

# SENATE BILL No. 164

February 3, 2005, Introduced by Senators SCOTT, LELAND, OLSHOVE and BRATER and referred to the Committee on Banking and Financial Institutions.

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

1 financial and insurance services in the department of labor and  
2 economic growth.

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

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

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

15 (g) "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 for  
20 consideration without first obtaining a license under this act.

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

26 (3) The commissioner shall establish a complaint process  
27 through which an aggrieved person or any member of the public may

1 file a complaint against a licensee or nonlicensee who violates  
2 this act. The commissioner shall hold hearings upon the request of  
3 a party to the complaint, make findings of fact, and conclusions of  
4 law. The commissioner may issue cease and desist orders, refer the  
5 matter to the appropriate law enforcement agency for prosecution  
6 under this act, or suspend or revoke a license granted under this  
7 act.

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

10 (a) A state or national chartered bank or a state or federal  
11 chartered credit union, savings and loan association, or savings  
12 bank.

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

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

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

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

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

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

3 (i) If the applicant is a corporation, its officers and  
4 directors.

5 (ii) If the applicant is an association, its officers and  
6 directors.

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

8 (iv) If the applicant is a limited liability company, either  
9 its manager or managers, if managed by a manager or managers, or  
10 its members.

11 (v) If the applicant is any other legal entity, its manager or  
12 other person designated to control the operation of that legal  
13 entity.

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

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

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

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

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

22 (iv) If the applicant is an association, a copy of any  
23 organizational documents of the association.

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

26 (a) Pay to the office a nonrefundable license fee of \$500.00  
27 for 1 business location and \$250.00 for each additional business

1 location.

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

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

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

14 Sec. 6. After an applicant files an application and complies  
15 with section 5(2), the commissioner shall investigate the financial  
16 responsibility, financial and business experience, and character  
17 and general fitness of the applicant. If the commissioner finds  
18 that these factors and qualities meet the requirements of this act  
19 and reasonably warrant the belief that the applicant's business  
20 will be conducted honestly, fairly, equitably, carefully,  
21 efficiently, and in a manner commanding the confidence and trust of  
22 the community, the commissioner shall issue to the person a license  
23 to engage in the business of providing deferred deposit loans.

24 Sec. 7. On or before January 1 of each year, a licensee shall  
25 pay a license renewal fee of \$250.00 for its principal business  
26 location, and \$100.00 for each additional business location, and  
27 submit a renewal application in the form prescribed by the

1 commissioner. The commissioner shall renew the license if, after  
2 considering all relevant factors and any comments or complaints  
3 about the licensee, the commissioner determines that the licensee  
4 is in compliance with this act.

5       Sec. 8. (1) A licensee shall conduct the business of providing  
6 deferred deposit loans only at locations approved by the  
7 commissioner.

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

11       Sec. 9. (1) The commissioner shall not deny, suspend, or  
12 revoke a license issued under this act before notice is sent to the  
13 applicant or licensee setting forth in writing the reasons for the  
14 denial, suspension, or revocation. Within 5 days after receipt of  
15 the notice, the applicant or licensee may make written demand for a  
16 hearing. The commissioner shall hear and determine the matter as  
17 provided under the administrative procedures act of 1969, 1969 PA  
18 306, MCL 24.201 to 24.328. The applicant or licensee may appeal the  
19 order of the commissioner within 30 days from the date of the order  
20 to the circuit court as provided under the administrative  
21 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If an  
22 appeal is taken from an order revoking a license, the effect of the  
23 order may be stayed by the court pending the final determination of  
24 the appeal.

25       (2) The commissioner may conduct investigations and hearings  
26 as the commissioner considers necessary to determine whether a  
27 licensee or other person has violated this act or whether a

1 licensee has conducted business in a manner that justifies  
2 suspension or revocation of its license.

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

8 Sec. 10. The commissioner shall promulgate rules that are  
9 necessary for the administration of this act under the  
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
11 24.328.

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

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

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

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

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

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

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

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

7 (g) The total number and dollar amount of returned checks, the  
8 total number and dollar amount of checks recovered, and the total  
9 number and dollar amount of checks charged off during the calendar  
10 year ending as of December 31 of the previous year.

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

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

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

20 Sec. 12. (1) A written agreement is required for a deferred  
21 deposit loan transaction, signed by both the issuer of the check  
22 and the licensee accepting the check. The licensee shall provide a  
23 copy of the written agreement to the issuer.

