## DRAFT 1

## SUBSTITUTE FOR

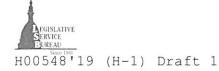
## HOUSE BILL NO. 4251

A bill to amend 2005 PA 244, entitled "Deferred presentment service transactions act," by amending sections 22, 31, 32, 33, 34, and 40 (MCL 487.2142, 487.2151, 487.2152, 487.2153, 487.2154, and 487.2160).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 22. (1) On or before December 31, 2006, the commissioner
- 2 shall DIRECTOR MUST develop, implement, and maintain a statewide,
- 3 common database that has real-time access through an internet
- 4 connection, is accessible at all time to licensees, and to the
- 5 commissioner DIRECTOR for purposes of subsections (10) and (11),
- 6 and meets the requirements of this section. Before the commissioner
- 7 DIRECTOR determines that the database is fully operational for the

- 1 purposes of this act, for at least 30 days the database provider
- 2 shall MUST operate a pilot program of the database to test all of
- 3 the processes of the database. The database provider shall make the
- 4 pilot program available to all applicants and licensees. During the
- 5 30-day period that begins on the date the commissioner DIRECTOR
- 6 determines that the database is fully operational, the commissioner
- 7 DIRECTOR shall not approve the imposition of any database
- 8 verification fees under section 34(5).
- 9 (2) The commissioner DIRECTOR may operate the database
- 10 described in subsection (1) or may select and contract with a
- 11 single third party provider to operate the database. If the
- 12 commissioner DIRECTOR contracts with a third party provider for the
- 13 operation of the database, all of the following apply:
- 14 (a) The commissioner DIRECTOR shall ensure that the third
- 15 party provider selected as the database provider operates the
- 16 database pursuant to IN A MANNER THAT COMPLIES WITH the provisions
- 17 of this act.
- 18 (b) The commissioner shall DIRECTOR MUST consider cost of
- 19 service and ability to meet all the requirements of this section in
- 20 selecting a third party provider as the database provider.
- 21 (c) In selecting a third party provider to act as the database
- 22 provider, the commissioner DIRECTOR shall give strong consideration
- 23 to the third party provider's ability to prevent fraud, abuse, and
- 24 other unlawful activity associated with deferred presentment
- 25 service transactions and provide additional tools for the
- 26 administration and enforcement of this act.
- 27 (d) The third party provider shall only use the data collected



- 1 under this act as prescribed in this act and the contract with the
- 2 office DEPARTMENT and for no other purpose.
- 3 (e) If the third party provider violates this section, the
- 4 commissioner shall DIRECTOR MUST terminate the contract and the
- 5 third party provider is barred from becoming a party to any other
- 6 state contracts.
- 7 (f) A person injured by the third party provider's violation
- 8 of this act may maintain a civil cause of action against the third
- 9 party provider and may recover actual damages plus reasonable
- 10 attorney fees.
- 11 (3) The database described in subsection (1) shall MUST allow
- 12 a licensee accessing the database to do all of the following:
- (a) Verify whether a customer has any open deferred
- 14 presentment service transactions with any licensee that have not
- 15 been closed. WERE NOT CLOSED ON THE DATE THE LICENSEE ACCESSED THE
- 16 DATABASE OR WERE CLOSED IN THE 30-DAY PERIOD PRECEDING THAT DATE.
- 17 (b) Provide information necessary to ensure licensee
- 18 compliance with any requirements imposed by the federal office of
- 19 foreign asset control OFFICE OF FOREIGN ASSETS CONTROL under
- 20 federal law.
- 21 (c) Track and monitor the number of customers who notify a
- 22 licensee of violations of this act, the number of times a licensee
- 23 agreed that a violation occurred, the number of times that a
- 24 licensee did not agree that a violation occurred, the amount of
- 25 restitution paid, and any other information the commissioner
- 26 DIRECTOR requires by rule.
- 27 (d) Determine whether a customer is eligible for repayment of

