

SENATE 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 ARTICLE 1

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

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

5 (a) "Applicant" means a person seeking a license to engage in  
6 the business of providing deferred presentment service transactions  
7 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.

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

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

(n) "Office" means the office of financial and insurance services of the department of labor and economic growth.

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

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

## ARTICLE 2

Sec. 11. (1) Subject to subsection (2), a person shall not engage in the business of providing deferred presentment service transactions after April 1, 2006 without a license under this act.

## House Bill No. 4834 as amended September 13, 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) By January 1, 2006, the commissioner by administrative  
9 bulletin, order, or rule shall establish an application process and  
10 an application timeline for license applications under this act.

<<(4) A person may continue to engage in the business of providing  
deferred presentment service transactions in this state after April 1,  
2006 and without a license until 1 of the following occurs:

(a) The person fails to meet its applications deadline.

(b) The commissioner acts on the person's complete application.>>

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

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

17 (b) Demonstrate to the commissioner that the applicant has the  
18 financial responsibility, financial condition, business experience,  
19 character, and general fitness to reasonably warrant a belief that  
20 the applicant will conduct its business lawfully and fairly. In  
21 determining whether this subdivision is satisfied, and for the  
22 purpose of investigating compliance with this act, the commissioner  
23 may review any of the following:

24 (i) The relevant business records and the capital adequacy of  
25 the applicant.

26 (ii) The competence, experience, integrity, and financial  
27 ability of any person who is a member, partner, executive officer,

1 or a shareholder with 10% or more interest in the applicant.

2 (iii) Any record regarding the applicant, or any person referred  
3 to in subparagraph (ii), of any criminal activity, fraud, or other  
4 act of personal dishonesty, any act, omission, or practice that  
5 constitutes a breach of a fiduciary duty, or any suspension,  
6 removal, or administrative action by any agency or department of  
7 the United States or any state.

8 Sec. 13. (1) An applicant shall submit an application for a  
9 license to the commissioner. Each application for a license shall  
10 be in writing and under oath, in a form prescribed by the  
11 commissioner, and shall include all of the following information:

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

15 (b) The legal name, residence, street address, and telephone  
16 number and business address of the applicant and, if the applicant  
17 is not an individual, of each executive officer and each person who  
18 directly or indirectly owns or controls 10% or more of the  
19 ownership interest in the applicant.

20 (c) If the applicant will not operate a physical business  
21 location in this state or if in addition to the location described  
22 in subdivision (a) the applicant will make deferred presentment  
23 service transactions by other means, a detailed description of the  
24 manner in which deferred presentment service transactions will be  
25 offered to customers in this state.

26 (d) Any other information the commissioner considers necessary  
27 under this act.

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

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

7           (2) The commissioner shall annually establish a schedule of  
8 license fees based upon each licensee's business volume, number of  
9 locations, and any other business factors considered reasonable by  
10 the commissioner in order to generate funds sufficient to pay, but  
11 not to exceed, the office's reasonably anticipated costs of  
12 administering this act. A licensee shall pay the actual travel,  
13 lodging, and meal expenses incurred by office employees who travel  
14 out of state to examine the records of or investigate the licensee.  
15 An office employee who travels under this subsection shall comply  
16 with all travel regulations and rate schedules currently in effect  
17 for the reimbursement of expenses incurred by classified state  
18 employees in connection with official state business.

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

22           (4) In addition to the license fee required under subsection  
23 (1), except as provided in this subsection, a licensee shall  
24 furnish a \$50,000.00 surety bond to secure the performance of its  
25 obligations, issued by a bonding company or insurance company  
26 authorized to do business in this state and in a form satisfactory  
27 to the commissioner. However, if 1 person owns 20% or more of the

1 ownership interest in 2 or more licensees, the group of licensees  
2 having that common ownership is only obligated to furnish one  
3 \$50,000.00 surety bond.

4       Sec. 15. (1) After the commissioner receives a completed  
5 license application, the commissioner shall investigate to  
6 determine whether the requirements of this act are satisfied. If  
7 the commissioner finds that the requirements of this act are  
8 satisfied, the commissioner shall issue to the applicant a license  
9 to engage in deferred presentment service transactions.

