

# HOUSE BILL No. 4251

February 26, 2019, Introduced by Reps. Sowerby, Koleszar, Haadsma, Ellison, Shannon, Peterson, Love, Pohutsky, Camilleri, Pagan, Whitsett, Bolden, Anthony, Elder, Paquette, Marino, Yaroch, Hood, Wozniak, Calley, Chirkun, Tyrone Carter, Gay-Dagnogo, Clemente, LaGrand, Sneller, Hoadley, Stone, Hertel, Neeley, Wittenberg, Byrd, Hope, Sabo, Hammoud, Liberati and Jones and referred to the Committee on Financial Services.

A bill to amend 2005 PA 244, entitled  
"Deferred presentment service transactions act,"  
by amending sections 33 and 40 (MCL 487.2153 and 487.2160).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

10 ~~—— (i) Fifteen percent of the first \$100.00 of the deferred~~

1 ~~presentment service transaction.~~

2 ~~—— (ii) Fourteen percent of the second \$100.00 of the deferred~~  
3 ~~presentment service transaction.~~

4 ~~—— (iii) Thirteen percent of the third \$100.00 of the deferred~~  
5 ~~presentment service transaction.~~

6 ~~—— (iv) Twelve percent of the fourth \$100.00 of the deferred~~  
7 ~~presentment service transaction.~~

8 ~~—— (v) Eleven percent of the fifth \$100.00 of the deferred~~  
9 ~~presentment service transaction.~~

10 ~~—— (vi) Eleven percent of the sixth \$100.00 of the deferred~~  
11 ~~presentment service transaction.~~ **AN ANNUAL PERCENTAGE RATE OF 36%.**

12 **AS USED IN THIS SUBDIVISION, "ANNUAL PERCENTAGE RATE" MEANS A RATE**  
13 **CALCULATED FOR A MILITARY ANNUAL PERCENTAGE RATE UNDER 32 CFR**  
14 **232.4.**

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

17 (2) A licensee shall not enter into a deferred presentment  
18 service transaction with a customer if the customer has an open  
19 deferred presentment service transaction with the licensee or has  
20 more than 1 open deferred presentment service transaction with any  
21 other licensee, and shall verify whether the customer has an open  
22 deferred presentment service transaction with the licensee or has  
23 more than 1 open deferred presentment service transaction with any  
24 other licensee by complying with section 34.

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

27 (a) Before the drawer signs the agreement, provide the

1 following notice to the drawer, in a document separate from the  
2 agreement and in at least 12-point type:

3 "1. After signing this agreement, if you believe that we have  
4 violated the law, you may do 1 of the following:

5 a. Before the close of business on the day you sign the  
6 agreement, notify us in person of the violation. You must provide  
7 supporting documents or other evidence of the violation.

8 b. At any time before signing a new deferred presentment  
9 service agreement with us, notify us in writing of the violation.  
10 Your written notice must state the violation and provide supporting  
11 documents or other evidence of the violation.

12 2. We have 3 business days to determine if we agree that we  
13 have violated the law and let you know of that determination.

14 3. If we agree that we have violated the law, we must return  
15 your check and you must return the cash received under the  
16 agreement. Additionally, for each violation, we must pay you  
17 restitution equal to 5 times the amount of the fee we charged you  
18 under the agreement but not less than \$15.00 or more than the face  
19 amount of your check. You may also pursue an action for your actual  
20 damages against us.

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

26 5. If you still believe we violated the law, you may file a  
27 written complaint including supporting documents or other evidence

1 with the ~~Office of Financial and Insurance Services~~. **DEPARTMENT OF**  
2 **INSURANCE AND FINANCIAL SERVICES**. The ~~Office~~-**DEPARTMENT** is required  
3 to investigate your complaint and has the authority to order us to  
4 pay you restitution if they agree that we violated the law. In  
5 addition, the ~~Office~~-**DEPARTMENT** can order us to pay civil fines or  
6 take away our right to do business. To do so, contact the ~~Office of~~  
7 ~~Financial and Insurance Services~~ **DEPARTMENT OF INSURANCE AND**  
8 **FINANCIAL SERVICES** toll-free at 1-877-999-6442."

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

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

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

15 (a) Charge interest under the agreement.

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

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

21 (d) Include a confession of judgment in the agreement.

22 (e) Except as provided in this act, charge or collect any  
23 other fees for a deferred presentment service transaction.

24 (5) A licensee shall not refuse to provide a deferred  
25 presentment service transaction to a customer solely because the  
26 customer has exercised his or her rights under this act.

27 (6) Each licensee shall post a sign, printed in bold faced,

1 36-point type, in a conspicuous location at each customer service  
2 window, station, or desk at each place of business, that states the  
3 following:

4 "Under Michigan law, you are entitled to receive the proceeds  
5 of this transaction in cash. If you request the proceeds in a check  
6 or money order, you may be charged additional check cashing or  
7 other processing fees by others for cashing the check or money  
8 order."

9 **(7) A DEFERRED PRESENTMENT SERVICE TRANSACTION THAT VIOLATES**  
10 **THIS SECTION IS VOID AND UNCOLLECTIBLE AS TO ANY PRINCIPAL, FEE, OR**  
11 **CHARGE.**

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

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

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

22 **(C) ENTER INTO A DEFERRED PRESENTMENT SERVICE TRANSACTION**  
23 **WITHOUT FIRST DETERMINING AND DOCUMENTING THAT THE CUSTOMER HAS A**  
24 **REASONABLE ABILITY TO REPAY THE LOAN. IN DETERMINING WHETHER THE**  
25 **CUSTOMER HAS A REASONABLE ABILITY TO REPAY THE DEFERRED PRESENTMENT**  
26 **SERVICE TRANSACTION, THE LICENSEE MUST, AT A MINIMUM, VERIFY THE**  
27 **CUSTOMER'S CURRENT AND ANTICIPATED INCOME AND EXPENSES, AND THE**

1 CUSTOMER'S CREDIT HISTORY. FOR PURPOSES OF THIS SUBDIVISION, A  
2 CUSTOMER DOES NOT HAVE THE REASONABLE ABILITY TO REPAY A DEFERRED  
3 PRESENTMENT SERVICE TRANSACTION IF PAYMENTS FOR THE PROPOSED  
4 DEFERRED PRESENTMENT SERVICE TRANSACTION CAUSE THE CUSTOMER TO HAVE  
5 A DEBT-TO-INCOME RATIO HIGHER THAN 41%. AS USED IN THIS  
6 SUBDIVISION:

7 (i) "DEBT-TO-INCOME RATIO" MEANS THE RATIO OF A CUSTOMER'S  
8 TOTAL MONTHLY DEBT OBLIGATIONS TO THE CUSTOMER'S GROSS MONTHLY  
9 INCOME.

10 (ii) "TOTAL MONTHLY DEBT OBLIGATIONS" CONSISTS OF THE SUM OF A  
11 CUSTOMER'S RENT OR MORTGAGE-RELATED OBLIGATIONS, ANY OTHER SECURED  
12 OR UNSECURED DEBT OBLIGATIONS, AND PAYMENTS FOR CHILD SUPPORT AND  
13 ALIMONY.

14 (D) MAKE, OFFER, ASSIST, ARRANGE, GUARANTEE, OR COLLECT A  
15 DEFERRED PRESENTMENT SERVICE TRANSACTION WITH FEES OR CHARGES THAT  
16 ARE GREATER THAN PERMITTED UNDER THIS ACT.

17 (E) ENGAGE IN ANY DEVICE OR SUBTERFUGE TO EVADE THE  
18 REQUIREMENTS OF THIS ACT.

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