CHAPTER 13-08
DEFERRED PRESENTMENT SERVICE PROVIDERS

13-08-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Check" means a personal check signed by the maker and made payable to a licensee.
2. "Commissioner" means the commissioner of financial institutions.
3. "Completed deferred presentment service transaction" means a transaction that is completed when a check is redeemed by the maker by payment in full to the licensee in cash, money order, or certified check or by negotiation or deposit by the licensee, or when an electronic funds transfer or other transfer of money has taken place to repay the contracted debt.
4. "Customer" means a person to which funds are advanced under a deferred presentment service transaction.
5. "Deferred presentment service transaction" means a transaction by which a person:
   a. Pays to a customer the amount of a check, less the fees permitted under this chapter, and accepts a check from the customer dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment;
   b. Accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check; or
   c. Pays to the customer an agreed-upon amount, and obtains the customer's authorization to transfer or withdraw, electronically or otherwise, funds from a customer's account in repayment at some future, agreed-upon date.
6. "Licensee" means a person licensed under this chapter to provide deferred presentment services.

13-08-02. License requirements.

A person may not engage in the business of deferred presentment service without a license issued under this chapter. A separate license is required for each location from which the business of deferred presentment service is conducted. A person is considered to be engaging in the business of deferred presentment service if the customer is located in this state.

13-08-03. Qualifications for license.

To qualify for a license, an applicant shall satisfy the following requirements:

1. Each applicant shall maintain a net worth of at least twenty-five thousand dollars per licensed location, determined in accordance with generally accepted accounting principles.
2. The financial responsibility, financial condition, business experience, character, and general fitness of the applicant must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant, and whether the applicant has filed the appropriate registration with the North Dakota secretary of state, if so required.
3. Each applicant shall establish that neither the applicant nor any principal of the applicant has been convicted of a felony. A deferred sentence or federal pretrial diversion must be considered a conviction for purposes of this section.
4. Each applicant shall maintain a bond issued by a surety company authorized to do business in this state, in the amount of twenty thousand dollars, and the commissioner may require a larger bond if the commissioner determines the larger bond is necessary based on the volume of the applicant's business.

13-08-04. Application for license.

1. Each application for a license must be in the form prescribed by the commissioner and must include:
   a. The legal name of the applicant, residence of the applicant, business address of the applicant, and address at which deferred presentment service is provided if different from the business address and, if the applicant is a partnership, association, or corporation, the name and address of every member, officer, and director;
   b. The location at which the registered office of the applicant is located; and
   c. Other data and information the commissioner may require with respect to the applicant and the applicant's directors, officers, members, and shareholders.
2. To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with a nationwide multistate licensing system and registry or other entities designated by a nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the chapter. The applicant shall pay directly to such nationwide multistate licensing system any additional fee relating to participation in such nationwide multistate licensing system.
3. In connection with an application for licensing as a deferred presentment service provider, or any license renewals, the applicant shall furnish to the nationwide multistate licensing system information concerning the applicant's identity, which may include:
   a. Fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check;
   b. Personal history and experience in a form prescribed by the nationwide multistate licensing system, including the submission of authorization for the nationwide multistate licensing system and the commissioner to obtain:
      (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
      (2) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and
   c. Any other documents, information, or evidence the commissioner deems relevant to the application regardless of the location, possession, control, or custody of such documents, information, or evidence.
4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.
5. For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

13-08-05. Application fees - Financial statements - Annual fee - Deposit of fees.

Each applicant for licensure shall include with the application an application and background investigation fee of eight hundred fifty dollars, which is not subject to refund but which, if the license is granted, constitutes the license fee for the first license year or part of the first license year, and each applicant for licensure shall include with the application proof of the required surety bond. The annual license fee is four hundred fifty dollars. Each fee set forth in this section is applicable to each location. The commissioner shall deposit fees and costs collected by the commissioner under this chapter in the department of financial institutions regulatory fund.

13-08-05.1. Change of name or address.

A licensee shall submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. In addition, the licensee shall submit the original license certificate for reissue.

13-08-05.2. Automatic six-month extension of license during 2014 calendar year.

Repealed by S.L. 2019, ch. 123, § 10.

13-08-06. Issuance of license - Posting.

1. Upon receipt of a complete application, the commissioner shall determine whether the qualifications prescribed under this chapter are satisfied. If the commissioner determines the qualifications are satisfied and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment service business.
2. A licensee shall keep a notice conspicuously posted in the place of business of the licensee and shall provide the same notice to its customers in this state. This notice must include the license number and instructions for customers to look up the licensee on the nationwide multistate licensing system for license verification.
3. A license issued under this section is effective through the remainder of the fiscal year ending December thirty-first after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

13-08-07. Nontransferability - Change in control of license.