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

12       Sec. 16. (1) If the commissioner determines that an applicant  
13 is not qualified to receive a license, the commissioner shall  
14 notify the applicant in writing that the application has been  
15 denied, stating the basis for denial.

16       (2) If the commissioner denies an application, or if the  
17 commissioner fails to act on an application within 60 days after  
18 the filing of a properly completed application, or within a longer  
19 time period agreed to by the commissioner and the applicant, the  
20 applicant may submit a written demand to the commissioner for a  
21 hearing before the commissioner on the question of whether the  
22 commissioner should grant a license. If a hearing is held, the  
23 commissioner shall reconsider the application, and issue a written  
24 order granting or denying the application after the hearing.

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

27       (2) The prior written approval of the commissioner is required



1 for the continued operation of a licensee if there is a change in  
2 control of that licensee. The commissioner may require information  
3 considered necessary to determine whether a new application is  
4 required. The person that requests the approval shall pay the cost  
5 incurred by the commissioner in investigating the change of control  
6 request.

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

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

14 (b) At least 15 days before discontinuing deferred presentment  
15 service transactions at any existing location or under section  
16 13(1)(c), provide written notice to the commissioner on a form  
17 prescribed by the commissioner of the name, street address, and  
18 telephone number of the discontinued location or the detailed  
19 description of the services required in section 13(1)(c).

20 (4) A licensee shall comply with any request for information  
21 or documentation made by the commissioner under this act and shall  
22 comply with any reasonable written time deadlines imposed by the  
23 commissioner on that request.

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

26 (a) For a corporation, direct or indirect ownership of, or the  
27 right to control, 10% or more of the voting shares of the

1 corporation, or the ability of a person to elect a majority of the  
2 directors or otherwise effect a change in policy.

3 (b) For any entity other than a corporation, the ability to  
4 change the principals of the organization, whether active or  
5 passive.

6 Sec. 18. The commissioner may determine and identify by order  
7 or rule events that may occur to a licensee that require the  
8 licensee to file a written report with the commissioner describing  
9 the event and its expected impact on the activities of the  
10 licensee, on a form prescribed by the commissioner for the event.

11 Sec. 19. (1) A license issued under this article shall expire  
12 on September 30 of each year unless earlier suspended, surrendered,  
13 or revoked under this act. A licensee may renew a license for a 12-  
14 month period by submitting a complete application that shows  
15 continued compliance with this act, in a form prescribed by the  
16 commissioner, and paying the license renewal fee to the  
17 commissioner. The licensee shall submit a renewal application under  
18 this subsection on or before August 1 and the commissioner shall  
19 proceed in the manner described in sections 15(1) and 16.

20 (2) Before October 1, 2006, the commissioner may issue a  
21 license to an applicant under this article that is for a period  
22 longer than 12 months and that expires on September 30, 2007.

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

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

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

12           (a) Provide an annual written report of its business  
13 operations, including business volume and other information on the  
14 business of providing deferred presentment service transactions.

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

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

20           (ii) A breakdown of the number of times the licensee agreed  
21 that a violation of this act occurred and the number of times that  
22 the licensee did not agree that a violation occurred.

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

25           (iv) Any other information the commissioner considers necessary  
26 under this act.

27           (4) To assure compliance with this act, the commissioner may

1 examine the relevant business, books, and records of any licensee.

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

7       Sec. 22. (1) On or before December 31, 2006, the commissioner  
8 shall develop, implement, and maintain a statewide, common database  
9 that has real-time access through an internet connection, is  
10 accessible at all time to licensees, and to the commissioner for  
11 purposes of subsections (10) and (11), and meets the requirements  
12 of this section.

13       (2) The commissioner may operate the database described in  
14 subsection (1) or may select and contract with a single third party  
15 provider to operate the database. If the commissioner contracts  
16 with a third party provider for the operation of the database, all  
17 of the following apply:

18       (a) The commissioner shall ensure that the third party  
19 provider selected as the database provider operates the database  
20 pursuant to the provisions of this act.

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

24       (c) In selecting a third party provider to act as the database  
25 provider, the commissioner shall give strong consideration to the  
26 third party provider's ability to prevent fraud, abuse, and other  
27 unlawful activity associated with deferred presentment service

1 transactions and provide additional tools for the administration  
2 and enforcement of this act.

