

SENATE BILL No. 21

January 21, 2003, Introduced by Senators SCOTT, LELAND, BRATER, BARCIA, BASHAM, JACOBS, EMERSON, CLARK-COLEMAN, SCHAUER, CHERRY, GOSCHKA and JOHNSON and referred to the Committee on Banking and Financial Institutions.

A bill to regulate deferred deposit loans for issued checks; To provide for licensing and fees; to prescribe the powers and duties of certain state agencies and officials; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "deferred deposit loan act".

3 Sec. 2. As used in this act:

4 (a) "Applicant" means a person seeking a license under this
5 act.

6 (b) "Check" means a personal check signed by the issuer and
7 made payable to a deferred deposit loan licensee.

8 (c) "Commissioner" means the commissioner of the office of
9 financial and insurance services in the department of consumer
10 and industry services.

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1 (d) "Deferred deposit loan" means a transaction under a
2 written agreement between a licensee and the issuer of a check in
3 which the licensee, for a fee, service charge, or other
4 consideration, accepts a check dated on the date it was written
5 and agrees to hold it for a period of days before deposit or
6 presentment, or accepts a check dated subsequent to the date it
7 was written, and agrees to hold the check for deposit until the
8 date written on the check.

9 (e) "Licensee" means a person licensed by the commissioner
10 under this act.

11 (f) "Office" means the office of financial and insurance
12 services.

13 (g) "Person" means an individual, partnership, association,
14 corporation, limited liability company, or other legal entity
15 except a governmental agency.

16 Sec. 3. (1) Except as provided in section 4, a person shall
17 not engage in the business of providing deferred deposit loans
18 for consideration without first obtaining a license under this
19 act.

20 (2) The commissioner shall maintain a list of licensees,
21 which shall be available to interested persons and the public.
22 The commissioner shall create a toll-free telephone number
23 through which a person may obtain information about licensees and
24 the complaint process.

25 (3) The commissioner shall establish a complaint process
26 through which an aggrieved person or any member of the public may
27 file a complaint against a licensee or nonlicensee who violates

1 this act. The commissioner shall hold hearings upon the request
2 of a party to the complaint, make findings of fact, and
3 conclusions of law. The commissioner may issue cease and desist
4 orders, refer the matter to the appropriate law enforcement
5 agency for prosecution under this act, or suspend or revoke a
6 license granted under this act.

7 Sec. 4. (1) Except as provided in subsection (3), this act
8 does not apply to the cashing of checks by any of the following:

9 (a) A state or national chartered bank or a state or federal
10 chartered credit union, savings and loan association, or savings
11 bank.

12 (b) A department or agency of a state or the United States.

13 (c) A foreign bank agency, as defined in section 1202 of the
14 banking code of 1999, 1999 PA 276, MCL 487.11202.

15 (2) This act does not apply to the receipt of money by an
16 incorporated telegraph company at an office of the company for
17 immediate transmission by telegraph.

18 (3) To the extent that a bank, savings and loan association,
19 savings bank, credit union, or other state or federally regulated
20 financial institution is exempt by other state or federal laws
21 from this act regarding limitations on interest and rates, all
22 other provisions of this act apply except the requirement of
23 licensing.

24 Sec. 5. (1) A person seeking a license to engage in the
25 business of providing deferred deposit loans in this state shall
26 file an application with the commissioner in writing and under
27 oath that includes all of the following:

1 (a) The name and exact address of the applicant and the name
2 and address of 1 of the following:

3 (i) If the applicant is a corporation, its officers and
4 directors.

5 (ii) If the applicant is an association, its officers and
6 directors.

7 (iii) If the applicant is a partnership, its partners.

8 (iv) If the applicant is a limited liability company, either
9 its manager or managers if managed by a manager or managers, or
10 its members.

11 (v) If the applicant is any other legal entity, its manager
12 or other person designated to control the operation of that legal
13 entity.

14 (b) A copy of a certificate of an assumed name, if
15 applicable.

16 (c) One of the following, as applicable:

17 (i) If the applicant is a corporation, a copy of the articles
18 of incorporation and bylaws.

19 (ii) If the applicant is a partnership, a copy of any
20 partnership agreement and partnership certificate.

21 (iii) If the applicant is a limited liability company, a copy
22 of the articles of organization and operating agreement.