A license issued under this chapter is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs. Control in the case of a corporation means direct or indirect ownership; the right to control twenty-five percent or more of the voting shares of the corporation; or the ability of any person to elect a majority of the directors or otherwise affect a change in policy. Control in the case of any other entity means the ability to exchange the principals of the organization, whether active or passive. In the case of a change of control request, the commissioner may require information the commissioner deems necessary to determine whether a new application is required. A licensee shall notify the commissioner fifteen days before any proposed change in the licensee's business location or name.

13-08-08. Reports of commissioner.

Within fifteen days of the occurrence of any one of the following events, a licensee shall file a written report with the commissioner describing the event and the event's expected impact on the activities of the licensee in the state:

1. The filing for bankruptcy or reorganization by the licensee;
2. The institution of revocation or suspension proceedings against the licensee by any governmental authority;
3. Any felony charges of the licensee or any of the licensee's members, directors, officers, or shareholders; and
4. Any other event the commissioner identifies by rule.

13-08-09. Expiration of license - Renewal.

Licenses issued under this chapter expire as of December thirty-first of each year. A license may be renewed for the ensuing twelve-month period upon application and the payment to the commissioner of the annual license fee, which is not subject to refund, before December first of each year. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of such license.

13-08-10. Regulations - Examinations.

The commissioner may adopt rules for the implementation and enforcement of this chapter. To assure compliance with this chapter, the commissioner may examine the relevant business, books, and records of any licensee. The licensee shall pay an examination or visitation fee, and the commissioner shall charge the licensee for the actual cost of the examination or visitation at an hourly rate set by the commissioner which is sufficient to cover all reasonable expenses associated with the examination or visitation.

13-08-11. Retention of records.

Each licensee shall keep and use in the licensee's business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the rules issued under this chapter. Every licensee shall preserve required books, accounts, and records for at least six years. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

13-08-11.1. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, the department may deny the application.

13-08-11.2. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner or commissioner's designee may furnish information to or receive information from a nationwide multistate licensing system for the purpose of regulation of the financial services industry. Information furnished by the commissioner to any third party which is confidential or privileged in the commissioner's possession remains confidential or privileged in the possession of the third party. Information received by the commissioner from any third party which is confidential or privileged in the third-party's possession remains confidential or privileged in the commissioner's possession.

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

1. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the customer a clear and conspicuous printed notice indicating:
    a. That a deferred presentment service transaction is not intended to meet long-term financial needs.
    b. That the customer should use a deferred presentment service transaction only to meet short-term cash needs.
    c. That the customer will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount.
    d. A schedule of fees charged for deferred presentment service.
    e. Any information required under federal law.

f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.

2. A licensee may charge a fee for the deferred presentment service, not to exceed twenty percent of the amount paid to the customer by the licensee. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, except that a fee, not to exceed the cost to the licensee, may be charged for registering a transaction on a database administered or authorized by the commissioner. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
3. A licensee may not disburse more than five hundred dollars to the customer in a deferred presentment service transaction.
4. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate value of all outstanding obligations from any one customer exceeding six hundred dollars which is payable to the same or any other licensee. A licensee may not enter a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction. A licensee may rely on a written or electronic representation of a customer regarding the existence of any outstanding obligations for deferred presentment held by a licensee other than the licensee receiving the representation until the database provided for under this subsection is in operation, and after that time may not rely on a customer's representation but must verify the fact using the database. However, if a licensee has multiple locations, that licensee may not rely on the representation of a customer regarding the existence of any outstanding obligation for deferred presentment held by that licensee, or one of the licensee's multiple locations, unless the licensee and the licensee's multiple locations use a point of sale registry or some other accounting system to attempt to prevent violations of this subsection. The commissioner shall administer or authorize the development of a database in which each transaction must be recorded for the purpose of preventing violations of this section. The commissioner shall adopt rules governing the creation, structure, and use of the database.
5. Before a licensee may negotiate or present a check for payment, the check must be endorsed with the actual name under which the licensee is doing business.
6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed or similarly authenticated by the customer. The original agreement must contain the name of the licensee; the transaction date; the amount of the obligation; a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent of the amount being renewed; a statement that the maximum term of the transaction, including the renewal, may not exceed sixty calendar days; a statement that the term of the renewal period may not be less than fifteen calendar days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this chapter; any representation from the check maker as to

the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date. The agreement must authorize the licensee to defer presentment or negotiation of the check, or electronic debit of the customer's account, until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee. A customer agreeing to an electronic deferred presentment service transaction may repay the obligation at any time before the agreed-upon date. A customer may rescind any transaction by the close of the business day following the day on which the customer receives payment from the licensee at no cost. If a customer agreeing to an electronic deferred presentment service transaction rescinds the transaction, the licensee must facilitate the repayment of the funds through the same electronic means the licensee used to deliver the funds to the customer.