3 (d) The third party provider shall only use the data collected  
4 under this act as prescribed in this act and the contract with the  
5 office and for no other purpose.

6 (e) If the third party provider violates this section, the  
7 commissioner shall terminate the contract and the third party  
8 provider is barred from becoming a party to any other state  
9 contracts.

10 (f) A person injured by the third party provider's violation  
11 of this act may maintain a civil cause of action against the third  
12 party provider and may recover actual damages plus reasonable  
13 attorney fees.

14 (3) The database described in subsection (1) shall allow a  
15 licensee accessing the database to do all of the following:

16 (a) Verify whether a customer has any open deferred  
17 presentment service transactions with any licensee that have not  
18 been closed.

19 (b) Provide information necessary to ensure licensee  
20 compliance with any requirements imposed by the federal office of  
21 foreign asset control under federal law.

22 (c) Track and monitor the number of customers who notify a  
23 licensee of violations of this act, the number of times a licensee  
24 agreed that a violation occurred, the number of times that a  
25 licensee did not agree that a violation occurred, the amount of  
26 restitution paid, and any other information the commissioner  
27 requires by rule.

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

5 (4) While operating the database, the database provider shall  
6 do all of the following:

7 (a) Establish and maintain a process for responding to  
8 transaction verification requests due to technical difficulties  
9 occurring with the database that prevent the licensee from  
10 accessing the database through the internet.

11 (b) Comply with any applicable provisions of the social  
12 security number privacy act, 2004 PA 454, MCL 445.81 to 445.87.

13 (c) Comply with any applicable provisions of the identity  
14 theft protection act, 2004 PA 452, MCL 445.61 to 445.77.

15 (d) Provide accurate and secure receipt, transmission, and  
16 storage of customer data.

17 (e) Meet the requirements of this act.

18 (5) When the database provider receives notification that a  
19 deferred presentment service transaction is closed under section  
20 34, the database provider shall designate the transaction as closed  
21 in the database immediately, but in no event after 11:59 p.m. on  
22 the day the commissioner or database provider receives  
23 notification.

24 (6) The database provider shall automatically designate a  
25 deferred presentment service transaction as closed in the database  
26 5 days after the transaction maturity date unless a licensee  
27 reports to the database provider before that time that the

1 transaction remains open because of the customer's failure to make  
2 payment; that the transaction is open because the customer's check  
3 or an electronic redeposit is in the process of clearing the  
4 banking system; or that the transaction remains open because the  
5 customer's check is being returned to the licensee for insufficient  
6 funds, a closed account, or a stop payment order, or any other  
7 factors determined by the commissioner. If a licensee reports the  
8 status of a transaction as open in a timely manner, the transaction  
9 remains an open transaction until it is closed under section 34 and  
10 the database provider is notified that the transaction is closed  
11 under that section.

12 (7) If a licensee stops providing deferred presentment service  
13 transactions, the database provider shall designate all open  
14 transactions with that licensee as closed in the database 60 days  
15 after the date the licensee stops offering deferred presentment  
16 service transactions, unless the licensee reports to the database  
17 provider before the expiration of the 60-day period which of its  
18 transactions remain open and the specific reason each transaction  
19 remains open. The licensee shall also provide to the commissioner a  
20 reasonably acceptable plan that outlines how the licensee will  
21 continue to update the database after it stops offering deferred  
22 presentment service transactions. The commissioner shall promptly  
23 approve or disapprove the plan and immediately notify the licensee  
24 of his or her decision. If the plan is disapproved, the licensee  
25 may submit a new plan or may submit a modified plan for the  
26 licensee to follow. If at any time the commissioner reasonably  
27 determines that a licensee that has stopped offering deferred

1 presentment service transactions is not updating the database in  
2 accordance with its approved plan, the commissioner shall  
3 immediately close or instruct the database provider to immediately  
4 close all remaining open transactions of that licensee.

