DEFERRED PRESENTMENT SERVICE TRANSACTIONS ACT

Act 244 of 2005

AN ACT to regulate the business of providing deferred presentment service transactions; to require the licensing of providers of deferred presentment service transactions; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

The People of the State of Michigan enact:

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ARTICLE 1

487.2121 Short title.

Sec. 1.

This act shall be known and may be cited as the "deferred presentment service transactions act".

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2122 Definitions.

Sec. 2.

(1) As used in this act:

(a) "Applicant" means a person that is seeking a license to engage in the business of providing deferred presentment service transactions under this act.

(b) "Check" means a draft that is payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union. Check includes any negotiable instrument that represents evidence of an obligation to pay even if it is described on its face by another term.

(c) "Closed" in connection with a deferred presentment service transaction means that 1 of the following has occurred concerning each of the customer's checks that is the basis of the deferred presentment service transaction:

(i) The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash or payment from a debit card that meets the requirements of section 35(11).

(ii) The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.

(iii) The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.

(iv) The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.

(v) The check is collected by means of a repayment plan agreed on by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.

(vi) The check is collected by the licensee under section 35(9) and the licensee has evidence that the person has satisfied the obligation.

(d) "Commissioner" means the director or his or her authorized representative.

(e) "Customer" means an individual who inquires into the availability of or applies for a deferred presentment service transaction or a drawer who enters into a deferred presentment service transaction.

(f) "Database provider" means 1 of the following:

(i) A third party provider selected by the director under section 22 to operate the statewide database described in that section.

(ii) If the director has not selected a third party provider under section 22, the director.

(g) Subject to subsection (2), "deferred presentment service transaction" means a transaction between a licensee and a customer under which the licensee agrees to do all of the following:

(i) Pay to the customer an agreed-upon amount in exchange for a fee.

(ii) Hold a customer's check for a period of time before negotiation, redemption, or presentment of the checks.

(h) "Department" means the department of insurance and financial services.

(i) "Director" means the director of the department or his or her authorized representative.

(j) "Drawee" means a bank, savings bank, savings and loan association, credit union, or other person on which a check is drawn.

(k) "Drawer" means a customer who enters into a deferred presentment service transaction with a licensee.

(l) "Executive officer" means an officer or director of a licensee or any other individual who has the authority to participate in the direction, directly or indirectly, through 1 or more persons, or the management or policies of a licensee.

(m) "Financial licensing act" means this act or any of the financial licensing acts as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(n) "Licensee" means a person that is licensed to engage in the business of providing deferred presentment service transactions under this act.

(o) "Maturity date" means the date on which a drawer's check is to be redeemed, presented for payment, or entered into the check-clearing process in a deferred presentment service transaction.

(p) "Office" or "office of financial and insurance services" means the department.

(q) "Person" means an individual, partnership, association, corporation, limited liability company, or other legal entity except a governmental entity.

(r) "Redeem" means that the customer pays to the licensee an amount equal to the face amount of a 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, and the licensee returns the check to the customer.

(2) Deferred presentment service transaction does not include a delay in presentment of a loan repayment check, at the request of the borrower, by a person that is licensed or registered under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to 493.114, the money transmission services act, 2006 PA 250, MCL 487.1001 to 487.1047, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2016, Act 140, Eff. Aug. 24, 2016

ARTICLE 2

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487.2131 Business of providing deferred presentment service transactions; license required; scope of act; application process and timeline; bulletin, order, or rule.

Sec. 11.

(1) Subject to subsection (2), a person shall not engage in the business of providing deferred presentment service transactions after June 1, 2006 without a license under this act. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted.

(2) This act does not apply to 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.

(3) By January 1, 2006, the commissioner by administrative bulletin, order, or rule shall establish an application process and an application timeline for license applications under this act.

(4) A person may continue to engage in the business of providing deferred presentment service transactions in this state after June 1, 2006 and without a license until 1 of the following occurs:

(a) The person fails to meet its applications deadline.

(b) The commissioner acts on the person's complete application.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2132 Licensure requirements.

Sec. 12.

To obtain a license, an applicant shall satisfy all of the following requirements:

(a) Have and maintain net worth of at least $50,000.00 for each licensed location, subject to a maximum of $250,000.00 in required net worth for any 1 licensee, determined in accordance with generally accepted accounting principles.

(b) Demonstrate to the commissioner that the applicant has the financial responsibility, financial condition, business experience, character, and general fitness to reasonably warrant a belief that the applicant will conduct its business lawfully and fairly. In determining whether this subdivision is satisfied, and for the purpose of investigating compliance with this act, the commissioner may review any of the following:

(i) The relevant business records and the capital adequacy of the applicant.

(ii) The competence, experience, integrity, and financial ability of any person who is a member, partner, executive officer, or a shareholder with 10% or more interest in the applicant.

(iii) Any record regarding the applicant, or any person referred to in subparagraph (ii), of any criminal activity, fraud, or other act of personal dishonesty, any act, omission, or practice that constitutes a breach of a fiduciary duty, or any suspension, removal, or administrative action by any agency or department of the United States or any state.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2133 Application; writing; oath; form; information; fee.

