

HOUSE BILL No. 4808

June 17, 1999, Introduced by Rep. Green and referred to the Committee on Insurance and Financial Services.

A bill to regulate the offering of deferred presentment services for issued checks; to prescribe the powers and duties of certain state agencies; and to provide for remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

4 (a) "Bureau" means the financial institutions bureau in the
5 department of consumer and industry services.

6 (b) "Check" means a personal check signed by the issuer and
7 made payable to a person licensed under this act.

8 (c) "Commissioner" means the commissioner of the financial
9 institutions bureau.

1 (d) "Deferred presentment service" means a transaction under
2 a written agreement between a licensee and the issuer of a check
3 in which the licensee does all of the following:

4 (i) Accepts a check from the issuer dated on the date it was
5 written.

6 (ii) Agrees to hold the check for a period of time before
7 negotiation or presentment.

8 (iii) Pays to the issuer of the check the amount of the
9 check, less the fee permitted under section 13.

10 (e) "Licensee" means a person licensed to provide deferred
11 presentment services under this act.

12 (f) "Person" means an individual, partnership, association,
13 corporation, governmental entity, or any other legal entity.

14 Sec. 3. A person shall not engage in the business of
15 deferred presentment services without having first obtained a
16 license under this act. A separate license shall be required for
17 each location from which the business of deferred presentment
18 services is conducted.

19 Sec. 4. To obtain a license, an applicant shall satisfy all
20 of the following requirements:

21 (a) Have and maintain liquid assets of at least \$50,000.00
22 per licensed location, up to a maximum of \$250,000.00 required
23 liquid assets per licensed entity.

24 (b) The financial responsibility, financial condition, busi-
25 ness experience, character, and general fitness to reasonably
26 warrant the belief that the applicant's business will be
27 conducted lawfully and fairly. In determining whether this

1 qualification has been met, and for the purpose of investigating
2 compliance with this act, the commissioner may review any of the
3 following:

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

6 (ii) The competence, experience, integrity, and financial
7 ability of any person who is a member, partner, director, offi-
8 cer, or a shareholder with 25% or more interest in the
9 applicant.

10 (c) Any record regarding the applicant, or any person
11 referred to in subdivision (b)(ii), of any criminal activity,
12 fraud or other act of personal dishonesty, an act, omission, or
13 practice that constitutes a breach of a fiduciary duty, or any
14 suspension, removal, or administrative action by any agency or
15 department of the United States or any state.

16 Sec. 5. Each application for a license shall be in writing
17 and under oath to the commissioner, in a form prescribed by the
18 commissioner, and shall include all of the following
19 information:

20 (a) The legal name, residence, and business address of the
21 applicant and, if the applicant is a partnership, association, or
22 corporation, of every member, officer, and director.

23 (b) The location at which the registered office of the
24 applicant shall be located.

25 (c) Other data and information the commissioner may require
26 with respect to the applicant, its directors, officers, members,
27 shareholders, managing employees, or agents.

1 Sec. 6. (1) Each application for a license shall be
2 accompanied by both of the following:

3 (a) A nonrefundable \$500.00 application and investigation
4 fee that, if the license is granted, shall constitute the license
5 fee for the first license year.

6 (b) A balance sheet and income statement for the immediately
7 preceding fiscal year, prepared in accordance with generally
8 accepted accounting principles by a certified public accountant
9 or public accounting firm. For a newly created entity, the com-
10 missioner may accept a balance sheet, accompanied by a projected
11 income statement demonstrating that the licensee will have ade-
12 quate capital after payment of start-up costs.

13 (2) The fee established in subsection (1)(a) applies to each
14 location of the applicant.

15 Sec. 7. (1) Upon the filing of an application as required
16 under section 5, accompanied by the fee and documents required in
17 section 6, the commissioner shall investigate to determine
18 whether the qualifications prescribed by section 4 have been
19 satisfied. If the commissioner finds that the qualifications
20 have been satisfied, the commissioner shall issue to the appli-
21 cant a license to engage in the deferred presentment services
22 business.

