

Introduced by

Senators Piepkorn, Bakke, Mathern

Representatives P. Anderson, Boschee, Schneider

1 A BILL for an Act to amend and reenact sections 13-08-01 and 13-08-12 of the North Dakota
2 Century Code, relating to deferred presentment service transaction fees; to provide a penalty;
3 and to provide for application.

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

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

7 **13-08-01. Definitions.**

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

9 1. "Annual percentage rate" means a measure of the cost of credit, expressed as a

10 yearly rate, as calculated under the federal Truth in Lending Act [Pub. L. 90-321;

11 8 Stat. 146; 15 U.S.C. 1601 et seq.]. The calculation of the annual percentage rate

12 includes all interest, fees, and charges, including fees and charges for any ancillary

13 products sold in connection with the deferred presentment service transaction.

14 2. "Check" means a personal check signed by the maker and made payable to a

15 licensee.

16 ~~2-3.~~ "Commissioner" means the commissioner of financial institutions.

17 ~~3-4.~~ "Completed deferred presentment service transaction" means a transaction that is

18 completed when a check is redeemed by the maker by payment in full to the licensee

19 in cash, money order, or certified check or by negotiation or deposit by the licensee, or

20 when an electronic funds transfer or other transfer of money has taken place to repay

21 the contracted debt.

22 ~~4-5.~~ "Customer" means a person to which funds are advanced under a deferred

23 presentment service transaction.

24 ~~5-6.~~ "Deferred presentment service transaction" means a transaction by which a person:

- 1 a. Pays to a customer the amount of a check, less the fees permitted under this
- 2 chapter, and accepts a check from the customer dated on the date of the
- 3 transaction and agrees to hold the check for a period of time before negotiation
- 4 or presentment;
- 5 b. Accepts a check dated after the date of the transaction and agrees to hold the
- 6 check for deposit until the date written on the check; or
- 7 c. Pays to the customer an agreed-upon amount, and obtains the customer's
- 8 authorization to transfer or withdraw, electronically or otherwise, funds from a
- 9 customer's account in repayment at some future, agreed-upon date.

10 ~~6-7.~~ "Licensee" means a person licensed under this chapter to provide deferred
11 presentment services.

12 **SECTION 2. AMENDMENT.** Section 13-08-12 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **13-08-12. Fees for service - Deferred presentment service transaction procedures -**
15 **Penalty.**

- 16 1. Before disbursing funds under a deferred presentment service transaction, a licensee
- 17 shall provide to the customer a clear and conspicuous printed notice indicating:
 - 18 a. ~~That a~~A deferred presentment service transaction is not intended to meet
 - 19 long-term financial needs.
 - 20 b. ~~That the~~The customer should use a deferred presentment service transaction
 - 21 only to meet short-term cash needs.
 - 22 c. ~~That the~~The customer will be required to pay additional fees if the deferred
 - 23 presentment service transaction is renewed rather than paid in full when due. If
 - 24 the transaction is renewed, any amount paid in excess of the fee applies to the
 - 25 payoff amount.
 - 26 d. A schedule of fees charged for deferred presentment service.
 - 27 e. Any information required under federal law.
 - 28 f. ~~No property~~Property, titles to any property, or mortgages may not be received or
 - 29 held directly or indirectly by the licensee as a condition of a deferred presentment
 - 30 service transaction or as a method of collection on a defaulted deferred
 - 31 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 customer by the licensee. ~~This fee may not~~
3 be deemed interest for any purpose of law. ~~No other fee or charge may be charged for~~
4 the deferred presentment service, ~~except that a fee, not to exceed the cost to the~~
5 licensee, ~~may be charged for registering a transaction on a database administered or~~
6 ~~authorized by the commissioner. No property; however, a licensee may neither~~
7 contract for nor receive a fee or charge pursuant to a deferred presentment service
8 transaction in excess of an annual percentage rate of thirty-six percent. Property, titles
9 to any property, or mortgages may not be received or held directly or indirectly by the
10 licensee as a condition of a deferred presentment service transaction or as a method
11 of collection on a defaulted deferred presentment service transaction without proper
12 civil process.
- 13 3. A person may not engage in any device, subterfuge, or pretense to evade the
14 requirements of subsection 2, including making a deferred presentment service
15 transaction disguised as a personal property sale and leaseback transaction;
16 disguising deferred presentment service transaction proceeds as a cash rebate for the
17 pretextual installment sale of goods or services; or making, offering, assisting, or
18 arranging a customer to obtain a deferred presentment service transaction with a
19 greater rate of interest, consideration, fee or charge than is permitted by this chapter
20 through any method, including mail, telephone, internet, or any electronic means,
21 regardless of whether the person has a physical location in the state.
- 22 4. A licensee may not disburse more than five hundred dollars to the customer in a
23 deferred presentment service transaction.
- 24 4.5. A licensee may not engage in a deferred presentment service transaction with a
25 customer who has an aggregate value of all outstanding obligations from any one
26 customer exceeding six hundred dollars which is payable to the same or any other
27 licensee. A licensee may not enter a new deferred presentment service transaction
28 with a customer within three business days of that customer's completion of a previous
29 deferred presentment service transaction. A licensee may rely on a written or
30 electronic representation of a customer regarding the existence of any outstanding
31 obligations for deferred presentment held by a licensee other than the licensee