Sec. 13.

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(1) An applicant shall submit an application for a license to the commissioner. Each application for a license shall be in writing and under oath, in a form prescribed by the commissioner, and shall include all of the following information:

(a) The name, street address, and telephone number of the business location within this state from which the applicant will offer deferred presentment service transactions, if available.

(b) The legal name, residence, street address, and telephone number and business address of the applicant and, if the applicant is not an individual, of each executive officer and each person who directly or indirectly owns or controls 10% or more of the ownership interest in the applicant.

(c) If the applicant will not operate a physical business location in this state or if in addition to the location described in subdivision (a) the applicant will make deferred presentment service transactions by other means, a detailed description of the manner in which deferred presentment service transactions will be offered to customers in this state.

(d) Any other information the commissioner considers necessary under this act.

(2) An applicant shall include an application fee in an amount determined by the commissioner with the application described in subsection (1).

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2134 License fees; disposition; surety bond.

Sec. 14.

(1) A licensee shall pay a license fee, in an amount determined by the commissioner under subsection (2), within 60 days of submitting its license application, and then annually.

(2) The commissioner shall annually establish a schedule of license fees based upon each licensee's business volume, number of locations, and any other business factors considered reasonable by the commissioner in order to generate funds sufficient to pay, but not to exceed, the office's reasonably anticipated costs of administering this act. A licensee shall pay the actual travel, lodging, and meal expenses incurred by office employees who travel out of state to examine the records of or investigate the licensee. An office employee who travels under this subsection shall comply with all travel regulations and rate schedules currently in effect for the reimbursement of expenses incurred by classified state employees in connection with official state business.

(3) Money received under this act shall be deposited in an interest bearing account in the state treasury and credited to the office to be used only for the operation of the office.

(4) In addition to the license fee required under subsection (1), except as provided in this subsection, a licensee shall furnish a $50,000.00 surety bond to secure the performance of its obligations, issued by a bonding company or insurance company authorized to do business in this state and in a form satisfactory to the commissioner. However, if 1 person owns 20% or more of the ownership interest in 2 or more licensees, the group of licensees having that common ownership is only obligated to furnish one $50,000.00 surety bond.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2135 Issuance of license upon investigation that requirements satisfied; posting copy of license.

Sec. 15.

(1) After the commissioner receives a completed license application, the commissioner shall investigate to determine whether the requirements of this act are satisfied. If the commissioner finds that the requirements of this act are satisfied, the commissioner shall issue to the applicant a license to engage in deferred presentment service transactions.

(2) A licensee shall post a copy of its license in a conspicuous location at the place of business of the licensee.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2136 Denial of application or failure to act within certain time period; hearing.

Sec. 16.

(1) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(2) If the commissioner denies an application, or if the commissioner fails to act on an application within 60 days after the filing of a properly completed application, or within a longer time period agreed to by the commissioner and the applicant, the applicant may submit a written demand to the commissioner for a hearing before the commissioner on the question of whether the commissioner should grant a license. If a hearing is held, the commissioner shall reconsider the application, and issue a written order granting or denying the application after the hearing.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2137 License not transferable or assignable; change in control; duties of licensee; request for information or documentation; "control" defined.

Sec. 17.

(1) A license issued under this article is not transferable or assignable.

(2) The prior written approval of the commissioner is required for the continued operation of a licensee if there is a change in control of that licensee. The commissioner may require information considered necessary to determine whether a new application is required. The person that requests the approval shall pay the cost incurred by the commissioner in investigating the change of control request.

(3) A licensee shall do all of the following:

(a) At least 15 days before providing deferred presentment service transactions at any new location or under section 13(1)(c), provide written notice to the commissioner on a form prescribed by the commissioner of the name, street address, and telephone number of the new location or the detailed description required in section 13(1)(c).

(b) At least 15 days before discontinuing deferred presentment service transactions at any existing location or under section 13(1)(c), provide written notice to the commissioner on a form prescribed by the commissioner of the name, street address, and telephone number of the discontinued location or the detailed description of the services required in section 13(1)(c).

(4) A licensee shall comply with any request for information or documentation made by the commissioner under this act and shall comply with any reasonable written time deadlines imposed by the commissioner on that request.

(5) As used in this section, "control" means 1 of the following:

(a) For a corporation, direct or indirect ownership of, or the right to control, 10% or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy.

(b) For any entity other than a corporation, the ability to change the principals of the organization, whether active or passive.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2138 Report describing certain event.

Sec. 18.

The commissioner may determine and identify by order or rule events that may occur to a licensee that require the licensee to file a written report with the commissioner describing the event and its expected impact on the activities of the licensee, on a form prescribed by the commissioner for the event.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2139 Expiration and renewal of license.

Sec. 19.

(1) A license issued under this article shall expire on September 30 of each year unless earlier suspended, surrendered, or revoked under this act. A licensee may renew a license for a 12-month period by submitting a complete application that shows continued compliance with this act, in a form prescribed by the commissioner, and paying the license renewal fee to the commissioner. The licensee shall submit a renewal application under this subsection on or before August 1 and the commissioner shall proceed in the manner described in sections 15(1) and 16.

