SENATE BILL No. 431

June 6, 2017, Introduced by Senators GREGORY, JOHNSON, BIEDA and ROBERTSON and referred to the Committee on Banking and Financial Institutions.

A bill to regulate the business of providing certain small loans; to require the licensing of providers of small loans; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

SHORT TITLE, DEFINITIONS, AND GENERAL PROVISIONS

Sec. 1. This act shall be known and may be cited as the "small loan regulatory act".

Sec. 3. As used in this act:
(a) "Applicant" means a person that is seeking a license to engage in the business of providing small loans under this act.
(b) "Borrower" means a customer who enters into a small loan transaction under article 2.
(c) "Closed" means, in connection with a small loan, that the loan is fully paid or satisfied.
(d) "Consumer reporting agency" means that term as defined in the security freeze act, 2013 PA 229, MCL 445.2512.
(e) "Customer" means an individual who requests information about the availability of, or applies for, a small loan or who enters into a small loan agreement with a licensee.
(f) "Database provider" means 1 of the following:
   (i) A third party provider selected by the director under section 19 to operate the statewide database described in that section.
   (ii) If the director has not selected a third party provider under section 19, the director.
(g) "Deferred presentment service transaction" means that term as defined in section 2 of the deferred presentment service transactions act, 2005 PA 244, MCL 487.2122.
(h) "Department" means the department of insurance and financial services.
   (i) "Director" means the director of the department or his or her authorized representative.
   (j) "Executive officer" means an officer or director of a licensee or any other individual who has the authority to participate in the direction, directly or indirectly, through 1 or more persons, or the management or policies of a licensee.
   (k) "Financial licensing act" means this act or any of the financial licensing acts as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
"Licensee" means a person that is licensed to engage in the business of providing small loans under this act.

"Maturity date" means the date a small loan, or the last installment of the loan, is due.

"Maximum loan amount" means 1 of the following:

(i) If subparagraph (ii) does not apply, $2,500.00.

(ii) If a borrower has an outstanding deferred presentment service transaction at the time he or she applies for a small loan, $2,500.00 less the amount of the outstanding deferred presentment service transaction.

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

With respect to an existing small loan, "renewal" means renewing, repaying, refinancing, or consolidating an existing small loan with the proceeds of either of the following:

(i) Another small loan.

(ii) A deferred presentment service transaction.

"Simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual interest rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan.

"Small loan" means a loan that is made by a licensee to an individual that meets all of the following:

(i) The loan is made for personal, family, or household use.

(ii) The principal amount of the loan does not exceed the maximum loan amount.
(iii) The maturity date for the loan is not more than 730 days after the date of the transaction.

(iv) The loan is unsecured and payable in installments.

Sec. 5. (1) Subject to subsection (3), beginning June 1, 2018, a person shall not engage in the business of providing small loans, through any method, including, but not limited to, mail, telephone, internet, mobile device application, or in person, without a license under this act.

(2) A person may engage in the business of providing small loans and deferred presentment service transactions at a single location under separate licenses. A separate license is required for each location from which the business of providing small loans is conducted.

(3) This act does not apply to a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits or member accounts are insured by an agency of the United States government. This act does not apply to a person that is licensed or registered under a financial licensing act and is authorized to make small loans under that financial licensing act.

(4) Within 90 days after the effective date of this act, the director by administrative bulletin, order, or rule shall establish an application process and an application timeline for license applications under this act.

Sec. 7. To obtain a license, an applicant shall satisfy all of the following requirements:

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. (1) A licensee shall pay a license fee, in an amount determined by the director under subsection (2), within 60 days of submitting its license application, and then annually.

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

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

(4) In addition to the license fee required under subsection (1), except as provided in this subsection, a licensee shall furnish a $50,000.00 surety bond to secure the performance of its obligations, issued by a bonding company or insurance company authorized to do business in this state and in a form satisfactory to the director. However, if 1 person owns 20% or more of the ownership interest in 2 or more licensees, the group of licensees having that common ownership is only obligated to furnish one $50,000.00 surety bond.