5 (8) The response to an inquiry to the database provider by a  
6 licensee shall only state that a person is eligible or ineligible  
7 for a new deferred presentment service transaction and describe the  
8 reason for that determination. Only the person seeking the  
9 transaction may make a direct inquiry to the database provider to  
10 request a more detailed explanation of a particular transaction  
11 that was the basis for the ineligibility determination. Any  
12 information regarding any person's transactional history is  
13 confidential, is not subject to public inspection, is not a public  
14 record subject to the disclosure requirements of the freedom of  
15 information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject  
16 to discovery, subpoena, or other compulsory process except in an  
17 action under section 53, and shall not be disclosed to any person  
18 other than the commissioner.

19 (9) The database provider may charge licensees a verification  
20 fee for access to the database, in amounts approved by the  
21 commissioner under section 34(5).

22 (10) The commissioner may access the database provided under  
23 subsection (1) only for purposes of an investigation of,  
24 examination of, or enforcement action concerning an individual  
25 database provider, licensee, customer, or other person. The  
26 commissioner and any employees of the commissioner, the office, or  
27 this state shall not obtain or access a customer's social security



1 number, driver license number, or other state-issued identification  
2 number in the database except as provided in this subsection. An  
3 individual who violates this subsection is guilty of a misdemeanor  
4 punishable by imprisonment for not more than 93 days or a fine of  
5 not more than \$1,000.00, or both, and if convicted, shall be  
6 dismissed from office or discharged from employment.

7 (11) The commissioner shall investigate violations of and  
8 enforce this section. The commissioner shall not delegate its  
9 responsibilities under this subsection to any third party provider.

10 (12) Within 30 days after the implementation of the database,  
11 as determined by the commissioner, a licensee shall enter into the  
12 database all transactions entered into with customers during the  
13 period from the effective date of this act to the date of the  
14 implementation of the database.

15 (13) The commissioner shall do all of the following:

16 (a) Require by rule that data are retained in the database  
17 only as required to ensure licensee compliance with this act.

18 (b) Require by rule that data in the database concerning a  
19 customer transaction are archived within 365 days after the  
20 customer transaction is closed unless needed for a pending  
21 enforcement action.

22 (c) Require by rule that any identifying customer information  
23 is deleted from the database when data are archived.

24 (d) Require by rule that data in the database concerning a  
25 customer transaction are deleted from the database 3 years after  
26 the customer transaction is closed or any enforcement action  
27 pending 3 years after the customer transaction is closed is

1 completed, whichever is later.

2 (14) The commissioner may maintain access to data archived  
3 under subsection (13) for future legislative or policy review.

4 ARTICLE 3

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

9 "1. A deferred presentment service transaction is not intended  
10 to meet long-term financial needs. We can only defer cashing your  
11 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 a transaction  
15 with you if you already have a deferred presentment service  
16 agreement in effect with us or have more than one deferred  
17 presentment service agreement in effect with any other person who  
18 provides this service.

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

21 5. We will pay the proceeds of a transaction to you by check,  
22 by money order, or in cash, as you request.

23 6. State law entitles you to the right to cancel an agreement  
24 and receive a refund of the fee. To do this, if you enter into a  
25 transaction today, you must notify us and return the money you  
26 receive by the time this office closes tomorrow or on our next  
27 business day if we are not open tomorrow.

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

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

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

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

25          (2) A licensee shall post prominently in an area designed to  
26 be seen by the customer before he or she enters into a deferred  
27 presentment service transaction a schedule of all fees and charges

1 imposed for deferred presentment service transactions in at least  
2 36-point type.

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

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

8       (a) The name of the customer.

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

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

14       (d) The date of the transaction.

15       (e) The transaction number assigned by the database provider,  
16 if any.

17       (f) The amount of the check presented to the licensee by the  
18 customer.

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

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

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

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

1           (k) The maturity date.

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

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

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

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

11          2. You should use this service only to meet short-term cash  
12 needs.

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

18          4. We must immediately give you a copy of your signed  
19 agreement.

20          5. We will pay the proceeds of this transaction to you by  
21 check, by money order, or in cash, as you request.

22          6. State law entitles you to the right to cancel this  
23 agreement and receive a refund of the fee. To do this, you must  
24 notify us and return the money you receive today by the time this  
25 office closes tomorrow or on our next business day if we are not  
26 open tomorrow.

27          7. State law prohibits us from renewing this agreement for a

1 fee. You have to pay an agreement in full before obtaining  
2 additional money from us.

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

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

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

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

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

1 arbitration.

