

SUBSTITUTE FOR
HOUSE BILL NO. 4834

A bill to regulate the business of providing deferred presentment service transactions; to require the licensing of providers of deferred presentment service transactions; 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
2
3
4
5
6
7

ARTICLE 1

Sec. 1. This act shall be known and may be cited as the "deferred presentment service transactions act".

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

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

1 (b) "Check" means a draft payable on demand and drawn on a
2 bank, savings bank, savings and loan association, or credit union.
3 Check includes any negotiable instrument that represents evidence
4 of an obligation to pay even if it is described on its face by
5 another term.

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

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

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

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

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

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

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

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

1 service transaction.

2 (f) "Database provider" means 1 of the following:

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

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

8 (g) Subject to subsection (2), "deferred presentment service
9 transaction" means a transaction between a licensee and a customer
10 under which the licensee agrees to do all of the 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 (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 (i) "Drawer" means a customer who enters into a deferred
19 presentment service transaction with a licensee.

20 (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 (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.

House Bill No. 4834 (H-3) as amended June 29, 2005

1 A separate license is required for each location from which the
2 business of providing deferred presentment service transactions is
3 conducted.

4 (2) This act does not apply to a state or nationally chartered
5 bank or a state or federally chartered savings and loan
6 association, savings bank, or credit union whose deposits or member
7 accounts are insured by an agency of the United States government.

8 (3) All of the following apply to a person engaged in the
9 business of providing deferred presentment services in this state
10 on the effective date of this act:

11 (a) By [December 31, 2007], the commissioner by administrative
12 bulletin, order, or rule shall establish an application process and
13 an application timeline that includes a deadline for submitting a
14 complete application.

15 (b) If the person intends to continue to provide deferred
16 presentment service transactions, it shall submit its complete
17 application with the commissioner by the application deadline
18 established by the commissioner under subdivision (a).

19 (c) The person may continue to engage in the business of
20 providing deferred presentment service transactions in this state
21 after the effective date of this act and without a license until 1
22 of the following occurs:

23 (i) The person fails to meet its application deadline.

24 (ii) The commissioner acts on the person's complete
25 application.

26 (d) The person must comply with articles 3 and 4 during the
27 time period described in subdivision (c).

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

3 (a) Have and maintain net worth of at least \$50,000.00 for
4 each licensed location, subject to a maximum of \$250,000.00 in
5 required net worth for any 1 licensee, determined in accordance
6 with generally accepted accounting principles.

7 (b) Demonstrate to the commissioner that the applicant has the
8 financial responsibility, financial condition, business experience,
9 character, and general fitness to reasonably warrant a belief that
10 the applicant will conduct its business lawfully and fairly. In
11 determining whether this subdivision is satisfied, and for the
12 purpose of investigating compliance with this act, the commissioner
13 may review any of the following:

14 (i) The relevant business records and the capital adequacy of
15 the applicant.

16 (ii) The competence, experience, integrity, and financial
17 ability of any person who is a member, partner, executive officer,
18 or a shareholder with 10% or more interest in the applicant.

19 (iii) Any record regarding the applicant, or any person referred
20 to in subparagraph (ii), of any criminal activity, fraud, or other
21 act of personal dishonesty, any act, omission, or practice that
22 constitutes a breach of a fiduciary duty, or any suspension,
23 removal, or administrative action by any agency or department of
24 the United States or any state.

25 Sec. 13. (1) An applicant shall submit an application for a
26 license to the commissioner. Each application for a license shall
27 be in writing and under oath, in a form prescribed by the

1 commissioner, and shall include all of the following information:

2 (a) The name, street address, and telephone number of the
3 business location within this state from which the applicant will
4 offer deferred presentment service transactions, if available.

5 (b) The legal name, residence, street address, and telephone
6 number and business address of the applicant and, if the applicant
7 is not an individual, of each executive officer and each person who
8 directly or indirectly owns or controls 10% or more of the
9 ownership interest in the applicant.

10 (c) If the applicant will not operate a physical business
11 location in this state or if in addition to the location described
12 in subdivision (a) the applicant will make deferred presentment
13 service transactions by other means, a detailed description of the
14 manner in which deferred presentment service transactions will be
15 offered to customers in this state.

16 (d) Any other information the commissioner considers necessary
17 under this act.

18 (2) An applicant shall include an application fee in an amount
19 determined by the commissioner with the application described in
20 subsection (1).

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

24 (2) The commissioner shall annually establish a schedule of
25 license fees based upon each licensee's business volume, number of
26 locations, and any other business factors considered reasonable by
27 the commissioner in order to generate funds sufficient to pay, but

House Bill No. 4834 (H-3) as amended June 29, 2005

1 not to exceed, the office's reasonably anticipated costs of
2 administering this act. A licensee shall pay the actual travel,
3 lodging, and meal expenses incurred by office employees who travel
4 out of state to examine the records of or investigate the licensee.
5 An office employee who travels under this subsection shall comply
6 with all travel regulations and rate schedules currently in effect
7 for the reimbursement of expenses incurred by classified state
8 employees in connection with official state business.

9 (3) Money received under this act shall be deposited in an
10 interest bearing account in the state treasury and credited to the
11 office to be used only for the operation of the office.