7. If a check or electronic debit is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the obligation. The licensee may contract for and collect a returned check or electronic debit charge not to exceed the collection fees and costs authorized in subdivision c of subsection 2 of section 6-08-16. No other fee or charge may be collected as a result of a returned check or electronic debit or as a result of default by the customer in timely payment to the licensee.
8. A customer who has authority to make a check or authorize an electronic debit and enters a deferred presentment service agreement is not subject to a criminal penalty relating to the check, electronic debit, or the deferred presentment service agreement unless the customer's account was closed on the original date of the transaction. At the time of entering a transaction involving a written check, a licensee shall verify that the account on which the check is written is open. A licensee may not pursue or threaten to pursue criminal penalties against a customer for criminal penalties prohibited by this subsection.
9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
10. The amount paid to the customer by the licensee in a deferred presentment service transaction must be paid in the form of cash, check, or an electronic credit to the customer's account.
11. Each licensee must conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service. A licensee that engages in a deferred presentment service transaction via the internet shall require its customers to acknowledge the fees imposed using a click-through or other method that prevents customers from completing the transaction without reviewing the licensee's fees.
12. Except as provided under subsection 13, a licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The renewal fee must be paid in cash, money order, or cashier's check. The total period of deferral, including the initial deferral and one renewal, may not exceed sixty days. An individual renewal period may not be less than fifteen days. After sixty days the renewed deferred presentment service transaction must be paid off in cash, money order, electronic payment, or cashier's check by the customer or, if a check is used, the check must be deposited by the licensee.
13. A licensee may enter a workout agreement with the borrower if the borrower believes financial hardship prevents the borrower from paying off the deferred presentment service transaction at the end of the original agreement or following any renewal. The workout agreement must outline the repayment terms in writing and must require

weekly, biweekly, or monthly even installments not to exceed twelve months. An additional interest or fee may not be charged as part of this workout, the deferred presentment service provider shall continue to report the transaction as an outstanding deferred presentment service transaction on any database administered by the commissioner, and entering a workout agreement is voluntary on the part of the deferred presentment service provider and the borrower.

14. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. It is presumed that a deferred presentment service transaction initiated within three business days before completion of a deferred presentment service transaction is a violation of this subsection.
15. A licensee may not conduct another business, other than a bona fide pawnbroking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers.
16. A licensee shall provide a notice in a prominent place on each deferred presentment service agreement in no less than ten-point type in substantially the following form:

    State law prohibits this business from allowing customers to have outstanding at any one time, deferred presentment service transactions totaling more than six hundred dollars.
17. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

13-08-13. Denial of license - Hearing.

If the commissioner determines an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing stating that the application is denied and stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within thirty days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. The hearing must be held within thirty days after receipt of the written demand by the applicant. In the event of a hearing, the commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application. If an applicant who is denied a license requests a hearing and the commissioner's denial is upheld, the commissioner may assess the applicant for the commissioner's costs incurred for the hearing, in an amount not exceeding two thousand dollars.

13-08-14. Suspension - Revocation.

1. The commissioner may issue and serve upon any licensee an order suspending or revoking a license if the commissioner finds that the licensee or any principal of the licensee has been convicted of a felony or that the licensee knowingly or through lack of due care:
    a. Failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;
    b. Committed any fraud, engaged in any dishonest activities, or made any misrepresentations;
    c. Violated this chapter or any rule adopted under this chapter or violated any other law in the course of the licensee's business activities as a licensee;
    d. Made false statements in the application for the license;
    e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business;
    f. Failed to maintain the required bond; or
    g. Failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

3. If a hearing is not requested within twenty business days of the date the order is served upon the licensee or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may upon written notice enter an order temporarily suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.

13-08-14.1. Suspension and removal of deferred presentment service provider officers and employees.

1. The commissioner of financial institutions may issue and serve upon any current or former deferred presentment service provider officer or employee and upon the licensee involved an order stating:
   a. That the current or former officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
      (1) Violating a law, rule, order, or written agreement with the commissioner.
      (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
      (3) Performing an act of commission or omission or practice, which is a breach of trust or a breach of fiduciary duty.
   b. The term of suspension or removal from employment and participation within the conduct or the affairs of a deferred presentment service provider.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty business days of the date the order is served, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or removing the current or former employee or officer from office. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a deferred presentment service provider pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When any current or former officer or employee or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the deferred presentment service provider affairs, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

13-08-15. Violations - Cease and desist orders - Penalties.

Except as otherwise provided in this chapter, any person who willfully provides deferred presentment services without a license is guilty of a class C felony and any person who violates

any other provisions of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the commissioner finds, whether without a hearing or after a hearing if a hearing is requested within twenty days of notice of an action by the commissioner under this section, that a person violated this chapter or any rule adopted to implement this chapter, the commissioner may do any one or more of the following:

1. Order the person to cease and desist violating this chapter or the rule.
2. Require the refund of any fees collected by the person in violation of this chapter.
3. Impose a civil penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

13-08-16. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all persons licensed under this chapter.