23 (iv) If the applicant is an association, a copy of any
24 organizational documents of the association.

25 (2) At the time of filing an application, an applicant shall
26 do all of the following:

27 (a) Pay to the office a nonrefundable license fee of \$500.00

1 for 1 business location, and \$250.00 for each additional business
2 location.

3 (b) Furnish financial statements to the office, in a form
4 satisfactory to the commissioner, showing the applicant has
5 working capital in excess of \$5,000.00 for each of the
6 applicant's business locations and cash in excess of \$25,000.00.

7 (c) Furnish a \$50,000.00 surety bond for each of the
8 applicant's business locations issued by a bonding company or
9 insurance company authorized to do business in this state and in
10 a form satisfactory to the commissioner, to secure the
11 performance of the obligations of the applicant with respect to
12 the receipt of money in connection with the cashing of checks.

13 (d) File an appointment of the commissioner as the agent for
14 service of process in this state.

15 Sec. 6. After an applicant files an application and
16 complies with section 5(2), the commissioner shall investigate
17 the financial responsibility, financial and business experience,
18 and character and general fitness of the applicant. If the
19 commissioner finds these factors and qualities meet the
20 requirements of this act and reasonably warrant the belief that
21 the applicant's business will be conducted honestly, fairly,
22 equitably, carefully, efficiently, and in a manner commanding the
23 confidence and trust of the community, the commissioner shall
24 issue to the person a license to engage in the business of
25 providing deferred deposit loans.

26 Sec. 7. On or before January 1 of each year, a licensee
27 shall pay a license renewal fee of \$250.00 for its principal

1 business location, and \$100.00 for each additional business
2 location, and submit a renewal application in the form prescribed
3 by the commissioner. The commissioner shall renew the license
4 if, after considering all relevant factors and any comments or
5 complaints about the licensee, the commissioner determines the
6 licensee is in compliance with this act.

7 Sec. 8. (1) A licensee shall conduct the business of
8 providing deferred deposit loans only at locations approved by
9 the commissioner.

10 (2) A license issued under this act is not transferable, but
11 with the prior written approval of the commissioner, a licensee
12 may change its name or principal address.

13 Sec. 9. (1) The commissioner shall not deny, suspend, or
14 revoke a license issued under this act before notice is sent to
15 the applicant or licensee setting forth in writing the reasons
16 for the denial, suspension, or revocation. Within 5 days after
17 receipt of the notice, the applicant or licensee may make written
18 demand for a hearing. The commissioner shall hear and determine
19 the matter as provided under the administrative procedures act of
20 1969, 1969 PA 306, MCL 24.201 to 24.328. The applicant or
21 licensee may appeal the order of the commissioner within 30 days
22 from the date of the order to the circuit court as provided under
23 the administrative procedures act of 1969, 1969 PA 306,
24 MCL 24.201 to 24.328. If an appeal is taken from an order
25 revoking a license, the effect of the order may be stayed by the
26 court pending the final determination of the appeal.

27 (2) The commissioner may conduct investigations and hearings

1 as the commissioner considers necessary to determine whether a
2 licensee or other person has violated this act, or whether a
3 licensee has conducted business in a manner that justifies
4 suspension or revocation of its license.

5 (3) The commissioner may subpoena witnesses, documents,
6 papers, books, records, and other evidence in a matter over which
7 the commissioner has jurisdiction, control, or supervision. The
8 commissioner may administer oaths and affirmations to a person
9 whose testimony is required.

10 Sec. 10. The commissioner shall promulgate rules that are
11 necessary for the administration of this act under the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328.

14 Sec. 11. (1) A licensee shall maintain accurate and
15 complete books, accounts, and records of its deferred deposit
16 loan business in a form satisfactory to the office, and shall
17 preserve the books, accounts, and records for not less than 3
18 years.

19 (2) No later than March 1 of each year, a licensee shall file
20 with the commissioner an annual report that includes all of the
21 following:

22 (a) The resources, assets, and liabilities of the licensee at
23 the beginning and the end of the reporting period.

24 (b) The income, expense, gain, loss, and a reconciliation of
25 surplus or net worth with the balance sheets, and the ratios of
26 the profits to the assets reported.

27 (c) The total number of deferred deposit loans made in the

1 calendar year ending as of December 31 of the previous year.