(2) Before October 1, 2006, the commissioner may issue a license to an applicant under this article that is for a period longer than 12 months and that expires on September 30, 2007.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2140 Enforcement and implementation of act; issuance of orders and rules; correction of inaccurate information; duties of licensee if database not operational; examination of business, books, and records.

Sec. 20.

(1) The commissioner may issue orders and rules that he or she considers necessary to enforce and implement this act. The commissioner shall make a copy of any order or rule issued under this subsection available to each licensee within a reasonable time after issuance.

(2) If any information previously submitted to the commissioner by a licensee under this act is no longer accurate, the licensee shall promptly file in writing with the commissioner a correction of the information. If requested by the commissioner, the licensee shall provide a written report of its business operations, including information described in subsection (3), within a reasonable time after the commissioner's request.

(3) If the commissioner has not implemented a database under section 22 or the database described in that section is not fully operational, as determined by the commissioner, a licensee shall do all of the following:

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(a) Provide an annual written report of its business operations, including business volume and other information on the business of providing deferred presentment service transactions.

(b) Every February 1, May 1, August 1, and November 1, report to the commissioner on a form prescribed by the commissioner all of the following:

(i) The number of customers who during the preceding calendar quarter notified the licensee of a violation of this act.

(ii) A breakdown of the number of times the licensee agreed that a violation of this act occurred and the number of times that the licensee did not agree that a violation occurred.

(iii) If the licensee agreed that the violation occurred, the amount of restitution that was paid to any customer under this act.

(iv) Any other information the commissioner considers necessary under this act.

(4) To assure compliance with this act, the commissioner may examine the relevant business, books, and records of any licensee.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2141 Books, accounts, and records; preservation.

Sec. 21.

Each licensee shall keep and use in its business any books, accounts, and records the commissioner requires under this act. A licensee shall preserve the books, accounts, and records for at least 3 years, unless applicable state or federal law concerning record retention requires a longer retention period.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2142 Development, implementation, and maintenance of database.

Sec. 22.

(1) On or before December 31, 2006, the commissioner shall develop, implement, and maintain a statewide, common database that has real-time access through an internet connection, is accessible at all time to licensees, and to the commissioner for purposes of subsections (10) and (11), and meets the requirements of this section. Before the commissioner determines that the database is fully operational for the purposes of this act, for at least 30 days the database provider shall operate a pilot program of the database to test all of the processes of the database. The database provider shall make the pilot program available to all applicants and licensees. During the 30-day period that begins on the date the commissioner determines that the database is fully operational, the commissioner shall not approve the imposition of any database verification fees under section 34(5).

(2) The commissioner may operate the database described in subsection (1) or may select and contract with a single third party provider to operate the database. If the commissioner contracts with a third party provider for the operation of the database, all of the following apply:

(a) The commissioner shall ensure that the third party provider selected as the database provider operates the database pursuant to the provisions of this act.

(b) The commissioner shall consider cost of service and ability to meet all the requirements of this section in selecting a third party provider as the database provider.

(c) In selecting a third party provider to act as the database provider, the commissioner shall give strong consideration to the third party provider's ability to prevent fraud, abuse, and other

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unlawful activity associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this act.

(d) The third party provider shall only use the data collected under this act as prescribed in this act and the contract with the office and for no other purpose.

(e) If the third party provider violates this section, the commissioner shall terminate the contract and the third party provider is barred from becoming a party to any other state contracts.

(f) A person injured by the third party provider's violation of this act may maintain a civil cause of action against the third party provider and may recover actual damages plus reasonable attorney fees.

(3) The database described in subsection (1) shall allow a licensee accessing the database to do all of the following:

(a) Verify whether a customer has any open deferred presentment service transactions with any licensee that have not been closed.

(b) Provide information necessary to ensure licensee compliance with any requirements imposed by the federal office of foreign asset control under federal law.

(c) Track and monitor the number of customers who notify a licensee of violations of this act, the number of times a licensee agreed that a violation occurred, the number of times that a licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the commissioner requires by rule.

(d) Determine whether a customer is eligible for repayment of the deferred presentment service transaction in installments as provided in section 35(2) and notify the licensee of that eligibility.

(4) While operating the database, the database provider shall do all of the following:

(a) 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.

(b) Comply with any applicable provisions of the social security number privacy act, 2004 PA 454, MCL 445.81 to 445.87.

(c) Comply with any applicable provisions of the identity theft protection act, 2004 PA 452, MCL 445.61 to 445.77.

(d) Provide accurate and secure receipt, transmission, and storage of customer data.

(e) Meet the requirements of this act.

(5) When the database provider receives notification that a deferred presentment service transaction is closed under section 34, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the commissioner or database provider receives notification.

(6) The database provider shall automatically designate a deferred presentment service transaction as closed in the database 5 days after the transaction maturity date unless a licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's check or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's check is being returned to the licensee for insufficient funds, a closed account, or a stop payment order, or any other factors determined by the commissioner. If a licensee reports the status of a transaction as open in a timely manner, the transaction remains an open transaction until it is closed under section 34 and the database provider is notified that the transaction is closed under that section.

