A bill to amend 2005 PA 244, entitled "Deferred presentment service transactions act," by amending sections 22, 31, 32, 33, 34, and 40 (MCL 487.2142, 487.2151, 487.2152, 487.2153, 487.2154, and 487.2160).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

(a) The commissioner-director shall ensure that the third-party third-party provider selected as the database provider operates the database in a manner that complies with the provisions of this act.

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

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

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

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

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

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

(a) Verify whether a customer has any open deferred presentment service transactions with any licensee that have not been closed, were not closed on the date the licensee accessed the database or were closed in the 30-day period preceding that date.

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

(c) Track and monitor the number of customers who notify a licensee of violations of this act, the number of times a licensee agreed that a violation occurred, the number of times that a licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the commissioner requires by rule.
(d) Determine whether a customer is eligible for repayment of
the deferred presentment service transaction in installments as
provided in section 35(2) and notify the licensee of that
eligibility.

(4) While operating the database described in subsection (1),
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
deferred presentment service transaction is closed under section
34, the database provider shall designate the transaction as closed
in the database immediately, but in no event after 11:59 p.m. on
the day the commissioner or database provider receives
notification.

(6) The database provider shall automatically designate a
deferred presentment service transaction as closed in the database
5 days after the transaction maturity date unless a licensee
reports to the database provider before that time that the
transaction remains open because of the customer's failure to make
payment, that the transaction is open because the customer's
check or an electronic redeposit is in the process of clearing the
banking system, or that the transaction remains open because the
customer's check is being returned to the licensee for insufficient
funds, a closed account, or a stop payment order, or any other
factors determined by the commissioner, director. If a licensee
reports the status of a transaction as open in a timely manner, the
transaction remains an open transaction until it is closed under
section 34 and the database provider is notified that the
transaction is closed under that section.

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

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

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

(10) The commissioner may access the database provided under described in subsection (1) only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person. The commissioner and any employees of the commissioner, the office, 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 must be dismissed from office or
discharged from employment.

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

(12) The commissioner director shall do all of the following:
(a) Require by rule that data are be retained in the database
only as required to ensure licensee compliance with this act.
(b) Require by rule that data in the database concerning a
customer transaction are be archived within 365 days after the
customer transaction is closed unless needed for a pending
enforcement action.
(c) Require by rule that any identifying customer information
is be deleted from the database when data are archived.
(d) Require by rule that data in the database concerning a
customer transaction are be deleted from the database 3 years after
the customer transaction is closed or any enforcement action
pending 3 years after the customer transaction is closed is
completed, whichever is later.

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

Sec. 31. (1) A licensee shall post prominently in an area
designed to be seen by the customer before he or she enters into a
defered presentment service transaction the following notice in at
least 36-point type:

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

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

3. State law prohibits us from entering into a transaction
with you if you already have a deferred presentment service
agreement in effect with us or have more than one deferred
presentment service agreement in effect with any other person who
provides this service, or were a party to a previous deferred
presentment service agreement that was in effect at any time in the
last 30 days.

4. If you enter into a transaction with us, we must
immediately give you a copy of your signed agreement.

5. We will pay the proceeds of a transaction to you by check,
by money order, or in cash, as you request.

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

7. State law prohibits us from renewing an agreement for a
fee. You have to pay any other agreement in full before obtaining
additional money from us.

8. State law prohibits us from using any criminal process to
collect on an agreement.

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

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

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

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

(2) A licensee shall include all of the following in the written deferred presentment service 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 deferred presentment service agreement on behalf of the licensee.

(d) The date of the transaction.

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

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

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

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

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

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

(k) The maturity date.

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

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

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

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

2. You should use this service only to meet short-term cash
3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service, or if you were a party to a previous deferred presentment service agreement that was in effect at any time in the last 30 days.

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

5. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request.

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

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

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

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

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

(3) A licensee may include an arbitration provision in a
delayed presentment service transaction agreement if the
arbitration provision meets all of the following:
(a) Provides that the licensee agrees to pay any costs of the
arbitration.
(b) Provides that an arbitration proceeding shall be held
within 10 miles of the drawer's address contained in the deferred
presentment service transaction agreement unless the drawer
consents to another location after an arbitrable dispute occurs.
(c) Provides that an arbitration proceeding shall be
conducted by a neutral arbitrator who was not and is not currently
being paid by the licensee and who has no financial interest in a
party to the arbitration.
(d) Requires that the arbitrator shall provide the drawer with
all the substantive rights that the drawer would have if the
drawer's claim were asserted in a court proceeding and shall not limit any other claim or defense the drawer has concerning the claim.

Sec. 33. (1) A licensee may enter into a deferred presentment service transaction with a customer for any amount up to $600.00. A licensee may charge the customer a service fee for each deferred presentment service transaction. A service fee is earned by the licensee on the date of the transaction and is not interest. A licensee may charge both of the following as part of the service fee, as applicable:

(a) An amount that does not exceed the aggregate of the following, as applicable:

(i) Fifteen percent of the first $100.00 of the deferred presentment service transaction.

(ii) Fourteen percent of the second $100.00 of the deferred presentment service transaction.

(iii) Thirteen percent of the third $100.00 of the deferred presentment service transaction.

(iv) Twelve percent of the fourth $100.00 of the deferred presentment service transaction.

(v) Eleven percent of the fifth $100.00 of the deferred presentment service transaction.

(vi) Eleven percent of the sixth $100.00 of the deferred presentment service transaction.

(b) The amount of any database verification fee allowed under section 34(5).

