

"PAYDAY LENDING": REPAYMENT USING DEBIT CARDS AND SIMILAR TRANSACTIONS

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Senate Bills 607 and 719 (as passed by the Senate)

Sponsor: Sen. Darwin L. Boohar

House Committee: Financial Services

Senate Committee: Banking and Financial Services

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Analysis available at
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SUMMARY:

A "deferred presentment service transaction" is a transaction between a firm and a customer under which the firm agrees to (1) pay the customer an agreed-upon amount in exchange for a fee, and (2) hold a customer's check for a period of time before negotiation, redemption, or presentment of the check. It is commonly referred to as "payday lending."

Under the Deferred Presentment Service Transaction Act, businesses engaged in deferred presentment service transactions in Michigan must be licensed by the Department of Insurance and Financial Services. A separate license is required for each location from which deferred presentment service transactions are conducted. Businesses engaged in these transactions are referred to throughout the act as "licensees" and the customers as "drawers."

Senate Bill 607: Repayment with debit cards or telephone-initiated entries

The act describes when a transaction is considered "closed." Senate Bill 607 would amend the act to specify that a deferred presentment service transaction would also be considered "closed" if a customer's check is redeemed by payment from a debit card or the check is collected by the licensee under Section 35(9) and the licensee has evidence that the person has satisfied the obligation. Section 35 (9) would be added to the act by Senate Bill 719; it deals with cases when the customer's check has been returned unpaid, and allows licensees to collect the check by "telephone-initiated entries." A telephone-initiated entry refers to a debit transaction to a customer's account that is processed through an automatic clearing house and initiated under an authorization obtained from the customer orally by telephone.

Currently, a transaction is closed under the act when: (1) the check is redeemed by the customer by payment of the face amount of the check in cash; (2) the check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution; (3) the check is deposited by the licensee and the licensee has evidence the customer has satisfied the obligation; (4) the check is collected by the licensee through civil remedy; and (5) the check is collected through a repayment plan or as the result of credit counseling services. Senate Bill 607 adds the two additional methods described above.

The bill would also add a definition of "*redeemed*" to mean that the customer pays to the licensee an amount equal to the face amount of the check included in a deferred presentment service transaction, on or before the maturity date or after the check is deposited and returned unpaid by the drawee (the customer), and the licensee returns the check to the customer.

Senate Bill 719: Telephone-initiated entries, use of debit cards, etc.

Senate Bill 719 would amend Section 35 of the act to do specify the following:

- If the customer has an outstanding transaction in which a check held in connection with a transaction was deposited and returned unpaid, the licensee could collect the check by one or more *telephone-initiated entries*, if all of the following are met:
 - the drawer agrees to each telephone-initiated entry;
 - each telephone-initiated entry is a single, date-specific payment and does not authorize more than one payment or periodic payments; and
 - the licensee does not charge the drawer a fee in connection with the telephone-initiated entry or entries.

As noted above, a telephone-initiated entry is defined as a debit transaction to a customer's account that is processed through an automatic clearing house and initiated under an authorization obtained from the customer orally by telephone.

- A licensee could only accept payment by *debit card* to redeem a check if the customer certified that the debit card draws funds from the same account on which the check is drawn.
- Unless the customer has entered into a written repayment plan, a licensee must deposit a check held in connection with a transaction on the maturity date if the check is not redeemed or exchanged either by payment in cash or debit card by the customer or payment by cash or cashier's check by the customer's financial institution on or before the maturity date.
- The licensee must deposit a check held in connection with a transaction on any repayment plan installment date if the customer fails to make the installment payment.
- If payment to satisfy an outstanding transaction obligation is made in person, the licensee must immediately return the held check to the customer. If the payment is not made in person, the licensee would have to return the check to the customer by mailing it to the address listed on the service agreement within one business day after obtaining evidence that the customer has satisfied the obligation.

The two bills are tie-barred, meaning neither can take effect unless both are enacted.

FISCAL IMPACT:

The bills would not have a significant fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.