

HOUSE BILL NO. 4004

January 26, 2021, Introduced by Rep. Hall and referred to the Committee on Regulatory Reform.

A bill to amend 2005 PA 244, entitled "Deferred presentment service transactions act," by amending the title and sections 2, 11, 13, 15, 17, 19, 22, 31, 32, 33, 34, 35, 36, 45, 48, and 53 (MCL 487.2122, 487.2131, 487.2133, 487.2135, 487.2137, 487.2139, 487.2142, 487.2151, 487.2152, 487.2153, 487.2154, 487.2155, 487.2156, 487.2165, 487.2168, and 487.2173), section 2 as amended by 2016 PA 140 and section 35 as amended by 2016 PA 141, and by adding sections 24, 31a, and 32a.

1 **(B)** ~~(ii)~~—The check is exchanged by the licensee for a cashier's
2 check or cash from the customer's financial institution.

3 **(C)** ~~(iii)~~—The check is deposited by the licensee and the
4 licensee has evidence that the person has satisfied the obligation.

5 **(D)** ~~(iv)~~—The check is collected by the licensee or its agent
6 through any civil remedy available under the laws of this state.

7 **(E)** ~~(v)~~—The check is collected by means of a repayment plan
8 agreed on by the customer and the licensee or as the result of
9 credit counseling where the licensee is paid the amount agreed upon
10 by the licensee under that plan.

11 **(F)** ~~(vi)~~—The check is collected by the licensee under section
12 35(9) and the licensee has evidence that the person has satisfied
13 the obligation.

14 (d) "Commissioner" means the director or his or her authorized
15 representative.

16 **(e) "Consumer education and financial services access and
17 literacy fund" means the consumer education and financial services
18 access and literacy fund created in section 24.**

19 **(f)** ~~(e)~~—"Customer" means ~~an~~ **1 of the following, as applicable:**

20 **(i) An individual who requests information about the
21 availability of, or applies for, a small loan or who enters into a
22 small loan agreement with a licensee.**

23 **(ii) An individual who ~~inquires into~~ requests information about
24 the availability of or applies for a deferred presentment service
25 transaction or a drawer who enters into a deferred presentment
26 service transaction.**

27 **(g)** ~~(f)~~—"Database provider" means 1 of the following:

28 **(i) A ~~third party~~ third-party provider selected by the director
29 under section 22 to operate the statewide database described in**

1 that section.

2 (ii) If the director has not selected a ~~third party~~**third-party**
3 provider under section 22, the director.

4 (h) ~~(g) Subject to subsection (2), "deferred~~**Deferred**
5 presentment service transaction" means, **subject to subsection (2)**,
6 a transaction between a licensee and a customer under which the
7 licensee agrees to do all of the following:

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

10 (ii) Hold a customer's check for a period of time before
11 negotiation, redemption, or presentment of the checks.

12 (i) ~~(h)~~"Department" means the department of insurance and
13 financial services.

14 (j) ~~(i)~~"Director" means the director of the department or his
15 or her authorized representative.

16 (k) ~~(j)~~"Drawee" means a bank, savings bank, savings and loan
17 association, credit union, or other person on which a check is
18 drawn.

19 (l) ~~(k)~~"Drawer" means a customer who enters into a deferred
20 presentment service transaction with a licensee.

21 (m) ~~(l)~~"Executive officer" means an officer or director of a
22 licensee or any other individual who has the authority to
23 participate in the direction, directly or indirectly, through 1 or
24 more persons, or the management or policies of a licensee.

25 (n) ~~(m)~~"Financial licensing act" means this act or any of the
26 financial licensing acts as **that term is** defined in section 2 of
27 the consumer financial services act, 1988 PA 161, MCL 487.2052.

28 (o) ~~(n)~~"Licensee" means a person that is licensed to engage
29 in the business of providing deferred presentment service

1 transactions **and authorized to make small loans** under this act.

2 (p) ~~(e)~~—"Maturity date" means ~~the~~ **1 of the following, as**
3 **applicable:**

4 (i) **The date a small loan, or the last installment of the small**
5 **loan, is due.**

6 (ii) **The** date on which a drawer's check is to be redeemed,
7 presented for payment, or entered into the check-clearing process
8 in a deferred presentment service transaction.

9 (q) ~~(p)~~—"Office" or "office of financial and insurance
10 services" means the department.

11 (r) ~~(q)~~—"Person" means an individual, partnership,
12 association, corporation, limited liability company, or other legal
13 entity except a governmental entity.

14 (s) ~~(r)~~—"Redeem" means that the customer pays to the licensee
15 an amount equal to the face amount of a check included in a
16 deferred presentment service transaction, on or before the maturity
17 date or after the check is deposited and returned unpaid by the
18 drawee, and the licensee returns the check to the customer.

