

- **Allow the Director to order a person who violated the Act, State or Federal law, or an applicable rule or regulation to pay a \$500 consumer literacy fee in addition to any civil fine.**

The bill would take effect 90 days after its enactment.

License to Provide Small Loans

The Act prohibits a person from engaging in the business of providing deferred presentment service transactions without a license. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted. The bill also would require a separate license for each location from which a business of providing small loans was conducted.

"Small loan" would mean a loan made by a licensee that meets all of the following:

- The loan is made to one or more individuals for personal, family, or household use.
- The principal amount of the loan does not exceed \$2,500.
- The maturity date for the loan is not fewer than 90 days or greater than 365 days after the date of the transaction.
- The loan is unsecured and payable in substantially equal installments.

"Small loan" would not include a loan or other extension of credit that was made by a person that was licensed or registered under the Consumer Financial Services Act, the Regulatory Loan Act, the Secondary Mortgage Loan Act, the Motor Vehicle Sales Finance Act, the Money Transmission Services Act, or the Mortgage Brokers, Lenders, and Servicers Licensing Act, or by an entity described in Section 11(2): 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.

The Act requires the Director by administrative bulletin, order, or rule to establish an application process and application timeline for license applications under the Act. Within 90 days of the bill's effective date, the Director by administrative bulletin, order, or rule would have to make any revisions to the application process and timeline that the Director determined were necessary to reflect the authority of licensees to engage in the business of providing small loans.

License Application

The Act requires an applicant for a license under the Act to submit an application for a license to the Director. Each application must be in writing and under oath, in a form prescribed by the commissioner, and must include certain information prescribed in the Act. An applicant must include an application fee in an amount determined by the Director with an application.

Under the bill, these provisions also would apply to an applicant that would offer small loans. In addition to the required application fee, an applicant would have to include an additional literacy fee in an amount determined by the Director, but not exceeding \$200, with an application. The literacy fee would have to be deposited into the Consumer Education and Financial Services Access and Literacy Fund (described below).

License Issuance

The Act requires the Director to investigate, after receiving a completed license application, to determine whether the requirements of the Act are satisfied. If the Director finds that the

requirements of the Act are satisfied, he or she must issue to the applicant a license to engage in deferred presentment service transactions. Under the bill, if the Director found that the requirements of the Act were satisfied, he or she would have to issue to an applicant a license to make small loans.

Licensee Responsibilities

The Act requires a licensee to do all of the following:

- At least 15 days before providing deferred presentment service transactions at any new location or by other means, provide written notice to the Director of the name, street address, and telephone number of the new location or the detailed description of the manner in which transactions will be offered to customers in the State.
- At least 15 days before discontinuing deferred presentment service transactions at any existing location or by other means, provide written notice to the Director of the name, street address, and telephone number of the discontinued location or the detailed description of the services.

Under the bill, these provisions also would apply to the provision and discontinuance of small loans.

The Act defines "customer" as an individual who requests information about the availability of or applies for a deferred presentment service transaction or a drawer who enters into a deferred presentment service transaction. Under the bill, the term also would mean 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.

License Expiration & Renewal

A license issued under the Act expires on September 30 of each year unless earlier suspended, surrendered, or revoked under the Act. A licensee may renew a license for a 12-month period by submitting a complete application that shows continued compliance with the Act, in a form prescribed by, and paying the license renewal fee to, the Director.

Under the bill, in addition to the license renewal fee, a licensee would have to include an additional literacy fee in an amount determined by the Director, but not exceeding \$200, with the renewal application. The literacy fee would have to be deposited into the Consumer Education and Financial Services Access and Literacy Fund.

Database

The Act requires the Director to develop, implement, and maintain a statewide, common database. The database must have real-time access through an internet connection, be accessible at all times to licensees and to the Director for the purposes of investigation and enforcement actions, and meet other listed requirements.

Within 90 days after the bill's effective date, the Director would have to implement any changes to the database that he or she determined were necessary to include small loans in the database for the purposes of the Act.

The Act requires the database to allow a licensee accessing the database to verify whether a customer has any open deferred presentment service transactions with any licensee that have not been closed, among other things. The bill also would require the database to allow a

licensee accessing it to verify whether a customer had any open small loans with any licensee that had not been closed.

Under the Act, while operating the database, the database provider must do all of the following:

- Meet the requirements of the Act.
- 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.
- Comply with any applicable provisions of the Social Security Number Privacy Act.
- Comply with any applicable provisions of the Identity Theft Protection Act.
- Provide accurate and secure receipt, transmission, and storage of customer data.