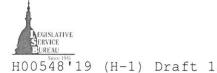


- 1 the deferred presentment service transaction in installments as
- 2 provided in section 35(2) and notify the licensee of that
- 3 eligibility.
- 4 (4) While operating the database, the database provider shall
- 5 MUST do all of the following:
- 6 (a) Establish and maintain a process for responding to
- 7 transaction verification requests due to technical difficulties
- 8 occurring with the database that prevent the licensee from
- 9 accessing the database through the internet.
- 10 (b) Comply with any applicable provisions of the social
- 11 security number privacy act, 2004 PA 454, MCL 445.81 to 445.87.
- 12 (c) Comply with any applicable provisions of the identity
- 13 theft protection act, 2004 PA 452, MCL 445.61 to 445.77.445.79D.
- 14 (d) Provide accurate and secure receipt, transmission, and
- 15 storage of customer data.
- (e) Meet the requirements of this act.
- 17 (5) When the database provider receives notification that a
- 18 deferred presentment service transaction is closed under section
- 19 34, the database provider shall MUST designate the transaction as
- 20 closed in the database immediately, but in no event after 11:59
- 21 p.m. on the day the commissioner DIRECTOR or database provider
- 22 receives notification.
- 23 (6) The database provider shall automatically designate a
- 24 deferred presentment service transaction as closed in the database
- 25 5 days after the transaction maturity date unless a licensee
- 26 reports to the database provider before that time that the
- 27 transaction remains open because of the customer's failure to make

- 1 payment; that the transaction is open because the customer's check
- 2 or an electronic redeposit is in the process of clearing the
- 3 banking system; or that the transaction remains open because the
- 4 customer's check is being returned to the licensee for insufficient
- 5 funds, a closed account, or a stop payment order, or any other
- 6 factors determined by the commissioner. DIRECTOR. If a licensee
- 7 reports the status of a transaction as open in a timely manner, the
- 8 transaction remains an open transaction until it is closed under
- 9 section 34 and the database provider is notified that the
- 10 transaction is closed under that section.
- 11 (7) If a licensee stops providing deferred presentment service
- 12 transactions, the database provider shall MUST designate all open
- 13 transactions with that licensee as closed in the database 60 days
- 14 after the date the licensee stops offering deferred presentment
- 15 service transactions, unless the licensee reports to the database
- 16 provider before the expiration of the 60-day period which of its
- 17 transactions remain open and the specific reason each transaction
- 18 remains open. The licensee shall MUST also provide to the
- 19 commissioner DIRECTOR a reasonably acceptable plan that outlines
- 20 how the licensee will continue to update the database after it
- 21 stops offering deferred presentment service transactions. The
- 22 commissioner shall DIRECTOR MUST promptly approve or disapprove the
- 23 plan and immediately notify the licensee of his or her decision. If
- 24 the plan is disapproved, the licensee may submit a new plan or may
- 25 submit a modified plan for the licensee to follow. If at any time
- 26 the commissioner DIRECTOR reasonably determines that a licensee
- 27 that has stopped offering deferred presentment service transactions

- 1 is not updating the database in accordance with its approved plan,
- 2 the commissioner shall DIRECTOR MUST immediately close or instruct
- 3 the database provider to immediately close all remaining open
- 4 transactions of that licensee.
- 5 (8) The response to an inquiry to the database provider by a
- 6 licensee shall only state that a person is eligible or ineligible
- 7 for a new deferred presentment service transaction and describe the
- 8 reason for that determination. Only the person seeking the
- 9 transaction may make a direct inquiry to the database provider to
- 10 request a more detailed explanation of a particular transaction
- 11 that was the basis for the ineligibility determination. Any
- 12 information regarding any person's transactional history is
- 13 confidential, is not subject to public inspection, is not a public
- 14 record subject to the disclosure requirements of the freedom of
- 15 information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject
- 16 to discovery, subpoena, or other compulsory process except in an
- 17 action under section 53, and shall not be disclosed to any person
- 18 other than the commissioner.DIRECTOR.
- 19 (9) The database provider may charge licensees a verification
- 20 fee for access to the database, in amounts approved by the
- 21 commissioner DIRECTOR under section 34(5).
- 22 (10) The commissioner DIRECTOR may access the database
- 23 provided under subsection (1) only for purposes of an investigation
- 24 of, examination of, or enforcement action concerning an individual
- 25 database provider, licensee, customer, or other person. The
- 26 commissioner DIRECTOR and any employees of the commissioner,
- 27 DIRECTOR, the office, DEPARTMENT, or this state shall not obtain or

