

# SENATE BILL No. 454

April 26, 2007, Introduced by Senators OLSHOVE, JACOBS, ANDERSON, THOMAS, SCHAUER, GLEASON, JANSEN, PAPPAGEORGE, KAHN, BASHAM, HUNTER, GARCIA and SWITALSKI and referred to the Committee on Banking and Financial Institutions.

A bill to amend 2005 PA 244, entitled  
"Deferred presentment service transactions act,"  
by amending sections 2, 33, and 35 (MCL 487.2122, 487.2153, and  
487.2155).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

5       **(B) "ARMED FORCES OF THE UNITED STATES" MEANS THE ARMED FORCES**  
6 **OF THE UNITED STATES AND THEIR RESERVE COMPONENTS AND THE UNITED**  
7 **STATES COAST GUARD.**

8       (C) ~~(b)~~—"Check" means a draft payable on demand and drawn on a

1 bank, savings bank, savings and loan association, or credit union.  
2 Check includes any negotiable instrument that represents evidence  
3 of an obligation to pay even if it is described on its face by  
4 another term.

5 (D) ~~(e)~~—"Closed" in connection with a deferred presentment  
6 service transaction means that 1 of the following has occurred  
7 concerning each of the customer's checks that is the basis of the  
8 deferred presentment service transaction:

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

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

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

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

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

21 (E) ~~(d)~~—"Commissioner" means the commissioner of the office of  
22 financial and insurance services or his or her authorized  
23 representative.

24 (F) ~~(e)~~—"Customer" means an individual who inquires into the  
25 availability of or applies for a deferred presentment service  
26 transaction or a drawer who enters into a deferred presentment  
27 service transaction.

1           **(G)** ~~(f)~~—"Database provider" means 1 of the following:

2           *(i)* A third party provider selected by the commissioner under  
3 section 22 to operate the statewide database described in that  
4 section.

5           *(ii)* If the commissioner has not selected a third party  
6 provider under section 22, the commissioner.

7           **(H)** ~~(g)~~—Subject to subsection (2), "deferred presentment  
8 service transaction" means a transaction between a licensee and a  
9 customer under which the licensee agrees to do all of the  
10 following:

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

13           *(ii)* Hold a customer's check for a period of time before  
14 negotiation, redemption, or presentment of the checks.

15           **(I)** ~~(h)~~—"Drawee" means a bank, savings bank, savings and loan  
16 association, credit union, or other person upon which a check is  
17 drawn.

18           **(J)** ~~(i)~~—"Drawer" means a customer who enters into a deferred  
19 presentment service transaction with a licensee.

20           **(K)** ~~(j)~~—"Executive officer" means an officer or director of a  
21 licensee or any other individual who has the authority to  
22 participate in the direction, directly or indirectly, through 1 or  
23 more persons, or the management or policies of a licensee.

24           **(L)** ~~(k)~~—"Financial licensing act" means this act, the consumer  
25 financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or  
26 any of the acts listed in section 2(d) of the consumer financial  
27 services act, 1988 PA 161, MCL 487.2052.

1           (M) ~~(L)~~—"Licensee" means a person licensed to engage in the  
2 business of providing deferred presentment service transactions  
3 under this act.

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

8           (O) ~~(n)~~—"Office" means the office of financial and insurance  
9 services of the department of labor and economic growth.

10          (P) ~~(o)~~—"Person" means an individual, partnership,  
11 association, corporation, limited liability company, or other legal  
12 entity except a governmental entity.

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

24          Sec. 33. (1) A licensee may enter into 1 deferred presentment  
25 service transaction with a customer for any amount up to \$600.00. A  
26 licensee may charge the customer a service fee for each deferred  
27 presentment service transaction. A service fee is earned by the

1 licensee on the date of the transaction and is not interest. A  
2 **SUBJECT TO SUBSECTION (7),** A licensee may charge both of the  
3 following as part of the service fee, as applicable:

4 (a) An amount that does not exceed the aggregate of the  
5 following, as applicable:

6 (i) Fifteen percent of the first \$100.00 of the deferred  
7 presentment service transaction.

8 (ii) Fourteen percent of the second \$100.00 of the deferred  
9 presentment service transaction.

10 (iii) Thirteen percent of the third \$100.00 of the deferred  
11 presentment service transaction.

12 (iv) Twelve percent of the fourth \$100.00 of the deferred  
13 presentment service transaction.

