

ALLOW PAYDAY LENDERS TO MAKE SMALL LOANS

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House Bill 5097 (H-5) as reported from committee

Sponsor: Rep. Brandt Iden

1st Committee: Regulatory Reform

2nd Committee: Ways and Means

Complete to 5-27-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5097 would amend the Deferred Presentment Service Transactions Act to allow the licensed providers of deferred presentment service transactions (commonly known as payday lenders) to make *small loans* to their customers. The bill would also create a fund to be used to promote certain financial literacy education programs.

Small loan would mean a loan made by a payday lender (hereafter “licensee”) that meets all of the following:

- The loan is unsecured.
- The loan is made to one or more individuals for personal, family, or household use (i.e., is a personal loan).
- The principal amount of the loan does not exceed \$2,500.
- The loan is payable in substantially equal installments.
- The date the small loan (or its last installment) is due is at least 90 days, but not more than 365 days, after the date of the transaction.

The term would not include a loan or other extension of credit that is made by a person that is licensed or registered under certain public acts¹ or through a state or nationally chartered bank or savings and loan association, savings bank, or credit union whose deposits or member accounts are insured by an agency of the U.S. government.

The bill would allow a licensee to enter into a single small loan transaction with a customer for any amount up to \$2,500. All of the following would apply to a small loan:

- The licensee could charge a customer a service fee for each small loan. A licensee could charge both of the following as part of the service fee, as applicable:
 - A fee that does not exceed 11% of the amount of the small loan and is not charged more often than monthly.
 - The amount of any database verification fee allowed under the act.
- A licensee could not charge a prepayment penalty to the customer for early payment.
- A licensee would have to report to a credit reporting agency or agencies the terms of the loan and the customers’ performances under those terms.
- When underwriting, making, or negotiating a small loan, in determining the amount and duration of the loan, a licensee would have to take into consideration the customer’s reasonable financial ability to repay the loan in the time and manner provided in the

¹ Specifically, the Consumer Financial Services Act; the Regulatory Loan Act; the Secondary Mortgage Loan Act; the Motor Vehicle Sales Finance Act; 1984 PA 379 (governing credit card arrangements); the Money Transmission Services Act; or the Mortgage Brokers, Lenders, and Servicers Licensing Act.

prospective small loan agreement. The licensee could not enter into a small loan agreement unless the licensee determined that the customer had the reasonable financial ability to repay the small loan. This would include consideration of at least all of the following:

- The customer's credit and borrowing history.
 - The customer's gross income.
 - The customer's major financial obligations.
 - The customer's estimated basic living expenses, which would include at least food, utilities, regular medical costs, and other costs associated with his or her health, welfare, ability to earn an income, and the health and welfare of those who are financially dependent on the customer. In determining a customer's ability to repay, a licensee could rely on the customer's representation of his or her estimated basic living expenses.
- A licensee could not charge interest under the agreement.

A licensee could not enter into a deferred presentment service transaction or small loan agreement with a customer if the customer had an open deferred presentment service transaction or small loan agreement with the licensee or had more than one open deferred presentment service transaction or a small loan agreement with any other licensee. However, this prohibition would not prohibit the use of the proceeds of a small loan to pay in full an existing deferred presentment service transaction with the same licensee.

A licensee would have to comply with the requirements of 12 CFR Part 205 (the federal regulations governing electronic fund transfers) if the licensee accepted an authorization to make electronic payments from the customer's account in connection with a deferred presentment service transaction or small loan agreement. A licensee would have to comply with the requirements of 12 CFR Part 1041 (covering payday, vehicle title, and certain high-cost installment loans) applicable to covered loans in making a small loan or entering into a small loan agreement.

Small loan agreement

A licensee would have to document a small loan by entering into a written small loan agreement signed by both the customer and the licensee. The agreement would have to include all of the following:

- The customer's name.
- The licensee's name, street address, and fax and telephone numbers.
- The signature and printed or typed name of the individual entering into the small loan agreement on behalf of the licensee.
- The date of the transaction.
- The amount of the small loan.
- An itemization of the fees to be paid by the customer.
- A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.
- A clear description of the customer's payment obligation under the small loan agreement.
- A repayment schedule with installment payments of substantially equal amounts of principal and service fees amortizing over the term of the small loan, such that the loan is repaid in full by the maturity date. If the licensee and customer mutually agree, the repayment schedule could provide for different payment amounts over the term of the small

loan. However, the repayment schedule could not include a payment due at the maturity date that was substantially larger than any previously scheduled installment payment.

- A provision allowing the customer to prepay in full the unpaid balance of the small loan at any time without any additional interest, fee, or penalty.
- The maturity date.
- A description of the process a customer may use to file a complaint against the licensee.