19 (t) **"Renewal" means, with respect to an existing small loan,**
20 **renewing, repaying, refinancing, or consolidating the existing**
21 **small loan with the proceeds of another small loan or a deferred**
22 **presentment service transaction. The term renewal does not include**
23 **the conversion of a deferred presentment service transaction to a**
24 **small loan.**

25 (u) "Small loan" means, subject to subsection (3), a loan made
26 by a licensee that meets all of the following:

27 (i) **The loan is made to 1 or more individuals for personal,**
28 **family, or household use.**

29 (ii) **The principal amount of the loan does not exceed**

1 \$2,500.00.

2 (iii) The maturity date for the loan is not fewer than 90 days
3 or greater than 365 days after the date of the transaction.

4 (iv) The loan is unsecured and payable in substantially equal
5 installments.

6 (2) Deferred presentment service transaction does not include
7 a delay in presentment of a loan repayment check, at the request of
8 the ~~borrower~~, **customer**, by a person that is licensed or registered
9 under the consumer financial services act, 1988 PA 161, MCL
10 487.2051 to 487.2072, the regulatory loan act, 1939 PA 21, MCL
11 493.1 to 493.24, the secondary mortgage loan act, 1981 PA 125, MCL
12 493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex
13 Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to
14 493.114, the money transmission services act, 2006 PA 250, MCL
15 487.1001 to 487.1047, or the mortgage brokers, lenders, and
16 servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

17 (3) Small loan does not include a loan or other extension of
18 credit that is made by a person that is licensed or registered
19 under the consumer financial services act, 1988 PA 161, MCL
20 487.2051 to 487.2072, the regulatory loan act, 1939 PA 21, MCL
21 493.1 to 493.24, the secondary mortgage loan act, 1981 PA 125, MCL
22 493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex
23 Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to
24 493.114, the money transmission services act, 2006 PA 250, MCL
25 487.1001 to 487.1047, or the mortgage brokers, lenders, and
26 servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or
27 by an entity described in section 11(2).

28 Sec. 11. (1) Subject to subsection (2), a person shall not
29 engage in the business of providing deferred presentment service

1 transactions after June 1, 2006 without a license under this act. A
2 separate license is required for each location from which the
3 business of providing deferred presentment service transactions **or**
4 **small loans** is conducted.

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

9 (3) By January 1, 2006, the commissioner by administrative
10 bulletin, order, or rule shall establish an application process and
11 an application timeline for license applications under this act.

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

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

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

19 (5) **Within 90 days after the effective date of the amendatory**
20 **act that added section 31a, the commissioner by administrative**
21 **bulletin, order, or rule shall make any revisions to the**
22 **application process and timeline described in subsection (3) that**
23 **the commissioner determines are necessary to reflect the authority**
24 **of licensees to engage in the business of providing small loans.**

25 Sec. 13. (1) An applicant **for a license under this act** shall
26 submit an application for a license to the commissioner. Each
27 application for a license ~~shall~~**must** be in writing and under oath,
28 in a form prescribed by the commissioner, and ~~shall~~**must** include
29 all of the following information:

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

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

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

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

19 (2) An applicant shall include an application fee in an amount
20 determined by the commissioner with the application described in
21 subsection (1). **In addition to the application fee required under**
22 **this section, an applicant shall include an additional literacy fee**
23 **in an amount determined by the commissioner, but not to exceed**
24 **\$200.00, with the application described in subsection (1). The**
25 **literacy fee collected under this subsection must be deposited into**
26 **the consumer education and financial services access and literacy**
27 **fund.**

28 Sec. 15. (1) After the commissioner receives a completed
29 license application, the commissioner shall investigate to

1 determine whether the requirements of this act are satisfied. If
2 the commissioner finds that the requirements of this act are
3 satisfied, the commissioner shall issue to the applicant a license
4 to engage in deferred presentment service transactions **and make**
5 **small loans**.

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

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

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

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

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

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

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

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

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

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

14 Sec. 19. (1) A license issued under this article ~~shall expire~~
15 **expires** on September 30 of each year unless earlier suspended,
16 surrendered, or revoked under this act. A licensee may renew a
17 license for a 12-month period by submitting a complete application
18 that shows continued compliance with this act, in a form prescribed
19 by the commissioner, and paying the license renewal fee to the
20 commissioner. The licensee shall submit a renewal application under
21 this subsection on or before August 1 and the commissioner shall
22 proceed in the manner described in sections 15(1) and 16. **In**
23 **addition to the license renewal fee required under this section, a**
24 **licensee shall include an additional literacy fee in an amount**
25 **determined by the commissioner, but not to exceed \$200.00, with the**
26 **renewal application. The literacy fee collected under this**
27 **subsection must be deposited into the consumer education and**
28 **financial services access and literacy fund.**

29 (2) Before October 1, 2006, the commissioner may issue a

1 license to an applicant under this article that is for a period
2 longer than 12 months and that expires on September 30, 2007.