12 (4) In addition to the license fee required under subsection
13 (1), [except as provided in this subsection,] a licensee shall furnish a
\$50,000.00 surety bond to secure
14 the performance of its obligations, issued by a bonding company or
15 insurance company authorized to do business in this state and in a
16 form satisfactory to the commissioner. [However, if 1 person owns 20% or
more of the ownership interest in 2 or more licensees, the group of
licensees having that common ownership are only obligated to furnish 1
\$50,000.00 surety bond.]

17 Sec. 15. (1) After the commissioner receives a completed
18 license application, the commissioner shall investigate to
19 determine whether the requirements of this act are satisfied. If
20 the commissioner finds that the requirements of this act are
21 satisfied, the commissioner shall issue to the applicant a license
22 to engage in deferred presentment service transactions.

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

25 Sec. 16. (1) If the commissioner determines that an applicant
26 is not qualified to receive a license, the commissioner shall
27 notify the applicant in writing that the application has been

1 denied, stating the basis for denial.

2 (2) If the commissioner denies an application, or if the
3 commissioner fails to act on an application within 60 days after
4 the filing of a properly completed application, or within a longer
5 time period agreed to by the commissioner and the applicant, the
6 applicant may submit a written demand to the commissioner for a
7 hearing before the commissioner on the question of whether the
8 commissioner should grant a license. If a hearing is held, the
9 commissioner shall reconsider the application, and issue a written
10 order granting or denying the application after the hearing.

11 Sec. 17. (1) A license issued under this article is not
12 transferable or assignable.

13 (2) The prior written approval of the commissioner is required
14 for the continued operation of a licensee if there is a change in
15 control of that licensee. The commissioner may require information
16 considered necessary to determine whether a new application is
17 required. The person that requests the approval shall pay the cost
18 incurred by the commissioner in investigating the change of control
19 request.

20 (3) A licensee shall do all of the following:

21 (a) At least 15 days before providing deferred presentment
22 service transactions at any new location or under section 13(1)(c),
23 provide written notice to the commissioner on a form prescribed by
24 the commissioner of the name, street address, and telephone number
25 of the new location or the detailed description required in section
26 13(1)(c).

27 (b) At least 15 days before discontinuing deferred presentment

1 service transactions at any existing location or under section
2 13(1)(c), provide written notice to the commissioner on a form
3 prescribed by the commissioner of the name, street address, and
4 telephone number of the discontinued location or the detailed
5 description of the services required in section 13(1)(c).

6 (4) A licensee shall comply with any request for information
7 or documentation made by the commissioner under this act and shall
8 comply with any reasonable written time deadlines imposed by the
9 commissioner on that request.

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

12 (a) For a corporation, direct or indirect ownership of, or the
13 right to control, 10% or more of the voting shares of the
14 corporation, or the ability of a person to elect a majority of the
15 directors or otherwise effect a change in policy.

16 (b) For any entity other than a corporation, the ability to
17 change the principals of the organization, whether active or
18 passive.

19 Sec. 18. The commissioner may determine and identify by order
20 or rule events that may occur to a licensee that require the
21 licensee to file a written report with the commissioner describing
22 the event and its expected impact on the activities of the
23 licensee, on a form prescribed by the commissioner for the event.

24 Sec. 19. (1) Except as provided in subsection (2), a license
25 issued under this article shall expire on September 30 of each year
26 unless earlier suspended, surrendered, or revoked under this act. A
27 licensee may renew a license for a 12-month period by submitting a

House Bill No. 4834 (H-3) as amended June 29, 2005

1 complete application that shows continued compliance with this act,
2 in a form prescribed by the commissioner, and paying the license
3 renewal fee to the commissioner. The licensee shall submit a
4 renewal application under this subsection on or before August 1 and
5 the commissioner shall proceed in the manner described in sections
6 15(1) and 16.

7 (2) Before [April 1, 2007], the commissioner may issue a
8 license to an applicant under this article that is for a period
9 longer than 12 months and that expires on [September 30, 2008].

10 Sec. 20. (1) The commissioner may issue orders and rules that
11 he or she considers necessary to enforce and implement this act.
12 The commissioner shall make a copy of any order or rule issued
13 under this subsection available to each licensee within a
14 reasonable time after issuance.

15 (2) If any information previously submitted to the
16 commissioner by a licensee under this act is no longer accurate,
17 the licensee shall promptly file in writing with the commissioner a
18 correction of the information. If requested by the commissioner,
19 the licensee shall provide a written report of its business
20 operations, including information described in subsection (3),
21 within a reasonable time after the commissioner's request.

22 (3) If the commissioner has not implemented a database under
23 section 22 or the database described in that section is not fully
24 operational, as determined by the commissioner, a licensee shall do
25 all of the following:

26 (a) Provide an annual written report of its business
27 operations, including business volume and other information on the

1 business of providing deferred presentment service transactions.

2 (b) Every February 1, May 1, August 1, and November 1, report
3 to the commissioner on a form prescribed by the commissioner all of
4 the following:

5 (i) The number of customers who during the preceding calendar
6 quarter notified the licensee of a violation of this act.

7 (ii) A breakdown of the number of times the licensee agreed
8 that a violation of this act occurred and the number of times that
9 the licensee did not agree that a violation occurred.

10 (iii) If the licensee agreed that the violation occurred, the
11 amount of restitution that was paid to any customer under this act.

12 (iv) Any other information the commissioner considers necessary
13 under this act.

14 (4) To assure compliance with this act, the commissioner may
15 examine the relevant business, books, and records of any licensee.