14 (v) Eleven percent of the fifth \$100.00 of the deferred  
15 presentment service transaction.

16 (vi) Eleven percent of the sixth \$100.00 of the deferred  
17 presentment service transaction.

18 (b) The amount of any database verification fee allowed under  
19 section 34(5).

20 (2) A licensee shall not enter into a deferred presentment  
21 service transaction with a customer if the customer has an open  
22 deferred presentment service transaction with the licensee or has  
23 more than 1 open deferred presentment service transaction with any  
24 other licensee, and shall verify whether the customer has an open  
25 deferred presentment service transaction with the licensee or has  
26 more than 1 open deferred presentment service transaction with any  
27 other licensee by complying with section 34.

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

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

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

8 a. Before the close of business on the day you sign the  
9 agreement, notify us in person of the violation. You must provide  
10 supporting documents or other evidence of the violation.

11 b. At any time before signing a new deferred presentment  
12 service agreement with us, notify us in writing of the violation.  
13 Your written notice must state the violation and provide supporting  
14 documents or other evidence of the violation.

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

17 3. If we agree that we have violated the law, we must return  
18 your check and you must return the cash received under the  
19 agreement. Additionally, for each violation, we must pay you  
20 restitution equal to 5 times the amount of the fee we charged you  
21 under the agreement but not less than \$15.00 or more than the face  
22 amount of your check. You may also pursue an action for your actual  
23 damages against us.

24 4. If we do not agree that we have violated the law, we may  
25 present your check for payment or enter your check into the check-  
26 clearing process on or after the maturity date. If your check is  
27 returned to us unpaid, we may take other legal steps to collect our

1 money.

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

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

11 (c) Pay the proceeds under the agreement to the drawer by  
12 delivering a business check of the licensee, a money order, or  
13 cash, as requested by the drawer.

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

16 (a) Charge interest under the agreement.

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

19 (c) Charge an additional fee for cashing the licensee's  
20 business check or money order if the licensee pays the proceeds to  
21 the drawer by business check or money order.

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

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

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

1           (6) Each licensee shall post a sign, printed in bold faced,  
2 36-point type, in a conspicuous location at each customer service  
3 window, station, or desk at each place of business, that states the  
4 following:

5           "Under Michigan law, you are entitled to receive the proceeds  
6 of this transaction in cash. If you request the proceeds in a check  
7 or money order, you may be charged additional check cashing or  
8 other processing fees by others for cashing the check or money  
9 order.".

10           **(7) IF A CUSTOMER IS SERVING ON ACTIVE DUTY IN ANY BRANCH OF**  
11 **THE ARMED FORCES OF THE UNITED STATES AT THE TIME HE OR SHE ENTERS**  
12 **INTO A DEFERRED PRESENTMENT SERVICE TRANSACTION WITH A LICENSEE, OR**  
13 **IF THE CUSTOMER IS THE SPOUSE OR DEPENDENT CHILD OF AN INDIVIDUAL**  
14 **WHO IS SERVING ON ACTIVE DUTY IN ANY BRANCH OF THE ARMED FORCES OF**  
15 **THE UNITED STATES AT THE TIME THAT SPOUSE OR CHILD ENTERS INTO THE**  
16 **DEFERRED PRESENTMENT SERVICE TRANSACTION, THE LICENSEE SHALL NOT**  
17 **CHARGE THAT CUSTOMER A SERVICE FEE THAT EXCEEDS 50% OF THE SERVICE**  
18 **FEE AMOUNT OTHERWISE DETERMINED UNDER SUBSECTION (1).**

19           Sec. 35. (1) A licensee shall not renew a deferred presentment  
20 service agreement. A licensee may extend a deferred presentment  
21 service agreement only if the licensee does not charge a fee in  
22 connection with the extended transaction. A licensee who extends an  
23 agreement under this subsection shall not create a balance owed  
24 above the amount owed on the original agreement.

25           (2) If a drawer enters into 8 deferred presentment service  
26 transactions with any licensee in any 12-month period, the licensee  
27 shall provide the drawer an option to repay that eighth transaction

1 and each additional transaction in that 12-month period pursuant to  
2 a written repayment plan subject to the following terms:

3 (a) The drawer shall request the repayment plan, either orally  
4 or in writing, within 30 days after the maturity date of the  
5 deferred presentment service transaction.