The agreement would also have to include, in at least 12-point type, the following notice:

“1. State law prohibits us from entering into this transaction with you if you already have a small loan agreement or deferred presentment service agreement in effect with us or have more than one deferred present service agreement or a small loan agreement in effect with any other person who provides this service.

2. We must immediately give you a copy of your signed loan agreement.

3. We may pay the proceeds of a small loan to you by check, by money order, in cash, or by any other means mutually acceptable and we are not permitted to subject you to any additional fees.

4. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today within 3 business days beginning from tomorrow.

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

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

A licensee could include an arbitration provision in the small loan agreement if the arbitration provision met all of the following conditions:

- It provides that the licensee agrees to pay any costs of the arbitration.
- It requires that the arbitration proceeding be held at a location within 10 miles of the customer’s address contained in the small loan agreement unless the customer consents to another location after an arbitrable dispute occurs.
- It requires that a neutral arbitrator who was not and is not currently being paid by the licensee and who has no financial interest in a party to the arbitration conduct the arbitration proceeding.
- It requires that the arbitrator provide the customer with all the substantive rights that the customer would have if the customer’s claim were asserted in a court proceeding and does not limit any other claim or defense the customer had concerning the claim.

A small loan customer would not be subject to any criminal penalty for entering into a small loan agreement or if his or her payment were dishonored.

Small loan renewal

A licensee could not *renew* a small loan agreement unless both of the following conditions were met:

- The customer had made all payments as scheduled.
- The customer had made at least 35% of all scheduled payments or retired at least 50% of the principal.

Renewal would mean, with respect to an existing small loan, repaying, refinancing, or consolidating the loan with the proceeds of another small loan or a deferred presentment service transaction. However, the term would not include the conversion of a deferred presentment service transaction into a small loan.

A licensee could not charge a rate for a renewed small loan that was higher than the rate charged for the original small loan. A licensee and customer could agree to convert a deferred presentment service transaction into a small loan, subject to the limits on outstanding small loans provided in the bill.

Notices

A licensee would have to post prominently, in an area designed to be seen by the customer before he or she enters into a small loan agreement, the following notice in at least 36-point type:

- “1. State law prohibits us from entering into a small loan agreement with you if you already have a deferred presentment service agreement or small loan agreement in effect with us or have more than one deferred present service agreement or a small loan agreement in effect with any other person who provides this service.
2. If you enter into a small loan agreement with us, we must immediately give you a copy of your signed agreement.
3. We may pay the proceeds of a small loan to you by check, by money order, in cash, or by any other means mutually acceptable and we are not permitted to subject you to any additional fees.
4. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive within 3 business days beginning from the day after you enter into a small loan agreement with us.
5. State law prohibits us from using any criminal process to collect on a deferred presentment service agreement.
6. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Department of Insurance and Financial Services toll-free at 1-877-999-6442.”

A licensee would also have to post prominently, in an area designed to be seen by the customer before he or she enters into a small loan agreement, a schedule of all fees and charges imposed for small loans in at least 36-point type.

Consumer Education and Financial Services Access and Literacy Fund

The bill would create the Consumer Education and Financial Services Access and Literacy Fund in the state treasury, to be administered for auditing purposes by the Department of Insurance and Financial Services (DIFS). The state treasurer could receive money or other assets from any source for deposit into the fund and would have to direct the investment of the fund and credit to the fund interest and earnings from that investment. Money in the fund at the close of the year would remain in the fund and not lapse to the general fund.

Under the bill, applicants for a new or renewal license under the act would have to submit with their application a literacy fee in an amount as determined by the director of DIFS, up to \$200, which would be deposited in the fund.

The bill would also provide that, in addition to any civil fine that may be assessed under the act upon a finding that a person has violated the act, state or federal law, or an applicable rule or regulation, the director of DIFS may order the person to pay a consumer literacy fee of up to \$500 for each violation, which would be deposited in the fund.

DIFS would have to expend money from the fund, upon appropriation, only for one or more of the following purposes:

- Promoting consumer education about access to financial services, financial counseling, and assistance, the different financial products available, and the cost of credit products.
- Developing, delivering, and promoting financial literacy and education programs in schools and communities.

Other rules and regulations

The bill would generally amend the act to include small loans in most of the rules and regulations that currently govern payday loans, including those pertaining to:

- Obtaining a license under the act and establishing a business location.
- The statewide database used to record payday loans.
- Rules and procedures for how a customer may file a complaint with DIFS, what a customer may do if he or she believes that a licensee has violated the law, and actions a licensee must take if found to have violated the law.

Within 90 days after the effective date of the bill, the director of DIFS would have to make any revisions to the license application process and timeline under the act that he or she considered necessary in light of the authority of licensees to engage in the business of providing small loans.

Within 90 days after the effective date of the bill, the director of DIFS would have to implement any changes to the deferred presentment service transaction database created under the act that he or she considered necessary to include small loans for the purposes of the bill.