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

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

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

15 Sec. 33. (1) A licensee may enter into 1 deferred presentment  
16 service transaction with a customer for any amount up to \$600.00. A  
17 licensee may charge the customer a service fee for each deferred  
18 presentment service transaction. A service fee is earned by the  
19 licensee on the date of the transaction and is not interest. A  
20 licensee may charge both of the following as part of the service  
21 fee, as applicable:

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

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

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

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

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

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

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

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

11          (2) A licensee shall not enter into a deferred presentment  
12 service transaction with a customer if the customer has an open  
13 deferred presentment service transaction with the licensee or has  
14 more than 1 open deferred presentment service transaction with any  
15 other licensee, and shall verify whether the customer has an open  
16 deferred presentment service transaction with the licensee or has  
17 more than 1 open deferred presentment service transaction with any  
18 other licensee by complying with section 34.

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

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

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

26           a. Before the close of business on the day you sign the  
27 agreement, notify us in person of the violation. You must provide



1 supporting documents or other evidence of the violation.

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

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

8 3. If we agree that we have violated the law, we must return  
9 your check and you must return the cash received under the  
10 agreement. Additionally, for each violation, we must pay you  
11 restitution equal to 5 times the amount of the fee we charged you  
12 under the agreement but not less than \$15.00 or more than the face  
13 amount of your check. You may also pursue an action for your actual  
14 damages against us.

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

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

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

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

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

7 (a) Charge interest under the agreement.

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

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

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

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

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

19 (6) Each licensee shall post a sign, printed in bold faced,  
20 36-point type, in a conspicuous location at each customer service  
21 window, station, or desk at each place of business, that states the  
22 following:

23 "Under Michigan law, you are entitled to receive the proceeds  
24 of this transaction in cash. If you request the proceeds in a check  
25 or money order, you may be charged additional check cashing or  
26 other processing fees by others for cashing the check or money  
27 order.".

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

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

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

20       (2) If the commissioner has not implemented a database under  
21 section 22; the database described in that section is not fully  
22 operational, as determined by the commissioner; or the licensee is  
23 unable to access the database and the alternative mechanism for  
24 verification described in subsection (3) is also unavailable, as  
25 determined by the commissioner, a licensee may rely upon the  
26 written verification of the borrower in a statement provided in  
27 substantially the following form in at least 12-point type:

1 "I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE  
2 TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE  
3 OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER  
4 LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE."

5 (3) If a licensee is unable to access the database described  
6 in section 22 due to technical difficulties occurring with the  
7 database, as determined by the commissioner, the licensee shall  
8 utilize the process established in section 22(4) to verify  
9 transactions.

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

12 (5) If approved by the commissioner, the database provider may  
13 impose a database verification fee for the actual costs of  
14 entering, accessing, and verifying data in the database described  
15 in section 22 to verify that a customer does not have any other  
16 open deferred presentment service transactions with the licensee  
17 and does not have more than 1 open deferred presentment service  
18 transaction with any other licensees. A database verification fee  
19 is payable to the database provider in a manner prescribed by the  
20 commissioner. A licensee may charge a customer all or part of the  
21 database verification fee under section 33(1)(b) but may not charge  
22 a customer any other fee except as authorized in section 33(1) or  
23 35(2).

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

1           (7) Before entering into a deferred presentment service  
2 transaction, a licensee shall submit to the database provider the  
3 customer's name and address, the customer's social security number,  
4 driver license number, or other state-issued identification number,  
5 the amount of the transaction, the customer's check number, the  
6 date of the transaction, the maturity date of the transaction, and  
7 any other information reasonably required by the commissioner or  
8 the database provider, in a format reasonably required by the  
9 commissioner.

10           (8) When a deferred presentment service transaction is closed,  
11 the licensee shall designate the transaction as closed and  
12 immediately notify the database provider, but in no event after  
13 11:59 p.m. on the day the transaction is closed. The commissioner  
14 shall assess an administrative fine of \$100.00 for each day that  
15 the licensee fails to notify the database provider that the  
16 transaction has been closed. It is a defense to the assessment of  
17 an administrative fine that notifying the database provider was not  
18 possible due to temporary technical problems with the database or  
19 to circumstances beyond the licensee's control.