6 (b) The drawer shall repay the transaction in 3 equal  
7 installments with 1 installment due on each of the next 3 dates on  
8 which the drawer receives regular wages or compensation from an  
9 employer or other regular source of income, pursuant to a written  
10 repayment plan agreement.

11 (c) ~~The~~ **SUBJECT TO SUBSECTION (7), THE** drawer shall pay a fee  
12 to the licensee for administration of the repayment plan. The  
13 initial amount of the fee is \$15.00. Beginning March 1, 2011, and  
14 by March 1 of every fifth year after March 1, 2011, the licensee  
15 may adjust the fee by an amount determined by the commissioner to  
16 reflect the cumulative percentage change in the Detroit consumer  
17 price index over the preceding 5 calendar years. As used in this  
18 subsection, "Detroit consumer price index" means the most  
19 comprehensive index of consumer prices available for the Detroit  
20 area from the bureau of labor statistics of the United States  
21 department of labor.

22 (d) The drawer shall agree not to enter into any additional  
23 deferred presentment transactions during the repayment plan term.

24 (3) A licensee shall advise a customer of the repayment option  
25 described in subsection (2) at the time he or she is eligible. If a  
26 customer believes he or she has been illegally denied the repayment  
27 option under this section, he or she is entitled to contact the

1 office of financial and insurance services toll-free at 1-877-999-  
2 6442. If a customer has entered into 8 deferred presentment service  
3 transactions in any 12-month period, the database provider shall  
4 notify the licensee when the licensee submits the required customer  
5 information to the database for that customer that the customer is  
6 entitled to a repayment plan under this section. The database  
7 provider shall instruct the licensee to provide the customer with  
8 the following notice, in a document separate from the deferred  
9 presentment transaction agreement and in at least 12-point type:

10 "If you are unable to pay your deferred presentment service  
11 transaction and have entered into 8 deferred presentment  
12 transactions in any 12-month period, state law entitles you to  
13 request a repayment of that transaction in installments. We are  
14 required to advise you of this option at the time it is available.  
15 If you elect this option, you must notify us, either orally or in  
16 writing, within 30 days after the maturity date of the eighth  
17 deferred presentment transaction in the 12-month period. The notice  
18 must be provided to us at our place of business. You may be charged  
19 an additional fee when the transaction is rescheduled in  
20 installments. You will be ineligible to enter into a deferred  
21 presentment service transaction with any licensee during the term  
22 of the repayment plan. If we refuse to provide this option under  
23 the stipulations above, you should contact the Office of Financial  
24 and Insurance Services toll-free at 1-877-999-6442."

25 (4) During the term of a repayment plan by a drawer under this  
26 section, the database provider shall notify the licensee at the  
27 time the licensee submits the required customer information to the

1 database for that customer that the customer is presently in a  
2 repayment plan under this section with 1 or more other licensees  
3 and the licensee shall not enter into a deferred presentment  
4 transaction with that individual.

5 (5) A licensee shall not present a check for payment before  
6 the maturity date or during the term of the repayment plan. In  
7 addition to the remedies and penalties under this act, a licensee  
8 that presents a check for payment before the maturity date or  
9 during the term of the repayment plan is liable for all expenses  
10 and damages caused to the drawer and the drawee as a result of the  
11 violation. If a drawer has not requested a repayment plan on or  
12 before the maturity date, the licensee may redeem, present for  
13 payment, or enter the check into the check-clearing process under  
14 the terms of the original deferred presentment service transaction  
15 agreement.

16 (6) 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.

21 (7) IF A DRAWER IS SERVING ON ACTIVE DUTY IN ANY BRANCH OF THE  
22 ARMED FORCES OF THE UNITED STATES AT THE TIME HE OR SHE ENTERS INTO  
23 A REPAYMENT PLAN WITH A LICENSEE, OR IF THE DRAWER IS THE SPOUSE OR  
24 DEPENDENT CHILD OF AN INDIVIDUAL WHO IS SERVING ON ACTIVE DUTY IN  
25 ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES AT THE TIME  
26 THAT SPOUSE OR CHILD ENTERS INTO THE REPAYMENT PLAN, THE LICENSEE  
27 SHALL NOT CHARGE THAT DRAWER A FEE FOR ADMINISTRATION OF THE

1 REPAYMENT PLAN THAT EXCEEDS 50% OF THE FEE AMOUNT OTHERWISE  
2 DETERMINED UNDER SUBSECTION (2) (C) .