

DEFERRED PRESENTMENT SERVICE TRANSACTIONS ACT (EXCERPT)

Act 244 of 2005

ARTICLE 2

487.2131 Business of providing deferred presentment service transactions; license required; scope of act; application process and timeline; bulletin, order, or rule.

Sec. 11. (1) Subject to subsection (2), a person shall not engage in the business of providing deferred presentment service transactions after June 1, 2006 without a license under this act. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted.

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

(3) By January 1, 2006, the commissioner by administrative bulletin, order, or rule shall establish an application process and 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 June 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.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2132 Licensure requirements.

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

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

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

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

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2133 Application; writing; oath; form; information; fee.

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

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

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

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

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2134 License fees; disposition; surety bond.

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

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

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

(4) In addition to the license fee required under subsection (1), except as provided in this subsection, a licensee shall furnish a \$50,000.00 surety bond to secure the performance of its obligations, issued by a bonding company or insurance company authorized to do business in this state and in a 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 is only obligated to furnish one \$50,000.00 surety bond.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2135 Issuance of license upon investigation that requirements satisfied; posting copy of license.

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2136 Denial of application or failure to act within certain time period; hearing.

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2137 License not transferable or assignable; change in control; duties of licensee; request for information or documentation; "control" defined.

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

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

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

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

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

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

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

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2138 Report describing certain event.

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2139 Expiration and renewal of license.

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2140 Enforcement and implementation of act; issuance of orders and rules; correction of inaccurate information; duties of licensee if database not operational; examination of business, books, and records.

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

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

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

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

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

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

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

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

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2141 Books, accounts, and records; preservation.

Sec. 21. Each licensee shall keep and use in its business any books, accounts, and records the commissioner requires under this act. A licensee shall preserve the books, accounts, and records for at least 3

years, unless applicable state or federal law concerning record retention requires a longer retention period.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.

487.2142 Development, implementation, and maintenance of database.

Sec. 22. (1) On or before December 31, 2006, the commissioner shall develop, implement, and maintain a statewide, common database that has real-time access through an internet connection, is accessible at all time to licensees, and to the commissioner for purposes of subsections (10) and (11), and meets the requirements of this section. Before the commissioner determines that the database is fully operational for the purposes of this act, for at least 30 days the database provider shall operate a pilot program of the database to test all of the processes of the database. The database provider shall make the pilot program available to all applicants and licensees. During the 30-day period that begins on the date the commissioner determines that the database is fully operational, the commissioner shall not approve the imposition of any database verification fees under section 34(5).

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

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

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

(c) In selecting a third party provider to act as the database provider, the commissioner shall give strong consideration to the third party provider's ability to prevent fraud, abuse, and other unlawful activity associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Meet the requirements of this act.

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

(6) The database provider shall automatically designate a deferred presentment service transaction as closed in the database 5 days after the transaction maturity date unless a licensee reports to the database

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

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

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

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

(10) The commissioner may access the database provided under subsection (1) only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person. The commissioner and any employees of the commissioner, the office, or this state shall not obtain or access a customer's social security number, driver license number, or other state-issued identification number in the database except as provided in this subsection. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both, and if convicted, an individual who violates this subsection shall be dismissed from office or discharged from employment.

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

(12) The commissioner shall do all of the following:

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

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

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

(d) Require by rule that data in the database concerning a customer transaction are deleted from the database 3 years after the customer transaction is closed or any enforcement action pending 3 years after the customer transaction is closed is completed, whichever is later.

(13) The commissioner may maintain access to data archived under subsection (12) for future legislative or policy review.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005.