

SUBSTITUTE FOR
SENATE BILL NO. 474

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:

1 ARTICLE 1

2 Sec. 1. This act shall be known and may be cited as the
3 "deferred presentment services act".

4 Sec. 2. As used in this act:

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

8 (b) "Check" means a draft payable on demand and drawn on a
9 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 services
10 agreement.

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

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

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

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

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

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

1 (i) "Licensee" means a person licensed to engage in the
2 business of providing deferred presentment services under this
3 act.

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

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

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

13 ARTICLE 2

14 Sec. 11. A person shall not engage in the business of
15 providing deferred presentment services without a license under
16 this article. A separate license is required for each location
17 from which the business of deferred presentment services is
18 conducted.

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

21 (a) Have and maintain net worth of at least \$50,000.00 for
22 each licensed location, subject to a maximum of \$250,000.00 in
23 required net worth for any 1 licensee.

24 (b) Demonstrate to the commissioner that the applicant has
25 the financial responsibility, financial condition, business
26 experience, character, and general fitness to reasonably warrant
27 a belief that the applicant will conduct its business lawfully

1 and fairly. In determining whether this subdivision is
2 satisfied, and for the purpose of investigating compliance with
3 this article, the commissioner may review any of the following:

4 (i) The relevant business records and the capital adequacy of
5 the applicant.

6 (ii) The competence, experience, integrity, and financial
7 ability of any person who is a member, partner, director,
8 officer, or a shareholder with 25% or more interest in the
9 applicant.

10 (iii) Any record regarding the applicant, or any person
11 referred to in subparagraph (ii), of any criminal activity,
12 fraud, or other act of personal dishonesty, an act, omission, or
13 practice that constitutes a breach of a fiduciary duty, or any
14 suspension, removal, or administrative action by any agency or
15 department of the United States or any state.

16 Sec. 13. Each application for a license shall be in writing
17 and under oath to the commissioner, in a form prescribed by the
18 commissioner, and shall include all of the following
19 information:

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

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

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

27 Sec. 14. (1) A licensee shall pay a license fee, in an

1 amount determined by the commissioner under subsection (2),
2 within 60 days of submitting its license application, and then
3 annually.

4 (2) The commissioner shall annually establish a schedule of
5 license fees based upon each licensee's business volume, number
6 of locations, and any other business factors considered
7 reasonable by the commissioner in order to generate funds
8 sufficient to pay, but not to exceed, the office's reasonably
9 anticipated costs of administering this act. A licensee shall
10 pay the actual travel, lodging, and meal expenses incurred by
11 office employees who travel out of state to examine the records
12 of or investigate the licensee.

13 (3) Money received under this act shall be deposited in the
14 state treasury and credited to the office to be used only for the
15 operation of the office.

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

21 Sec. 15. (1) When a license application is received, the
22 commissioner shall investigate to determine whether the
23 qualifications prescribed by section 12 have been satisfied. If
24 the commissioner finds that the qualifications have been
25 satisfied, the commissioner shall issue to the applicant a
26 license to engage in the deferred presentment services business.

27 (2) A licensee shall post a copy of its license in a

1 conspicuous location at the place of business of the licensee.

2 (3) A license issued under this section shall remain in
3 effect through the remainder of the fiscal year ending September
4 30 after its date of issuance, unless earlier surrendered,
5 suspended, or revoked under this act.

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

8 (2) The prior written approval of the commissioner is
9 required for the continued operation of a deferred presentment
10 services business if there is a change in control of a licensee.
11 The commissioner may require information considered necessary to
12 determine whether a new application is required. The person that
13 requests the approval shall pay the cost incurred by the
14 commissioner in investigating the change of control request.

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

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

19 (a) For a corporation, direct or indirect ownership, or the
20 right to control, 25% or more of the voting shares of the
21 corporation, or the ability of a person to elect a majority of
22 the directors or otherwise effect a change in policy.

23 (b) For any entity other than a corporation, the ability to
24 change the principals of the organization, whether active or
25 passive.

