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BILL ANALYSIS



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House Bill 4834 (Substitute S-7 as reported)
Sponsor: Representative Bill McConico
House Committee: Banking and Financial Institutions
Senate Committee: Economic Development, Small Business and Regulatory Reform

CONTENT

The bill would create the "Deferred Presentment Service Transactions Act" to do the following:

- Prohibit a person from engaging in the business of providing deferred presentment services after December 31, 2006, without a license from the Commissioner of the Office of Financial and Insurance Services (OFIS).
- Prohibit providers of deferred presentment service transactions from having more than one transaction open with a customer at one time, or from providing service to a customer with open transactions at more than one other provider.
- Require the Commissioner, by December 31, 2006, to develop, implement, and maintain a statewide common database that would allow a licensee to determine whether customers had other open deferred presentment service transactions.
- Require the Commissioner to establish license fees sufficient to cover OFIS's administrative costs.
- Require a licensee to document a deferred presentment service transaction by entering into a deferred presentment service agreement with the customer.
- Limit a deferred presentment service agreement to a maximum of \$600 and 31 days.
- Allow a licensee to charge a service fee of between 11% and 15%, depending on the amount of the transaction.
- Require a licensee to display certain notices, and to include other notices in a service agreement.
- Allow a customer to complain to a licensee of a violation and/or file a complaint with the Commissioner, and require the Commissioner to investigate a customer's complaint.
- Authorize the Commissioner to issue a cease and desist order, suspend or revoke a license, and impose civil fines for violations of the proposed Act.
- Establish a misdemeanor penalty for an executive officer or agent of a licensee who violated a final Commissioner order related to fraud.
- Allow a person injured by a licensee's or database provider's violation to bring a civil action.

"Deferred presentment service transaction" would mean a transaction between a licensee and a customer under which the licensee agreed to pay to the customer an agreed-upon amount in exchange for a fee, and to hold a customer's check for a period of time before negotiation, redemption, or presentment of the check. A "customer" would be an individual who inquired into the availability of or applied for a deferred presentment service transaction and/or entered into a deferred presentment service transaction with a licensee.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would require these licensed businesses to pay a fee that would be sufficient to cover the administrative costs of regulating this industry, which would make the addition of this industry under the regulated category revenue neutral. The bill also would create civil fines that could be assessed for noncompliance, which would be deposited into the General Fund. Without knowing how many civil fines would be assessed and at what levels, it is difficult to determine the revenue that would be generated from this bill.

To the extent that it would allow additional civil actions, the bill could increase local court costs.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor. Local units of government incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.