3 Sec. 22. (1) On or before December 31, 2006, the commissioner
4 shall develop, implement, and maintain a statewide, common database
5 that has real-time access through an internet connection, is
6 accessible at all time to licensees, and to the commissioner for
7 purposes of subsections (10) and (11), and meets the requirements
8 of this section. Before the commissioner determines that the
9 database is fully operational for the purposes of this act, for at
10 least 30 days the database provider shall operate a pilot program
11 of the database to test all of the processes of the database. The
12 database provider shall make the pilot program available to all
13 applicants and licensees. During the 30-day period that begins on
14 the date the commissioner determines that the database is fully
15 operational, the commissioner shall not approve the imposition of
16 any database verification fees under section 34(5). **Within 90 days**
17 **after the effective date of the amendatory act that added section**
18 **31a, the commissioner shall implement any changes to the database**
19 **that the commissioner determines are necessary to include small**
20 **loans in the database for the purposes of this act.**

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

26 (a) The commissioner shall ensure that the ~~third party~~**third-**
27 **party** provider selected as the database provider operates the
28 database ~~pursuant to~~ **in accordance with** the provisions of this act.

29 (b) The commissioner shall consider cost of service and

1 ability to meet all the requirements of this section in selecting a
2 ~~third party~~ **third-party** provider as the database provider.

3 (c) In selecting a ~~third party~~ **third-party** provider to act as
4 the database provider, the commissioner shall give strong
5 consideration to the ~~third party~~ **third-party** provider's ability to
6 prevent fraud, abuse, and other unlawful activity associated with
7 deferred presentment service transactions **or small loans** and
8 provide additional tools for the administration and enforcement of
9 this act.

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

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

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

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

23 (a) Verify whether a customer has any open deferred
24 presentment service transactions **or small loans** with any licensee
25 that have not been closed.

26 (b) Provide information necessary to ensure licensee
27 compliance with any requirements imposed by the ~~federal office of~~
28 ~~foreign asset control~~ **Office of Foreign Assets Control** under
29 federal law.

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

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

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

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

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

19 (c) Comply with any applicable provisions of the identity
 20 theft protection act, 2004 PA 452, MCL 445.61 to ~~445.77~~.**445.79d**.

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

23 **(e) Provide to a licensee access to the data reported by that**
 24 **licensee.**

25 **(f) ~~(e)~~**Meet the requirements of this act.

26 (5) When the database provider receives notification that a
 27 deferred presentment service transaction **or small loan** is closed
 28 under section 34, the database provider shall designate the
 29 transaction **or loan** as closed in the database immediately, but in

1 no event after 11:59 p.m. on the day the commissioner or database
2 provider receives notification.

3 (6) The database provider shall automatically designate a
4 deferred presentment service transaction **or small loan** as closed in
5 the database 5 days after the transaction **or loan** maturity date
6 unless a licensee reports to the database provider before that time
7 that the transaction **or loan** remains open because of the customer's
8 failure to make payment, ~~+~~that, **in connection with a deferred**
9 **presentment service transaction**, the transaction is open because
10 the customer's check or an electronic redeposit is in the process
11 of clearing the banking system, ~~+~~or that the transaction remains
12 open because the customer's check is being returned to the licensee
13 for insufficient funds, a closed account, or a stop payment order,
14 or any other factors determined by the commissioner. If a licensee
15 reports the status of a **deferred presentment service** transaction **or**
16 **small loan** as open in a timely manner, the transaction **or loan**
17 remains an open transaction **or loan** until it is closed under
18 section 34 and the database provider is notified that the
19 transaction **or loan** is closed under that section.

20 (7) If a licensee stops providing deferred presentment service
21 transactions **or small loans**, the database provider shall designate
22 all open transactions with that licensee as closed in the database
23 60 days after the date the licensee stops offering deferred
24 presentment service transactions **or small loans**, unless the
25 licensee reports to the database provider before the expiration of
26 the 60-day period which of its transactions **or loans** remain open
27 and the specific reason each transaction **or loan** remains open. The
28 licensee shall also provide to the commissioner a reasonably
29 acceptable plan that outlines how the licensee will continue to

1 update the database after it stops offering deferred presentment
2 service transactions **or small loans**. The commissioner shall
3 promptly approve or disapprove the plan and immediately notify the
4 licensee of his or her decision. If the plan is disapproved, the
5 licensee may submit a new plan or may submit a modified plan for
6 the licensee to follow. If at any time the commissioner reasonably
7 determines that a licensee that has stopped offering deferred
8 presentment service transactions **or small loans** is not updating the
9 database in accordance with its approved plan, the commissioner
10 shall immediately close or instruct the database provider to
11 immediately close all remaining open transactions **or loans** of that
12 licensee.

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

29 (9) The database provider may charge licensees a verification

1 fee for access to the database, in amounts approved by the
2 commissioner under section 34(5).

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

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

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

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

23 (b) Require by rule that data in the database concerning a
24 customer **deferred presentment service** transaction ~~are~~ **or small loan**
25 **be** archived within 365 days after the customer transaction **or loan**
26 is closed unless needed for a pending enforcement action.