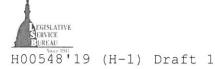
- 1 access a customer's social security SOCIAL SECURITY number, driver
- 2 license number, or other state-issued identification number in the
- 3 database except as provided in this subsection. An individual who
- 4 violates this subsection is guilty of a misdemeanor punishable by
- 5 imprisonment for not more than 93 days or a fine of not more than
- 6 \$1,000.00, or both, and if convicted, an individual who violates
- 7 this subsection shall be dismissed from office or discharged from
- 8 employment.
- 9 (11) The commissioner shall DIRECTOR MUST investigate
- 10 violations of and enforce this section. The commissioner DIRECTOR
- 11 shall not delegate its responsibilities under this subsection to
- 12 any third party provider.
- 13 (12) The commissioner—DIRECTOR shall do all of the following:
- 14 (a) Require by rule that data are retained in the database
- 15 only as required to ensure licensee compliance with this act.
- 16 (b) Require by rule that data in the database concerning a
- 17 customer transaction are archived within 365 days after the
- 18 customer transaction is closed unless needed for a pending
- 19 enforcement action.
- 20 (c) Require by rule that any identifying customer information
- 21 is deleted from the database when data are archived.
- (d) Require by rule that data in the database concerning a
- 23 customer transaction are deleted from the database 3 years after
- 24 the customer transaction is closed or any enforcement action
- 25 pending 3 years after the customer transaction is closed is
- 26 completed, whichever is later.
- 27 (13) The commissioner DIRECTOR may maintain access to data



- 1 archived under subsection (12) for future legislative or policy
- 2 review.
- 3 Sec. 31. (1) A licensee shall MUST post prominently in an area
- 4 designed to be seen by the customer before he or she enters into a
- 5 deferred presentment service transaction the following notice in at
- 6 least 36-point type:
- 7 "1. A deferred presentment service transaction is not intended
- 8 to meet long-term financial needs. We can only defer cashing your
- 9 check for up to 31 days.
- 10 2. You should use this service only to meet short-term cash
- 11 needs.
- 3. State law prohibits us from entering into a transaction
- 13 with you if you already have a deferred presentment service
- 14 agreement in effect with us or have more than one deferred
- 15 presentment service agreement in effect with any other person who
- 16 provides this service, OR WERE A PARTY TO A PREVIOUS DEFERRED
- 17 PRESENTMENT SERVICE AGREEMENT THAT WAS IN EFFECT AT ANY TIME IN THE
- 18 LAST 30 DAYS.
- 19 4. If you enter into a transaction with us, we must
- 20 immediately give you a copy of your signed agreement.
- 21 5. We will pay the proceeds of a transaction to you by check,
- 22 by money order, or in cash, as you request.
- 23 6. State law entitles you to the right to cancel an agreement
- 24 and receive a refund of the fee. To do this, if you enter into a
- 25 transaction today, you must notify us and return the money you
- 26 receive by the time this office closes tomorrow or on our next
- 27 business day if we are not open tomorrow.



- 1 7. State law prohibits us from renewing an agreement for a
- 2 fee. You have to pay any other agreement in full before obtaining
- 3 additional money from us.
- 4 8. State law prohibits us from using any criminal process to
- 5 collect on an agreement.
- 6 9. State law entitles you to information regarding filing a
- 7 complaint against us if you believe that we have violated the law.
- 8 If you feel we are acting unlawfully, you should call the Office of
- 9 Financial and Insurance DEPARTMENT OF INSURANCE AND FINANCIAL
- 10 Services toll-free at 1-877-999-6442.
- 10. If you are unable to pay your deferred presentment service
- 12 transaction and have entered into 8 deferred presentment service
- 13 transactions with any licensee in any 12-month period, state law
- 14 entitles you to request a repayment of that transaction in
- 15 installments. We are required to advise you of this option at the
- 16 time it is available. If you elect this option, you must notify us,
- 17 either orally or in writing, within 30 days after the maturity date
- 18 of the deferred presentment transaction. The notice must be
- 19 provided to us at our place of business. You may be charged an
- 20 additional fee when the transaction is rescheduled in installments.
- 21 You will be ineligible to enter into a deferred presentment service
- 22 transaction with any licensee during the term of the repayment
- 23 plan. If we refuse to provide this option under the stipulations
- 24 above, you should contact the Office of Financial and Insurance
- 25 DEPARTMENT OF INSURANCE AND FINANCIAL Services toll-free at 1-877-
- 26 999-6442.".
- 27 (2) A licensee shall MUST post prominently in an area designed