Sec. 13. (1) After the director receives a completed license application, the director shall investigate to determine whether the requirements of this act are satisfied. If the director finds that the requirements of this act are satisfied, the director shall issue to the applicant a license to engage in small loans.

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

Sec. 15. (1) A license issued under this article is not transferable or assignable.

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

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

(a) At least 15 days before providing small loans at any new location or under section 9(1)(c), provide written notice to the director on a form prescribed by the director of the name, street address, and telephone number of the new location or the detailed description required in section 9(1)(c).

(b) At least 15 days before discontinuing small loans at any existing location or under section 9(1)(c), provide written notice to the director on a form prescribed by the director of the name, street address, and telephone number of the discontinued location or the detailed description of the services required in section 9(1)(c).

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

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

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

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

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

Sec. 19. (1) Before June 1, 2018, the director shall develop, implement, and maintain a statewide common database that has real-time access through an internet connection, is accessible at all time to licensees and to the director for purposes of subsections (10) and (11), and meets the requirements of this section. The director may, in his or her discretion, develop, implement, and maintain this database as a separate database from the deferred presentment service transactions database described in section 22 of the deferred presentment service transactions act, 2005 PA 244, MCL 487.2142, or as part of that deferred presentment service transactions database.

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

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

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

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

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

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

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

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

(a) Verify whether a customer has any open small loans with
any licensee that have not been closed.

(b) Provide information necessary to ensure licensee compliance with any requirements imposed by the federal Office of Foreign Asset Control under federal law.

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

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

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

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

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

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

(e) Meet the requirements of this act.

(5) When the database provider receives notification that a small loan is closed, the database provider shall designate the loan as closed in the database immediately, but in no event after 11:59 p.m. on the day the director or database provider receives
(6) The database provider shall automatically designate a small loan as closed in the database 5 days after the transaction maturity date unless a licensee reports to the database provider before that time that the loan remains open because of the customer's failure to make payment. If a licensee reports the status of a loan as open in a timely manner, the transaction remains an open transaction until it is closed and the database provider is notified that the loan is closed.

(7) If a licensee stops providing small loans, the database provider shall designate all open loans with that licensee as closed in the database 60 days after the date the licensee stops offering small loans, unless the licensee reports to the database provider before the expiration of the 60-day period which of its loans remain open and the specific reason each loan remains open. The licensee shall also provide to the director a reasonably acceptable plan that outlines how the licensee will continue to update the database after it stops offering small loans. The director shall promptly approve or disapprove the plan and immediately notify the licensee of his or her decision. If the plan is disapproved, the licensee may submit a new plan or may submit a modified plan for the licensee to follow. If at any time the director reasonably determines that a licensee that has stopped offering small loans is not updating the database in accordance with its approved plan, the director shall immediately close or instruct the database provider to immediately close all remaining open small loans of that licensee.
(8) The response to an inquiry to the database provider by a licensee shall only state that a person is eligible or ineligible for a new small loan and describe the reason for that determination. Only the person seeking the small loan may make a direct inquiry to the database provider to request a more detailed explanation of a particular loan that was the basis for the ineligibility determination. Any information regarding any person's loan history is confidential, is not subject to public inspection, is not a public record subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to discovery, subpoena, or other compulsory process except in an action under section 31, and shall not be disclosed to any person other than the director.

(9) The database provider may charge licensees a verification fee for access to the database, in amounts approved by the director.

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

discharged from employment.

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

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

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

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

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

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

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

ARTICLE 2

SMALL LOANS

Sec. 21. (1) A licensee may enter into a small loan with a
customer for any amount that does not exceed the maximum loan
amount.

(2) Subject to subsection (3), a licensee may contract for and
receive a monthly finance loan charge for a small loan that meets
both of the following:
(a) Does not exceed the aggregate of the following, as applicable:

(i) Fifteen percent of the first $500.00 of the original principal amount of the loan.

(ii) Fourteen percent of the second $500.00 of the original principal amount of the loan.

(iii) Thirteen percent of the third $500.00 of the original principal amount of the loan.

(iv) Twelve percent of the fourth $500.00 of the original principal amount of the loan.