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

29 (d) Require by rule that data in the database concerning a

1 customer **deferred presentment service** transaction ~~are~~ **or small loan**
2 **be** deleted from the database 3 years after the customer transaction
3 **or loan** is closed or any enforcement action pending 3 years after
4 the customer transaction **or loan** is closed is completed, whichever
5 is later.

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

8 **Sec. 24. (1) The consumer education and financial services**
9 **access and literacy fund is created within the state treasury. The**
10 **department is the administrator of the fund for auditing purposes.**

11 (2) The state treasurer may receive money or other assets from
12 any source for deposit into the fund. The state treasurer shall
13 direct the investment of the fund. The fund consists of the money
14 credited to the fund pursuant to fees collected under sections 13
15 and 19, any interest and earnings accruing from the saving and
16 investment of that money, and money from any other source.

17 (3) Money in the fund at the close of the year remains in the
18 fund and does not lapse to the general fund.

19 (4) The department shall expend money from the fund, upon
20 appropriation, only for 1 or more of the following purposes:

21 (a) Promote the education of consumers about access to
22 financial services, financial counseling, and assistance, the
23 different financial products available, and the cost of credit
24 products.

25 (b) Develop, deliver, and promote financial literacy and
26 education programs in schools and communities.

27 **Sec. 31. (1) A licensee shall post prominently in an area**
28 **designed to be seen by the customer before he or she enters into a**
29 **deferred presentment service transaction the following notice in at**

1 least 36-point type:

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

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

7 3. State law prohibits us from entering into a transaction
8 with you if you already have a deferred presentment service
9 agreement **or small loan agreement** in effect with us or have more
10 than one deferred presentment service agreement **or a small loan**
11 **agreement** in effect with any other person who provides this
12 service.

13 4. If you enter into a **deferred presentment service**
14 transaction with us, we must immediately give you a copy of your
15 signed agreement.

16 5. We ~~will~~**may** pay the proceeds of a **deferred presentment**
17 **service** transaction to you by check, by money order, ~~or~~ in cash, ~~as~~
18 ~~you request~~**or by any other means mutually acceptable and we are**
19 **not permitted to subject you to any additional fees.**

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

25 7. State law prohibits us from renewing ~~an~~**a deferred**
26 **presentment service** agreement for a fee. You have to pay any other
27 **deferred presentment service agreement or small loan** agreement in
28 full before obtaining additional money from us.

29 8. State law prohibits us from using any criminal process to

1 collect on ~~an~~ **a deferred presentment service** agreement.

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

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

23 (2) A licensee shall post prominently in an area designed to
24 be seen by the customer before he or she enters into a deferred
25 presentment service transaction a schedule of all fees and charges
26 imposed for deferred presentment service transactions in at least
27 36-point type.

28 **Sec. 31a. (1) A licensee shall post prominently in an area**
29 **designed to be seen by the customer before he or she enters into a**

1 small loan agreement the following notice in at least 36-point
2 type:

3 "1. State law prohibits us from entering into a small loan
4 agreement with you if you already have a deferred presentment
5 service agreement or small loan agreement in effect with us or have
6 more than one deferred presentment service agreement or a small
7 loan agreement in effect with any other person who provides this
8 service.

9 2. If you enter into a small loan agreement with us, we must
10 immediately give you a copy of your signed agreement.

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

14 4. State law entitles you to the right to cancel this
15 agreement and receive a refund of the fee. To do this, you must
16 notify us and return the money you receive within 3 business days
17 beginning from the day after you enter into a small loan agreement
18 with us.

19 5. State law prohibits us from using any criminal process to
20 collect on a small loan agreement.

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

26 (2) A licensee shall post prominently in an area designed to
27 be seen by the customer before he or she enters into a small loan
28 agreement a schedule of all fees and charges imposed for small
29 loans in at least 36-point type.

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

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

6 (a) The name of the customer.

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

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

12 (d) The date of the transaction.

13 (e) The transaction number assigned by the database provider,
14 if any.

15 (f) The amount of the check presented to the licensee by the
16 customer.

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

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

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

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

26 (k) The maturity date.

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

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

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

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

7 2. You should use this service only to meet short-term cash
8 needs.

9 3. State law prohibits us from entering into this transaction
10 with you if you already have a deferred presentment service
11 agreement **or small loan agreement** in effect with us or have more
12 than one deferred presentment service agreement **or a small loan**
13 **agreement** in effect with any other person who provides this
14 service.

15 4. We must immediately give you a copy of your signed
16 agreement.

17 5. We ~~will~~**may** pay the proceeds of this transaction to you by
18 check, by money order, ~~or in cash, as you request.~~**or by any other**
19 **means mutually acceptable and we are not permitted to subject you**
20 **to any additional fees.**

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

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

29 8. State law prohibits us from using any criminal process to

1 collect on this agreement.

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

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

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

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

28 (b) ~~Provides that an~~ **Requires that the** arbitration proceeding
29 ~~shall be held~~ **at a location** within 10 miles of the drawer's address

1 contained in the deferred presentment service transaction agreement
2 unless the drawer consents to another location after an arbitrable
3 dispute occurs.