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(7) If a licensee stops providing deferred presentment service transactions, the database provider shall designate all open transactions with that licensee as closed in the database 60 days after the date the licensee stops offering deferred presentment service transactions, unless the licensee reports to the database provider before the expiration of the 60-day period which of its transactions remain open and the specific reason each transaction remains open. The licensee shall also provide to the commissioner a reasonably acceptable plan that outlines how the licensee will continue to update the database after it stops offering deferred presentment service transactions. The commissioner shall promptly approve or disapprove the plan and immediately notify the licensee of his or her decision. If the plan is disapproved, the licensee may submit a new plan or may submit a modified plan for the licensee to follow. If at any time the commissioner reasonably determines that a licensee that has stopped offering deferred presentment service transactions is not updating the database in accordance with its approved plan, the commissioner shall immediately close or instruct the database provider to immediately close all remaining open transactions of that licensee.

(8) The response to an inquiry to the database provider by a licensee shall only state that a person is eligible or ineligible for a new deferred presentment service transaction and describe the reason for that determination. 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, 1976 PA 442, MCL 15.231 to 15.246, is not subject to discovery, subpoena, or other compulsory process except in an action under section 53, and shall not be disclosed to any person other than the commissioner.

(9) The database provider may charge licensees a verification fee for access to the database, in amounts approved by the commissioner under section 34(5).

(10) The commissioner may access the database provided under subsection (1) only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person. The commissioner and any employees of the commissioner, the office, or this state shall not obtain or access a customer's social security number, driver license number, or other state-issued identification number in the database except as provided in this subsection. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both, and if convicted, an individual who violates this subsection shall be dismissed from office or discharged from employment.

(11) The commissioner shall investigate violations of and enforce this section. The commissioner shall not delegate its responsibilities under this subsection to any third party provider.

(12) The commissioner shall do all of the following:

(a) Require by rule that data are retained in the database only as required to ensure licensee compliance with this act.

(b) Require by rule that data in the database concerning a customer transaction are archived within 365 days after the customer transaction is closed unless needed for a pending enforcement action.

(c) Require by rule that any identifying customer information is deleted from the database when data are archived.

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(d) Require by rule that data in the database concerning a customer transaction are deleted from the database 3 years after the customer transaction is closed or any enforcement action pending 3 years after the customer transaction is closed is completed, whichever is later.

(13) The commissioner may maintain access to data archived under subsection (12) for future legislative or policy review.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

ARTICLE 3

487.2151 Notice; posting; form.

Sec. 31.

(1) A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction the following notice in at least 36-point type:

"1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into a transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. If you enter into a transaction with us, we must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of a transaction to you by check, by money order, or in cash, as you request.

6. State law entitles you to the right to cancel an agreement and receive a refund of the fee. To do this, if you enter into a transaction today, you must notify us and return the money you receive by the time this office closes tomorrow or on our next business day if we are not open tomorrow.

7. State law prohibits us from renewing an agreement for a fee. You have to pay any other agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on an agreement.

9. 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 Office of Financial and Insurance Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442.".

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(2) A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction a schedule of all fees and charges imposed for deferred presentment service transactions in at least 36-point type.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2152 Written deferred presentment service agreement; signatures; provisions; arbitration.

Sec. 32.

(1) A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee.

(2) A licensee shall include all of the following in the written deferred presentment service agreement:

(a) The name of the customer.

(b) The name, street address, facsimile number, and telephone number of the licensee.

(c) The signature and printed or typed name of the individual who enters into the deferred presentment service agreement on behalf of the licensee.

(d) The date of the transaction.

(e) The transaction number assigned by the database provider, if any.

(f) The amount of the check presented to the licensee by the customer.

(g) An itemization of the fees to be paid by the customer.

(h) A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.

(i) A clear description of the customer's payment obligation under the agreement.

(j) 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 deferred presentment service transaction.

(k) The maturity date.

(l) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.

(m) A description of the process a drawer may use to file a complaint against the licensee.

(n) The following notice in at least 12-point type:

"1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. We must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request.

6. 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.

7. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on this agreement.

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9. 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 Office of Financial and Insurance Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442.".

(3) A licensee may include an arbitration provision in a deferred presentment service transaction agreement if the arbitration provision meets all of the following:

(a) Provides that the licensee agrees to pay any costs of the arbitration.

(b) Provides that an arbitration proceeding shall be held within 10 miles of the drawer's address contained in the deferred presentment service transaction agreement unless the drawer consents to another location after an arbitrable dispute occurs.

(c) Provides that an arbitration proceeding shall be conducted by 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.

(d) Requires that the arbitrator shall provide the drawer with all the substantive rights that the drawer would have if the drawer's claim were asserted in a court proceeding and shall not limit any other claim or defense the drawer has concerning the claim.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2153 Transaction; limitation on amount; service fee; conditions prohibiting entering transaction; duties of licensee; prohibited conduct; sign.

Sec. 33.

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

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

(i) Fifteen percent of the first $100.00 of the deferred presentment service transaction.

(ii) Fourteen percent of the second $100.00 of the deferred presentment service transaction.

(iii) Thirteen percent of the third $100.00 of the deferred presentment service transaction.