- 1 to be seen by the customer before he or she enters into a deferred
- 2 presentment service transaction a schedule of all fees and charges
- 3 imposed for deferred presentment service transactions in at least
- 4 36-point type.
- 5 Sec. 32. (1) A licensee shall MUST document a deferred
- 6 presentment service transaction by entering into a written deferred
- 7 presentment service agreement signed by both the customer and the
- 8 licensee.
- 9 (2) A licensee shall MUST include all of the following in the
- 10 written deferred presentment service agreement:
- 11 (a) The name of the customer.
- 12 (b) The name, street address, facsimile number, and telephone
- 13 number of the licensee.
- 14 (c) The signature and printed or typed name of the individual
- 15 who enters into the deferred presentment service agreement on
- 16 behalf of the licensee.
- 17 (d) The date of the transaction.
- 18 (e) The transaction number assigned by the database provider,
- **19** if any.
- 20 (f) The amount of the check presented to the licensee by the
- 21 customer.
- 22 (g) An itemization of the fees to be paid by the customer.
- 23 (h) A calculation of the cost of the fees and charges to the
- 24 customer, expressed as a percentage rate per year.
- 25 (i) A clear description of the customer's payment obligation
- 26 under the agreement.
- 27 (j) A schedule of all fees associated with the deferred

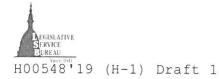
- 1 presentment service transaction and an example of the amounts the
- 2 customer would pay based on the amount of the deferred presentment
- 3 service transaction.
- 4 (k) The maturity date.
- 5 (1) A provision that the licensee will defer presentment,
- 6 defer negotiation, and defer entering a check into the check-
- 7 clearing process until the maturity date.
- 8 (m) A description of the process a drawer may use to file a
- 9 complaint against the licensee.
- 10 (n) The following notice in at least 12-point type:
- 11 "1. A deferred presentment service transaction is not intended
- 12 to meet long-term financial needs. We can only defer cashing your
- 13 check for up to 31 days.
- 14 2. You should use this service only to meet short-term cash
- 15 needs.
- 3. State law prohibits us from entering into this transaction
- 17 with you if you already have a deferred presentment service
- 18 agreement in effect with us or have more than one deferred
- 19 presentment service agreement in effect with any other person who
- 20 provides this service, OR WERE A PARTY TO A PREVIOUS DEFERRED
- 21 PRESENTMENT SERVICE AGREEMENT THAT WAS IN EFFECT AT ANY TIME IN THE
- 22 LAST 30 DAYS.
- 4. We must immediately give you a copy of your signed
- 24 agreement.
- 25 5. We will pay the proceeds of this transaction to you by
- 26 check, by money order, or in cash, as you request.
- 27 6. State law entitles you to the right to cancel this