16 Sec. 21. Each licensee shall keep and use in its business any
17 books, accounts, and records the commissioner requires under this
18 act. A licensee shall preserve the books, accounts, and records for
19 at least 3 years, unless applicable state or federal law concerning
20 record retention requires a longer retention period.

21 Sec. 22. (1) On or before December 31, 2006, the commissioner
22 shall develop, implement, and maintain a statewide, common database
23 that has real-time access through an internet connection, is
24 accessible at all time to licensees, and to the commissioner for
25 purposes of subsections (11) and (12), and meets the requirements
26 of this section.

27 (2) The commissioner may operate the database described in

1 subsection (1) or may select and contract with a single third party
2 provider to operate the database. If the commissioner contracts
3 with a third party provider for the operation of the database, all
4 of the following apply:

5 (a) The commissioner shall operate or ensure that a third
6 party provider selected as the database provider operates the
7 database pursuant to the provisions of this act.

8 (b) The commissioner shall consider cost of service and
9 ability to meet all the requirements of this section in selecting a
10 third party provider as the database provider.

11 (c) In selecting a third party provider to act as the database
12 provider, the commissioner shall give strong consideration to the
13 third party provider's ability to prevent fraud, abuse, and other
14 unlawful activity associated with deferred presentment service
15 transactions, provide additional credit information relevant to a
16 customer's ability to pay, and provide additional tools for the
17 administration and enforcement of this act.

18 (d) The database provider shall only use the data collected
19 under this act as prescribed in this act and the contract with the
20 office and for no other purpose.

21 (3) A database provider and a licensee may voluntarily enter
22 into a contract in which the database provider obtains, from that
23 licensee only, the same data that the licensee is required by this
24 section to provide to the state database.

25 (4) The database described in subsection (1) shall allow a
26 licensee accessing the database to do all of the following:

27 (a) Check a customer's social security number and report to

1 the commissioner or licensee if that social security number is
2 invalid, was issued within the 5-year period preceding the date of
3 the inquiry, or is issued to a deceased individual.

4 (b) Verify whether a customer has any open deferred
5 presentment service transactions with any licensee that have not
6 been closed.

7 (c) Provide information necessary to ensure licensee
8 compliance with any requirements imposed by the federal office of
9 foreign asset control under federal law.

10 (d) If that information is available in the database, provide
11 additional credit information relevant to a customer's ability to
12 pay if the commissioner determines that this is appropriate and
13 reasonable under this act. The database provider may make this
14 additional data available to licensees at their option and sole
15 expense. This additional data may include any of the following:

16 (i) Past performance data on deferred presentment service
17 transactions that the customer has entered into within or outside
18 of this state.

19 (ii) Inquiry information from deferred presentment service
20 providers outside of this state that indicate that the customer has
21 entered into deferred presentment service transactions outside of
22 this state.

23 (iii) Any other data the commissioner determines by rule as
24 appropriate, necessary, and reasonable under this act.

25 (e) Track and monitor the number of customers who notify a
26 licensee of violations of this act, the number of times a licensee
27 agreed that a violation occurred, the number of times that a

1 licensee did not agree that a violation occurred, the amount of
2 restitution paid, and any other information the commissioner
3 considers necessary under this subdivision.

4 (f) Determine whether a customer is eligible for repayment of
5 the deferred presentment service transaction in installments as
6 provided in section 35(2) and notify the licensee of that
7 eligibility.

8 (5) The database provider shall establish and maintain a
9 process for responding to transaction verification requests due to
10 technical difficulties occurring with the database that prevent the
11 licensee from accessing the database through the internet.

12 (6) When the database provider receives notification that a
13 deferred presentment service transaction is closed under section
14 34, the database provider shall designate the transaction as closed
15 in the database immediately, but in no event after 11:59 p.m. on
16 the day the commissioner or database provider receives
17 notification.

18 (7) The database provider shall automatically designate a
19 deferred presentment service transaction as closed in the database
20 5 days after the transaction maturity date unless a licensee
21 reports to the database provider before that time that the
22 transaction remain open because of the customer's failure to make
23 payment; that the transaction is open because the customer's check
24 or an electronic redeposit is in the process of clearing the
25 banking system; or that the transaction remains open because the
26 customer's check is being returned to the licensee for insufficient
27 funds, a closed account, or a stop payment order, or any other

1 factors determined by the commissioner. If a licensee reports the
2 status of a transaction as open in a timely manner, the transaction
3 remains an open transaction until it is closed under section 34 and
4 the database provider is notified that the transaction is closed
5 under that section.

6 (8) If a licensee stops providing deferred presentment service
7 transactions, the database provider shall designate all open
8 transactions with that licensee as closed in the database 60 days
9 after the date the licensee stops offering deferred presentment
10 service transactions, unless the licensee reports to the database
11 provider before the expiration of the 60-day period which of its
12 transactions remain open and the specific reason each transaction
13 remains open. The licensee shall also provide to the commissioner a
14 reasonably acceptable plan that outlines how the licensee will
15 continue to update the database after it stops offering deferred
16 presentment service transactions. The commissioner shall promptly
17 approve or disapprove the plan and immediately notify the licensee
18 of his or her decision. If the plan is disapproved, the licensee
19 may submit a new plan or may submit a modified plan for the
20 licensee to follow. If at any time the commissioner reasonably
21 determines that a licensee that has stopped offering deferred
22 presentment service transactions is not updating the database in
23 accordance with its approved plan, the commissioner shall
24 immediately close or instruct the database provider to immediately
25 close all remaining open transactions of that licensee.