(iv) Twelve percent of the fourth $100.00 of the deferred presentment service transaction.

(v) Eleven percent of the fifth $100.00 of the deferred presentment service transaction.

(vi) Eleven percent of the sixth $100.00 of the deferred presentment service transaction.

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

(2) A licensee shall not enter 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 1 open deferred presentment service transaction with any other licensee, and shall

verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee by complying with section 34.

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

(a) Before the drawer signs the agreement, provide the following notice to the drawer, in a document separate from the agreement and in at least 12-point type:

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

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

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

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

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

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

5. If you still believe we violated the law, you may file a written complaint including supporting documents or other evidence with the Office of Financial and Insurance Services. The Office is required to investigate your complaint and has the authority to order us to pay you restitution if they agree that we violated the law. In addition, the Office can order us to pay civil fines or take away our right to do business. To do so, contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442.".

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

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

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

(a) Charge interest under the agreement.

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

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

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

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

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

(6) Each licensee shall post a sign, printed in bold faced, 36-point type, in a conspicuous location at each customer service window, station, or desk at each place of business, that states the following:

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2154 Customer eligibility; verification; use of database; fee; submission of information to database; closure of transaction.

Sec. 34.

(1) A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing 1 of the following, as applicable:

(a) If the commissioner has not implemented a database under section 22 or the database described in section 22 is not fully operational, as determined by the commissioner, verifying that the customer does not have an open deferred presentment service transaction with the licensee. The licensee shall 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 subdivision.

(b) If the commissioner has implemented a database under section 22 and the database described in that section is fully operational, as determined by the commissioner, 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 1 open deferred presentment service transaction that has not been fully repaid with any other licensee.

(2) If the commissioner has not implemented a database under section 22; the database described in that section is not fully operational, as determined by the commissioner; or the licensee is unable to access the database and the alternative mechanism for verification described in subsection (3) is also unavailable, as determined by the commissioner, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 12-point type:

"I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE.".

(3) If a licensee is unable to access the database described in section 22 due to technical difficulties occurring with the database, as determined by the commissioner, the licensee shall utilize the process established in section 22(4) to verify transactions.

(4) The commissioner may use the database to administer and enforce this act.

(5) If approved by the commissioner, the database provider may impose a database verification fee for the actual costs of entering, accessing, and verifying data in the database described in section 22 to verify that a customer does not have any other open deferred presentment service transactions with the licensee and does not have more than 1 open deferred presentment service transaction with any other licensees. A database verification fee is payable to the database provider in a manner prescribed by the commissioner. A licensee may charge a customer all or part of the database verification fee under section 33(1)(b) but may not charge a customer any other fee except as authorized in section 33(1) or 35(2).

(6) A licensee may rely on the information contained in the database described in section 22 as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

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(7) Before entering into a deferred presentment service transaction, a licensee shall submit to the database provider the customer's name and address, the customer's social security number, driver license number, or other state-issued identification number, the amount of the transaction, the customer's check number, the date of the transaction, the maturity date of the transaction, and any other information reasonably required by the commissioner or the database provider, in a format reasonably required by the commissioner.

(8) When a deferred presentment service transaction is closed, the licensee shall designate the transaction as closed and immediately notify the database provider, but in no event after 11:59 p.m. on the day the transaction is closed. The commissioner shall assess an administrative fine of $100.00 for each day that the licensee fails to notify the database provider that the transaction has been closed. It is a defense to the assessment of an administrative fine that notifying the database provider was not possible due to temporary technical problems with the database or to circumstances beyond the licensee's control.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2155 Renewal or extension of agreement; repayment option; conditions; terms; notice; satisfaction of drawer's obligation; deposit of check held in connection with transaction; return of check; payment by debit card; "telephone-initiated entry" defined..

Sec. 35.

(1) A licensee shall not renew 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 who extends an agreement under this subsection shall not create a balance owed above the amount owed on the original agreement.

(2) If a drawer enters into 8 deferred presentment service transactions with any licensee in any 12-month period, the licensee shall provide the drawer an option to repay that eighth transaction and each additional transaction in that 12-month period pursuant to a written repayment plan subject to the following terms:

(a) The drawer shall request the repayment plan, either orally or in writing, within 30 days after the maturity date of the deferred presentment service transaction.

(b) The drawer shall repay the transaction in 3 equal installments with 1 installment due on each of the next 3 dates on which the drawer receives regular wages or compensation from an employer or other regular source of income, pursuant to a written repayment plan agreement.

(c) The drawer shall pay a fee to the licensee for administration of the repayment plan. The initial amount of the fee is $15.00. Beginning March 1, 2011, and by March 1 of every fifth year after March 1, 2011, the licensee may adjust the fee by an amount determined by the director to reflect the cumulative percentage change in the Detroit consumer price index over the preceding 5 calendar years. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the Bureau of Labor Statistics of the United States Department of Labor.

(d) The drawer shall agree not to enter into any additional deferred presentment transactions during the repayment plan term.