The bill also would require the database provide to provide to a licensee access to data reported by that licensee.

Generally, the Act requires the database provider to take certain actions after it receives notification that a deferred presentment service transaction is closed. Under the bill, these provisions also would apply to closing a small loan.

The Act specifies that 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, is not subject to discovery, subpoena, or other compulsory process except in an action under the Act, and may not be disclosed to any person other than the Director. Under the bill, these provisions also would apply to the person's small loan.

Literacy Fund

The bill would create the Consumer Education and Financial Services Access and Literacy Fund within the State Treasury. The Department would be the administrator of the Fund for auditing purposes.

The State Treasurer could receive money or other assets from any source for deposit into the fund. The State Treasurer would have to direct the investment of the Fund. The Fund would have to consist of the money credited to the Fund pursuant to fees collected for license issuance and renewal, any interest and earnings accruing from the saving and investment of that money, and money from any other source. Money in the Fund at the close of the year would have to remain in the Fund and would not lapse to the General Fund.

The Department would have to spend money from the Fund, upon appropriation, for only one or both of the following purposes:

- Promote the education of consumers about access to financial services, financial counseling, and assistance, the different financial products available, and the cost of credit products.
- Develop, deliver, and promote financial literacy and education programs in schools and communities.

Notice

The Act requires a licensee to post a notice prominently in an area designed to be seen by a customer before he or she enters into a deferred presentment service transaction. The notice must be in at least 36-point type and contain a statement prescribed in the Act. Among other things, the statement informs the customer that the licensee may not enter into a transaction if the customer already has a deferred presentment services agreement in effect and the licensee must pay the proceeds of a transaction by check, money order, or cash, as the customer requested.

Under the bill, the notice also would state that the licensee could not enter into a transaction if the customer already had a small loan agreement in effect and that the licensee would have to pay the proceeds of a transaction by check, by money order, in cash, *or by any other means mutually acceptable and would not be permitted to subject the customer to any additional fees.*

Additionally, the bill would require a licensee to post a notice prominently in an area designed to be seen by a customer before he or she enters into a small loan agreement. The notice must be in at least 36-point type and contain a statement prescribed in the Act. The statement, in part, would have to inform the customer that the licensee was required to give the customer a copy of the signed agreement; the licensee could not enter into a transaction if the customer already had a deferred presentment services or small loan agreement in effect; the customer could cancel an agreement; the licensee would pay the proceeds of a transaction by check, by money order, in cash, or by any other means mutually acceptable and would not be permitted to subject the customer to any additional fees; the customer was entitled to information about filing a complaint against the licensee; and the licensee could not use any criminal process to collect on a small loan agreement.

The licensee also would have to post prominently, in at least 36-point type, a schedule of fees and charges imposed for a small loan agreement.

Agreement

The Act requires a licensee to document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee. A licensee must include certain information in the agreement, including a notice, in at least 12-point type. The notice must include a statement that informs the customer of certain information, including that the licensee may not enter into a transaction if the customer already has a deferred presentment services agreement in effect and the licensee must pay the proceeds of a transaction by check, money order, or cash, as the customer requested.

Under the bill, the notice also would inform a customer that the licensee could not enter into a transaction if the customer already had a small loan agreement in effect and that the licensee would have to pay the proceeds of a transaction by check, by money order, in cash, *or by any other means mutually acceptable and would not be permitted to subject the customer to any additional fees.*

Additionally, the bill would require a licensee to document a small loan by entering into a written small loan agreement signed by both the customer and the licensee. A licensee would have to include all of the following in the agreement:

- The customer's name.
- The licensee's name, street address, facsimile number, and telephone number.

- The signature of the individual who entered into the agreement on behalf of the licensee.
- The date of the transaction.
- The transaction number assigned by the database provider, if any.
- The amount of the check presented to the licensee by the customer.
- 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 agreement.
- 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 transaction.
- The maturity date.
- A provision that the licensee would defer presentment, negotiation, and entering a check into the check-clearing process until the maturity date.
- A description of the process a customer could use to file a complaint against the licensee.

The agreement also would have to include, in at least 12-point type, a notice prescribed in the bill. The notice would have to include information similar to that contained in the posted notice.

The Act defines "maturity date" as the date on which a drawer's check is to be redeemed, presented for payment, or entered into the check-clearing processing in a deferred presentment service transaction. Under the bill, the term also would mean the date a small loan, or the last installment of the small loan, is due.