26 (9) The response to an inquiry to the database provider by a
27 licensee shall only state that a person is eligible or ineligible

1 for a new deferred presentment service transaction and describe the
2 reason for that determination. Only the person seeking the
3 transaction may make a direct inquiry to the database provider to
4 request a more detailed explanation of a particular transaction
5 that was the basis for the ineligibility determination. Any
6 information regarding any person's transactional history is
7 confidential, is not subject to public inspection, and is not a
8 public record subject to the disclosure requirements of the freedom
9 of information act, 1976 PA 442, MCL 15.231 to 15.246.

10 (10) The database provider may charge licensees a verification
11 fee for access to the database, in amounts approved by the
12 commissioner under section 34(5).

13 (11) The commissioner may access the database provided under
14 subsection (1) only for the purposes of this act and shall not have
15 access to the additional data available to licensees under
16 subsection (4)(d).

17 (12) The commissioner shall investigate violations of and
18 enforce this section. The commissioner shall not delegate its
19 responsibilities under this subsection to any third party provider.

20 (13) Within 30 days after the implementation of the database,
21 as determined by the commissioner, a licensee shall enter into the
22 database all transactions entered into with customers during the
23 period from the effective date of this act to the date of the
24 implementation of the database.

25 (14) The commissioner by order or rule may stipulate that data
26 is retained in the database only as required to ensure licensee
27 compliance with this act and that data recorded in the database is

1 archived when no longer needed for the administration of this act
2 or for enforcement or compliance purposes. The commissioner by
3 order or rule may specify that any identifying customer information
4 is deleted from the database when data is archived. The
5 commissioner may maintain access to archived data for future
6 legislative or policy review.

7 ARTICLE 3

8 Sec. 31. (1) A licensee shall post prominently in an area
9 designed to be seen by the customer before he or she enters into a
10 deferred presentment service transaction the following notice in at
11 least 36-point type:

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

15 2. You should use this service only to meet short-term cash
16 needs.

17 3. State law prohibits us from entering into a transaction
18 with you if you already have a deferred presentment service
19 agreement in effect with us or have more than one deferred
20 presentment service agreement in effect with any other person who
21 provides this service.

22 4. If you enter into a transaction with us, we must
23 immediately give you a copy of your signed agreement.

24 5. We must pay the proceeds of a transaction to you in cash if
25 you request it.

26 6. State law entitles you to the right to cancel an agreement
27 and receive a refund of the fee. To do this, if you enter into a

House Bill No. 4834 (H-3) as amended June 29, 2005

1 transaction today, you must notify us and return the money you
2 receive by the time this office closes tomorrow or on our next
3 business day if we are not open tomorrow.

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

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

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

13 10. If you are unable to pay your deferred presentment service
14 transaction and have entered into [8 deferred presentment service
15 transactions with a licensee in any 12-month period], state law entitles
16 you to request a
17 repayment of that transaction in installments. We are required to
18 advise you of this option at the time it is available. If you
19 elect this option, you must notify us, either orally or in writing,
20 within 30 days after the maturity date of the deferred presentment
21 transaction. The notice must be provided to us at our place of
22 business. You may be charged an additional fee when the
23 transaction is rescheduled in installments. You will be ineligible
24 to enter into a deferred presentment service transaction with any
25 licensee during the term of the repayment plan. If we refuse to
26 provide this option under the stipulations above, you should
27 contact the Office of Financial and Insurance Services 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 service transaction a schedule of all fees and charges
4 imposed for deferred presentment service transactions in at least
5 36-point type.

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

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

11 (a) The name of the customer.

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

14 (c) The signature and printed or typed name of the individual
15 who enters into the deferred presentment service agreement on
16 behalf of the licensee.

17 (d) The date of the transaction.

18 (e) The transaction number assigned by the database provider,
19 if any.

20 (f) The amount of the check presented to the licensee by the
21 customer.

22 (g) An itemization of the fees to be paid by the customer.

23 (h) A calculation of the cost of the fees and charges to the
24 customer, expressed as a percentage rate per year.

25 (i) A clear description of the customer's payment obligation
26 under the agreement.

27 (j) A schedule of all fees associated with the deferred

1 presentment service transaction and an example of the amounts the
2 customer would pay based on the amount of the deferred presentment
3 service transaction.

4 (k) The maturity date.

5 (l) A provision that the licensee will defer presentment, defer
6 negotiation, and defer entering a check into the check-clearing
7 process until the maturity date.

8 (m) A description of the process a drawer may use to file a
9 complaint against the licensee.

10 (n) The following notice in at least 12-point type:

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

14 2. You should use this service only to meet short-term cash
15 needs.

16 3. State law prohibits us from entering into this transaction
17 with you if you already have a deferred presentment service
18 agreement in effect with us or have more than one deferred
19 presentment service agreement in effect with any other person who
20 provides this service.

21 4. We must immediately give you a copy of your signed
22 agreement.

23 5. We must pay the proceeds of this transaction to you in cash
24 if you request it.

25 6. State law entitles you to the right to cancel this
26 agreement and receive a refund of the fee. To do this, you must
27 notify us and return the money you receive today by the time this

House Bill No. 4834 (H-3) as amended June 29, 2005 (1 of 2)

1 office closes tomorrow or on our next business day if we are not
2 open tomorrow.

3 7. State law prohibits us from renewing this agreement for a
4 fee. You have to pay an agreement in full before obtaining
5 additional money from us.

