

ALLOW PAYDAY LENDERS TO MAKE SMALL LOANS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5097 as introduced
Sponsor: Rep. Brandt Iden
Committee: Regulatory Reform
Complete to 10-15-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5097 would amend the Deferred Presentment Service Transactions Act to allow the authorized licensed providers of deferred presentment service transactions (commonly called payday lenders) to make certain small loans to their customers.

Small Loans

Currently, the act only allows payday lenders to make deferred presentment service transactions (i.e., payday loans). The bill would further allow lenders to offer small loans with a principal amount of \$2,500 or less to their customers. Specifically, a small loan made under the bill would have to meet the following requirements:

- The loan is made to one or more individuals for personal, family, or household use (i.e., is a personal loan).
- The principal amount of the loan does not exceed \$2,500.
- The maturity date for the loan is not less than 90 days after the date of the transaction.
- The loan is unsecured and payable in installments.

Small loans would not include a loan or other extension of credit that is made by a person that is licensed or registered under a financial licensing act or through a state or nationally chartered bank or savings and loan association, savings bank, or credit union whose deposits or member accounts are insured by an agency of the U.S. government.

Small loans would be considered “closed” once the loan was fully paid or satisfied. The bill would prohibit the *renewal* of a small loan agreement, which is defined as renewing, repaying, refinancing, or consolidating the existing small loan with the proceeds of either another small loan or a deferred presentment service transaction. A licensee (i.e., the small loan lender) could extend a small loan agreement only if the licensee did not charge a fee in connection with the extended loan. A licensee that extended an agreement would not be allowed to create a balance owed above the amount owed in the original agreement.

The bill would allow licensees to enter into only one small loan transaction with a customer for any amount up to \$2,500. All of the following would apply to the small loan transaction:

- The licensee could charge a customer a service fee for each small loan transaction. A licensee could charge both of the following as part of the service fee, as applicable:
 - 11% of the amount of the small loan, which the licensee could charge as a daily blended rate per periodic installment.
 - The amount of any database verification fee allowed under the act.
- A licensee could not charge a prepayment penalty to the borrower for early payment.

Advisory Sign

A licensee that offered small loans under the bill would have to prominently post a sign, in an area designed to be seen by the customer before he or she enters into a small loan agreement, that includes the following notice in at least 36-point type:

1. State law prohibits us from entering into a small loan agreement with you if you already have a deferred presentment service agreement or small loan agreement in effect with us or have more than one deferred present service agreement or small loan agreement in effect with any other person who provides this service.
2. If you enter into a small loan agreement with us, we must immediately give you a copy of your signed agreement.
3. We will pay the proceeds of a small loan to you by check, by money order, or in cash, as you request.
4. State law prohibits us from extending a small loan agreement for a fee. You have to pay any other deferred presentment service agreements or small loan agreements in full before obtaining additional money from us.
5. State law prohibits us from using any criminal process to collect on a deferred presentment service agreement.
6. 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 Department of Insurance and Financial Services toll-free at 1-877-999-6442.

In addition, the bill would require licensees to prominently post fee schedules of all fees and charges imposed for small loans, in at least 36-point type, in an area designed to be seen by the customer before he or she enters into a small loan with the licensee.

Written Small Loan Agreement

In order to make a small loan transaction, a licensee would have to enter into a written small loan agreement signed by both the customer and the licensee. This agreement would have to include all of the following components:

- The name of the customer.
- The name, street address, facsimile number, and telephone number of the licensee.
- The signature and printed or typed name of the individual who enters into the small loan agreement on behalf of the licensee.
- The date of the transaction.
- The amount of the small loan.
- An itemization of the fees to be paid by the customer.
- A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.
- A clear description of the customer's payment obligation under the small loan agreement.
- A provision that allows the borrower to prepay in full the unpaid balance of the small loan at any time without any additional interest, fee, or penalty.
- The maturity date.
- A description of the process a borrower may use to file a complaint against the licensee.

The agreement would have to contain a notice that includes all of the statements required in the sign described above, minus any mention of deferred presentment service transactions. It would also have to include the following additional statement:

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.

The bill would allow the licensee to include an arbitration provision in the small loan agreement if the arbitration provision meets all of the following:

- It provides that the licensee agreed to pay any costs of the arbitration.
- It requires that the arbitration proceeding be held at a location within 10 miles of the borrower's address contained in the small loan agreement unless the borrower consents to another location after an arbitrable dispute occurs.
- It requires that 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 conduct the arbitration proceeding.
- It requires that the arbitrator provide the borrower with all the substantive rights that the borrower would have if the borrower's claim were asserted in a court proceeding and does not limit any other claim or defense the borrower had concerning the claim.

Rules and Regulations

Small loans made under the bill would be subject to most of the same rules and regulations as payday loans, including:

- The rules and procedures for obtaining a license under the act.
- The rules for first establishing a location for providing payday loans and small loans.
- The required inclusion in the statewide database used to record payday loans as established by the act, along with all rules surrounding compliance with and use of the database.
- The required elements for written deferred presentment service agreements.
- The prohibition on renewing a closed loan or other transaction
- The rules and procedures for how a customer may file a complaint with DIFS.
- The rules and procedures for what a borrower may do if they believe that the licensee has violated the law.
- The rules and procedures for required actions that a licensee must take if they are found to have violated the law.

Within 30 days after the effective date of the bill (90 days after the date it was enacted into law) the commissioner appointed by the director of the Department of Insurance and Financial Services (DIFS) would have to make any revisions to the application process and timeline that he or she considered necessary to reflect the authority of licensees to engage in the business of providing small loans. Within those same 30 days, the commissioner would have to implement any changes to the database that he or she determined were necessary to include small loans for the purposes of the bill.

Finally, licensees would be required to comply with the requirements of 12 CFR Part 205 (the federal regulations governing electronic fund transfers) if the licensee accepted an authorization to make electronic payments from the customer's or borrower's account in

connection with a deferred presentment service transaction or small loan. A licensee would have to comply with the requirements of 12 CFR Part 1041 (covering payday, vehicle title, and certain high-cost installment loans) applicable to covered loans in making a small loan or entering into a small loan transaction.

Legal Action

If a licensee violated the law in relation to an agreement with a borrower, the licensee would have to return any payments of principal and interest that it received in the small loan transaction, along with any service fees paid by the borrower. In return, the borrower would have to return to the licensee the money that he or she received in the initial transaction, either in cash or a cash equivalent. In addition, the licensee would have to pay restitution to the borrower for each violation in an amount equal to five times the amount of the fee charged for the small loan transaction, but not less than the principal amount of the borrower's loan.

The licensee could also be subject to civil action. A person injured by a licensee could maintain a civil cause of action against the licensee and could recover actual damages and an amount equal to the interest and service fee paid in connection with each small loan transaction found to violate the bill, plus reasonable attorney fees.

The bill would take effect 90 days after it is enacted.

MCL 487.2122 et seq.

FISCAL IMPACT:

House Bill 5097 would have an indeterminate fiscal impact on the Department of Insurance and Financial Services (DIFS). The bill would likely require administrative and information technology changes, the cost of which is indeterminate.

Legislative Analyst: Nick Kelly
Fiscal Analyst: Marcus Coffin

■ 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.