26 Sec. 17. Within 15 days after the occurrence of any 1 of
27 the following events, a licensee shall file a written report with

1 the commissioner describing the event and its expected impact on
2 the activities of the licensee in this state:

3 (a) The filing for bankruptcy or reorganization by the
4 licensee.

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

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

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

11 (e) Any other events the commissioner may determine and
12 identify by rule.

13 Sec. 18. A license issued under this article shall expire
14 on September 30 of each year. A licensee may renew a license for
15 a 12-month period by submitting an application that shows
16 continued compliance with this act, in a form prescribed by the
17 commissioner, and paying the license renewal fee to the
18 commissioner.

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

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

27 Sec. 20. Each licensee shall keep and use in its business

1 any books, accounts, and records the commissioner requires under
2 this act. A licensee shall preserve the books, accounts, and
3 records for at least 2 years, unless applicable state or federal
4 law concerning record retention requires a longer retention
5 period.

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

10 (2) If the commissioner denies an application, or if the
11 commissioner fails to act on an application within 60 days after
12 the filing of a properly completed application, the applicant may
13 submit a written demand to the commissioner for a hearing before
14 the commissioner on the question of whether the commissioner
15 should grant a license. If a hearing is held, the commissioner
16 shall reconsider the application, and issue a written order
17 granting or denying the application after the hearing.

18 (3) A person conducting a deferred presentment services
19 business in this state on the effective date of this act may
20 continue to conduct that business until the commissioner acts on
21 its application. During that time period, the person shall
22 comply with the provisions of articles 3 and 4.

23 ARTICLE 3

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

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

4 2. You should use this service only to meet short-term cash
5 needs.

6 3. State law prohibits us from entering into a transaction
7 with you if you already have a deferred presentment
8 services agreement in effect with any person providing this
9 service.

10 4. If you enter into an agreement, we must immediately give
11 you a copy of your signed agreement.

12 5. State law entitles you to the right to cancel an
13 agreement and receive a refund of the fee. To do this, if
14 you enter into an agreement today, you must notify us and
15 return the money you receive by the time this office closes
16 tomorrow or on our next business day if we are not open
17 tomorrow.

18 6. State law prohibits us from renewing an agreement for a
19 fee. You have to pay any other agreement in full before
20 obtaining additional money from us.

21 7. State law prohibits us from using any criminal process
22 to collect on an agreement.

23 8. State law entitles you to information regarding filing a
24 complaint against us if you believe that we have violated
25 the law. If you feel we are acting unlawfully, you should
26 call the Office of Financial and Insurance Services
27 toll-free at 1-877-999-6442."

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

6 Sec. 32. (1) A licensee shall document a deferred
7 presentment service transaction by entering into a written
8 deferred presentment services agreement signed by both the
9 customer and the licensee.

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

12 (a) The name of the customer.

13 (b) The name, street address, and telephone number of the
14 licensee.

15 (c) The signature of the individual who enters into the
16 deferred presentment services agreement on behalf of the
17 licensee.

18 (d) The date of the agreement.

19 (e) The amount of the check presented to the licensee by the
20 customer.

21 (f) An itemization of the fees and charges to be paid by the
22 customer.

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

25 (h) A schedule of all fees and charges associated with the
26 deferred presentment service transaction and include an example
27 of the amounts the customer would pay based on the amount of the

1 deferred presentment service transaction.

2 (i) The maturity date.

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

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

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

9 "1. A deferred presentment service transaction is not
10 intended to meet long-term financial needs. We can only
11 defer cashing your check for up to 31 days.
12 2. You should use this service only to meet short-term cash
13 needs.
14 3. State law prohibits us from entering into this
15 transaction with you if you already have a deferred
16 presentment services agreement in effect with any person
17 providing this service.
18 4. We must immediately give you a copy of your signed
19 agreement.
20 5. State law entitles you to the right to cancel this
21 agreement and receive a refund of the fee. To do this, you
22 must notify us and return the money you receive today by
23 the time this office closes tomorrow or on our next
24 business day if we are not open tomorrow.
25 6. State law prohibits us from renewing this agreement for
26 a fee. You have to pay an agreement in full before
27 obtaining additional money from us.