(3) A licensee shall advise a customer of the repayment option described in subsection (2) at the time he or she is eligible. If a customer believes he or she has been illegally denied the repayment option under this section, he or she is entitled to contact the department toll-free at 1-877-999-6442. If a customer has entered into 8 deferred presentment service transactions in any 12-month period, the database provider shall notify the licensee when the licensee submits

the required customer information to the database for that customer that the customer is entitled to a repayment plan under this section. The database provider shall instruct the licensee to provide the customer with the following notice, in a document separate from the deferred presentment transaction agreement and in at least 12-point type:

"If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment transactions in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the eighth deferred presentment transaction in the 12-month period. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the department of insurance and financial services toll-free at 1-877-999-6442.".

(4) During the term of a repayment plan by a drawer under this section, the database provider shall notify the licensee at the time the licensee submits the required customer information to the database for that customer that the customer is presently in a repayment plan under this section with 1 or more other licensees and the licensee shall not enter into a deferred presentment transaction with that individual.

(5) A licensee shall not present a check for payment before the maturity date or during the term of the repayment plan. In addition to the remedies and penalties under this act, a licensee that presents a check for payment before the maturity date or during the term of the repayment plan is liable for all expenses and damages caused to the drawer and the drawee as a result of the violation. If a drawer has not requested a repayment plan on or before the maturity date, the licensee may redeem, present for payment, or enter the check into the check-clearing process under the terms of the original deferred presentment service transaction agreement.

(6) A drawer satisfies his or her obligation under a deferred presentment service agreement when the check the licensee is holding is paid by the drawee or is redeemed by the drawer by paying to the licensee an amount equal to the full amount of the check.

(7) Unless the drawer has entered into a written repayment plan under subsection (2), a licensee shall deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check is not redeemed in the manner described in section 2(1)(c)(i), or exchanged in the manner described in section 2(1)(c)(ii), on or before the maturity date.

(8) A licensee shall deposit a check held in connection with a deferred presentment service transaction on any repayment plan installment date described in subsection (2) if the drawer fails to make the installment payment.

(9) If the drawer has an outstanding deferred presentment service transaction in which a check held in connection with the transaction was deposited and returned unpaid, the licensee may collect the check by means of 1 or more telephone-initiated entries if all of the following are met:

(a) The drawer agrees to each telephone-initiated entry.

(b) Each telephone-initiated entry is a single, date-specific payment and does not authorize more than 1 payment or periodic payments.

(c) The licensee does not charge the drawer a fee in connection with the telephone-initiated entry or entries.

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(10) If the payment to satisfy an outstanding deferred presentment transaction obligation is made in person, the licensee shall immediately return the check held in connection with the deferred presentment service transaction to the drawer. If the payment to satisfy the obligation is not made in person, the licensee shall return the check to the drawer by mailing it to the address listed on the deferred presentment transaction service agreement within 1 business day after the licensee obtains evidence that the drawer has satisfied the obligation.

(11) A licensee shall only accept a payment by debit card to redeem a check the licensee is holding if the drawer certifies to the licensee that the debit card draws funds from the same account on which the check is drawn.

(12) As used in this section, "telephone-initiated entry" means a debit transaction to a drawer's account that is processed through an automated clearing house, as that term is defined in section 1 of 2002 PA 738, MCL 124.301, and initiated pursuant to an authorization obtained from the drawer orally by telephone.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2016, Act 141, Eff. Aug. 24, 2016

487.2156 Violation of act.

Sec. 36.

(1) No later than the close of business on the day he or she signed a deferred presentment service agreement, a drawer who believes that a licensee has violated this act may notify the licensee in person that the licensee has violated the act. The drawer shall identify the nature of the violation and provide documentary or other evidence of the violation at that time.

(2) At any time before signing a new deferred presentment service agreement with a licensee, a drawer who believes that the licensee has violated this act in connection with a deferred presentment service transaction may deliver to the licensee a notice in writing that the licensee has violated the act. The drawer shall identify the nature of the violation and include documentary or other evidence of the violation in the notice.

(3) No later than the close of the third business day after receipt of a notice under subsection (1) or (2), the licensee shall determine if it has violated the law as alleged in the notice.

(4) If the licensee determines that it has violated the law, it shall return to the drawer the check it received in the deferred presentment service transaction and any service fee paid by the drawer to the licensee. The drawer shall deliver to the licensee cash or a cash equivalent in an amount equal to the amount of cash the drawer received in the transaction. In addition, the licensee shall make restitution to the drawer for each violation in an amount equal to 5 times the amount of the fee charged in the deferred presentment service transaction, but not less than $15.00 or more than the face amount of the drawer's check. A licensee that makes restitution for a violation under this subsection may be subject to a civil action under section 53 with respect to that violation. A licensee that makes restitution for a violation under this subsection shall immediately notify the commissioner of that action. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner.

(5) If the licensee determines that it did not violate the law, the licensee shall immediately notify the commissioner and the drawer of that determination. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner. The licensee shall include in the notification to the drawer that the drawer has the right to file a written complaint with the office if he or she does not agree with the determination that the licensee

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did not violate the law. The licensee shall include in the notice detailed information on how the drawer can contact the office to obtain a complaint form.