23 (2) The license shall be kept conspicuously posted at the
24 place of business of the licensee.

25 (3) A license issued under this section shall remain in
26 effect through the remainder of the fiscal year ending September

1 30 after its date of issuance, unless earlier surrendered,
2 suspended, or revoked under this act.

3 Sec. 8. (1) A license issued under this act is not trans-
4 ferable or assignable.

5 (2) The prior written approval of the commissioner is
6 required for the continued operation of a deferred presentment
7 services business whenever there is to be change in control of a
8 licensee. Control in the case of a corporation means direct or
9 indirect ownership, or the right to control, 25% or more of the
10 voting shares of the corporation, or the ability of a person to
11 elect a majority of the directors or otherwise effect a change in
12 policy. Control in the case of any other entity means the abil-
13 ity to change the principals of the organization, whether active
14 or passive. The commissioner may require information considered
15 necessary to determine whether a new application is required.
16 Cost incurred by the commissioner in investigating a change of
17 control request shall be paid by the person requesting the
18 approval.

19 (3) A licensee shall notify the bureau 5 days before any
20 change in the licensee's business location or name.

21 Sec. 9. Within 15 days of the occurrence of any 1 of the
22 following events, a licensee shall file a written report with the
23 commissioner describing the event and its expected impact on the
24 activities of the licensee in this state:

25 (a) The filing for bankruptcy or reorganization by the
26 licensee.

1 (b) The institution of revocation or suspension proceedings
2 against the licensee by any state or governmental authority.

3 (c) Any felony indictment of the licensee or any of its mem-
4 bers, directors, officers, or shareholders.

5 (d) Any felony conviction of the licensee or any of its mem-
6 bers, directors, officers, or shareholders.

7 (e) Such other events as the commissioner may determine and
8 identify by rule.

9 Sec. 10. Licenses issued under this act shall expire on
10 September 30 of each year. Each license may be renewed for a
11 12-month period upon application by the license holder showing
12 continued compliance with this act and the payment to the commis-
13 sioner annually, on or before September 30 of each year, of a
14 license renewal fee of \$500.00.

15 Sec. 11. (1) The commissioner may issue orders and regula-
16 tions as he or she considers necessary to enforce and implement
17 this act. A copy of any order or regulation adopted by the com-
18 missioner shall be mailed to each license holder at least 30 days
19 before the date it takes effect.

20 (2) To assure compliance with this act, the commissioner may
21 annually examine the relevant business, books, and records of any
22 licensee. The cost of the examination shall be paid by the
23 licensee.

24 Sec. 12. Each licensee shall keep and use in its business
25 any books, accounts, and records the commissioner may require to
26 carry into effect this act. Every licensee shall preserve the
27 books, accounts, and records for at least 2 years.

1 Sec. 13. (1) A licensee may charge a fee for the deferred
2 presentment service not to exceed 18% of the amount paid to the
3 issuer of the check by the licensee. The fee is not considered
4 interest for any purpose of law. No other fees or charges shall
5 be charged or collected for the deferred presentment service.

6 (2) The maximum amount a licensee may pay to the issuer of a
7 check in a deferred presentment service transaction is \$500.00.

8 (3) Before a licensee shall negotiate or present a check for
9 payment, the check shall be endorsed with the actual name under
10 which the licensee is doing business.

11 (4) Each deferred presentment transaction shall be docu-
12 mented by a written agreement signed by both the issuer of the
13 check and the licensee. The written agreement shall contain the
14 name of the licensee, the transaction date, the amount of the
15 check, and a statement of the total amount of fees charged,
16 expressed both as a dollar amount and as an annual percentage
17 rate. The written agreement shall authorize the licensee to
18 defer presentment or negotiation of the check until a specific
19 date.

20 (5) The issuer of a check shall have the right to redeem the
21 check from the licensee at any time prior to the negotiation or
22 presentment of the check by making payment to the licensee of the
23 full amount of the check.

24 (6) A licensee shall not defer presentment or negotiation of
25 any check for more than 31 calendar days after the date the check
26 is received by the licensee.