Senate Bill No. 474 as amended October 8, 2003

7. State law prohibits us from using any criminal process to collect on this agreement.

8. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

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

(2) A licensee shall not enter into a deferred presentment services agreement with a customer if the customer has a deferred presentment services agreement that has not been fully repaid with the licensee or with any other licensee. In determining whether a customer has any outstanding agreements with the licensee or other licensees, the licensee shall obtain a written representation from the customer that he or she does not have any outstanding deferred presentment services agreements with the licensee or any other licensee and shall independently verify the accuracy of the customer's written representation through commercially reasonable means. As used in this subsection, "commercially reasonable means" includes any method of

1 verification that at least includes a manual investigation or an
2 electronic query of the licensee's own records maintained at all
3 of the business locations in this state owned or operated by the
4 licensee. A customer who enters into an agreement in violation
5 of this subsection is not entitled to the remedies provided under
6 section 35 or through the office as otherwise provided under this
7 act with regard to that agreement.

8 (3) At the time of entering into a deferred presentment
9 services agreement, a licensee shall do all of the following:

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

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

15 a. Before the close of business on the day you sign the
16 agreement, notify us in person of the violation. You must
17 provide supporting documents or other evidence of the
18 violation.

19 b. At any time before signing a new deferred presentment
20 services agreement with us, notify us in writing delivered
21 by mail or in person of the violation. Your written notice
22 must state the violation and provide supporting documents
23 or other evidence of the violation.

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

27 3. If we agree that we have violated the law, we must

1 return your check and you must return the cash received
2 under the agreement. Additionally, for each violation, we
3 must pay you restitution equal to 5 times the amount of the
4 fee we charged you under the agreement but not less than
5 \$15.00 or more than the face amount of your check. If we
6 pay you restitution for violating the law, you cannot
7 attempt to recover more from us for that violation.

8 4. If we do not agree that we have violated the law, we may
9 present your check for payment or enter your check into the
10 check-clearing process on or after the maturing date. If
11 your check is returned to us unpaid, we may take other
12 legal steps to collect our money.

13 5. If you still believe we violated the law, you may file a
14 written complaint including supporting documents or other
15 evidence with the Office of Financial and Insurance
16 Services. The Office is required to investigate your
17 complaint and has the authority to order us to pay you
18 restitution if they agree that we violated the law. In
19 addition, the Office can order us to pay civil fines or
20 take away our right to do business. To do so, contact the
21 Office of Financial and Insurance Services toll-free at
22 1-877-999-6442."

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

24 (c) Pay the proceeds under the agreement to the drawer in
25 cash if requested by the drawer. Otherwise, the licensee may pay
26 the proceeds under the agreement to the drawer in the form of the
27 licensee's business check, money order, cash, or any other valid

1 method of monetary transfer.

2 (4) At the time of entering into a deferred presentment
3 services agreement, a licensee shall not do any of the
4 following:

5 (a) Charge interest under the agreement.

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

8 (c) Charge an additional fee for cashing the licensee's
9 business check if the licensee pays the proceeds to the drawer by
10 business check.

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

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

14 Sec. 34. (1) A licensee shall not renew a deferred
15 presentment services agreement. A licensee may extend a deferred
16 presentment services agreement only if the licensee does not
17 charge a fee in connection with the extended transaction. A
18 licensee who extends an agreement under this subsection shall not
19 create a balance owed above the amount owed on the original
20 agreement.

21 (2) A licensee shall not present a check for payment before
22 the maturity date. In addition to the remedies and penalties
23 under this act, a licensee that presents a check for payment
24 before the maturity date is liable for all expenses and damages
25 caused to the drawer and the drawee as a result of the
26 violation.

27 (3) A drawer satisfies his or her obligation under a deferred

1 presentment services agreement when the check the licensee is
2 holding is paid by the drawee or is redeemed by the drawer by
3 paying to the licensee an amount equal to the full amount of the
4 check. If the drawer satisfies his or her obligation under a
5 deferred presentment services agreement, the licensee or any
6 other licensee may enter into a new deferred presentment services
7 agreement with that drawer.