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

26           (2) If a drawer enters into 8 deferred presentment service  
27 transactions with any licensee in any 12-month period, the licensee

1 shall provide the drawer an option to repay that eighth transaction  
2 and each additional transaction in that 12-month period pursuant to  
3 a written repayment plan subject to the following terms:

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) At any time before signing a new deferred presentment



1 service agreement with a licensee, a drawer who believes that the  
2 licensee has violated this act in connection with a deferred  
3 presentment service transaction may deliver to the licensee a  
4 notice in writing that the licensee has violated the act. The  
5 drawer shall identify the nature of the violation and include  
6 documentary or other evidence of the violation in the notice.

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

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

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

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

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

24           (8) The commissioner shall promptly investigate a complaint  
25 filed by a drawer under this section. If after investigating the  
26 drawer's complaint, the commissioner concludes that the licensee  
27 violated this act, the commissioner may order the licensee to make

1 restitution to the drawer in an amount equal to 3 times the amount  
2 provided for in subsection (4), but not less than \$45.00 or more  
3 than 3 times the face amount of the drawer's check. A licensee  
4 ordered to pay restitution under this subsection is also subject to  
5 any other applicable penalties and remedies available under this  
6 act for the violation.

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

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

23 (2) A drawer may redeem a check from the licensee holding the  
24 check in a deferred presentment service transaction at any time  
25 before the maturity date. A licensee shall return the check to the  
26 drawer upon receipt of cash or its equivalent in the full amount of  
27 the check. A licensee shall not contract for or collect a charge

1 for accepting partial payments from the customer if the full amount  
2 is paid by the maturity date.

3 Sec. 38. (1) A licensee shall endorse a check given to it by a  
4 drawer with the actual name under which the licensee is doing  
5 business before the licensee negotiates or presents the check for  
6 payment.

7 (2) A licensee may contract for and collect a returned check  
8 charge that does not exceed the maximum returned check charge  
9 determined under subsection (3) if the drawer's check that the  
10 licensee is holding in a deferred presentment service transaction  
11 is returned by the drawee due to insufficient funds, a closed  
12 account, or a stop payment order. The licensee may only contract  
13 for and collect 1 returned check charge under this subsection in a  
14 transaction with a customer. In addition to the charge authorized  
15 by this section, a licensee may exercise any other remedy available  
16 under any law applicable to the return of a check because of a  
17 closed account or a stop payment order.

18 (3) The initial maximum amount of a returned check charge  
19 described in subsection (2) is \$25.00. Beginning March 1, 2011, and  
20 by March 1 of every fifth year after March 1, 2011, the licensee  
21 may adjust the maximum returned check charge by an amount  
22 determined by the commissioner to reflect the cumulative percentage  
23 change in the Detroit consumer price index over the preceding 5  
24 calendar years. As used in this subsection, "Detroit consumer price  
25 index" means the most comprehensive index of consumer prices  
26 available for the Detroit area from the bureau of labor statistics  
27 of the United States department of labor.

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

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

(2) A licensee shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a deferred presentment service transaction for any period of time required by law.

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

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

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

## ARTICLE 4

1       Sec. 45. (1) A customer may file a written complaint with the  
2 office on a form prescribed by the commissioner regarding a  
3 licensee. The customer shall include with the complaint documentary  
4 or other evidence of the violation or activities of the licensee.  
5 The commissioner shall investigate a complaint filed by a customer  
6 under this subsection.

7       (2) The commissioner may investigate or conduct examinations  
8 of a licensee and conduct hearings as the commissioner considers  
9 necessary to determine whether a licensee or any other person has  
10 violated this act, or whether a licensee has conducted business in  
11 a manner that justifies suspension or forfeiture of its authority  
12 to engage in the business of providing deferred presentment service  
13 transactions in this state.

14       (3) The commissioner may subpoena witnesses and documents,  
15 papers, books, records, and other evidence in any manner over which  
16 the commissioner has jurisdiction, control, or supervision. The  
17 commissioner may administer oaths to any person whose testimony is  
18 required. If a person fails to comply with a subpoena issued by the  
19 commissioner or to testify with respect to any matter concerning  
20 which the person may be lawfully questioned, the commissioner may  
21 petition the circuit court for Ingham county to issue an order  
22 requiring the person to attend, give testimony, or produce  
23 evidence.