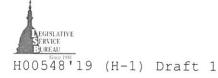
- 1 agreement and receive a refund of the fee. To do this, you must
- 2 notify us and return the money you receive today by the time this
- 3 office closes tomorrow or on our next business day if we are not
- 4 open tomorrow.
- 5 7. State law prohibits us from renewing this agreement for a
- 6 fee. You have to pay an agreement in full before obtaining
- 7 additional money from us.
- 8 8. State law prohibits us from using any criminal process to
- 9 collect on this agreement.
- 9. State law entitles you to information regarding filing a
- 11 complaint against us if you believe that we have violated the law.
- 12 If you feel we are acting unlawfully, you should call the Office of
- 13 Financial and Insurance DEPARTMENT OF INSURANCE AND FINANCIAL
- 14 Services toll-free at 1-877-999-6442.
- 15 10. If you are unable to pay your deferred presentment service
- 16 transaction and have entered into 8 deferred presentment service
- 17 transactions with any licensee in any 12-month period, state law
- 18 entitles you to request a repayment of that transaction in
- 19 installments. We are required to advise you of this option at the
- 20 time it is available. If you elect this option, you must notify us,
- 21 either orally or in writing, within 30 days after the maturity date
- 22 of the deferred presentment transaction. The notice must be
- 23 provided to us at our place of business. You may be charged an
- 24 additional fee when the transaction is rescheduled in installments.
- 25 You will be ineligible to enter into a deferred presentment service
- 26 transaction with any licensee during the term of the repayment
- 27 plan. If we refuse to provide this option under the stipulations

- 1 above, you should contact the Office of Financial and Insurance
- 2 DEPARTMENT OF INSURANCE AND FINANCIAL Services toll-free at 1-877-
- **3** 999-6442.".
- 4 (3) A licensee may include an arbitration provision in a
- 5 deferred presentment service transaction agreement if the
- 6 arbitration provision meets all of the following:
- 7 (a) Provides that the licensee agrees to pay any costs of the
- 8 arbitration.
- 9 (b) Provides that an arbitration proceeding shall be held
- 10 within 10 miles of the drawer's address contained in the deferred
- 11 presentment service transaction agreement unless the drawer
- 12 consents to another location after an arbitrable dispute occurs.
- 13 (c) Provides that an arbitration proceeding shall be conducted
- 14 by a neutral arbitrator who was not and is not currently being paid
- 15 by the licensee and who has no financial interest in a party to the
- 16 arbitration.
- 17 (d) Requires that the arbitrator shall provide the drawer with
- 18 all the substantive rights that the drawer would have if the
- 19 drawer's claim were asserted in a court proceeding and shall not
- 20 limit any other claim or defense the drawer has concerning the
- 21 claim.
- Sec. 33. (1) A licensee may enter into 1 deferred presentment
- 23 service transaction with a customer for any amount up to \$600.00. A
- 24 licensee may charge the customer a service fee for each deferred
- 25 presentment service transaction. A service fee is earned by the
- 26 licensee on the date of the transaction and is not interest. A
- 27 licensee may charge both of the following as part of the service

- 1 fee, as applicable:
- 2 (a) An amount that does not exceed the aggregate of the
- 3 following, as applicable:
- 4 (i) Fifteen percent of the first \$100.00 of the deferred
- 5 presentment service transaction.
- 6 (ii) Fourteen percent of the second \$100.00 of the deferred
- 7 presentment service transaction.
- 8 (iii) Thirteen percent of the third \$100.00 of the deferred
- 9 presentment service transaction.
- 10 (iv) Twelve percent of the fourth \$100.00 of the deferred
- 11 presentment service transaction.
- 12 (v) Eleven percent of the fifth \$100.00 of the deferred
- 13 presentment service transaction.
- 14 (vi) Eleven percent of the sixth \$100.00 of the deferred
- 15 presentment service transaction.
- 16 (b) The amount of any database verification fee allowed under
- 17 section 34(5).
- 18 (2) A licensee shall not enter into a deferred presentment
- 19 service transaction with a customer if the customer has an open
- 20 deferred presentment service transaction with the licensee or has
- 21 more than 1 open deferred presentment service transaction with any
- 22 other licensee, and shall OR WAS A PARTY TO A PREVIOUS DEFERRED
- 23 PRESENTMENT SERVICE AGREEMENT WITH THE LICENSEE OR ANY OTHER
- 24 LICENSEE THAT WAS CLOSED AT ANY TIME IN THE LAST 30 DAYS. THE
- 25 LICENSEE MUST verify whether the customer has an open deferred
- 26 presentment service transaction with the licensee or has more than
- 27 1 open deferred presentment service transaction with any other