8 Sec. 35. (1) No later than the close of business on the day
9 he or she signed a deferred presentment services agreement, a
10 drawer who believes that a licensee has violated this act may
11 notify the licensee in person that the licensee has violated the
12 act. The drawer shall identify the nature of the violation and
13 provide documentary or other evidence of the violation at that
14 time.

15 (2) At any time before signing a new deferred presentment
16 services agreement with a licensee, a drawer who believes that
17 the licensee has violated this act in connection with a deferred
18 presentment service transaction may deliver to the licensee a
19 notice in writing that the licensee has violated the act. The
20 drawer shall identify the nature of the violation and include
21 documentary or other evidence of the violation in the notice.

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

26 (4) If the licensee determines that it has violated the law,
27 it shall return to the drawer the check received under the

1 agreement and any service fee paid by the drawer to the
2 licensee. The drawer shall deliver to the licensee cash or a
3 cash equivalent in an amount equal to the amount of cash the
4 drawer received under the agreement. In addition, the licensee
5 shall make restitution to the drawer for each violation in an
6 amount equal to 5 times the amount of the fee charged in the
7 drawer's deferred presentment services agreement, but not less
8 than \$15.00 or more than the face amount of the drawer's check.
9 A licensee that makes restitution for a violation under this
10 subsection is not subject to any other remedy provided for a
11 violation under this act with respect to that violation. A
12 licensee that makes restitution for a violation under this
13 subsection shall immediately notify the commissioner of that
14 action. The licensee shall give the commissioner detailed
15 information about the terms of the deferred presentment services
16 agreement and shall provide other information requested by the
17 commissioner.

18 (5) If the licensee determines that it did not violate the
19 law, the licensee shall immediately notify the commissioner and
20 the drawer of that determination. The licensee shall give the
21 commissioner detailed information about the terms of the deferred
22 presentment services agreement and shall provide other
23 information requested by the commissioner. The licensee shall
24 include in the notification to the drawer that the drawer has the
25 right to file a written complaint with the office if he or she
26 does not agree with the determination that the licensee did not
27 violate the law. The licensee shall include in the notice

1 detailed information on how the drawer can contact the office to
2 obtain a complaint form.

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

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

13 (8) The commissioner shall promptly investigate a complaint
14 filed by a drawer under this section. If after investigating the
15 drawer's complaint, the commissioner concludes that the licensee
16 violated this act, the commissioner may order the licensee to
17 make restitution to the drawer in an amount equal to 3 times the
18 amount provided for in subsection (4), but not less than \$45.00
19 or more than 3 times the full amount of the check. A licensee
20 ordered to pay restitution under this subsection is also subject
21 to any other applicable penalties and remedies available under
22 this act for the violation.

23 Sec. 36. (1) A drawer may rescind a deferred presentment
24 services agreement without cost to the drawer and for any reason
25 if the drawer, not later than the close of business on the
26 business day following the date of the agreement, delivers to the
27 licensee cash or a cash equivalent in an amount equal to the

1 amount of cash the drawer received under the agreement. The
2 licensee shall return to the drawer the check received under the
3 agreement and any service fee paid by the drawer to the
4 licensee. A drawer who rescinds an agreement under this section
5 is not eligible for restitution under section 35 with regard to
6 the rescinded agreement.

7 (2) A drawer may redeem a check from the licensee holding the
8 check under a deferred presentment services agreement at any time
9 before the maturity date. A licensee shall return the check to
10 the drawer upon receipt of cash or its equivalent in the full
11 amount of the check. A licensee shall not contract for or
12 collect a charge for accepting partial payments from the customer
13 if the full amount is paid by the maturity date.

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

18 (2) A licensee may contract for and collect a returned check
19 charge that does not exceed \$25.00 if 1 or more of a drawer's
20 checks that the licensee is holding under a deferred presentment
21 services agreement are returned by the drawee due to insufficient
22 funds, a closed account, or a stop payment order. The licensee
23 may only contract for and collect 1 returned check charge under
24 this subsection in a transaction with a customer. In addition to
25 the charge authorized by this section, a licensee may exercise
26 any other remedy available under any law applicable to the return
27 of a check because of a closed account or a stop payment order.