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

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

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

[(3) A licensee may include an arbitration provision in a deferred
presentment service transaction agreement if the arbitration provision
meets all of the following:

(a) Provides that the licensee agrees to pay any costs of the
arbitration.

House Bill No. 4834 (H-3) as amended June 29, 2005 (2 of 2)

(b) Provides that an arbitration proceeding shall be held within 10 miles of the drawer's address contained in the deferred presentment service transaction agreement unless the drawer consents to another location after an arbitrable dispute occurs.

(c) Provides that an arbitration proceeding shall be conducted by a neutral arbitrator who was not and is not currently being paid by the licensee and who has no financial interest in a party to the arbitration.

(d) Requires that the arbitrator shall provide the drawer with all the substantive rights that the drawer would have if the drawer's claim were asserted in a court proceeding and shall not limit any other claim or defense the drawer has concerning the claim.]

27

Sec. 33. (1) A licensee may enter into 1 deferred presentment

1 service transaction with a customer for any amount up to \$600.00. A
2 licensee may charge the customer a service fee for each deferred
3 presentment service transaction. A service fee is earned by the
4 licensee on the date of the transaction and is not interest. A
5 licensee may charge both of the following as part of the service
6 fee, as applicable:

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

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

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

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

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

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

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

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

23 (2) A licensee shall not enter into a deferred presentment
24 service transaction with a customer if 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, and shall verify whether the customer has an open

1 deferred presentment service transaction with the licensee or has
2 more than 1 open deferred presentment service transaction with any
3 other licensee by complying with section 34.

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

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

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

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

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

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

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

27 4. If we do not agree that we have violated the law, we may

1 present your check for payment or enter your check into the check-
2 clearing process on or after the maturity date. If your check is
3 returned to us unpaid, we may take other legal steps to collect our
4 money.

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

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

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

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

21 (a) Charge interest under the agreement.

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

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

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

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

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

6 Sec. 34. (1) A licensee shall verify a customer's eligibility
7 to enter into a deferred presentment service transaction by doing 1
8 of the following, as applicable:

9 (a) If the commissioner has not implemented a database under
10 section 22 or the database described in section 22 is not fully
11 operational, as determined by the commissioner, verifying that the
12 customer does not have an open deferred presentment service
13 transaction with the licensee. The licensee shall maintain a
14 database of all of the licensee's transactions at all of its
15 locations and search that database to meet its obligation under
16 this subdivision.

17 (b) If the commissioner has implemented a database under
18 section 22 and the database described in that section is fully
19 operational, as determined by the commissioner, accessing the
20 database and verifying that the customer does not have an
21 outstanding deferred presentment service transaction with the
22 licensee and does not have more than 1 open deferred presentment
23 service transaction that has not been fully repaid with any other
24 licensee.

25 (2) If the commissioner has not implemented a database under
26 section 22; the database described in that section is not fully
27 operational, as determined by the commissioner; or the licensee is

1 unable to access the database and the alternative mechanism for
2 verification described in subsection (3) is also unavailable, as
3 determined by the commissioner, a licensee may rely upon the
4 written verification of the borrower in a statement provided in
5 substantially the following form in at least 12-point type:

6 "I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE
7 TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE
8 OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER
9 LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE.".

10 (3) If a licensee is unable to access the database described
11 in section 22 due to technical difficulties occurring with the
12 database, as determined by the commissioner, the licensee shall
13 utilize the process established in section 22(5) to verify
14 transactions.

15 (4) The commissioner may use the database to administer and
16 enforce this act.

17 (5) If approved by the commissioner, the database provider may
18 impose a database verification fee for the actual costs of
19 entering, accessing, and verifying data in the database described
20 in section 22 to verify that a customer does not have any other
21 open deferred presentment service transactions with the licensee
22 and does not have more than 1 open deferred presentment service
23 transaction with any other licensees. A database verification fee
24 is payable to the database provider in a manner prescribed by the
25 commissioner. A licensee may charge a customer all or part of the
26 database verification fee under section 33(1)(b) but may not charge
27 a customer any other fee except as authorized in section 33(1) or

1 35(2).

2 (6) A licensee may rely on the information contained in the
3 database described in section 22 as accurate and is not subject to
4 any administrative penalty or civil liability as a result of
5 relying on inaccurate information contained in the database.

6 (7) Before entering into a deferred presentment service
7 transaction, a licensee shall submit to the database provider the
8 customer's name, social security number, address, and driver
9 license number or other method of state identification, if
10 available, the amount of the transaction, the customer's check
11 number, the date of the transaction, the maturity date of the
12 transaction, and any other information reasonably required by the
13 commissioner or the database provider, in a format reasonably
14 required by the commissioner.

15 (8) When a deferred presentment service transaction is closed,
16 the licensee shall designate the transaction as closed and
17 immediately notify the database provider, but in no event after
18 11:59 p.m. on the day the transaction is closed. The commissioner
19 shall assess an administrative fine of \$100.00 for each day that
20 the licensee fails to notify the database provider that the
21 transaction has been closed. It is a defense to the assessment of
22 an administrative fine that notifying the database provider was not
23 possible due to temporary technical problems with the database or
24 to circumstances beyond the licensee's control.

25 Sec. 35. (1) A licensee shall not renew a deferred presentment
26 service agreement. A licensee may extend a deferred presentment
27 service agreement only if the licensee does not charge a fee in

1 connection with the extended transaction. A licensee who extends an
2 agreement under this subsection shall not create a balance owed
3 above the amount owed on the original agreement.

