shall include in the notice detailed
10 information on how the drawer can contact the office to obtain a
11 complaint form.

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

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

22 (8) The commissioner shall promptly investigate a complaint
23 filed by a drawer under this section. If after investigating the
24 drawer's complaint, the commissioner concludes that the licensee
25 violated this act, the commissioner may order the licensee to
26 make restitution to the drawer in an amount equal to 3 times the
27 amount provided for in subsection (4), but not less than \$45.00

1 or more than 3 times the full amount of the check. A licensee
2 ordered to pay restitution under this subsection is also subject
3 to any other applicable penalties and remedies available under
4 this act for the violation.

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

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

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

27 (2) A licensee may contract for and collect a returned check

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

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

14 Sec. 38. (1) A licensee shall maintain each deferred
15 presentment service agreement until the expiration of 2 years
16 after the date the deferred presentment service agreement is
17 satisfied and make available for examination by the commissioner
18 deferred presentment service agreements and all related documents
19 in its possession or control including, but not limited to, any
20 applications, credit reports, employment verifications, or loan
21 disclosure statements.

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

27 Sec. 39. The commissioner shall investigate consumer credit

1 counseling service agencies that provide debt management and
2 financial management service, compile a list of recommended
3 agencies, and make the list available to customers, licensees,
4 and the public on request.

5 ARTICLE 4

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

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

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

1 give testimony, or produce evidence.

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

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

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

1 as provided in the order.

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

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

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

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

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

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

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

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

24 (3) The commissioner shall comply with the administrative
25 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
26 concerning any notice or hearing under this section. A notice
27 served under this section shall contain a statement of the facts

1 constituting the violation or pattern of practice and shall fix a
2 time and place at which the commissioner will hold a hearing to
3 determine whether the commissioner should issue an order to
4 suspend or terminate 1 or more licenses of the licensee.

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

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

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

1 than \$5,000.00 or more than \$50,000.00 for each violation. The
2 commissioner may also order the person to pay the costs of the
3 investigation.

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

13 Sec. 45. (1) A licensee ordered to cease and desist, whose
14 license is suspended or terminated, or that is ordered to pay a
15 fine under this act is entitled to a hearing before the
16 commissioner if a written request for a hearing is filed with the
17 commissioner not more than 30 days after the effective date of
18 the order.

19 (2) Any administrative proceedings under this act are subject
20 to the administrative procedures act of 1969, 1969 PA 306, MCL
21 24.201 to 24.328.

22 Sec. 46. The commissioner may promulgate rules under the
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
24 24.328, to enforce and administer this act.

25 Sec. 47. A person who provided deferred presentment
26 services before July 1, 2004 is considered to have complied with
27 applicable state law if the person provided the services in

1 substantial conformity with the rulings and interpretive
2 statements then in effect that were issued by the office or its
3 predecessor agency.

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