1 (3) A drawer is not subject to any criminal penalty for
2 entering into a deferred presentment services agreement and is
3 not subject to any criminal penalty in the event the drawer's
4 check is dishonored.

5 Sec. 38. (1) A licensee shall maintain each deferred
6 presentment services agreement until the expiration of 2 years
7 after the date the deferred presentment services agreement is
8 satisfied and make available for examination by the commissioner
9 deferred presentment services agreements and all related
10 documents in its possession or control including, but not limited
11 to, any applications, credit reports, employment verifications,
12 or loan disclosure statements.

13 (2) Notwithstanding any other provision of this act, a
14 licensee shall preserve and keep available for examination by the
15 commissioner all documents pertaining to a rejected application
16 for a deferred presentment service for any period of time
17 required by law.

<<Sec. 39a. (1) On or before December 31, 2004, the commissioner may designate a third-party provider to develop, implement, and maintain a database with real-time access through an internet connection in accordance with the provisions of this section. The database must be accessible to the commissioner and the licensee to ensure compliance with this article. The commissioner shall select a database provider based on an assessment of cost of service and an ability to perform the reporting requirements of this article. The commissioner shall give strong consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. The commissioner may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section. The database shall be available to the commissioner at all times.

(2) The database must be able to do the following:

(a) Check the borrower's social security number and report to the licensee if any such social security number is invalid, has been issued within the past 5-year prior to the date of submission, or represents a deceased person.

(b) Validate whether a new deferred presentment transaction may be extended to the borrower based on the allowable number of transactions and transaction amount pursuant to this article.

(c) Provide information necessary to ensure licensee compliance with the Department of Homeland Security - Office of Foreign Asset Control requirements.

(d) Provide access to the database 24 hours a day, 7 days a week.

(e) In selecting the database provider, the commissioner shall give strong consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. This additional data can be made available to the deferred presentment providers at their option and sole expense. This additional data could include:

(i) Past performance data on deferred presentment transactions the customer has secured within or outside of the state.

(ii) Inquiry information from deferred presentment providers outside the state that would indicate deferred presentment transactions outside the state may have been secured by the customer.

(iii) Access to other performance information about the customer in relation to other sub-prime industries.

(3) The commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(4) As provided in section 33(1), a licensee may charge a customer any database verification fee imposed by the database provider and approved by the commissioner to pay the costs required to validate whether a deferred presentment transaction may be extended to the borrower pursuant to this article. Licensees may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(5) A licensee may not enter into any deferred presentment transaction with a person who has an outstanding transaction, if the principal amount would exceed \$1,000.00. The licensee must verify the following information:

(a) The licensee shall maintain an intracompany database and shall verify the total number of and dollar amount between a person and the licensee.

(b) Upon full implementation of the statewide common database, the licensee shall access the database established pursuant to this section and shall verify whether a loan may be made to the borrower based on the allowable number of loans and loan amounts pursuant to this article.

(6) Before entering into each deferred presentment transaction, a licensee shall submit the required borrower data in the format the commissioner shall reasonably require, including the borrower's name, social security number, address, driver's license number, amount of the transaction, borrower's check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the commissioner.

(7) Prior to implementation of the database or during times when the database is unavailable to licensees due to technical problems, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 10-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED PRESENTMENT TRANSACTIONS WITH AN OUTSTANDING BALANCE EXCEEDING \$1,000.00 WITH THIS OR ANY OTHER LICENSED DEFERRED PRESENTMENT PROVIDER.

(8) Any deferred presentment transaction that has been fully paid and satisfied, as defined in subsection (9) of this section, shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of \$100.00 for each day that the licensee fails to indicate in the database that the loan has been paid. A licensee shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond the licensee's control, including the database temporarily experiencing technical problems.

(9) A deferred presentment transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(a) Redeemed by the customer by payment to the licensee of the face amount of the check in cash.

(b) Exchanged by the licensee for a cashier's check or cash from the borrower's financial institution.