(2) A licensee shall not enter into a deferred presentment service transaction with a customer if the customer has an open deferred presentment service transaction with the licensee or has
more than 1 open deferred presentment service transaction with any other licensee, and shall or was a party to a previous deferred presentment service agreement with the licensee or any other licensee that was closed at any time in the last 30 days. The licensee shall verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee, or was a party to a previous deferred presentment service agreement with the licensee or any other licensee that was closed at any time in the last 30 days, by complying with section 34.

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

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

"1. After signing this 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 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 deferred presentment service 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 agree that we have violated the law, we must return your check and you must return the cash received under the agreement. Additionally, for each violation, we must pay you
restitution equal to 5 times the amount of the fee we charged you
under the agreement but not less than $15.00 or more than the face
amount of your check. You may also pursue an action for your actual
damages against us.

4. If we do not agree that we have violated the law, we may
present your check for payment or enter your check into the check-
clearing process on or after the maturity date. If your check is
returned to us unpaid, we may take other legal steps to collect our
money.

5. If you still believe we violated the law, you may file a
written complaint including supporting documents or other evidence
with the Office of Financial and Insurance Department of Insurance
and Financial Services. The Office 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 Office Department can order us to pay civil fines or
take away our right to do business. To do so, contact the Office of
Financial and Insurance Department of Insurance and Financial
Services toll-free at 1-877-999-6442.”.

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

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

(4) At the time of entering into a deferred presentment
service transaction, a licensee shall not do any of the following:

(a) Charge interest under the agreement.

(b) Include a maturity date that is more than 31 days after
the date of the transaction.

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

(d) Include a confession of judgment in the agreement.
(e) Except as provided in this act, charge or collect any
other fees for a deferred presentment service transaction.
(5) A licensee shall not refuse to provide a deferred
presentment service transaction to a customer solely because the
customer has exercised his or her rights under this act.
(6) Each A licensee shall post a sign, printed in bold faced,
36-point type, in a conspicuous location at each customer service
window, station, or desk at each place of business, that states the
following:
"Under Michigan law, you are entitled to receive the proceeds
of this transaction in cash. If you request the proceeds in a check
or money order, you may be charged additional check cashing or
other processing fees by others for cashing the check or money
order."
(7) A deferred presentment service transaction that violates
this section is void and uncollectible as to any principal, fee, or
charge.
Sec. 34. (1) A licensee shall verify a customer's eligibility
to enter into a deferred presentment service transaction by doing 1
of the following, as applicable:
(a) If the commissioner director has not implemented a
database under section 22 or the database described in section 22
that section is not fully operational, as determined by the
commissioner, director, verifying that the customer does not have
an open deferred presentment service transaction with the licensee,
and was not a party to a previous deferred presentment service
agreement with the licensee that was closed at any time in the last 30 days. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subdivision.

(b) If the commissioner director has implemented a database under section 22 and the database described in that section is fully operational, as determined by the commissioner, director, accessing the database and verifying that the customer does not have an outstanding deferred presentment service transaction with the licensee and does not have more than 1 open deferred presentment service transaction that has not been fully repaid or with any other licensee, and was not a party to a previous deferred presentment service agreement with the licensee or any other licensee that was closed at any time in the last 30 days.

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

"I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION OR WITH ANY OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE, AND I HAVE NOT HAD A DEFERRED PRESENTMENT SERVICE TRANSACTION WITH THIS LICENSEE OR ANY OTHER LICENSEE THAT WAS OUTSTANDING AT ANY
TIME IN THE LAST 30 DAYS.

(3) If a licensee is unable to access the database described in section 22 due to technical difficulties occurring with the database, as determined by the commissioner, director, the licensee shall utilize the process established in under section 22(4) to verify transactions.

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

(5) If approved by the commissioner, director, the database provider may impose a database verification fee for the actual costs of entering, accessing, and verifying data in the database described in section 22 to verify that a customer does not have any other open deferred presentment service transactions with the licensee and does not have more than 1 open deferred presentment service transaction or with any other licensees, and was not a party to a previous deferred presentment service agreement with the licensee or any other licensee that was closed at any time in the last 30 days. A database verification fee is payable to the database provider in a manner prescribed by the commissioner, director. A licensee may charge a customer all or part of the database verification fee under section 33(1)(b) but may not charge a customer any other fee except as authorized in section 33(1) or 35(2).

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

(7) Before entering into a deferred presentment service transaction, a licensee shall submit to the database provider the
customer's name and address, the customer's Social Security number, driver license number, or other state-issued identification number, the amount of the transaction, the customer's check number, the date of the transaction, the maturity date of the transaction, and any other information reasonably required by the commissioner or the database provider, in a format reasonably required by the commissioner.

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

Sec. 40. A licensee shall not do any of the following:

(a) Enter into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee or an affiliate or subsidiary of the licensee.

(b) Knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.

(c) Enter into a deferred presentment service transaction without first determining and documenting that the customer has a
reasonable ability to repay the amount owed. In determining whether
the customer has a reasonable ability to repay the deferred
presentment service transaction, the licensee must, at a minimum,
verify the customer's current and anticipated income and expenses,
and the customer's credit history. For purposes of this
subdivision, a customer does not have the reasonable ability to
repay a deferred presentment service transaction if payments for
the proposed deferred presentment service transaction cause the
customer to have a debt-to-income ratio higher than 41%. As used in
this subdivision:

(i) "Debt-to-income ratio" means the ratio of a customer's
total monthly debt obligations to the customer's gross monthly
income.

(ii) "Total monthly debt obligations" consists of the sum of a
customer's rent or mortgage-related obligations, any other secured
or unsecured debt obligations, and payments for child support and
alimony.

(d) Make, offer, assist, arrange, guarantee, or collect a
deferred presentment service transaction with fees or charges that
are greater than permitted under this act.

(e) Engage in any device or subterfuge to evade the
requirements of this act.

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