(6) A drawer who receives a notice of determination by the licensee that it did not violate the law may file a written complaint with the office on a form prescribed by the commissioner. The drawer shall include with the complaint documentary or other evidence of the violation.

(7) If the licensee has otherwise complied with this section and has determined that it did not violate the law, the licensee may present the drawer's check for payment on or after the maturity date. If a check presented for payment under this subsection is not honored, and the licensee is not in violation of this act in connection with the deferred presentment service transaction, the licensee may initiate any lawful collection effort.

(8) The commissioner shall promptly investigate a complaint filed by a drawer under this section. If after investigating the drawer's complaint, the commissioner concludes that the licensee violated this act, the commissioner may order the licensee to make restitution to the drawer in an amount equal to 3 times the amount provided for in subsection (4), but not less than $45.00 or more than 3 times the face amount of the drawer's check. A licensee ordered to pay restitution under this subsection is also subject to any other applicable penalties and remedies available under this act for the violation.

(9) A licensee shall enter information regarding alleged violations and determinations under this section into the database as required by the commissioner.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2157 Rescission of agreement; redemption of check by drawer.

Sec. 37.

(1) A drawer may rescind a deferred presentment service agreement without cost to the drawer and for any reason if the drawer, not later than the close of business on the business day following the date of the deferred presentment service transaction, either delivers to the licensee cash in an amount equal to the amount the drawer received if the drawer received cash in the transaction or returns to the licensee the licensee's check the drawer received if the drawer received a check from the licensee in the transaction. The licensee shall return to the drawer the check received in the transaction and any service fee paid by the drawer to the licensee. A drawer who rescinds an agreement under this section is not eligible for restitution under section 36 with regard to the rescinded agreement.

(2) A drawer may redeem a check from the licensee holding the check in a deferred presentment service transaction at any time before the maturity date. A licensee shall return the check to the drawer upon receipt of cash or its equivalent in the full amount of the check. A licensee shall not contract for or collect a charge for accepting partial payments from the customer if the full amount is paid by the maturity date.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2158 Endorsement of check; returned check charge; liability for dishonored check.

Sec. 38.

(1) A licensee shall endorse a check given to it by a drawer with the actual name under which the licensee is doing business before the licensee negotiates or presents the check for payment.

(2) A licensee may contract for and collect a returned check charge that does not exceed the maximum returned check charge determined under subsection (3) if the drawer's check that the licensee is holding in a deferred presentment service transaction is returned by the drawee due to insufficient funds, a closed account, or a stop payment order. The licensee may only contract for and collect 1 returned check charge under this subsection in a transaction with a customer. In addition to the charge authorized by this section, a licensee may exercise any other remedy available under any law applicable to the return of a check because of a closed account or a stop payment order.

(3) The initial maximum amount of a returned check charge described in subsection (2) is $25.00. Beginning March 1, 2011, and by March 1 of every fifth year after March 1, 2011, the licensee may adjust the maximum returned check charge by an amount determined by the commissioner to reflect the cumulative percentage change in the Detroit consumer price index over the preceding 5 calendar years. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(4) A drawer is not subject to any criminal penalty for entering into a deferred presentment service transaction and is not subject to any criminal penalty in the event the drawer's check is dishonored.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2159 Agreements; maintenance; availability for examination; rejected applications.

Sec. 39.

(1) A licensee shall maintain each deferred presentment service agreement until the expiration of 3 years after the date the deferred presentment service agreement is satisfied and make available for examination by the commissioner any deferred presentment service agreements and all related documents in its possession or control including, but not limited to, any applications, credit reports, employment verifications, or loan disclosure statements.

(2) A licensee shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a deferred presentment service transaction for any period of time required by law.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2160 Prohibited conduct.

Sec. 40.

A licensee shall not do any of the following:

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

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

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

ARTICLE 4

487.2165 Customer complaint; filing; investigation or examination by commissioner; subpoena; noncompliance.

Sec. 45.

(1) A customer may file a written complaint with the office on a form prescribed by the commissioner regarding a licensee. The customer shall include with the complaint documentary or other evidence of the violation or activities of the licensee. The commissioner shall investigate a complaint filed by a customer under this subsection.

(2) The commissioner may investigate or conduct examinations of a licensee and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this 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 this state.

(3) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in any manner over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths to any person whose testimony is required. If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the commissioner may petition the circuit court for Ingham county to issue an order requiring the person to attend, give testimony, or produce evidence.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

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487.2166 Cease and desist order.

Sec. 46.

(1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate this act, state or federal law, or an applicable rule or regulation, the commissioner may serve a notice of intention to issue a cease and desist order. A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place for a hearing at which the commissioner will determine whether to issue an order to cease and desist against the licensee.

(2) A licensee that fails to appear at a hearing under subsection (1) consents to the issuance of a cease and desist order. If a licensee consents, or upon the record made at the hearing the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its executive officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) Except to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order is effective on the date of service. A cease and desist order issued with the consent of the licensee is effective at the time specified in the order and remains effective and enforceable as provided in the order.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2167 Suspension, revocation, or termination of license.

Sec. 47.

(1) The commissioner may, after notice and hearing, suspend or revoke a license if the commissioner finds that the licensee has knowingly or through lack of due care done any of the following:

(a) Failed to pay the annual license fee, an examination fee, or any other fee imposed by the commissioner under this act.