24       Sec. 46. (1) If in the opinion of the commissioner a licensee  
25 is, has, or is about to engage in a practice that poses a threat of  
26 financial loss or threat to the public welfare, or is, has, or is  
27 about to violate this act, state or federal law, or an applicable

1 rule or regulation, the commissioner may serve a notice of  
2 intention to issue a cease and desist order. A notice served under  
3 this section shall contain a statement of the facts constituting  
4 the alleged practice or violation and shall fix a time and place  
5 for a hearing at which the commissioner will determine whether to  
6 issue an order to cease and desist against the licensee.

7 (2) A licensee that fails to appear at a hearing under  
8 subsection (1) consents to the issuance of a cease and desist  
9 order. If a licensee consents, or upon the record made at the  
10 hearing the commissioner finds that the practice or violation  
11 specified in the notice has been established, the commissioner may  
12 serve upon the licensee an order to cease and desist from the  
13 practice or violation. The order may require the licensee and its  
14 executive officers, employees, and agents to cease and desist from  
15 the practice or violation and to take affirmative action to correct  
16 the conditions resulting from the practice or violation.

17 (3) Except to the extent it is stayed, modified, terminated,  
18 or set aside by the commissioner or a court, a cease and desist  
19 order is effective on the date of service. A cease and desist order  
20 issued with the consent of the licensee is effective at the time  
21 specified in the order and remains effective and enforceable as  
22 provided in the order.

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

27 (a) Failed to pay the annual license fee, an examination fee,

1 or any other fee imposed by the commissioner under this act.

2 (b) Committed any fraud, engaged in any dishonest activities,  
3 or made any misrepresentations.

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

7 (d) Made a false statement in the application for the license,  
8 failed to give a true reply to a question in the application, or  
9 failed to reply to a request of the commissioner authorized in this  
10 act.

11 (e) Demonstrated incompetency or untrustworthiness to act as a  
12 licensee.

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

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

19 (3) A notice served under this section shall contain a  
20 statement of the facts constituting the violation or pattern of  
21 practice and shall fix a time and place at which the commissioner  
22 will hold a hearing to determine whether the commissioner should  
23 issue an order to suspend or terminate 1 or more licenses of the  
24 licensee.

25 (4) If a licensee fails to appear at a hearing under  
26 subsection (1), the licensee consents to the issuance of the order  
27 to suspend or terminate 1 or more licenses of the licensee. If a



1 licensee consents, or upon the record made at the hearing the  
2 commissioner finds that the pattern of practice or violation  
3 specified in the notice has been established, the commissioner may  
4 serve upon the licensee an order suspending or terminating 1 or  
5 more licenses of the licensee.

6 (5) Except to the extent it is stayed, modified, terminated,  
7 or set aside by the commissioner or a court, an order suspending or  
8 terminating 1 or more licenses of the licensee is effective on the  
9 date of service. An order suspending or terminating 1 or more  
10 licenses of the licensee issued with the consent of the licensee is  
11 effective at the time specified in the order and remains effective  
12 and enforceable as provided in the order.

13 Sec. 48. (1) If the commissioner finds that a person has  
14 violated this act, state or federal law, or an applicable rule or  
15 regulation, the commissioner may order the person to pay a civil  
16 fine of not less than \$1,000.00 or more than \$10,000.00 for each  
17 violation. However, if the commissioner finds that a person has  
18 violated this act and that the person knew or reasonably should  
19 have known that he or she was in violation of this act, the  
20 commissioner may order the person to pay a civil fine of not less  
21 than \$5,000.00 or more than \$50,000.00 for each violation. The  
22 commissioner may also order the person to pay the costs of the  
23 investigation.

24 (2) A civil fine assessed under subsection (1) may be sued for  
25 and recovered by and in the name of the commissioner and may be  
26 collected and enforced by summary proceedings by the attorney  
27 general. In determining the amount of a fine, the commissioner

1 shall consider the extent to which the violation was a knowing and  
2 willful violation, the extent of the injury suffered because of the  
3 violation, the corrective action taken by the licensee to ensure  
4 that the violation will not be repeated, and the record of the  
5 licensee in the complying with this act.

