

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 ~~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:

13 (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.

16 (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.

22 (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.

12 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.

11           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 ~~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 (l) 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.

16 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.**

23 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.

10 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.

22 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:

11 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.

14 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.

20 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.

27 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 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.

24 (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 ~~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:

10 "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.**

18 Sec. 34. (1) A licensee shall ~~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:

23 "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.

21 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.