24 (2) A written agreement shall authorize the licensee to defer  
25 presentment or negotiation of the check until a specific date that  
26 is not later than 31 calendar days following the date of the  
27 transaction.



1           (3) A written agreement shall include all of the following  
2 information:

3           (a) The name, address, and telephone number of the licensee  
4 making the deferred deposit loan and the name and title of the  
5 individual employee who signs the agreement on behalf of the  
6 licensee.

7           (b) An itemization of the fees and interest charges to be paid  
8 by the consumer.

9           (c) Disclosures required by the truth in lending act, 15 USC  
10 1601 to 1667f, regardless of whether that act applies to deferred  
11 deposit loans.

12           (d) Disclosures required under any other laws of this state.

13           (e) A clear description of the consumer's payment obligation  
14 under the loan.

15           (f) A schedule of all fees and charges associated with the  
16 loan, including an example of the amounts the issuer would pay  
17 based on the amount of the loan.

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

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

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

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

27           (C) THE LICENSEE CANNOT USE ANY CRIMINAL PROCESS TO COLLECT

1 ANY DEFERRED DEPOSIT LOAN.".

2       Sec. 14. (1) In addition to an administration fee of \$5.00 per  
3 deferred deposit loan, a licensee may charge a service fee for each  
4 deferred deposit loan transaction that does not exceed an amount  
5 that would equate to a 25% annual interest rate on the amount paid  
6 by the licensee to the issuer of the check.

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

9       Sec. 15. (1) A deferred deposit loan shall have a minimum term  
10 of no less than 2 weeks, and an issuer is permitted to make partial  
11 payments on the loan at any time, without charge.

12       (2) The maximum amount of the deferred deposit loan shall not  
13 exceed \$500.00 or be less than \$50.00.

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

18       (4) Upon receipt of the check from the issuer for a deferred  
19 deposit loan, the licensee shall immediately stamp the back of the  
20 check with an endorsement that states: "This check is being  
21 negotiated as part of a deferred deposit loan, and any holder of  
22 this check takes it subject to all claims and defenses of the  
23 maker.".

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

26       Sec. 16. (1) A licensee shall not have more than 1 outstanding  
27 deferred deposit loan transaction with any issuer at the same time,

1 and the face value of the deferred deposit loan shall not exceed  
2 \$500.00, exclusive of the service fee authorized by section 14.

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

6 "STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING AT ANY 1 TIME  
7 DEFERRED DEPOSIT LOANS TOTALING MORE THAN \$500.00 (EXCLUDING  
8 APPLICABLE SERVICE FEES). FAILURE TO OBEY THIS LAW COULD CREATE  
9 FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.".

10 (3) An issuer shall not use the proceeds of a deferred deposit  
11 loan to renew, extend, refinance, or consolidate a preexisting  
12 deferred deposit loan transaction.

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

17 (2) A licensee shall not enter into a deferred deposit loan  
18 transaction with an issuer of a check if the issuer has any  
19 outstanding deferred deposit loan transactions with the licensee or  
20 with any other licensee. A licensee shall require an issuer of a  
21 check to represent in writing that the issuer does not have any  
22 outstanding deferred deposit loan transactions with the licensee or  
23 with any other licensee.

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

27 Sec. 18. A licensee shall pay the proceeds from a deferred

1 deposit loan transaction to the issuer of the check in the form of  
2 the licensee's business check, money order, or cash. A licensee  
3 shall not charge any additional fee for cashing the licensee's  
4 business check.

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

8       Sec. 20. The issuer of a check has the right to redeem the  
9 check from a licensee holding the check at any time before the  
10 negotiation or presentment of the check by paying the full amount  
11 of the check in the form of cash or its equivalent.

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

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

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

25       (2) The issuer of a check who enters into a deferred deposit  
26 loan agreement is not subject to any criminal penalty for entering  
27 into the agreement and is not subject to any criminal penalty in

1 the event that the issuer's check is dishonored, unless the account  
2 on which the check was written was closed on the date of the  
3 transaction or before the agreed-upon negotiation date.

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

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

10 Sec. 26. A person injured by a licensee's violation of this  
11 act may maintain a civil cause of action against the licensee and  
12 may recover actual damages and an amount equal to twice the service  
13 fee paid in connection with each deferred deposit loan transaction  
14 that is found to violate this act, plus reasonable attorney fees.

15 Sec. 27. (1) A licensee that violates this act is guilty of a  
16 misdemeanor punishable by imprisonment for not more than 90 days or  
17 a fine of not more than \$1,000.00, or both.

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

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