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

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

13 **Sec. 32a. (1) A licensee shall document a small loan by**
14 **entering into a written small loan agreement signed by both the**
15 **customer and the licensee.**

16 (2) A licensee shall include all of the following in a written
17 small loan agreement:

18 (a) The name of the customer.

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

21 (c) The signature and printed or typed name of the individual
22 who enters into the small loan agreement on behalf of the licensee.

23 (d) The date of the transaction.

24 (e) The amount of the small loan.

25 (f) An itemization of the fees to be paid by the customer.

26 (g) A calculation of the cost of the fees and charges to the
27 customer, expressed as a percentage rate per year.

28 (h) A clear description of the customer's payment obligation
29 under the small loan agreement.

1 (i) Except as otherwise provided under this subdivision, a
2 repayment schedule with installment payments of substantially equal
3 amounts of principal and service fees amortizing over the term of
4 the small loan such that the loan is repaid in full by the maturity
5 date. If the licensee and customer mutually agree, the repayment
6 schedule may provide for different payment amounts over the term of
7 the small loan. However, the repayment schedule must not include a
8 payment due at the maturity date that is substantially larger than
9 any previously scheduled installment payment.

10 (j) A provision that allows the customer to prepay in full the
11 unpaid balance of the small loan at any time without any additional
12 interest, fee, or penalty.

13 (k) The maturity date.

14 (l) A description of the process a customer may use to file a
15 complaint against the licensee.

16 (m) The following notice in at least 12-point type:

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

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

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

28 4. State law entitles you to the right to cancel this
29 agreement and receive a refund of the fee. To do this, you must

1 notify us and return the money you receive today within 3 business
2 days beginning from tomorrow.

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

5 6. 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
8 Department of Insurance and Financial Services toll-free at 1-877-
9 999-6442."

10 (3) A licensee may include an arbitration provision in a small
11 loan agreement if the arbitration provision meets all of the
12 following:

13 (a) Provides that the licensee agree to pay any costs of the
14 arbitration.

15 (b) Requires that the arbitration proceeding be held at a
16 location within 10 miles of the customer's address contained in the
17 small loan agreement unless the customer consents to another
18 location after an arbitrable dispute occurs.

19 (c) Requires that a neutral arbitrator who was not and is not
20 currently being paid by the licensee and who has no financial
21 interest in a party to the arbitration conduct the arbitration
22 proceeding.

23 (d) Requires that the arbitrator provide the customer with all
24 the substantive rights that the customer would have if the
25 customer's claim were asserted in a court proceeding and does not
26 limit any other claim or defense the customer has concerning the
27 claim.

28 Sec. 33. (1) ~~A~~ Subject to subsection (3), a licensee may enter
29 into ~~1~~ a single deferred presentment service transaction with a

1 customer for any amount up to \$600.00. **All of the following apply**
2 **to a deferred presentment service transaction:**

3 (a) A licensee may charge the customer a service fee for each
4 deferred presentment service transaction. A service fee is earned
5 by the licensee on the date of the transaction and is not interest.

6 (b) A licensee may charge both of the following as part of the
7 service fee, as applicable:

8 (i) ~~(a)~~—An amount that does not exceed the aggregate of the
9 following, as applicable:

10 (A) ~~(i)~~—Fifteen percent of the first \$100.00 of the deferred
11 presentment service transaction.

12 (B) ~~(ii)~~—Fourteen percent of the second \$100.00 of the deferred
13 presentment service transaction.

14 (C) ~~(iii)~~—Thirteen percent of the third \$100.00 of the deferred
15 presentment service transaction.

16 (D) ~~(iv)~~—Twelve percent of the fourth \$100.00 of the deferred
17 presentment service transaction.

18 (E) ~~(v)~~—Eleven percent of the fifth \$100.00 of the deferred
19 presentment service transaction.

20 (F) ~~(vi)~~—Eleven percent of the sixth \$100.00 of the deferred
21 presentment service transaction.

22 (ii) ~~(b)~~—The amount of any database verification fee allowed
23 under section 34(5).

24 (2) **Subject to subsection (3), a licensee may enter into a**
25 **single small loan agreement with a customer for any amount up to**
26 **\$2,500.00. All of the following apply to a small loan:**

27 (a) A licensee may charge a customer a service fee for each
28 small loan. A licensee may charge both of the following as part of
29 the service fee, as applicable:

1 (i) A fee that does not exceed 11% of the amount of the small
2 loan and is not charged more frequently than monthly.

3 (ii) The amount of any database verification fee allowed under
4 section 34(5).

5 (b) A licensee shall not charge a prepayment penalty to the
6 customer for early payment.

7 (c) A licensee shall report to a credit reporting agency or
8 agencies the terms of the small loan and the customer's performance
9 pursuant to those terms.