- 1 licensee, OR WAS A PARTY TO A PREVIOUS DEFERRED PRESENTMENT SERVICE
- 2 AGREEMENT WITH THE LICENSEE OR ANY OTHER LICENSEE THAT WAS CLOSED
- 3 AT ANY TIME IN THE LAST 30 DAYS, by complying with section 34.
- 4 (3) At the time of entering into a deferred presentment
- 5 service transaction, a licensee shall MUST do all of the following:
- 6 (a) Before the drawer signs the agreement, provide the
- 7 following notice to the drawer, in a document separate from the
- 8 agreement and in at least 12-point type:
- 9 "1. After signing this agreement, if you believe that we have
- 10 violated the law, you may do 1 of the following:
- a. Before the close of business on the day you sign the
- 12 agreement, notify us in person of the violation. You must provide
- 13 supporting documents or other evidence of the violation.
- b. At any time before signing a new deferred presentment
- 15 service agreement with us, notify us in writing of the violation.
- 16 Your written notice must state the violation and provide supporting
- 17 documents or other evidence of the violation.
- 18 2. We have 3 business days to determine if we agree that we
- 19 have violated the law and let you know of that determination.
- 3. If we agree that we have violated the law, we must return
- 21 your check and you must return the cash received under the
- 22 agreement. Additionally, for each violation, we must pay you
- 23 restitution equal to 5 times the amount of the fee we charged you
- 24 under the agreement but not less than \$15.00 or more than the face
- 25 amount of your check. You may also pursue an action for your actual
- 26 damages against us.
- 4. If we do not agree that we have violated the law, we may



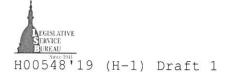
- 1 present your check for payment or enter your check into the check-
- 2 clearing process on or after the maturity date. If your check is
- 3 returned to us unpaid, we may take other legal steps to collect our
- 4 money.
- 5. If you still believe we violated the law, you may file a
- 6 written complaint including supporting documents or other evidence
- 7 with the Office of Financial and Insurance DEPARTMENT OF INSURANCE
- 8 AND FINANCIAL Services. The Office DEPARTMENT is required to
- 9 investigate your complaint and has the authority to order us to pay
- 10 you restitution if they agree that we violated the law. In
- 11 addition, the Office DEPARTMENT can order us to pay civil fines or
- 12 take away our right to do business. To do so, contact the Office of
- 13 Financial and Insurance DEPARTMENT OF INSURANCE AND FINANCIAL
- 14 Services toll-free at 1-877-999-6442.".
- 15 (b) Provide a copy of the signed agreement to the drawer.
- 16 (c) Pay the proceeds under the agreement to the drawer by
- 17 delivering a business check of the licensee, a money order, or
- 18 cash, as requested by the drawer.
- 19 (4) At the time of entering into a deferred presentment
- 20 service transaction, a licensee shall not do any of the following:
- 21 (a) Charge interest under the agreement.
- 22 (b) Include a maturity date that is more than 31 days after
- 23 the date of the transaction.
- (c) Charge an additional fee for cashing the licensee's
- 25 business check or money order if the licensee pays the proceeds to
- 26 the drawer by business check or money order.
- 27 (d) Include a confession of judgment in the agreement.



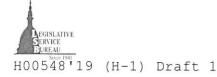
- 1 (e) Except as provided in this act, charge or collect any
- 2 other fees for a deferred presentment service transaction.
- 3 (5) A licensee shall not refuse to provide a deferred
- 4 presentment service transaction to a customer solely because the
- 5 customer has exercised his or her rights under this act.
- 6 (6) Each A licensee shall MUST post a sign, printed in bold
- 7 faced, 36-point type, in a conspicuous location at each customer
- 8 service window, station, or desk at each place of business, that
- 9 states the following:
- "Under Michigan law, you are entitled to receive the proceeds
- 11 of this transaction in cash. If you request the proceeds in a check
- 12 or money order, you may be charged additional check cashing or
- 13 other processing fees by others for cashing the check or money
- 14 order.".
- 15 (7) A DEFERRED PRESENTMENT SERVICE TRANSACTION THAT VIOLATES
- 16 THIS SECTION IS VOID AND UNCOLLECTIBLE AS TO ANY PRINCIPAL, FEE, OR
- 17 CHARGE
- Sec. 34. (1) A licensee shall MUST verify a customer's
- 19 eligibility to enter into a deferred presentment service
- 20 transaction by doing 1 of the following, as applicable:
- 21 (a) If the commissioner DIRECTOR has not implemented a
- 22 database under section 22 or the database described in section 22
- 23 is not fully operational, as determined by the commissioner,
- 24 DIRECTOR, verifying that the customer does not have an open
- 25 deferred presentment service transaction with the licensee, AND WAS
- 26 NOT A PARTY TO A PREVIOUS DEFERRED PRESENTMENT SERVICE AGREEMENT
- 27 WITH THE LICENSEE THAT WAS CLOSED AT ANY TIME IN THE LAST 30 DAYS.