The bill would also require the database provider, in addition to other requirements contained in the act, to provide a licensee with access to the data reported by that licensee.

The bill would take effect 90 days after its enactment.

MCL 487.2122 et seq. and proposed MCL 487.2144, 487.2151a, and 487.2152a

FISCAL IMPACT:

House Bill 5097 would have an indeterminate fiscal impact on the Department of Insurance and Financial Services (DIFS). The bill may necessitate administrative and information technology changes, but the magnitude of any resulting costs is presently indeterminate. The bill would establish the Consumer Education and Financial Services Access and Literacy Fund, which would be a restricted fund administered by DIFS. Expenditures could only be made from the fund, upon appropriation, for promoting consumer education regarding various financial services and for developing, delivering, and promoting financial literacy and education programs in schools and communities. The bill would allow a literacy fee to be levied (in addition to license and license renewal fees currently levied) on licensure applicants under the act, with the amount to be established by the DIFS Director (the amount could not exceed

\$200). The bill would also allow for a consumer literacy fee of up to \$500 to be assessed (in addition to other civil fines) if a person is found to have violated the act, state or federal law, or an applicable rule or regulation. Revenues from these literacy fees would depend on the volume of licensure applications, the volume of violations, and the fee amounts; the magnitude of such revenues is presently indeterminate.

POSITIONS:

Representatives of the following entities testified in support of the bill (10-15-19):

- Advance America (and indicated support 2-19-20)
- Check 'n Go of Michigan (and indicated support 5-27-20)

The following entities indicated support for the bill:

- Axxess Financial (2-19-20)
- Macomb County Veterans Service (12-10-19)

A representative of the Michigan Catholic Conference testified in opposition to the bill. (10-15-19; and indicated opposition 5-27-20)

The following entities indicated opposition to the bill:

- Department of Insurance and Financial Services (5-27-20)
- Allen Neighborhood Center (5-27-20)
- Alpha Advisory Group (5-27-20)
- Astera Credit Union (5-27-20)
- Blue Water Community Action (10-15-19)
- Center for Civil Justice (5-27-20)
- Church of the Messiah Housing Corporation (5-27-20)
- Cinnaire (5-27-20)
- City of Grand Rapids (12-10-19)
- Community Action Alger-Marquette (5-27-20)
- Community Development Advocates of Detroit (2-19-20)
- Community Economic Development Association of Michigan (5-27-20)
- Cooperative Capital (5-27-20)
- Cottonwood Financial (10-15-19)
- Detroit Development Fund (5-27-20)
- Dwelling Place of Grand Rapids (5-27-20)
- Fafnir Lab (5-27-20)
- Food Bank Council of Michigan (5-27-20)
- Friends in Deed (5-27-20)
- Genesee County Habitat for Humanity (5-27-20)
- Habitat for Humanity Capital Region (12-10-19)
- Habitat for Humanity Hiawatha Land (5-27-20)
- Habitat for Humanity of Manistee County (12-10-19)
- Habitat for Humanity of Michigan (5-27-20)
- Have Mercy (5-27-20)
- Hearts for Homes Inc. (5-27-20)
- Home Repair Services (5-27-20)

- Housing Resources Inc. (5-27-20)
- Invest Detroit (5-27-20)
- Jolt Credit Union (5-27-20)
- Kalamazoo Eastside Neighborhood Association (5-27-20)
- Lake Trust Credit Union (5-27-20)
- Linking International Needs with the Church's Untapped Power (LINC UP) (5-27-20)
- Local Initiatives Support Corporation (LISC) Flint (5-27-20)
- LISC Kalamazoo (5-27-20)
- Metropolitan Christian Council Detroit-Windsor (5-27-20)
- Michigan Association of United Ways (2-19-20)
- Michigan Coalition Against Homelessness (5-27-20)
- Michigan Community Action (10-15-19)
- Michigan Credit Union League (5-27-20)
- Michigan Foreclosure Prevention Project (5-27-20)
- Michigan League for Public Policy (2-19-20)
- Michigan Poverty Law Program (2-19-20)
- New Development Corporation (5-27-20)
- New Hope Community Development (5-27-20)
- Northern Homes CDC (5-27-20)
- Northern Initiatives (5-27-20)
- Oakland Livingston Human Service Agency (5-27-20)
- One Detroit Credit Union (5-27-20)
- Open Doors Kalamazoo (5-27-20)
- Opportunity Resource Fund (10-15-19)
- Pennies from Heaven Foundation (5-27-20)
- Project GREEN (5-27-20)
- Roscommon Habitat (5-27-20)
- Southwest Economic Solutions (10-15-19)
- United Way of Washtenaw County (5-27-20)

Legislative Analyst: Rick Yuille
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.