10 (d) When underwriting, making, or negotiating a small loan, in
11 determining the amount and duration of the loan, a licensee shall
12 take into consideration the customer's reasonable financial ability
13 to repay the loan in the time and manner provided in the
14 prospective small loan agreement including, but not limited to, the
15 customer's credit and borrowing history, gross income, major
16 financial obligations, and estimated basic living expenses. For
17 purposes of this subdivision, estimated basic living expenses
18 include, but are not limited to, food, utilities, regular medical
19 costs, and other costs associated with the customer's health,
20 welfare, ability to produce income, and the health and welfare of
21 the customer's household who are financially dependent on the
22 customer. A licensee may rely on the customer's representation of
23 estimated basic living expenses when determining a customer's
24 ability to repay.

25 (e) A licensee shall not charge interest under the agreement.

26 (3) ~~(2)~~—A licensee shall not enter into a deferred presentment
27 service transaction **or small loan agreement** with a customer if the
28 customer has an open deferred presentment service transaction **or**
29 **small loan agreement** with the licensee or has more than 1 open

1 deferred presentment service transaction **or a small loan agreement**
2 with any other licensee, and shall verify whether the customer has
3 an open deferred presentment service transaction **or small loan**
4 **agreement** with the licensee or has more than 1 open deferred
5 presentment service transaction **or a small loan agreement** with any
6 other licensee by complying with section 34. **A licensee shall not**
7 **enter into a small loan agreement with a customer unless the**
8 **licensee makes a determination after the considerations under**
9 **subsection (2) (d) that the customer has the reasonable financial**
10 **ability to repay the small loan. This subsection does not prohibit**
11 **the use of the proceeds of a small loan to pay in full an existing**
12 **deferred presentment service transaction with the licensee.**

13 (4) A licensee shall comply with the requirements of 12 CFR
14 part 205 if the licensee accepts an authorization to make
15 electronic payments from the customer's account in connection with
16 a deferred presentment service transaction or small loan agreement.
17 A licensee shall comply with the requirements of 12 CFR part 1041
18 applicable to covered loans in making a small loan or entering into
19 a small loan agreement.

20 (5) ~~(3)~~—At the time of entering into a deferred presentment
21 service transaction, a licensee shall do all of the following:

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

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

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

1 b. At any time before signing a new deferred presentment
2 service agreement **or small loan agreement** with us, notify us in
3 writing of the violation. Your written notice must state the
4 violation and provide supporting documents or other evidence of the
5 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~~ **Department of Insurance**
23 **and Financial** Services. The ~~Office~~ **Department** is required to
24 investigate your complaint and has the authority to order us to pay
25 you restitution if they agree that we violated the law. In
26 addition, the ~~Office~~ **Department** can order us to pay civil fines or
27 take away our right to do business. To do so, contact the ~~Office of~~
28 ~~Financial and Insurance~~ **Department of Insurance and Financial**
29 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 (6) ~~(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 (7) ~~(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 (8) ~~(6)~~—Each licensee shall post a sign, printed in bold
20 faced, 36-point type, in a conspicuous location at each customer
21 service window, station, or desk at each place of business, that
22 states the 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."

28 Sec. 34. (1) A licensee shall verify a customer's eligibility
29 to enter into a deferred presentment service transaction **or small**

1 **loan** by doing 1 of the following, as applicable:

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

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

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

28 ~~"I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE~~
 29 ~~TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE~~

1 ~~OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER~~
2 ~~LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE."~~.

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

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

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

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

27 (7) Before entering into a deferred presentment service
28 transaction **or small loan**, a licensee shall submit to the database
29 provider the customer's name and address, the customer's ~~social~~

1 ~~security~~ **Social Security** number, driver license number, or other
 2 state-issued identification number, the amount of the transaction
 3 **or loan**, the customer's check number **if the customer is entering**
 4 **into a deferred presentment service transaction**, the date of the
 5 transaction **or loan**, the maturity date of the transaction **or loan**,
 6 and any other information reasonably required by the commissioner
 7 or the database provider, in a format reasonably required by the
 8 commissioner.

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

20 Sec. 35. (1) **The following apply to the renewal of deferred**
 21 **presentment service agreements and small loan agreements:**

22 (a) A licensee shall not renew a deferred presentment service
 23 agreement. A licensee may extend a deferred presentment service
 24 agreement only if the licensee does not charge a fee in connection
 25 with the extended transaction. A licensee ~~who~~ **that** extends an
 26 agreement under this subsection ~~shall~~ **must** not create a balance
 27 owed above the amount owed on the original agreement.

28 (b) **A licensee shall not renew a small loan agreement unless**
 29 **both of the following conditions are met:**

1 (i) The customer has made all payments as scheduled.

2 (ii) The customer has made at least 30% of all scheduled
3 payments or retired at least 50% of the principal.

4 (c) A licensee shall not charge a rate for the renewal of a
5 small loan agreement that is higher than the rate charged for the
6 original small loan.