- 1 The licensee shall maintain a database of all of the licensee's
- 2 transactions at all of its locations and search that database to
- 3 meet its obligation under this subdivision.
- 4 (b) If the commissioner DIRECTOR has implemented a database
- 5 under section 22 and the database described in that section is
- 6 fully operational, as determined by the commissioner, DIRECTOR,
- 7 accessing the database and verifying that the customer does not
- 8 have an outstanding deferred presentment service transaction with
- 9 the licensee and does not have more than 1 open deferred
- 10 presentment service transaction that has not been fully repaid OR
- 11 with any other licensee, AND WAS NOT A PARTY TO A PREVIOUS DEFERRED
- 12 PRESENTMENT SERVICE AGREEMENT WITH THE LICENSEE OR ANY OTHER
- 13 LICENSEE THAT WAS CLOSED AT ANY TIME IN THE LAST 30 DAYS.
- 14 (2) If the commissioner DIRECTOR has not implemented a
- 15 database under section 22; the database described in that section
- 16 is not fully operational, as determined by the commissioner;
- 17 DIRECTOR; or the licensee is unable to access the database and the
- 18 alternative mechanism for verification described in subsection (3)
- 19 is also unavailable, as determined by the commissioner, DIRECTOR, a
- 20 licensee may rely upon the written verification of the borrower in
- 21 a statement provided in substantially the following form in at
- 22 least 12-point type:
- "I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE
- 24 TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE
- 25 OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION OR WITH ANY
- 26 OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE,
- 27 AND I HAVE NOT HAD A DEFERRED PRESENTMENT SERVICE TRANSACTION WITH

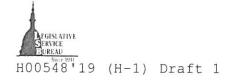
- 1 THIS LICENSEE OR ANY OTHER LICENSEE THAT WAS OUTSTANDING AT ANY
- 2 TIME IN THE LAST 30 DAYS.".
- 3 (3) If a licensee is unable to access the database described
- 4 in section 22 due to technical difficulties occurring with the
- 5 database, as determined by the commissioner, DIRECTOR, the licensee
- 6 shall MUST utilize the process established in section 22(4) to
- 7 verify transactions.
- 8 (4) The commissioner DIRECTOR may use the database to
- 9 administer and enforce this act.
- 10 (5) If approved by the commissioner, DIRECTOR, the database
- 11 provider may impose a database verification fee for the actual
- 12 costs of entering, accessing, and verifying data in the database
- 13 described in section 22 to verify that a customer does not have any
- 14 other open deferred presentment service transactions with the
- 15 licensee and does not have more than 1 open deferred presentment
- 16 service transaction OR with any other licensees, AND WAS NOT A
- 17 PARTY TO A PREVIOUS DEFERRED PRESENTMENT SERVICE AGREEMENT WITH THE
- 18 LICENSEE OR ANY OTHER LICENSEE THAT WAS CLOSED AT ANY TIME IN THE
- 19 LAST 30 DAYS. A database verification fee is payable to the
- 20 database provider in a manner prescribed by the commissioner.
- 21 DIRECTOR. A licensee may charge a customer all or part of the
- 22 database verification fee under section 33(1)(b) but may not charge
- 23 a customer any other fee except as authorized in section 33(1) or
- **24** 35(2).
- 25 (6) A licensee may rely on the information contained in the
- 26 database described in section 22 as accurate and is not subject to
- 27 any administrative penalty or civil liability as a result of