(v) Eleven percent of the fifth $500.00 of the original principal amount of the loan.

(b) Is earned by the licensee on a daily basis using the simple interest method.

(3) All of the following apply for purposes of calculating a monthly finance loan charge under subsection (2):

(a) The term of a small loan commences on the date on which the loan is made.

(b) A "month" is considered a period that extends from a specific date in 1 calendar month to 1 of the following, as applicable:

(i) The same date in the succeeding calendar month.

(ii) If there is no same date in the succeeding calendar month, the last day of the succeeding calendar month.

(c) In calculating a monthly finance charge, any differences in lengths of months are disregarded and each day is counted as one-thirtieth of a month.
(4) A licensee may obtain, other than as a condition for the extension of the small loan, the borrower's written authorization to electronically debit the borrower's account for scheduled automatic payments, or if there is a default under an agreement between the borrower and the licensee that is in compliance with the requirements of 12 CFR part 1005, commonly known as Regulation E.

(5) In connection with a payment owed in connection with a default described in subsection (4), a scheduled automatic payment described in subsection (4), or a payment made by electronic debit under section 23(2)(i), if a financial institution refuses to process the payment because there are insufficient funds in the account, the licensee may attempt to collect the payment by means of 1 or more electronic debit transactions processed through an automated clearinghouse, as that term is defined in section 1 of 2002 PA 738, MCL 124.301. However, if the licensee makes 2 consecutive attempts to collect the payment by electronic debit transactions under this subsection, the licensee shall not make any additional attempts to collect that payment through an electronic debit transaction unless the licensee notifies the borrower of the financial institution's refusal to process the payment because there were insufficient funds in the account and obtains written authorization from the borrower before the licensee makes any additional attempts to collect that payment through an electronic debit transaction.

(6) If a borrower makes a small loan payment by check and the check is deposited by the licensee and returned unpaid, the
licensee may collect the check by means of 1 or more telephone-initiated entries if all of the following are met:

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

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

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

Sec. 22. (1) At the time it makes a small loan, a licensee shall do all of the following:

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

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

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

b. At any time before signing a new small loan agreement with us, notify us in writing of the violation. Your written notice must state the violation and provide supporting documents or other evidence of the violation.

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

3. If we do not agree that we have violated the law, we may take other legal steps to collect our money.

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

(b) Provide a copy of the signed loan agreement to the borrower.

(c) Pay the proceeds under the loan agreement to the borrower by delivering a business check of the licensee, or a money order, as requested by the borrower.

(d) Issue a payment schedule in which the payments on the small loan are due in substantially equal and consecutive installments, subject to any adjustments that the licensee may reasonably establish with respect to the first payment due.

(2) At the time of entering into a small loan, a licensee shall not do any of the following:

(a) Include a maturity date that is more than 730 days after the date of the transaction.

(b) Charge an additional fee for cashing the licensee's business check or money order if the licensee pays the proceeds to the borrower by business check or money order.

(c) Include a confession of judgment in the loan agreement.

(d) Except as provided in this act, charge or collect any other fees for a small loan.
(e) Enter into a small loan with a borrower if the total of the scheduled payments for the small loan, and if the borrower has an outstanding deferred presentment service transaction, any scheduled payments under the terms of that transaction, due in any single month exceeds 20% of the borrower's monthly gross income. For purposes of determining a borrower's monthly gross income under this subdivision, a licensee shall obtain and maintain third party verification of all income considered in making the determination. Third party verification is subject to review and approval of the director.

(3) A licensee shall not enter into a renewal of an existing small loan with a borrower. However, if a small loan is paid in full, a subsequent small loan is not considered a renewal under this subsection.

(4) A licensee shall not require a borrower to secure a small loan with real or personal property.

(5) A licensee shall not refuse to provide a small loan to a customer solely because the customer has exercised his or her rights under this act.