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

- Provided that the licensee agree to pay any costs of arbitration.
- Required that the arbitration proceeding be held at a location within 10 miles of the customer's address contained in the agreement unless the customer consented to another location after an arbitrable dispute occurred.
- Required that a neutral arbitrator who had not been and was not currently being paid by the licensee and who had no financial interest in a party to the arbitration conduct the arbitration proceeding.
- Required that the arbitrator provide the customer with all the substantive rights that the customer would have if the customer's claim were asserted in a court proceeding and did not limit any other claim or defense the customer had concerning the claim.

A licensee could enter into a single small loan agreement with a customer for any amount up to \$2,500. All of the following would apply to a small loan:

- A licensee could not charge a prepayment penalty to the customer for early payment.
- A licensee would have to report to a credit reporting agency or agencies the terms of a small loan and the customer's performance under those terms.
- A licensee could not charge interest under the agreement.
- A licensee could charge a customer a service fee for each small loan.

A licensee could charge both of the following as part of the service fee, as applicable: a fee not exceeding 11% of the amount of the small loan and not charged more frequently than monthly and the amount of any database verification fee.

Additionally, when underwriting, making, or negotiating a small loan, in determining the amount and duration of the loan, a licensee would have to take into consideration the

customer's reasonable financial ability to repay the loan in the time and manner provided in the prospective small loan agreement, including the customer's credit and borrowing history, gross income, major financial obligations, and estimated basic living expenses. For purposes of this provision, estimated basic living expenses would include food, utilities, regular medical costs, and other costs associated with the customer's health, welfare, ability to produce income, and the health and welfare of the customer's household who were financially dependent on the customer. A licensee could rely on the customer's representation of estimated basic living expenses when determining a customer's ability to repay.

The Act prohibits a licensee from entering 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 one open deferred presentment service transaction with any other licensee, and must verify whether the customer has an open deferred presentment service transaction with the licensee or has more than one open deferred presentment service transaction with any other licensee by complying with the Act. Under the bill, these provisions also would apply to a small loan agreement.

A licensee could not enter into a small loan agreement with a customer unless the licensee made a determination after the considerations described above that the customer had the reasonable financial ability to repay the small loan. This provision would not prohibit the use of the proceeds of a small loan to pay in full an existing deferred presentment service transaction with the licensee.

A licensee would have to comply with the requirements of 12 CFR Part 205 (which governs electronic fund transfers) if the licensee accepted an authorization to make electronic payments from the customer's account in connection with a deferred presentment service transaction or small loan agreement. A licensee would have to comply with the requirements of 12 CFR Part 1041 (which applies to covering payday, vehicle title, and certain high-cost installation loans) applicable to covered loans in making a small loan or entering into a small loan agreement.

Verification

The Act requires a licensee to verify a customer's eligibility to enter into a deferred presentment service transaction by doing one of the following, as applicable:

- If the Director has implemented a database and the database is fully operational, as determined by the 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 one open deferred presentment service transaction that has not been fully repaid with any other licensee.
- If the Director has not implemented a database or the database is not fully operational, as determined by the Director, verifying that the customer does not have an open deferred presentment service transaction with the licensee.

The licensee must 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 provision.

Under the bill, these provisions also would apply to eligibility to enter into a small loan.

The Act specifies that if the Director has not implemented a database; the database is not fully operational, as determined by the Director; or the licensee is unable to access the database and the alternative mechanism for verification also is unavailable, as determined by the Director, a licensee may rely upon the written verification of the customer.

The licensee may rely upon the written verification of the customer in a statement provided in the form prescribed in the Act in at least 12-point type. The bill would delete this provision.

If approved by the Director, the database provider may impose a database verification fee for the actual costs of entering, accessing, and verifying data in the database to verify that a customer does not have any other open deferred presentment service transactions with the licensee and does not have more than one open deferred presentment service transaction with any other licensees. Under the bill, this provision also would apply to verifying that the customer did not have any other open small loans.

Under the Act, before entering into a deferred presentment service transaction, a licensee must submit to the database certain information prescribed in the Act. The bill also would require a licensee to submit this information before entering into a small loan.

When a deferred presentment service transaction is closed, the licensee must designate the transaction as closed and immediately notify the database provider by 11:59 PM on the day the transaction is closed. The Director must assess an administrative fine of \$100 for each day that the licensee fails to notify the database provider that the transaction has been closed. Under the bill, this provision also would apply to closing a small loan.