6       Sec. 49. (1) If in the opinion of the commissioner a person  
7 has engaged in fraud, the commissioner may serve upon that person a  
8 written notice of intention to prohibit that person from being  
9 employed by, an agent of, or an executive officer of a licensee  
10 under this act. As used in this subsection, "fraud" includes  
11 actionable fraud, actual or constructive fraud, criminal fraud,  
12 extrinsic or intrinsic fraud, fraud in the execution, in the  
13 inducement, in fact, or in law, or any other form of fraud.

14       (2) A notice issued under subsection (1) shall contain a  
15 statement of the facts supporting the prohibition and, except as  
16 provided under subsection (7), set a hearing on a date within 60  
17 days after the date of the notice. If the person does not appear at  
18 the hearing, he or she is considered to have consented to the  
19 issuance of an order in accordance with the notice.

20       (3) If after a hearing held under subsection (2) the  
21 commissioner finds that any of the grounds specified in the notice  
22 have been established, the commissioner may issue an order of  
23 suspension or prohibition from being a licensee or from being  
24 employed by, an agent of, or an executive officer of any licensee  
25 under this act.

26       (4) An order issued under subsection (2) or (3) is effective  
27 when served on a person. The commissioner shall also serve a copy

1 of the order upon the licensee of which the person is an employee,  
2 agent, or executive officer. The order remains in effect until it  
3 is stayed, modified, terminated, or set aside by the commissioner  
4 or a reviewing court.

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

8 (6) If the commissioner considers that a person served a  
9 notice under subsection (1) poses an imminent threat of financial  
10 loss to customers, the commissioner may serve upon the person an  
11 order of suspension from being employed by, an agent of, or an  
12 executive officer of any licensee. The suspension is effective on  
13 the date the order is issued and, unless stayed by a court, remains  
14 in effect until the commissioner completes the review required  
15 under this section, and the commissioner has dismissed the charges  
16 specified in the order.

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

22 (8) If a person is convicted of a felony involving fraud,  
23 dishonesty, or breach of trust, the commissioner may issue an order  
24 suspending or prohibiting that person from being a licensee and  
25 from being employed by, an agent of, or an executive officer of any  
26 licensee under this act. After 5 years from the date of the order,  
27 the person subject to the order may apply to the commissioner to

1 terminate the order.

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

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

12 (11) Except for a consent order, a party to the proceeding or  
13 a person affected by an order issued under this section may obtain  
14 a judicial review of the order. A consent order may be reviewed as  
15 provided under the administrative procedures act of 1969, 1969 PA  
16 306, MCL 24.201 to 24.328. Except for an order under judicial  
17 review, the commissioner may terminate or set aside any order. The  
18 commissioner may terminate or set aside an order under judicial  
19 review with the permission of the court.

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

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

26 (14) Any current or former executive officer or agent who  
27 violates a final order issued under this section is guilty of a

1 misdemeanor punishable by a fine of not more than \$5,000.00 or  
2 imprisonment for not more than 1 year, or both.

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

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

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

12 Sec. 50. (1) A licensee who is ordered to cease and desist,  
13 whose license is suspended or terminated, or who is ordered to pay  
14 a fine under this act is entitled to a hearing before the  
15 commissioner if a written request for a hearing is filed with the  
16 commissioner not more than 30 days after the effective date of the  
17 order.

18 (2) Any administrative proceedings under this act are subject  
19 to the administrative procedures act of 1969, 1969 PA 306, MCL  
20 24.201 to 24.328.

21 Sec. 51. (1) The commissioner may promulgate rules under the  
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
23 24.328, to enforce and administer this act.

24 (2) By July 31, 2007, the commissioner shall submit a report  
25 to the standing committees of the senate and house of  
26 representatives concerned with regulatory reform issues that  
27 includes the following information:

1           (a) The number of persons engaged in the business of providing  
2 deferred presentment service transactions in this state on the  
3 effective date of this act and the number on June 30, 2007.

4           (b) A general report on the business of providing deferred  
5 presentment service transactions in this state as of June 30, 2007.  
6 The report shall include the number of licensees, the number of  
7 customers, the number and amount of transactions, and any other  
8 financial information about deferred presentment service  
9 transactions in this state requested by the legislature or  
10 considered relevant by the commissioner.

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

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