2 (d) The total number of loans outstanding as of December 31
3 of the previous year.

4 (e) The minimum, maximum, and average dollar amount of checks
5 whose deposits were deferred in the calendar year ending as of
6 December 31 of the previous year.

7 (f) The average annual percentage rate and the average number
8 of days a deposit of a check is deferred during the calendar year
9 ending as of December 31 of the previous year.

10 (g) The total number and dollar amount of returned checks,
11 the total number and dollar amount of checks recovered, and the
12 total number and dollar amount of checks charged off during the
13 calendar year ending as of December 31 of the previous year.

14 (h) Verification that the licensee has not used the criminal
15 process or caused the criminal process to be used in the
16 collection of any deferred deposit loans or used any civil
17 process to collect the payment of deferred payment loans not
18 generally available to creditors to collect on loans in default
19 during the calendar year ending as of December 31 of the previous
20 year.

21 (i) A copy of the licensee's standard deferred deposit loan
22 agreement.

23 (j) A copy of the licensee's schedule of fees and charges.

24 Sec. 12. (1) A written agreement is required for a deferred
25 deposit loan transaction, signed by both the issuer of the check
26 and the licensee accepting the check. The licensee shall provide
27 a copy of the written agreement to the issuer.

1 (2) A written agreement shall authorize the licensee to defer
2 presentment or negotiation of the check until a specific date
3 that is not later than 31 calendar days following the date of the
4 transaction.

5 (3) A written agreement shall include all of the following
6 information:

7 (a) The name, address, phone number of the licensee making
8 the deferred deposit loan, and the name and title of the
9 individual employee who signs the agreement on behalf of the
10 licensee.

11 (b) An itemization of the fees and interest charges to be
12 paid by the consumer.

13 (c) Disclosures required by the truth in lending act, title I
14 of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615,
15 1631 to 1635, 1637 to 1649, and 1661 to 1667f, regardless of
16 whether that act applies to deferred deposit loans.

17 (d) Disclosures required under any other laws of this state.

18 (e) A clear description of the consumer's payment obligation
19 under the loan.

20 (f) A schedule of all fees and charges associated with the
21 loan and include an example of the amounts the issuer would pay
22 based on the amount of the loan.

23 (g) A description of the process an issuer may use to file a
24 complaint against a licensee.

25 Sec. 13. A licensee of a deferred deposit loan transaction
26 shall provide the following notice in a prominent place on each
27 deferred deposit loan agreement in at least 10-point type:

1 (A) A DEFERRED DEPOSIT LOAN TRANSACTION IS NOT INTENDED TO
2 MEET LONG-TERM FINANCIAL NEEDS.

3 (B) YOU SHOULD USE A DEFERRED DEPOSIT LOAN TRANSACTION ONLY
4 TO MEET SHORT-TERM CASH NEEDS.

5 (C) THE LICENSEE CANNOT USE ANY CRIMINAL PROCESS TO COLLECT
6 ANY DEFERRED DEPOSIT LOAN."

7 Sec. 14. (1) In addition to an administration fee of \$5.00
8 per deferred deposit loan, a licensee may charge a service fee
9 for each deferred deposit loan transaction that does not exceed
10 an amount that would equate to a 25% annual interest rate on the
11 amount paid by the licensee to the issuer of the check.

12 (2) A licensee shall not charge or collect any other fees or
13 charges for a deferred deposit loan transaction.

14 Sec. 15. (1) A deferred deposit loan shall have a minimum
15 term of no less than 2 weeks and an issuer is permitted to make
16 partial payments on the loan at any time, without charge.

17 (2) The maximum amount of the deferred deposit loan shall
18 not exceed \$500.00 and not be less than \$50.00.

19 (3) After each payment made, in full or in part, on any
20 loan, the licensee shall give to the person making the payment a
21 signed, dated receipt showing the amount paid and the balance due
22 on the loan.

23 (4) Upon receipt of the check from the issuer for a deferred
24 deposit loan, the licensee shall immediately stamp the back of
25 the check with an endorsement that states: "This check is being
26 negotiated as part of a deferred deposit loan and any holder of
27 this check takes it subject to all claims and defenses of the

1 maker.".

2 (5) A check written by a consumer in a deferred deposit loan
3 shall be made payable to the licensee.