4 (2) If a drawer enters into 8 deferred presentment service
5 transactions with a licensee in any 12-month period, the licensee
6 shall provide the drawer an option to repay that eighth transaction
7 and each additional transaction in that 12-month period pursuant to
8 a written repayment plan subject to the following terms:

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

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

17 (c) The drawer shall pay \$15.00 to the licensee for
18 administration of the repayment plan.

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

21 (3) A licensee shall advise a customer of the repayment option
22 described in subsection (2) at the time he or she is eligible. If a
23 customer believes he or she has been illegally denied the repayment
24 option under this section, he or she is entitled to contact the
25 office of financial and insurance services toll-free at 1-877-999-
26 6442. If a customer has entered into 8 deferred presentment service
27 transactions in any 12-month period, the database provider shall

1 notify the licensee when the licensee submits the required customer
2 information to the database for that customer that the customer is
3 entitled to a repayment plan under this section. The database
4 provider shall instruct the licensee to provide the customer with
5 the following notice, in a document separate from the deferred
6 presentment transaction agreement and in at least 12-point type:
7 "If you are unable to pay your deferred presentment service
8 transaction and have entered into 8 deferred presentment
9 transactions in any 12-month period, state law entitles you to
10 request a repayment of that transaction in installments. We are
11 required to advise you of this option at the time it is available.
12 If you elect this option, you must notify us, either orally or in
13 writing, within 30 days after the maturity date of the eighth
14 deferred presentment transaction in the 12-month period. The
15 notice must be provided to us at our place of business. You may be
16 charged an additional fee when the transaction is rescheduled in
17 installments. You will be ineligible to enter into a deferred
18 presentment service transaction with any licensee during the term
19 of the repayment plan. If we refuse to provide this option under
20 the stipulations above, you should contact the Office of Financial
21 and Insurance Services toll-free at 1-877-999-6442."

22 (4) During the term of a repayment plan by a drawer under this
23 section, the database provider shall notify the licensee at the
24 time the licensee submits the required customer information to the
25 database for that customer that the customer is presently in a
26 repayment plan under this section with 1 or more other licensees
27 and the licensee shall not enter into a deferred presentment

1 transaction with that individual.

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

13 (6) A drawer satisfies his or her obligation under a deferred
14 presentment service agreement when the check the licensee is
15 holding is paid by the drawee or is redeemed by the drawer by
16 paying to the licensee an amount equal to the full amount of the
17 check.

18 Sec. 36. (1) No later than the close of business on the day he
19 or she signed a deferred presentment service agreement, a drawer
20 who believes that a licensee has violated this act may notify the
21 licensee in person that the licensee has violated the act. The
22 drawer shall identify the nature of the violation and provide
23 documentary or other evidence of the violation at that time.

24 (2) At any time before signing a new deferred presentment
25 service agreement with a licensee, a drawer who believes that the
26 licensee has violated this act in connection with a deferred
27 presentment service transaction may deliver to the licensee a

1 notice in writing that the licensee has violated the act. The
2 drawer shall identify the nature of the violation and include
3 documentary or other evidence of the violation in the notice.

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

7 (4) If the licensee determines that it has violated the law,
8 it shall return to the drawer the check it received in the deferred
9 presentment service transaction and any service fee paid by the
10 drawer to the licensee. The drawer shall deliver to the licensee
11 cash or a cash equivalent in an amount equal to the amount of cash
12 the drawer received in the transaction. In addition, the licensee
13 shall make restitution to the drawer for each violation in an
14 amount equal to 5 times the amount of the fee charged in the
15 deferred presentment service transaction, but not less than \$15.00
16 or more than the face amount of the drawer's check. A licensee that
17 makes restitution for a violation under this subsection may be
18 subject to a civil action under section 53 with respect to that
19 violation. A licensee that makes restitution for a violation under
20 this subsection shall immediately notify the commissioner of that
21 action. The licensee shall give the commissioner detailed
22 information about the terms of the deferred presentment service
23 transaction and shall provide other information requested by the
24 commissioner.

25 (5) If the licensee determines that it did not violate the
26 law, the licensee shall immediately notify the commissioner and the
27 drawer of that determination. The licensee shall give the

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

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

14 (7) If the licensee has otherwise complied with this section
15 and has determined that it did not violate the law, the licensee
16 may present the drawer's check for payment on or after the maturity
17 date. If a check presented for payment under this subsection is not
18 honored, and the licensee is not in violation of this act in
19 connection with the deferred presentment service transaction, the
20 licensee may initiate any lawful collection effort.

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

1 ordered to pay restitution under this subsection is also subject to
2 any other applicable penalties and remedies available under this
3 act for the violation.

4 (9) A licensee shall enter information regarding alleged
5 violations and determinations under this section into the database
6 as required by the commissioner.

7 Sec. 37. (1) A drawer may rescind a deferred presentment
8 service agreement without cost to the drawer and for any reason if
9 the drawer, not later than the close of business on the business
10 day following the date of the deferred presentment service
11 transaction, either delivers to the licensee cash in an amount
12 equal to the amount the drawer received if the drawer received cash
13 in the transaction or returns to the licensee the licensee's check
14 the drawer received if the drawer received a check from the
15 licensee in the transaction. The licensee shall return to the
16 drawer the check received in the transaction and any service fee
17 paid by the drawer to the licensee. A drawer who rescinds an
18 agreement under this section is not eligible for restitution under
19 section 36 with regard to the rescinded agreement.