(c) Deposited by the licensee and the licensee has evidence that the check has cleared.

(d) Collected by the licensee or its agent through any civil remedy available under state law.

(e) Collected by means of a repayment plan agreed upon by the borrower and the licensee or as the result of credit counseling where the licensee has been paid the amount agreed upon by the licensee under the plan.

(10) Notwithstanding the provisions of subsection (9) of this section, the designated third-party provider shall automatically close any outstanding customer transaction 5 days following the loan maturity date unless a licensee reports to the database prior to that time that any of the following apply:

(a) The transaction remains open, due to the borrower's failure to make payment.

(b) The transaction is pending, due to the borrower's check or an electronic redeposit being in the process of clearing the banking system.

(c) The transaction remains open, due to the borrower's check being returned to the licensee for insufficient funds, closed accounts, or stop payment order.

(11) If a licensee timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (7) of this section and reported as such by the licensee. If a licensee ceases offering deferred presentment loans, all open transactions with the licensee shall automatically close 60 days following the date the licensee ceases offering deferred deposit loans, unless the licensee reports to the designated third-party provider prior to the expiration of the 60-day period: (i) those borrower transactions that remain open; and (ii) the

specific reason each transaction remains open; and further provides to the commissioner a reasonably acceptable plan which outlines how the licensee will continue to update the database following the ceasing of its deferred presentment operations. If at any time the commissioner reasonably determines that a licensee who has ceased its deferred presentment operations is not updating the database in accordance with its approved plan, the commissioner shall immediately close all remaining transactions attributable to the licensee.

(12) Inquiries to the database by licensees shall only state that a person is eligible or ineligible for a new deferred presentment transaction, together with a description of the reason for the determination. Only information previously registered and recorded by the licensee on the database shall be made available to the licensee by the database or the commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection, and is not a public record.

(13) As used in this section:

(a) "Open transaction or open" means a deferred presentment transaction that has been registered and recorded in the database but not closed or pending.

(b) "Pending transaction or pending" means an open transaction that is in the process of clearing the banking system.

(c) "Closed transaction or closed" means a deferred presentment transaction that has been terminated as defined in subsection (9) of this section.>>

18

ARTICLE 4

19

Sec. 41. (1) A customer may file a written complaint with

20

the office on a form prescribed by the commissioner regarding a

21

licensee. The customer shall include with the complaint

22

documentary or other evidence of the violation or activities of

23

the licensee. The commissioner shall investigate a complaint

24

filed by a customer under this subsection.

25

(2) The commissioner may investigate or conduct examinations

26

of a licensee and conduct hearings as the commissioner considers

27

necessary to determine whether a licensee or any other person has

1 violated this act, or whether a licensee has conducted business
2 in a manner that justifies suspension or forfeiture of its
3 authority to engage in the business of deferred presentment
4 services in this state.

5 (3) The commissioner may subpoena witnesses and documents,
6 papers, books, records, and other evidence in any manner over
7 which the commissioner has jurisdiction, control, or
8 supervision. The commissioner may administer oaths to any person
9 whose testimony is required. If a person fails to comply with a
10 subpoena issued by the commissioner or to testify with respect to
11 any matter concerning which the person may be lawfully
12 questioned, the commissioner may petition the circuit court for
13 Ingham county to issue an order requiring the person to attend,
14 give testimony, or produce evidence.

15 Sec. 42. (1) If in the opinion of the commissioner a
16 licensee is, has, or is about to engage in a practice that poses
17 a threat of financial loss or threat to the public welfare, or
18 is, has, or is about to violate this article, state or federal
19 law, or an applicable rule or regulation, the commissioner may
20 serve a notice of intention to issue a cease and desist order. A
21 notice served under this section shall contain a statement of the
22 facts constituting the alleged practice or violation and shall
23 fix a time and place for a hearing at which the commissioner will
24 determine whether to issue an order to cease and desist against
25 the licensee.