1 receiving the representation until the database provided for under this subsection is in
2 operation, and after that time may not rely on a customer's representation but
3 ~~must~~shall verify the fact using the database. However, if a licensee has multiple
4 locations, that licensee may not rely on the representation of a customer regarding the
5 existence of any outstanding obligation for deferred presentment held by that licensee,
6 or one of the licensee's multiple locations, unless the licensee and the licensee's
7 multiple locations use a point of sale registry or some other accounting system to
8 attempt to prevent violations of this subsection. The commissioner shall administer or
9 authorize the development of a database in which each transaction must be recorded
10 for the purpose of preventing violations of this section. The commissioner shall adopt
11 rules governing the creation, structure, and use of the database.

12 ~~5.6.~~ Before a licensee may negotiate or present a check for payment, the check must be
13 endorsed with the actual name under which the licensee is doing business.

14 ~~6.7.~~ Each deferred presentment service transaction, including a renewal, must be
15 documented by a written agreement signed or similarly authenticated by the customer.
16 The original agreement must contain the name of the licensee; the transaction date;
17 the amount of the obligation; a statement of the total amount of fees charged,
18 expressed as a dollar amount and as an annual percentage rate; the name and
19 signature of the individual who signs the agreement on behalf of the licensee; the
20 name and address of the check maker; the transaction number assigned by the
21 database; the date of negotiation of the check; the signature of the check maker; a
22 statement ~~that~~ a licensee may not renew a transaction more than once; a statement
23 ~~that~~ the renewal fee may not exceed ~~twenty~~an annual percentage rate of thirty-six
24 percent of the amount being renewed, as provided under subsection 2; a statement
25 ~~that~~ the maximum term of the transaction, including the renewal, may not exceed sixty
26 calendar days; a statement ~~that~~ the term of the renewal period may not be less than
27 fifteen calendar days; and a statement containing the right of rescission printed
28 immediately above the signature line of the written agreement in a minimum of
29 ten-point font and providing a space for the check maker to initial ~~that~~ the notice to the
30 right of rescission was received. The original agreement may not include a hold
31 harmless clause; a confession of judgment clause; any assignment of or order for

1 payment of wages or other compensation for services; a provision in which the check
2 maker agrees not to assert any claim or defense arising out of the agreement; a
3 waiver of any provision of this chapter; any representation from the check maker as to
4 the sufficiency of funds regarding any past deferred presentment service transactions;
5 or any statement regarding criminal prosecution with respect to the agreement. A
6 renewal agreement must be contained in a separate section, as part of the original
7 written agreement or in other form as approved by the commissioner. The renewal
8 agreement must restate the original transaction date, the renewal transaction date, the
9 amount of the check paid to the check maker, the fee charged in dollars, the annual
10 percentage rate, and the maturity date. The agreement must authorize the licensee to
11 defer presentment or negotiation of the check, or electronic debit of the customer's
12 account, until a specified date. The maker of a check may redeem the check from the
13 licensee at any time before the negotiation or presentment of the check by making
14 payment to the licensee. A customer agreeing to an electronic deferred presentment
15 service transaction may repay the obligation at any time before the agreed-upon date.
16 A customer may rescind any transaction by the close of the business day following the
17 day on which the customer receives payment from the licensee at no cost. If a
18 customer agreeing to an electronic deferred presentment service transaction rescinds
19 the transaction, the licensee ~~must~~shall facilitate the repayment of the funds through
20 the same electronic means the licensee used to deliver the funds to the customer.