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

27 Sec. 38. (1) A licensee shall endorse a check given to it by a

1 drawer with the actual name under which the licensee is doing
2 business before the licensee negotiates or presents the check for
3 payment.

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

14 (3) A drawer is not subject to any criminal penalty for
15 entering into a deferred presentment service transaction and is not
16 subject to any criminal penalty in the event the drawer's check is
17 dishonored.

18 Sec. 39. (1) A licensee shall maintain each deferred
19 presentment service agreement until the expiration of 3 years after
20 the date the deferred presentment service agreement is satisfied
21 and make available for examination by the commissioner any deferred
22 presentment service agreements and all related documents in its
23 possession or control including, but not limited to, any
24 applications, credit reports, employment verifications, or loan
25 disclosure statements.

26 (2) A licensee shall preserve and keep available for
27 examination by the commissioner all documents pertaining to a

1 rejected application for a deferred presentment service transaction
2 for any period of time required by law.

3 Sec. 40. A licensee shall not do any of the following:

4 (a) Enter into a tying arrangement through which the licensee
5 conditions the sale of 1 financial service to a consumer on the
6 agreement by the consumer to purchase 1 or more other financial
7 services from the licensee or an affiliate or subsidiary of the
8 licensee.

9 (b) Knowingly permit a person to violate an order that has
10 been issued under this act or any other financial licensing act
11 that prohibits that person from being employed by, an agent of, or
12 a control person of the licensee.

13 ARTICLE 4

14 Sec. 45. (1) A customer may file a written complaint with the
15 office on a form prescribed by the commissioner regarding a
16 licensee. The customer shall include with the complaint documentary
17 or other evidence of the violation or activities of the licensee.
18 The commissioner shall investigate a complaint filed by a customer
19 under this subsection.

20 (2) The commissioner may investigate or conduct examinations
21 of a licensee and conduct hearings as the commissioner considers
22 necessary to determine whether a licensee or any other person has
23 violated this act, or whether a licensee has conducted business in
24 a manner that justifies suspension or forfeiture of its authority
25 to engage in the business of providing deferred presentment service
26 transactions in this state.

27 (3) The commissioner may subpoena witnesses and documents,

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

10 Sec. 46. (1) If in the opinion of the commissioner a licensee
11 is, has, or is about to engage in a practice that poses a threat of
12 financial loss or threat to the public welfare, or is, has, or is
13 about to violate this act, state or federal law, or an applicable
14 rule or regulation, the commissioner may serve a notice of
15 intention to issue a cease and desist order. A notice served under
16 this section shall contain a statement of the facts constituting
17 the alleged practice or violation and shall fix a time and place
18 for a hearing at which the commissioner will determine whether to
19 issue an order to cease and desist against the licensee.

20 (2) A licensee that fails to appear at a hearing under
21 subsection (1) consents to the issuance of a cease and desist
22 order. If a licensee consents, or upon the record made at the
23 hearing the commissioner finds that the practice or violation
24 specified in the notice has been established, the commissioner may
25 serve upon the licensee an order to cease and desist from the
26 practice or violation. The order may require the licensee and its
27 executive officers, employees, and agents to cease and desist from

1 the practice or violation and to take affirmative action to correct
2 the conditions resulting from the practice or violation.

3 (3) Except to the extent it is stayed, modified, terminated,
4 or set aside by the commissioner or a court, a cease and desist
5 order is effective on the date of service. A cease and desist order
6 issued with the consent of the licensee is effective at the time
7 specified in the order and remains effective and enforceable as
8 provided in the order.

9 Sec. 47. (1) The commissioner may, after notice and hearing,
10 suspend or revoke a license if the commissioner finds that the
11 licensee has knowingly or through lack of due care done any of the
12 following:

13 (a) Failed to pay the annual license fee, an examination fee,
14 or any other fee imposed by the commissioner under this act.

15 (b) Committed any fraud, engaged in any dishonest activities,
16 or made any misrepresentations.

17 (c) Violated this act or any rule or order issued under this
18 act or violated any other law in the course of the licensee's
19 dealings as a licensee.

20 (d) Made a false statement in the application for the license,
21 failed to give a true reply to a question in the application, or
22 failed to reply to a request of the commissioner authorized in this
23 act.

24 (e) Demonstrated incompetency or untrustworthiness to act as a
25 licensee.

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

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

5 (3) A notice served under this section shall contain a
6 statement of the facts constituting the violation or pattern of
7 practice and shall fix a time and place at which the commissioner
8 will hold a hearing to determine whether the commissioner should
9 issue an order to suspend or terminate 1 or more licenses of the
10 licensee.

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

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

26 Sec. 48. (1) If the commissioner finds that a person has
27 violated this act, state or federal law, or an applicable rule or

1 regulation, the commissioner may order the person to pay a civil
2 fine of not less than \$1,000.00 or more than \$10,000.00 for each
3 violation. However, if the commissioner finds that a person has
4 violated this act and that the person knew or reasonably should
5 have known that he or she was in violation of this act, the
6 commissioner may order the person to pay a civil fine of not less
7 than \$5,000.00 or more than \$50,000.00 for each violation. The
8 commissioner may also order the person to pay the costs of the
9 investigation.