4 Sec. 16. (1) A licensee shall not have more than 1
5 outstanding deferred deposit loan transaction with any issuer at
6 the same time, and the face value of the deferred deposit loan
7 shall not exceed \$500.00, exclusive of the service fee authorized
8 by section 14.

9 (2) A licensee providing a deferred deposit loan transaction
10 shall provide the following notice in a prominent place on each
11 deferred deposit loan agreement in at least 10-point type:

12 "STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING AT ANY 1
13 TIME DEFERRED DEPOSIT LOANS TOTALING MORE THAN \$500.00 (EXCLUDING
14 APPLICABLE SERVICE FEES). FAILURE TO OBEY THIS LAW COULD CREATE
15 FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.".

16 (3) An issuer shall not use the proceeds of a deferred
17 deposit loan to renew, extend, refinance, or consolidate a
18 preexisting deferred deposit loan transaction.

19 Sec. 17. (1) After an issuer of a check has completed a
20 deferred deposit loan transaction with a licensee, the issuer
21 shall not enter into a new agreement for a deferred deposit loan
22 with that licensee for at least 24 hours.

23 (2) A licensee shall not enter into a deferred deposit loan
24 transaction with an issuer of a check if the issuer has any
25 outstanding deferred deposit loan transactions with the licensee
26 or with any other licensee. A licensee shall require an issuer
27 of a check to represent in writing that the issuer does not have

1 any outstanding deferred deposit loan transactions with the
2 licensee or with any other licensee.

3 (3) A licensee shall also take such other actions,
4 including, but not limited to, electronic searches, to ensure
5 that an issuer is in compliance with this section.

6 Sec. 18. A licensee shall pay the proceeds from a deferred
7 deposit loan transaction to the issuer of the check in the form
8 of the licensee's business check, money order, or cash. A
9 licensee shall not charge any additional fee for cashing the
10 licensee's business check.

11 Sec. 19. Before a licensee may negotiate or present a check
12 for payment, the licensee shall endorse the check with the actual
13 name under which the licensee is doing business.

14 Sec. 20. The issuer of a check has the right to redeem the
15 check from a licensee holding the check at any time before the
16 negotiation or presentment of the check by paying the full amount
17 of the check in the form of cash or its equivalent.

18 Sec. 21. A licensee may contract for and collect a returned
19 check charge not to exceed \$25.00. A licensee shall not collect
20 any other fees for a returned check or the default by an issuer
21 under a deferred deposit loan agreement.

22 Sec. 22. A licensee offering deferred deposit loan
23 transactions shall post at the point of sale a notice of the
24 charges imposed for deferred deposit loan transactions.

25 Sec. 23. (1) The issuer of a check held in connection with
26 a deferred deposit loan transaction may rescind the transaction
27 at no cost and for any reason if the issuer, not later than 5

1 p.m. on the business day following the date of the transaction,
2 delivers to the licensee cash or a cash equivalent in an amount
3 equal to the amount of the issuer's check.

4 (2) The issuer of a check who enters into a deferred deposit
5 loan agreement is not subject to any criminal penalty for
6 entering into the agreement and is not subject to any criminal
7 penalty in the event the issuer's check is dishonored, unless the
8 account on which the check was written was closed on the date of
9 the transaction or before the agreed-upon negotiation date.

10 Sec. 24. A licensee may conduct any other types of business
11 allowed by law at a location where the licensee offers deferred
12 deposit loans.

13 Sec. 25. A licensee shall not engage in unfair or deceptive
14 acts, practices, or advertising in connection with a deferred
15 deposit loan transaction.

16 Sec. 26. A person injured by a licensee's violation of this
17 act may maintain a civil cause of action against the licensee and
18 may recover actual damages and an amount equal to twice the
19 service fee paid in connection with each deferred deposit loan
20 transaction that is found to violate this act, plus reasonable
21 attorney fees.

22 Sec. 27. (1) A licensee that violates this act is guilty of
23 a misdemeanor punishable by imprisonment for not more than 90
24 days or a fine of not more than \$1,000.00, or both.

25 (2) Each transaction conducted in violation of this act is a
26 separate violation under subsection (1).

27 Sec. 28. The attorney general has the same powers and

1 authority in enforcing this act as provided for under the
2 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to
3 445.922.