7 (d) A licensee and customer may agree to convert a deferred
8 presentment service transaction to a small loan, subject to the
9 limits on outstanding small loans provided in this act.

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

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

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

23 (c) The drawer shall pay a fee to the licensee for
24 administration of the repayment plan. The initial amount of the fee
25 is \$15.00. Beginning March 1, 2011, and by March 1 of every fifth
26 year after March 1, 2011, the licensee may adjust the fee by an
27 amount determined by the director to reflect the cumulative
28 percentage change in the Detroit ~~consumer price index~~ **Consumer**
29 **Price Index** over the preceding 5 calendar years. As used in this

1 ~~subsection, subdivision, "Detroit consumer price index"~~ **Consumer**
2 **Price Index**" means the most comprehensive index of consumer prices
3 available for the Detroit area from the Bureau of Labor Statistics
4 of the United States Department of Labor.

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

7 (3) A licensee shall advise a ~~customer-drawer~~ of the repayment
8 option described in subsection (2) at the time he or she is
9 eligible. If a ~~customer-drawer~~ believes he or she has been
10 illegally denied the repayment option under this section, he or she
11 is entitled to contact the department toll-free at 1-877-999-6442.
12 If a customer has entered into 8 deferred presentment service
13 transactions in any 12-month period, the database provider shall
14 notify the licensee when the licensee submits the required customer
15 information to the database for that ~~customer-drawer~~ that the
16 ~~customer-drawer~~ is entitled to a repayment plan under this section.
17 The database provider shall instruct the licensee to provide the
18 ~~customer-drawer~~ with the following notice, in a document separate
19 from the deferred presentment transaction agreement and in at least
20 12-point type:

21 "If you are unable to pay your deferred presentment service
22 transaction and have entered into 8 deferred presentment
23 transactions in any 12-month period, state law entitles you to
24 request a repayment of that transaction in installments. We are
25 required to advise you of this option at the time it is available.
26 If you elect this option, you must notify us, either orally or in
27 writing, within 30 days after the maturity date of the eighth
28 deferred presentment transaction in the 12-month period. The notice
29 must be provided to us at our place of business. You may be charged

1 an additional fee when the transaction is rescheduled in
 2 installments. You will be ineligible to enter into a deferred
 3 presentment service transaction with any licensee during the term
 4 of the repayment plan. If we refuse to provide this option under
 5 the stipulations above, you should contact the ~~department of~~
 6 ~~insurance and financial services~~ **Department of Insurance and**
 7 **Financial Services** toll-free at 1-877-999-6442."

8 (4) During the term of a repayment plan by a drawer under this
 9 section, the database provider shall notify the licensee at the
 10 time the licensee submits the required customer information to the
 11 database for that ~~customer that the customer~~ **drawer that he or she**
 12 is presently in a repayment plan under this section with 1 or more
 13 other licensees and the licensee shall not enter into a deferred
 14 presentment transaction with that individual.

15 (5) ~~A~~ **In a deferred presentment service transaction, a**
 16 licensee shall not present a check for payment before the maturity
 17 date or during the term of the repayment plan. In addition to the
 18 remedies and penalties under this act, a licensee that presents a
 19 check for payment before the maturity date or during the term of
 20 the repayment plan is liable for all expenses and damages caused to
 21 the drawer and the drawee as a result of the violation. If a drawer
 22 has not requested a repayment plan on or before the maturity date,
 23 the licensee may redeem, present for payment, or enter the check
 24 into the check-clearing process under the terms of the original
 25 deferred presentment service transaction agreement.

26 (6) A drawer satisfies his or her obligation under a deferred
 27 presentment service agreement when the check the licensee is
 28 holding is paid by the drawee or is redeemed by the drawer by
 29 paying to the licensee an amount equal to the full amount of the

1 check.

2 (7) Unless the drawer has entered into a written repayment
 3 plan under subsection (2), a licensee shall deposit a check held in
 4 connection with a deferred presentment service transaction on the
 5 maturity date if the check is not redeemed in the manner described
 6 in section ~~2(1)(c)(i)~~, **2(1)(c)(ii)(A)**, or exchanged in the manner
 7 described in ~~section 2(1)(c)(ii)~~, **2(1)(c)(ii)(B)**, on or before the
 8 maturity date.

9 (8) A licensee shall deposit a check held in connection with a
 10 deferred presentment service transaction on any repayment plan
 11 installment date described in subsection (2) if the drawer fails to
 12 make the installment payment.

13 (9) If the drawer has an outstanding deferred presentment
 14 service transaction in which a check held in connection with the
 15 transaction was deposited and returned unpaid, the licensee may
 16 collect the check by means of 1 or more telephone-initiated entries
 17 if all of the following are met:

18 (a) The drawer agrees to each telephone-initiated entry.

19 (b) Each telephone-initiated entry is a single, date-specific
 20 payment and does not authorize more than 1 payment or periodic
 21 payments.

22 (c) The licensee does not charge the drawer a fee in
 23 connection with the telephone-initiated entry or entries.