26 (2) A licensee that fails to appear at a hearing under
27 subsection (1) consents to the issuance of the cease and desist

1 order. If a licensee consents, or upon the record made at the
2 hearing the commissioner finds that the practice or violation
3 specified in the notice has been established, the commissioner
4 may serve upon the licensee an order to cease and desist from the
5 practice or violation. The order may require the licensee and
6 its executive officers, employees, and agents to cease and desist
7 from the practice or violation and to take affirmative action to
8 correct the conditions resulting from the practice or violation.

9 (3) Except to the extent it is stayed, modified, terminated,
10 or set aside by the commissioner or a court, a cease and desist
11 order is effective on the date of service. A cease and desist
12 order issued with the consent of the licensee is effective at the
13 time specified in the order and remains effective and enforceable
14 as provided in the order.

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

19 (a) Failed to pay the annual license fee imposed by this
20 article, or an examination fee imposed by the commissioner under
21 this article.

22 (b) Committed any fraud, engaged in any dishonest activities,
23 or made any misrepresentations.

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

27 (d) Made a false statement in the application for the license

1 or failed to give a true reply to a question in the application.

2 (e) Demonstrated incompetency or untrustworthiness to act as
3 a licensee.

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

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

10 (3) The commissioner shall comply with the administrative
11 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
12 concerning any notice or hearing under this section. A notice
13 served under this section shall contain a statement of the facts
14 constituting the violation or pattern of practice and shall fix a
15 time and place at which the commissioner will hold a hearing to
16 determine whether the commissioner should issue an order to
17 suspend or terminate 1 or more licenses of the licensee.

18 (4) If a licensee fails to appear at a hearing under
19 subsection (1), the licensee consents to the issuance of the
20 order to suspend or terminate 1 or more licenses of the
21 licensee. If a licensee consents, or upon the record made at the
22 hearing the commissioner finds that the pattern of practice or
23 violation specified in the notice has been established, the
24 commissioner may serve upon the licensee an order suspending or
25 terminating 1 or more licenses of the licensee.

26 (5) Except to the extent it is stayed, modified, terminated,
27 or set aside by the commissioner or a court, an order suspending

1 or terminating 1 or more licenses of the licensee is effective on
2 the date of service. An order suspending or terminating 1 or
3 more licenses of the licensee issued with the consent of the
4 licensee is effective at the time specified in the order and
5 remains effective and enforceable as provided in the order.

6 Sec. 44. (1) If the commissioner finds that a person has
7 violated this act, state or federal law, or an applicable rule or
8 regulation, the commissioner may order the person to pay a civil
9 fine of not less than \$1,000.00 or more than \$10,000.00 for each
10 violation. However, if the commissioner finds that a person has
11 violated this act and that the person knew or reasonably should
12 have known that he or she was in violation of this act, the
13 commissioner may order the person to pay a civil fine of not less
14 than \$5,000.00 or more than \$50,000.00 for each violation. The
15 commissioner may also order the person to pay the costs of the
16 investigation.

17 (2) A civil fine assessed under subsection (1) may be sued
18 for and recovered by and in the name of the commissioner and may
19 be collected and enforced by summary proceedings by the attorney
20 general. In determining the amount of a fine, the commissioner
21 shall consider the extent to which the violation was a knowing
22 and willful violation, the extent of the injury suffered because
23 of the violation, the corrective action taken by the licensee to
24 ensure that the violation will not be repeated, and the record of
25 the licensee in the complying with this act.

26 Sec. 45. (1) A licensee ordered to cease and desist, whose
27 license is suspended or terminated, or that is ordered to pay a

1 fine under this act is entitled to a hearing before the
2 commissioner if a written request for a hearing is filed with the
3 commissioner not more than 30 days after the effective date of
4 the order.

5 (2) Any administrative proceedings under this act are subject
6 to the administrative procedures act of 1969, 1969 PA 306, MCL
7 24.201 to 24.328.

8 Sec. 46. The commissioner may promulgate rules under the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
10 24.328, to enforce and administer this act.

11 Sec. 47. A person who provided deferred presentment
12 services before July 1, 2004 is considered to have complied with
13 applicable state law if the person provided the services in
14 substantial conformity with the rulings and interpretive
15 statements then in effect that were issued by the office or its
16 predecessor agency.

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