- 1 relying on inaccurate information contained in the database.
- 2 (7) Before entering into a deferred presentment service
- 3 transaction, a licensee shall MUST submit to the database provider
- 4 the customer's name and address, the customer's social security
- 5 number, driver license number, or other state-issued identification
- 6 number, the amount of the transaction, the customer's check number,
- 7 the date of the transaction, the maturity date of the transaction,
- 8 and any other information reasonably required by the commissioner
- 9 DIRECTOR or the database provider, in a format reasonably required
- 10 by the commissioner.DIRECTOR.
- 11 (8) When a deferred presentment service transaction is closed,
- 12 the licensee shall MUST designate the transaction as closed and
- 13 immediately notify the database provider, but in no event after
- 14 11:59 p.m. on the day the transaction is closed. The commissioner
- 15 DIRECTOR shall assess an administrative fine of \$100.00 for each
- 16 day that the licensee fails to notify the database provider that
- 17 the transaction has been closed. It is a defense to the assessment
- 18 of an administrative fine that notifying the database provider was
- 19 not possible due to temporary technical problems with the database
- 20 or to circumstances beyond the licensee's control.
- Sec. 40. A licensee shall not do any of the following:
- 22 (a) Enter into a tying arrangement through which the licensee
- 23 conditions the sale of 1 financial service to a consumer on the
- 24 agreement by the consumer to purchase 1 or more other financial
- 25 services from the licensee or an affiliate or subsidiary of the
- 26 licensee.
- 27 (b) Knowingly permit a person to violate an order that has



- 1 been issued under this act or any other financial licensing act
- 2 that prohibits that person from being employed by, an agent of, or
- 3 a control person of the licensee.
- 4 (C) ENTER INTO A DEFERRED PRESENTMENT SERVICE TRANSACTION
- 5 WITHOUT FIRST DETERMINING AND DOCUMENTING THAT THE CUSTOMER HAS A
- 6 REASONABLE ABILITY TO REPAY THE AMOUNT OWED. IN DETERMINING WHETHER
- 7 THE CUSTOMER HAS A REASONABLE ABILITY TO REPAY THE DEFERRED
- 8 PRESENTMENT SERVICE TRANSACTION, THE LICENSEE MUST, AT A MINIMUM,
- 9 VERIFY THE CUSTOMER'S CURRENT AND ANTICIPATED INCOME AND EXPENSES,
- 10 AND THE CUSTOMER'S CREDIT HISTORY. FOR PURPOSES OF THIS
- 11 SUBDIVISION, A CUSTOMER DOES NOT HAVE THE REASONABLE ABILITY TO
- 12 REPAY A DEFERRED PRESENTMENT SERVICE TRANSACTION IF PAYMENTS FOR
- 13 THE PROPOSED DEFERRED PRESENTMENT SERVICE TRANSACTION CAUSE THE
- 14 CUSTOMER TO HAVE A DEBT-TO-INCOME RATIO HIGHER THAN 41%. AS USED IN
- 15 THIS SUBDIVISION:
- 16 (i) "DEBT-TO-INCOME RATIO" MEANS THE RATIO OF A CUSTOMER'S
- 17 TOTAL MONTHLY DEBT OBLIGATIONS TO THE CUSTOMER'S GROSS MONTHLY
- 18 INCOME.
- 19 (ii) "TOTAL MONTHLY DEBT OBLIGATIONS" CONSISTS OF THE SUM OF A
- 20 CUSTOMER'S RENT OR MORTGAGE-RELATED OBLIGATIONS, ANY OTHER SECURED
- 21 OR UNSECURED DEBT OBLIGATIONS, AND PAYMENTS FOR CHILD SUPPORT AND
- 22 ALIMONY
- 23 (D) MAKE, OFFER, ASSIST, ARRANGE, GUARANTEE, OR COLLECT A
- 24 DEFERRED PRESENTMENT SERVICE TRANSACTION WITH FEES OR CHARGES THAT
- 25 ARE GREATER THAN PERMITTED UNDER THIS ACT.
- 26 (E) ENGAGE IN ANY DEVICE OR SUBTERFUGE TO EVADE THE
- 27 REQUIREMENTS OF THIS ACT.



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