1 (7) Within 5 business days after being advised by the payor
2 financial institution that a check or draft has been altered,
3 forged, stolen, obtained through fraudulent or illegal means,
4 negotiated without proper legal authority, or represents the pro-
5 ceeds of illegal activity, the licensee shall notify the prosecu-
6 tor for the county in which the check was received.

7 (8) If a check is returned to the licensee from a payor
8 financial institution due to insufficient funds, closed account,
9 or a stop payment order, the licensee shall have the right to all
10 civil means available by law to collect the check. The licensee
11 may contract for and collect a returned check charge not to
12 exceed \$20.00 and may recover any court costs and collection
13 costs incurred as a result of the returned check. Other fees or
14 charges such as late fees, collection costs, or attorney fees
15 shall not be collected as a result of the returned check or the
16 default by the issuer of the check in timely payment to the
17 licensee.

18 (9) The issuer of a check who enters into a deferred pre-
19 sentment service agreement shall not be subject to any criminal
20 penalty relating to the check or the deferred presentment
21 agreement.

22 (10) A licensee shall not engage in unfair or deceptive
23 acts, practices, or advertising in the conduct of the licensed
24 business.

25 (11) The amount paid to the issuer of a check by the
26 licensee in a deferred presentment service transaction may be
27 paid by the licensee's business check, money order, or cash. No

1 additional fee shall be charged by a licensee for cashing the
2 licensee's check.

3 (12) Each licensee shall post a notice in a conspicuous
4 location in its place of business containing a description of the
5 charges imposed by the licensee for the deferred presentment
6 service.

7 (13) A licensee shall not more than 4 times renew,
8 roll-over, or otherwise consolidate a deferred presentment trans-
9 action with the proceeds of another deferred presentment transac-
10 tion made by the same licensee and issuer of a check.

11 (14) Once the issuer of a check has completed a deferred
12 presentment transaction with a licensee, he or she may enter into
13 a new agreement for deferred presentment services with the
14 licensee. A transaction is completed when a check is presented
15 for payment, deposited, or redeemed by the issuer.

16 Sec. 14. (1) If the commissioner determines that an appli-
17 cant is not qualified to receive a license, the commissioner
18 shall notify the applicant in writing that the application has
19 been denied, stating the basis for denial.

20 (2) If the commissioner denies an application, or if the
21 commissioner fails to act on an application within 60 days after
22 the filing of a properly completed application, the applicant may
23 make written demand to the commissioner for a hearing before the
24 commissioner on the question of whether the license should be
25 granted. In the event of a hearing, the commissioner shall
26 reconsider the application and, after hearing, issue a written
27 order granting or denying the application.

1 Sec. 15. (1) The commissioner may, after notice and
2 hearing, suspend or revoke any license if the commissioner finds
3 that the licensee has knowingly or through lack of due care done
4 any of the following:

5 (a) Failed to pay the annual license fee imposed by this
6 act, or an examination fee imposed by the commissioner under this
7 act.

8 (b) Committed any fraud, engaged in any dishonest activi-
9 ties, or made any misrepresentations.

10 (c) Violated this act or any rule or order issued under this
11 act or has violated any other law in the course of the licensee's
12 dealings as a licensee.

13 (d) Made a false statement in the application for the
14 license or failed to give a true reply to a question in the
15 application.

16 (e) Demonstrated incompetency or untrustworthiness to act as
17 a licensee.

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

22 (3) Notice and hearing under this section shall be in
23 accordance with the administrative procedures act of 1969, 1969
24 PA 306, MCL 24.201 to 24.328.

25 Sec. 16. If, after notice and hearing under section 15, the
26 commissioner finds that a person has violated this act, or any

1 administrative regulation issued under this act, the commissioner
2 may do any of the following:

3 (a) Order the person to cease and desist violating this act
4 or any rule or order issued under this act.

5 (b) Require the refund of any fees collected by the person
6 in violation of this act.

7 (c) Order the person to pay to the commissioner a civil pen-
8 alty of not more than \$1,000.00 for each transaction in violation
9 of this act or for each day that a violation has occurred and
10 continues.