24 (10) If the payment to satisfy an outstanding deferred
 25 presentment transaction obligation is made in person, the licensee
 26 shall immediately return the check held in connection with the
 27 deferred presentment service transaction to the drawer. If the
 28 payment to satisfy the obligation is not made in person, the
 29 licensee shall return the check to the drawer by mailing it to the

1 address listed on the deferred presentment transaction service
2 agreement within 1 business day after the licensee obtains evidence
3 that the drawer has satisfied the obligation.

4 (11) ~~A~~**In a deferred presentment service transaction, a**
5 licensee shall only accept a payment by debit card to redeem a
6 check the licensee is holding if the drawer certifies to the
7 licensee that the debit card draws funds from the same account on
8 which the check is drawn. **The drawer may provide the certification**
9 **orally or in writing at any time prior to processing a payment.**

10 (12) As used in this section, "telephone-initiated entry"
11 means a debit transaction to a drawer's account that is processed
12 through an automated clearing house, as that term is defined in
13 section 1 of 2002 PA 738, MCL 124.301, and initiated pursuant to an
14 authorization obtained from the drawer orally by telephone.

15 Sec. 36. (1) ~~No~~**By not** later than the close of business on the
16 day he or she signed a deferred presentment service agreement **or**
17 **small loan agreement**, a drawer **or small loan customer** who believes
18 that a licensee has violated this act may notify the licensee in
19 person that the licensee has violated the act. The drawer **or small**
20 **loan customer** shall identify the nature of the violation and
21 provide documentary or other evidence of the violation at that
22 time.

23 (2) At any time before signing a new deferred presentment
24 service agreement **or small loan agreement** with a licensee, a drawer
25 **or small loan customer** who believes that the licensee has violated
26 this act in connection with a deferred presentment service
27 transaction **or small loan** may deliver to the licensee a notice in
28 writing that the licensee has violated the act. The drawer **or small**
29 **loan customer** shall identify the nature of the violation and

1 include documentary or other evidence of the violation in the
2 notice.

3 (3) ~~No~~**By not** later than the close of the third business day
4 after receipt of a notice under subsection (1) or (2), the licensee
5 shall determine if it has violated the law as alleged in the
6 notice.

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

29 (5) If the licensee determines that it did not violate the

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

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

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

27 (8) The commissioner shall promptly investigate a complaint
28 filed by a drawer **or small loan customer** under this section. If
29 after investigating the drawer's **or small loan customer's**

1 complaint, the commissioner concludes that the licensee violated
2 this act, the commissioner may order the licensee to make
3 restitution to the drawer **or small loan customer** in an amount equal
4 to 3 times the amount provided for in subsection (4), but not less
5 than \$45.00 or more than 3 times the face amount of the drawer's
6 check **or the principal amount of the small loan**. A licensee ordered
7 to pay restitution under this subsection is also subject to any
8 other applicable penalties and remedies available under this act
9 for the violation.

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

13 **(10) A small loan customer is not subject to any criminal**
14 **penalty for entering into a small loan agreement and is not subject**
15 **to any criminal penalty in the event the small loan customer's**
16 **payment is dishonored.**

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

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

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

11 Sec. 48. (1) If the commissioner finds that a person has
12 violated this act, state or federal law, or an applicable rule or
13 regulation, the commissioner may order the person to pay a civil
14 fine of not less than \$1,000.00 or more than \$10,000.00 for each
15 violation. However, if the commissioner finds that a person has
16 violated this act and that the person knew or reasonably should
17 have known that he or she was in violation of this act, the
18 commissioner may order the person to pay a civil fine of not less
19 than \$5,000.00 or more than \$50,000.00 for each violation. The
20 commissioner may also order the person to pay the costs of the
21 investigation. **In addition to any civil fine that may be assessed**
22 **under this subsection upon a finding that a person has violated**
23 **this act, state or federal law, or an applicable rule or**
24 **regulation, the commissioner may order the person to pay a consumer**
25 **literacy fee of not more than \$500.00 for each violation. The fee**
26 **collected under this subsection must be deposited into the consumer**
27 **education and financial services access and literacy fund.**

28 (2) A civil fine assessed under subsection (1) may be sued for
29 and recovered by and in the name of the commissioner and may be

1 collected and enforced by summary proceedings by the attorney
2 general. In determining the amount of a fine, the commissioner
3 shall consider the extent to which the violation was a knowing and
4 willful violation, the extent of the injury suffered because of the
5 violation, the corrective action taken by the licensee to ensure
6 that the violation will not be repeated, and the record of the
7 licensee in the complying with this act.

8 Sec. 53. A person injured by a licensee's violation of this
9 act may maintain a civil cause of action against the licensee and
10 may recover actual damages and an amount equal to the service fee
11 paid in connection with each deferred presentment service
12 transaction, **or the interest and service fee paid in connection**
13 **with each small loan agreement**, that is found to violate this act,
14 plus reasonable attorney fees.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.