

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1321
(Representatives Dosch, Delmore, Kasper, S. Meyer)
(Senators Krebsbach, Wardner)

AN ACT to amend and reenact sections 13-08-01, 13-08-06, and 13-08-12 of the North Dakota Century Code, relating to deferred presentment service transaction procedures and limitations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-08-01 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~made under a written agreement between a licensee and the maker of a check under which the licensee by~~ which a person:
 - a. ~~Pays to the maker of the check a customer~~ the amount of ~~the~~ a check, less the fees permitted under this chapter, and accepts a check from the ~~maker~~ customer dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment; ~~or~~
 - 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.

SECTION 2. AMENDMENT. Section 13-08-06 of the North Dakota Century Code is amended and reenacted as follows:

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 the license conspicuously posted in the place of business of the licensee, and shall provide notice to its customers in this state of the license number under which it is operating.
3. A license issued under this section is effective through the remainder of the fiscal year ending June thirtieth after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

SECTION 3. AMENDMENT. Section 13-08-12 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~maker of the check~~ 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 ~~maker of a check~~ customer should use a deferred presentment service transaction only to meet short-term cash needs.
 - c. That the ~~maker of a check~~ 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 ~~maker of the check~~ 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, and no except that a fee, not to exceed the cost to the licensee, may be charged for registering a transaction on a data base 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 ~~maker of a check~~ 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 ~~face~~ value of all outstanding ~~checks~~ obligations from any one ~~maker~~ customer exceeding ~~five~~ six hundred dollars which is payable to the same or any other licensee. A licensee may not enter ~~into~~ 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 ~~maker~~ customer regarding the existence of any outstanding checks obligations for deferred presentment held by a licensee other than the licensee receiving the representation until the data base 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 data base. However, if a licensee has multiple locations, that licensee may not rely on ~~such written~~ the representation of a ~~maker~~ customer regarding the existence of any outstanding checks 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 data base 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 data base.

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 ~~maker of the check~~ customer. The ~~written~~ agreement must contain the name of the licensee; the transaction date; the amount of the check obligation; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate. The ~~written~~ 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; ~~however, the maker~~. 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 the any transaction by the close of the following 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 check obligation. The licensee may contract for and collect a returned check or electronic debit charge not to exceed twenty dollars ~~per customer, per year~~. 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 ~~maker of the check~~ customer in timely payment to the licensee.
8. A ~~maker of a check~~ customer who has authority to make a check or authorize an electronic debit and enters ~~into~~ 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 ~~on which the check was written~~ 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 ~~maker of a check~~ 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 ~~maker~~ customer by the licensee in a deferred presentment service transaction must be paid in the form of cash ~~or~~, 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. 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 total period of deferral, including the initial deferral and one renewal, may not exceed ~~forty five~~ sixty days. An individual renewal period may not be less than fifteen days. After ~~forty five~~ sixty days the renewed deferred presentment ~~check~~ service transaction must be paid off in cash, money order, electronic payment, or certified check by the ~~maker~~ customer or, if a check is used, the check must be deposited by the licensee.
13. 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.
14. 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.
15. 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 ~~five~~ six hundred dollars.
16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1321 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 78 Nays 11 Absent 5

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 1 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State