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

19 Sec. 49. (1) If in the opinion of the commissioner a person
20 has engaged in fraud, the commissioner may serve upon that person a
21 written notice of intention to prohibit that person from being
22 employed by, an agent of, or an executive officer of a licensee
23 under this act. As used in this subsection, "fraud" includes
24 actionable fraud, actual or constructive fraud, criminal fraud,
25 extrinsic or intrinsic fraud, fraud in the execution, in the
26 inducement, in fact, or in law, or any other form of fraud.

27 (2) A notice issued under subsection (1) shall contain a

1 statement of the facts supporting the prohibition and, except as
2 provided under subsection (7), set a hearing on a date within 60
3 days after the date of the notice. If the person does not appear at
4 the hearing, he or she is considered to have consented to the
5 issuance of an order in accordance with the notice.

6 (3) If after a hearing held under subsection (2) the
7 commissioner finds that any of the grounds specified in the notice
8 have been established, the commissioner may issue an order of
9 suspension or prohibition from being a licensee or from being
10 employed by, an agent of, or an executive officer of any licensee
11 under this act.

12 (4) An order issued under subsection (2) or (3) is effective
13 when served on a person. The commissioner shall also serve a copy
14 of the order upon the licensee of which the person is an employee,
15 agent, or executive officer. The order remains in effect until it
16 is stayed, modified, terminated, or set aside by the commissioner
17 or a reviewing court.

18 (5) After 5 years from the date of an order issued under
19 subsection (2) or (3), the person subject to the order may apply to
20 the commissioner to terminate the order.

21 (6) If the commissioner considers that a person served a
22 notice under subsection (1) poses an imminent threat of financial
23 loss to customers, the commissioner may serve upon the person an
24 order of suspension from being employed by, an agent of, or an
25 executive officer of any licensee. The suspension is effective on
26 the date the order is issued and, unless stayed by a court, remains
27 in effect until the commissioner completes the review required

1 under this section, and the commissioner has dismissed the charges
2 specified in the order.

3 (7) Unless otherwise agreed to by the commissioner and the
4 person served with an order issued under subsection (6), the
5 commissioner shall hold the hearing required under subsection (2)
6 to review the suspension not earlier than 5 days or later than 20
7 days after the date of the notice.

8 (8) If a person is convicted of a felony involving fraud,
9 dishonesty, or breach of trust, the commissioner may issue an order
10 suspending or prohibiting that person from being a licensee and
11 from being employed by, an agent of, or an executive officer of any
12 licensee under this act. After 5 years from the date of the order,
13 the person subject to the order may apply to the commissioner to
14 terminate the order.

15 (9) The commissioner shall mail a copy of any notice or order
16 issued under this section to the licensee of which the person
17 subject to the notice or order is an employee, agent, or executive
18 officer.

19 (10) Within 30 days after the commissioner has notified the
20 parties that the case has been submitted to him or her for final
21 decision, the commissioner shall render a decision that includes
22 findings of fact supporting the decision and serve upon each party
23 to the proceeding a copy of the decision and an order consistent
24 with the decision.

25 (11) Except for a consent order, a party to the proceeding or
26 a person affected by an order issued under this section may obtain
27 a judicial review of the order. A consent order may be reviewed as

1 provided under the administrative procedures act of 1969, 1969 PA
2 306, MCL 24.201 to 24.328. Except for an order under judicial
3 review, the commissioner may terminate or set aside any order. The
4 commissioner may terminate or set aside an order under judicial
5 review with the permission of the court.

6 (12) Unless ordered by the court, the commencement of
7 proceedings for judicial review under subsection (11) does not stay
8 the commissioner's order.

9 (13) The commissioner may apply to the circuit court of Ingham
10 county for the enforcement of any outstanding order issued under
11 this section.

12 (14) Any current or former executive officer or agent who
13 violates a final order issued under this section is guilty of a
14 misdemeanor punishable by a fine of not more than \$5,000.00 or
15 imprisonment for not more than 1 year, or both.

16 (15) An executive officer who is subject to an order issued
17 under this section and who meets all of the following requirements
18 is not in violation of the order:

19 (a) He or she does not in any manner, directly or indirectly,
20 participate in the control or management of a licensee after the
21 date the order is issued.

22 (b) He or she transfers any interest he or she owns in the
23 licensee to an unrelated third party within 6 months after the date
24 the order is final.

25 Sec. 50. (1) A licensee who is ordered to cease and desist,
26 whose license is suspended or terminated, or who is ordered to pay
27 a fine under this act is entitled to a hearing before the

House Bill No. 4834 (H-3) as amended June 29, 2005

1 commissioner if a written request for a hearing is filed with the
2 commissioner not more than 30 days after the effective date of the
3 order.

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

7 Sec. 51. The commissioner may promulgate rules under the
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
9 24.328, to enforce and administer this act.

10 Sec. 52. A person who provided deferred presentment service
11 transactions in this state before the effective date of this act is
12 considered to have complied with applicable state law if the person
13 provided those transactions in substantial conformity with the
14 rulings and interpretive statements then in effect that were issued
15 by the office or its predecessor agency.

16 Sec. 53. A person injured by a licensee's violation of this
17 act may maintain a civil cause of action against the licensee and
18 may recover actual damages and an amount equal to the service fee
19 paid in connection with each deferred presentment service
20 transaction that is found to violate this act, plus reasonable
21 attorney fees.

[Enacting section 1. This act takes effect July 31, 2007.]