

HOUSE BILL NO. 1321

Introduced by

Representatives Dosch, Delmore, Kasper, S. Meyer

Senators Krebsbach, Wardner

1 A BILL for an Act to amend and reenact section 13-08-12 of the North Dakota Century Code,
2 relating to deferred presentment service transaction procedures and limitations.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 13-08-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **13-08-12. Fees for service - Deferred presentment service transaction procedures**
7 **- Penalty.**

- 8 1. Before disbursing funds under a deferred presentment service transaction, a
9 licensee shall provide to the maker of the check a clear and conspicuous printed
10 notice indicating:
- 11 a. That a deferred presentment service transaction is not intended to meet
12 long-term financial needs.
 - 13 b. That the maker of a check should use a deferred presentment service
14 transaction only to meet short-term cash needs.
 - 15 c. That the maker of a check will be required to pay additional fees if the
16 deferred presentment service transaction is renewed rather than paid in full
17 when due. If the transaction is renewed, any amount paid in excess of the fee
18 applies to the payoff amount.
 - 19 d. A schedule of fees charged for deferred presentment service.
 - 20 e. Any information required under federal law.
 - 21 f. No property, titles to any property, or mortgages may be received or held
22 directly or indirectly by the licensee as a condition of a deferred presentment
23 service transaction or as a method of collection on a defaulted deferred
24 presentment service transaction without proper civil process.

- 1 2. A licensee may charge a fee for the deferred presentment service, not to exceed
2 twenty percent of the amount paid to the maker of the check by the licensee. This
3 fee may not be deemed interest for any purpose of law. No other fee or charge
4 may be charged for the deferred presentment service, and no property, titles to any
5 property, or mortgages may be received or held directly or indirectly by the
6 licensee as a condition of a deferred presentment service transaction or as a
7 method of collection on a defaulted deferred presentment service transaction
8 without proper civil process.
- 9 3. A licensee may not disburse more than five hundred dollars to the maker of a
10 check in a deferred presentment service transaction.
- 11 4. A licensee may not engage in a deferred presentment service transaction with a
12 customer who has an aggregate face value of all outstanding checks from any one
13 maker exceeding ~~five~~ six hundred dollars which is payable to the same or any
14 other licensee. A licensee may not enter ~~into~~ a new deferred presentment service
15 transaction with a customer within three business days of that customer's
16 completion of a previous deferred presentment service transaction. A licensee
17 may rely on a written representation of a maker regarding the existence of any
18 outstanding checks for deferred presentment held by a licensee other than the
19 licensee receiving the representation. However, if a licensee has multiple
20 locations, that licensee may not rely on such written representation of a maker
21 regarding the existence of any outstanding checks for deferred presentment held
22 by that licensee, or one of the licensee's multiple locations, unless the licensee and
23 the licensee's multiple locations use a point of sale registry or some other
24 accounting system to attempt to prevent violations of this subsection.
- 25 5. Before a licensee may negotiate or present a check for payment, the check must
26 be endorsed with the actual name under which the licensee is doing business.
- 27 6. Each deferred presentment service transaction, including a renewal, must be
28 documented by a written agreement signed by the maker of the check. The written
29 agreement must contain the name of the licensee; the transaction date; the amount
30 of the check; and a statement of the total amount of fees charged, expressed as a
31 dollar amount and as an annual percentage rate. The written agreement must

- 1 authorize the licensee to defer presentment or negotiation of the check until a
2 specified date. The maker of a check may redeem the check from the licensee at
3 any time before the negotiation or presentment of the check by making payment to
4 the licensee; however, the maker may rescind the transaction by the close of the
5 following business day at no cost.
- 6 7. If a check is returned to the licensee from a payer financial institution due to
7 insufficient funds, closed account, or a stop payment order, the licensee has the
8 right to all civil remedies available to collect the check. The licensee may contract
9 for and collect a returned check charge not to exceed twenty dollars ~~per customer,~~
10 ~~per year~~. No other fee or charge may be collected as a result of a returned check
11 or as a result of default by the maker of the check in timely payment to the
12 licensee.
- 13 8. A maker of a check who has authority to make the check and enters into a deferred
14 presentment service agreement is not subject to a criminal penalty relating to the
15 check or the deferred presentment service agreement unless the account on which
16 the check was written was closed on the original date of the transaction. At the
17 time of entering a transaction, a licensee shall verify that the account on which the
18 check is written is open. A licensee may not pursue or threaten to pursue criminal
19 penalties against a maker of a check for criminal penalties prohibited by this
20 subsection.
- 21 9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in
22 the conduct of a deferred presentment service business.
- 23 10. The amount paid to the maker by the licensee in a deferred presentment service
24 transaction must be paid in the form of cash or check.
- 25 11. Each licensee must conspicuously post in the licensee's licensed location a notice
26 of the fees imposed for the deferred presentment service.
- 27 12. A licensee may not renew a deferred presentment service transaction more than
28 once. A licensee's renewal fee may not exceed twenty percent of the amount
29 being renewed. The total period of deferral, including the initial deferral and one
30 renewal, may not exceed ~~forty-five~~ sixty days. An individual renewal period may
31 not be less than fifteen days. After ~~forty-five~~ sixty days the renewed deferred

- 1 presentment check must be paid off in cash, money order, or certified check by the
2 maker or must be deposited by the licensee.
- 3 13. A licensee may not renew, repay, refinance, or consolidate a deferred presentment
4 service transaction with the proceeds of another deferred presentment service
5 transaction with that licensee by the same maker or customer. It is presumed that
6 a deferred presentment service transaction initiated within three business days
7 before completion of a deferred presentment service transaction is a violation of
8 this subsection.
- 9 14. A licensee may not conduct another business, other than a bona fide pawnbroking
10 business, within the same office, suite, room, or place of business at which the
11 licensee engages in deferred presentment service transactions unless the
12 commissioner provides written authorization after a determination the other
13 business is not contrary to the best interests of consumers.
- 14 15. A licensee shall provide a notice in a prominent place on each deferred
15 presentment service agreement in no less than ten-point type in substantially the
16 following form:
- 17 State law prohibits this business from allowing customers to have outstanding
18 at any one time, deferred presentment service transactions totaling more than
19 ~~five~~ six hundred dollars.
- 20 16. A licensee or any agent of a licensee who willfully violates this section is guilty of a
21 class A misdemeanor.