(6) If a licensee is providing small loans, then the licensee shall post a notice, printed in boldfaced, 36-point type, in a conspicuous location at each customer service window, station, or desk at each place of business, that states the following:

"The cost of your small loan may be higher than loans offered by other lending institutions. A borrower may rescind a small loan without cost by paying the amount of the principal of the small loan to the licensee not later than the end of the business day
(7) A licensee that conducts small loan transactions on the internet shall post the notice described in subsection (6) in a prominent and conspicuous place on its internet website that is fully accessible to its customers and the public.

Sec. 23. (1) A licensee shall document a small loan by entering into a written small loan agreement signed by both the customer and the licensee.

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

(a) The name of the customer.

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

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

(d) The date of the transaction.

(e) The amount of the small loan.

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

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

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

(i) A provision that allows a borrower to use cash, checks, or other immediately available funds to make payments on the small loan, or, with the borrower's voluntary authorization, through an electronic debit of a deposit account of the borrower.

(j) A provision that allows the borrower to prepay in full the
unpaid balance of the small loan at any time without any additional
interest or penalty.

(k) A schedule of all fees associated with the small loan and
an example of the amounts the customer would pay based on the
amount of the small loan.

(l) The maturity date.

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

(n) A provision that allows the borrower to rescind the small
loan without cost by paying the amount of the principal of the
small loan to the licensee not later than the end of the business
day immediately following the day on which the small loan is made.

Sec. 24. Before it makes any small loans under this act, a
licensee must establish reasonable policies and procedures for
evaluating the creditworthiness of borrowers and determining a
borrower's capability for repaying a small loan.

Sec. 25. For each small loan made under this act, a licensee
must report the terms of the loan and the borrower's performance
under those terms to a consumer reporting agency.

Sec. 26. (1) In the event of a default under a loan agreement
between a licensee and a borrower, the licensee shall not
accelerate the maturity of a small loan or commence any collection
action except as provided in this section.

(2) If an overdue payment is not satisfied within 10 days
after its due date, the licensee must notify the borrower of the
default and the borrower has a right to cure the default under
subsection (3).
(3) Except as provided in subsection (4), a borrower who has received a notice of default under subsection (2) may cure the default within 20 days after the date of the notice. All of the following apply to the cure of a default under this section:

(a) The borrower may cure the default by paying the amount of all unpaid installments due at the time of payment.

(b) If the borrower makes the payment described in subdivision (a), the licensee shall not accelerate the full loan balance and require the immediate payment of that balance.

(c) The act of curing a default under this subsection restores to the borrower the borrower’s rights under the loan agreement as though no default had occurred.

(4) A borrower does not have a right to cure a default under this section if all of the following occurred during the 12-month period before the date of the default:

(a) The customer had previously defaulted in the same loan transaction.

(b) The licensee gave the customer notice of the right to cure that previous default under subsection (2).

(c) The customer cured the previous default under subsection (3).

(5) If a borrower does not cure a default within 20 days of receiving the notice required under subsection (2), the remaining loan balance and any accrued finance loan charges are immediately due. Finance loan charges under section 21(2) shall not accrue after the date a loan balance becomes due under this subsection. However, after that date, the licensee may charge and collect post-
default interest on the amount of the loan balance and accrued
finance charges, at a rate that does not exceed 20% per annum.

ARTICLE 3

ENFORCEMENT, PENALTIES, REMEDIES

Sec. 31. (1) A customer may file a written complaint with the
department on a form prescribed by the director regarding a
licensee. The customer shall include with the complaint documentary
or other evidence of the violation or activities of the licensee.
The director shall investigate a complaint filed by a customer
under this subsection.

(2) The director may investigate or conduct examinations of a
licensee and conduct hearings as the director considers necessary
to determine whether a licensee or any other person has violated
this act, or whether a licensee has conducted business in a manner
that justifies suspension or forfeiture of its authority to engage
in the business of providing small loans in this state.

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

Sec. 33. A person injured by a licensee's violation of this
act may maintain a civil cause of action against the licensee and
may recover actual damages and an amount equal to the service fee
paid in connection with each small loan that is found to violate
this act, plus reasonable attorney fees.

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

Enacting section 2. This act does not take effect unless
Senate Bill No. 432
of the 99th Legislature is enacted into law.