21 ~~7-8.~~ If a check or electronic debit is returned to the licensee from a payer financial
22 institution due to insufficient funds, closed account, or a stop payment order, the
23 licensee has the right to all civil remedies available to collect the obligation. The
24 licensee may contract for and collect a returned check or electronic debit charge, not
25 to exceed the collection fees and costs authorized in subdivision c of subsection 2 of
26 section 6-08-16. No other fee or charge may be collected as a result of a returned
27 check or electronic debit or as a result of default by the customer in timely payment to
28 the licensee. Fees or charges authorized under this subsection are not subject to
29 subsection 2.

30 ~~8-9.~~ A customer who has authority to make a check or authorize an electronic debit and
31 enters a deferred presentment service agreement is not subject to a criminal penalty

1 relating to the check, electronic debit, or the deferred presentment service agreement,
2 unless the customer's account was closed on the original date of the transaction. At
3 the time of entering a transaction involving a written check, a licensee shall verify that
4 the account on which the check is written is open. A licensee may not pursue or
5 threaten to pursue criminal penalties against a customer for criminal penalties
6 prohibited by this subsection.

7 ~~9-10.~~ A licensee may not engage in unfair or deceptive acts, practices, or advertising in the
8 conduct of a deferred presentment service business.

9 ~~10-11.~~ The amount paid to the customer by the licensee in a deferred presentment service
10 transaction must be paid in the form of cash, check, or an electronic credit to the
11 customer's account.

12 ~~11-12.~~ Each licensee ~~must~~shall conspicuously post in the licensee's licensed location a notice
13 of the fees imposed for the deferred presentment service. A licensee that engages in a
14 deferred presentment service transaction via the internet shall require ~~its~~the licensee's
15 customers to acknowledge the fees imposed using a click-through or other method
16 that prevents customers from completing the transaction without reviewing the
17 licensee's fees.

18 ~~12-13.~~ A licensee may not renew a deferred presentment service transaction more than once.
19 A licensee's renewal fee may not exceed ~~twenty percent of the amount being~~
20 ~~renewed~~the amount set forth under subsection 2. The renewal fee must be paid in
21 cash, money order, or cashier's check. The total period of deferral, including the initial
22 deferral and one renewal, may not exceed sixty days. An individual renewal period
23 may not be less than fifteen days. After sixty days the renewed deferred presentment
24 service transaction must be paid off in cash, money order, electronic payment, or
25 cashier's check by the customer or, if a check is used, the check must be deposited by
26 the licensee.

27 ~~13-14.~~ A licensee may not renew, repay, refinance, or consolidate a deferred presentment
28 service transaction with the proceeds of another deferred presentment service
29 transaction with that licensee by the same maker or customer. It is presumed ~~that~~
30 a deferred presentment service transaction initiated within three business days before

1 completion of a deferred presentment service transaction is a violation of this
2 subsection.

3 ~~14.15.~~ A licensee may not conduct another business, other than a bona fide pawnbroking
4 business, within the same office, suite, room, or place of business at which the
5 licensee engages in deferred presentment service transactions, unless the
6 commissioner provides written authorization after a determination the other business
7 is not contrary to the best interests of consumers.

8 ~~15.16.~~ A licensee shall provide a notice in a prominent place on each deferred presentment
9 service agreement in no less than ten-point type in substantially the following form:

10 State law prohibits this business from allowing customers to have outstanding at
11 any one time, deferred presentment service transactions totaling more than six
12 hundred dollars.

13 ~~16.17.~~ A deferred presentment service transaction made in violation of this section is void and
14 uncollectible as to any principal, fee, charge, or interest.

15 18. A licensee or any agent of a licensee who willfully violates this section is guilty of a
16 class A misdemeanor.

17 **SECTION 3. APPLICATION.** This Act applies to deferred presentment service transactions
18 made on and after the effective date of this Act.