(b) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.

(c) Violated this act or any rule or order issued under this act or violated any other law in the course of the licensee's dealings as a licensee.

(d) Made a false statement in the application for the license, failed to give a true reply to a question in the application, or failed to reply to a request of the commissioner authorized in this act.

(e) Demonstrated incompetency or untrustworthiness to act as a licensee.

(f) Engaged in a pattern or practice that poses a threat of financial loss or threat to the public welfare.

(2) If the reason for revocation or suspension of a licensee's license at any 1 location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(3) A notice served under this section shall contain a statement of the facts constituting the violation or pattern of practice and shall fix a time and place at which the commissioner will hold a hearing to determine whether the commissioner should issue an order to suspend or terminate 1 or more licenses of the licensee.

(4) If a licensee fails to appear at a hearing under subsection (1), the licensee consents to the issuance of the order to suspend or terminate 1 or more licenses of the licensee. If a licensee consents, or upon the record made at the hearing the commissioner finds that the pattern of practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order suspending or terminating 1 or more licenses of the licensee.

(5) Except to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, an order suspending or terminating 1 or more licenses of the licensee is effective on the date of service. An order suspending or terminating 1 or more licenses of the licensee issued with the consent of the licensee is effective at the time specified in the order and remains effective and enforceable as provided in the order.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2168 Violations; civil fines.

Sec. 48.

(1) If the commissioner finds that a person has violated this act, state or federal law, or an applicable rule or regulation, the commissioner 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 commissioner finds that a person has violated this act and that the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the person to pay a civil fine of not less than $5,000.00 or more than $50,000.00 for each violation. The commissioner may also order the person to pay the costs of the investigation.

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(2) A civil fine assessed under subsection (1) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. In determining the amount of a fine, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee to ensure that the violation will not be repeated, and the record of the licensee in the complying with this act.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2169 Fraud.

Sec. 49.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or an executive officer of a licensee under this act. As used in this subsection, "fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing on a date within 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or from being employed by, an agent of, or an executive officer of any licensee under this act.

(4) An order issued under subsection (2) or (3) is effective when served on a person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or executive officer. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to customers, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or an executive officer of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the commissioner completes the review required under this section, and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or an executive officer of any licensee under this act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

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(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or executive officer.

(10) Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that includes findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the commissioner's order.

(13) The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any current or former executive officer or agent who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than $5,000.00 or imprisonment for not more than 1 year, or both.

(15) An executive officer who is subject to an order issued under this section and who meets all of the following requirements is not in violation of the order:

(a) He or she does not in any manner, directly or indirectly, participate in the control or management of a licensee after the date the order is issued.

(b) He or she transfers any interest he or she owns in the licensee to an unrelated third party within 6 months after the date the order is final.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

CAUTION! This document is from an archive and may contain outdated information.

487.2170 Hearing.

Sec. 50.

(1) A licensee who is ordered to cease and desist, whose license is suspended or terminated, or who is ordered to pay a fine under this act is entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order.

(2) Any administrative proceedings under this act are subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2171 Rules; report.

Sec. 51.

(1) The director may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to enforce and administer this act.

(2) By October 31, 2025, and by each October 31 thereafter through October 31, 2031, the director shall submit a report to the standing committees of the senate and house of

representatives concerned with banking and financial services issues that includes the following information:

(a) The number of persons engaged in the business of providing deferred presentment service transactions in this state during the immediately preceding calendar year.

(b) A general report on the business of providing deferred presentment service transactions in this state during the immediately preceding calendar year. The report must include information about the number of licensees, the number of customers, and the number and amount of transactions, reported in the following format:

(i) A summary of the deferred presentment service transaction program fees received by the department.

(ii) Statewide statistics concerning transaction volumes by month, transaction amounts, fees, and averages, active license locations, the total number of customers, and drawer usage of repayment plans.

(iii) Statistics, reported by county or zip code, concerning provider locations, transaction volumes, total amount of advances, total fees for advances, average advance amounts, average advance fees, the total number of repeat drawers, and the total number of licensee locations.

(c) The name and street address of each licensee in this state during the immediately preceding calendar year.

(d) The number of complaints filed with the department against licensees and nonlicensees arising from transactions that took place in this state for the immediately preceding calendar year.

(e) Any additional information that the director considers relevant.

(3) Beginning October 31, 2025, and on October 31 of each year thereafter through October 31, 2031, the department shall publish on its website the report described in subsection (2).

CAUTION! This document is from an archive and may contain outdated information

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2024, Act 46, Eff. Apr. 2, 2025

487.2172 Person providing services before effective date of act; compliance.

Sec. 52.

A person who provided deferred presentment service transactions in this state before the effective date of this act is considered to have complied with applicable state law if the person provided those transactions in substantial conformity with the rulings and interpretive statements then in effect that were issued by the office or its predecessor agency.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2173 Civil cause of action; damages.

Sec. 53.

A person injured by a licensee's violation of this act may 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 each deferred presentment service transaction that is found to violate this act, plus reasonable attorney fees.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005