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BILL ANALYSIS

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Senate Bill 607 and 719 (as enrolled)
Sponsor: Senator Darwin L. Booher
Senate Committee: Banking and Financial Services
House Committee: Financial Services

Date Completed: 5-24-16

RATIONALE

The Deferred Presentment Service Transactions Act governs deferred presentment service transactions, commonly known as payday loans, in Michigan. The Act requires a person to be licensed by the Department of Licensing and Regulatory Affairs in order to engage in the business of deferred presentment service transactions. (A "deferred presentment service transaction" is a transaction between a licensee and a customer under which the licensee agrees to 1) pay the customer an agreed-upon amount in exchange for a fee, and 2) hold a customer's check for a period of time before negotiation, redemption, or presentment of the check.) Currently, these loans are repaid through redemption or presentment of a check, or by cash or money order. However, many consumers use debit cards or other payment methods with greater frequency and are less likely to use checks. In order to address this trend, it has been suggested that the Act should allow a loan customer to pay his or her loan with a debit card or by telephone.

CONTENT

Senate Bill 607 would amend the Deferred Presentment Service Transactions Act to specify that a deferred presentment service transaction would be closed if a customer's check were redeemed by a debit card payment, or if a returned check were collected by one or more telephone-initiated entries (debits to a customer's account).

Senate Bill 719 would amend the Deferred Presentment Service Transactions Act to do the following:

- **Require a licensee to deposit a check held in connection with a deferred presentment service transaction if the check were not redeemed or exchanged, unless the drawer had entered into a written repayment plan.**
- **Allow a licensee to collect the check through telephone-initiated entries if a check were deposited and returned unpaid, and certain requirements were met.**
- **Require a licensee to return a check, and specify the manner of return, if payment to satisfy an outstanding obligation were made.**
- **Specify that a licensee could accept a payment by debit card only if the drawer certified that the debit card drew funds from the same account as the check.**

The bills are tie-barred, and each would take effect 90 days after its enactment.

Senate Bill 607

The Act prohibits a licensee from entering into a deferred presentment service transaction with a customer if the customer has an open transaction with the licensee or has more than one open deferred presentment service transaction with any other licensee.

When a deferred presentment service transaction is closed, the licensee must designate the transaction as closed, and notify a database provider as required by the Act. "Closed" in connection with a deferred presentment service transaction means that one of the following has occurred concerning each of the customer's checks that is the basis of the deferred presentment services transaction:

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

Under the bill, in addition to those circumstances, a transaction would be closed if the check were redeemed by the customer by payment of its face amount from a debit card meeting the requirements of Section 35(11). A transaction also would be closed if the check were collected by the licensee under Section 35(9) and the licensee had evidence that the person had satisfied the obligation. (Senate Bill 719 would add Section 35(7) to 35(12). Under Section 35(11), a license could accept payment by debit card to redeem a check only if the card drew money from the same account as the check. Section 35(9) would allow a licensee to collect a returned check by means of one or more telephone-initiated entries if certain requirements were met.)

Under the bill, "redeem" would mean that the customer pays to the licensee an amount equal to the face amount of a check included in a deferred presentment service transaction, on or before the maturity date or after the check is deposited and returned unpaid by the drawee, and the licensee returns the check to the customer.

Senate Bill 719

Under the Act, if a drawer enters into eight deferred presentment service transactions with any licensee in any 12-month period, the licensee must give the drawer an option to repay the eighth transaction and each additional transaction in that period under a written repayment plan subject to the following terms:

-- The drawer must request the repayment plan within 30 days after the transaction's maturity date.
-- The drawer must repay the transaction in three equal installments with one due on the next three dates on which the drawer receives regular wages or compensation.
-- The drawer must pay a fee to the licensee to administer the repayment plan.
-- The drawer must agree not to enter into any additional deferred presentment service transactions during the repayment plan term.

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

Under the bill, unless a drawer had entered into a written repayment plan, a licensee would have to deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check were not redeemed by payment of its face amount in cash or from a debit card, or exchanged for a cashier's check or cash from the drawer's financial institution, on or before the maturity date.

A licensee would have to deposit a check held in connection with a deferred presentment service transaction on any repayment plan installment date if the drawer failed to meet the installment payment.

If the drawer had an outstanding deferred presentment service transaction in which a check held in connection with the transaction was deposited and returned unpaid, the licensee could collect the check by means of one or more telephone-initiated entries if all of the following were met: a) the drawer agreed to each telephone-initiated entry; b) each telephone-initiated entry was a single, date-specific payment and did not authorize more than one payment or periodic payments; and c) the licensee did not charge the drawer a fee in connection with the telephone-initiated entry or entries.

"Telephone-initiated entry" would mean a debit transaction to a drawer's account that is processed through an automated clearing house, as that term is defined in Public Act 738 of 2002, and initiated pursuant to an authorization obtained from the drawer orally by telephone. (Public Act 738 of 2002 regulates electronic transactions of local public funds. The Act defines "automated clearing house" as a national and governmental organization that has authority to process electronic payments, including, but not limited to, the National Automated Clearing House Association and the Federal Reserve System.)

If the payment to satisfy an outstanding deferred presentment transaction obligation were made in person, the licensee would have to return the check held in connection with the transaction to the drawer. If the payment were not made in person, the licensee would have to return the check by mailing it to the address listed on the deferred presentment transaction service agreement within one business day after the licensee obtained evidence that the drawer had satisfied the obligation.

A licensee could accept a payment by debit card to redeem a check the licensee was holding only if the drawer certified that the debit card drew money from the same account on which the check was drawn.

MCL 487.2122 (S.B. 607)
487.2155 (S.B. 719)

BACKGROUND

A deferred presentment service transaction (a "payday loan", also referred to as a cash advance or check advance loan) is a short-term transaction for a relatively small amount of money in which a customer provides a lender with a postdated check to cover the amount of the loan and accompanying service fees. In exchange, the customer receives cash, a check, or a money order, as needed. Payments on this loan are typically made from the customer's next paycheck. To qualify for a payday loan, a customer generally provides personal identification, checking account information, and proof of anticipated income. These transactions can provide ready access to credit for individuals who do not have credit cards or are unable to secure other means of credit. For individuals with poor credit and low incomes, a payday loan can provide short-term access to money to address sudden financial needs when there are few alternatives. However, in order to provide immediate access to credit, these loans use almost no underwriting standards except the information provided by the customer. To protect against default, lenders instead place high service fees and interest rates on these transactions. Thus, compared with traditional loans, there is higher risk that a consumer will default or will need subsequent payday loans to repay older loans or address financial emergencies in the future.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Additional options to repay payday loan debt are needed in light of the growing use of debit cards and the reduced use of checks. The bills would allow a payday loan customer to use a debit card or a telephone-initiated transaction to pay his or her loan. Additional options to pay off a loan would make it easier for a consumer to pay his or her debts, benefitting the borrower and the lender.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.