Renewal

The Act prohibits a licensee from renewing a deferred presentment service agreement. A licensee may extend a deferred presentment service agreement only if the licensee does not charge a fee in connection with the extended transaction. A licensee that extends an agreement may not create a balance owed above the amount owed to the original agreement.

Under the bill, the following also would apply to the renewal of deferred presentment service agreements and small loan agreements:

- A licensee could not renew a small loan agreement unless the customer had made all payments as scheduled and the customer had made at least 30% of all scheduled payments or retired at least 50% of the principal.
- A licensee could not charge a rate for the renewal of a small loan agreement that was higher than the rate charged for the original small loan.
- A licensee and customer could agree to convert a deferred presentment service transaction to a small loan, subject to the limits on outstanding small loans provided in the Act.

With respect to an existing small loan, "renewal" would mean renewing, repaying, refinancing, or consolidating the existing small loan with the proceeds of another small loan or a deferred presentment service transaction. The term would not include the conversion of a deferred presentment service transaction to a small loan.

Under the Act, a licensee may accept a payment by debit card to redeem a check the licensee is holding only if the drawer certifies to the licensee that the debit card draws funds from the same account on which the check is drawn. Under the bill, this provision would apply in a deferred presentment service transaction. The drawer could provide the certification orally or in writing at any time prior to processing a payment.

Violations

Section 36 of the Act governs violations of the Act. Generally, if the drawer of a deferred presentment service agreement believes that a licensee has violated the Act, he or she must

notify the licensee by identifying the nature of the violation and providing any documentary or other evidence of the violation. If the licensee determines that it has violated the law, it must return to the drawer the check it received in the deferred presentment service transaction. If the licensee determined it did not violate the law, it would have to immediately notify the Director and the drawer of the determination. A drawer who received a notice could file a written complaint with DIFS. The Director immediately must investigate a complaint

Under the bill, these provisions also would apply to a small loan customer who believed a licensee violated the law. If a licensee determined that it had violated the law, it would have to return to the customer any payments of principal and interest in received under the small loan agreement.

Additionally, a small loan customer would not be subject to any criminal penalty for entering into a small loan agreement and would not be subject to any criminal penalty in the event the small loan customer's payment was dishonored.

Investigations

The Act allows the Director to investigate or conduct examinations of a licensee and conduct hearings as he or she considers necessary to determine whether a licensee or any other person has violated the 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 deferred presentment service transactions in the State. This provision also would apply to engaging in the business of providing small loans.

Civil Fines

The Act specifies that if the Director finds that a person has violated the Act, State or Federal law, or an applicable rule or regulation, he or she may order the person to pay a civil fine of not less than \$1,000.00 or more than \$10,000.00 for each violation. However, if the Director finds that a person has violated the Act and that the person knew or reasonably should have known that he or she was in violation of the Act, he or she may order the person to pay a civil fine of between \$5,000 and \$50,000 for each violation. The Director may also order the person to pay the costs of the investigation.

Under the bill, in addition to any civil fine that could be assessed upon a finding that a person had violated the Act, State or Federal law, or an applicable rule or regulation, the Director could order the person to pay a consumer literacy fee of at least \$500 for each violation. The collected consumer literacy fee would have to be deposited into the Consumer Education and Financial Services Access and Literacy Fund.

Cause of Action

The Act allows a person injured by a licensee's violation of the Act to 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 deferred presentment service transaction that is found to violate the Act plus reasonable attorney fees.

Under the bill, an injured person also could recover actual damages and an amount equal to the interest and service fee paid in connection with each small loan agreement plus attorney fees.

MCL 487.2122 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Insurance and Financial Services. Under the bill, the Director of the Department would establish a literacy fee of not more than \$200 to be paid by each applicant for a new or renewed license. Revenue from the fee would be deposited in the newly created Consumer Education and Financial Services Access and Literacy Fund. There are currently 448 licensed deferred presentment service provider locations in Michigan. The bill would allow a fee of up to \$500 to be collected from a licensee who violated the Act, a State or Federal law, or an applicable rule or regulation. Revenue from these fees also would be deposited into the Fund.

The Department likely would experience increased costs due to regulatory activity that would be required by the bill's provisions. The magnitude of these costs is unknown.

The Department of Treasury would experience a minimal fiscal impact as the administrator of the Fund. These costs would be minor and within current appropriations.

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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.