

Introduced by

Representatives Dosch, Delmore, Kasper, S. Meyer

Senators Krebsbach, Wardner

1 A BILL for an Act to amend and reenact sections 13-08-01, 13-08-06, and 13-08-12 of the  
2 North Dakota Century Code, relating to deferred presentment service transaction procedures  
3 and limitations; and to declare an emergency.

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

- 8 1. "Check" means a personal check signed by the maker and made payable to a  
9 licensee.
- 10 2. "Commissioner" means the commissioner of financial institutions.
- 11 3. "Completed deferred presentment service transaction" means a transaction that is  
12 completed when a check is redeemed by the maker by payment in full to the  
13 licensee in cash, money order, or certified check or by negotiation or deposit by  
14 the licensee, or when an electronic funds transfer or other transfer of money has  
15 taken place to repay the contracted debt.
- 16 4. "Customer" means a person to which funds are advanced under a deferred  
17 presentment service transaction.
- 18 5. "Deferred presentment service transaction" means a transaction ~~made under a~~  
19 ~~written agreement between a licensee and the maker of a check under which the~~  
20 ~~licensee by which a person:~~
  - 21 a. Pays to ~~the maker of the check~~ a customer the amount of ~~the~~ a check, less  
22 the fees permitted under this chapter, and accepts a check from the ~~maker~~  
23 customer dated on the date of the transaction and agrees to hold the check  
24 for a period of time before negotiation or presentment; ~~or~~

- 1           b. Accepts a check dated after the date of the transaction and agrees to hold the  
2           check for deposit until the date written on the check; or  
3           c. Pays to the customer an agreed-upon amount, and obtains the customer's  
4           authorization to transfer or withdraw, electronically or otherwise, funds from a  
5           customer's account in repayment at some future, agreed-upon date.

6       5- 6. "Licensee" means a person licensed under this chapter to provide deferred  
7       presentment services.

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

10       **13-08-06. Issuance of license - Posting.**

- 11       1. Upon receipt of a complete application, the commissioner shall determine whether  
12       the qualifications prescribed under this chapter are satisfied. If the commissioner  
13       determines the qualifications are satisfied and approves the documents, the  
14       commissioner shall issue to the applicant a license to engage in the deferred  
15       presentment service business.  
16       2. A licensee shall keep the license conspicuously posted in the place of business of  
17       the licensee, and shall provide notice to its customers in this state of the license  
18       number under which it is operating.  
19       3. A license issued under this section is effective through the remainder of the fiscal  
20       year ending June thirtieth after the license's date of issuance unless earlier  
21       surrendered, suspended, or revoked under this chapter.

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

24       **13-08-12. Fees for service - Deferred presentment service transaction procedures**  
25       **- Penalty.**

- 26       1. Before disbursing funds under a deferred presentment service transaction, a  
27       licensee shall provide to the ~~maker of the check~~ customer a clear and conspicuous  
28       printed notice indicating:  
29       a. That a deferred presentment service transaction is not intended to meet  
30       long-term financial needs.

- 1           b. That the ~~maker of a check~~ customer should use a deferred presentment  
2           service transaction only to meet short-term cash needs.
- 3           c. That the ~~maker of a check~~ customer will be required to pay additional fees if  
4           the deferred presentment service transaction is renewed rather than paid in  
5           full when due. If the transaction is renewed, any amount paid in excess of the  
6           fee applies to the payoff amount.
- 7           d. A schedule of fees charged for deferred presentment service.
- 8           e. Any information required under federal law.
- 9           f. No property, titles to any property, or mortgages may be received or held  
10          directly or indirectly by the licensee as a condition of a deferred presentment  
11          service transaction or as a method of collection on a defaulted deferred  
12          presentment service transaction without proper civil process.
- 13          2. A licensee may charge a fee for the deferred presentment service, not to exceed  
14          twenty percent of the amount paid to the ~~maker of the check~~ customer by the  
15          licensee. This fee may not be deemed interest for any purpose of law. No other  
16          fee or charge may be charged for the deferred presentment service, ~~and no~~ except  
17          that a fee, not to exceed the cost to the licensee, may be charged for registering a  
18          transaction on a data base administered or authorized by the commissioner. No  
19          property, titles to any property, or mortgages may be received or held directly or  
20          indirectly by the licensee as a condition of a deferred presentment service  
21          transaction or as a method of collection on a defaulted deferred presentment  
22          service transaction without proper civil process.
- 23          3. A licensee may not disburse more than five hundred dollars to the ~~maker of a~~  
24          ~~check~~ customer in a deferred presentment service transaction.
- 25          4. A licensee may not engage in a deferred presentment service transaction with a  
26          customer who has an aggregate ~~face~~ value of all outstanding ~~checks~~ obligations  
27          from any one ~~maker~~ customer exceeding ~~five~~ six hundred dollars which is payable  
28          to the same or any other licensee. A licensee may not enter ~~into~~ a new deferred  
29          presentment service transaction with a customer within three business days of that  
30          customer's completion of a previous deferred presentment service transaction. A  
31          licensee may rely on a written or electronic representation of a ~~maker~~ customer

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

15 5. Before a licensee may negotiate or present a check for payment, the check must  
16 be endorsed with the actual name under which the licensee is doing business.

17 6. Each deferred presentment service transaction, including a renewal, must be  
18 documented by a written agreement signed or similarly authenticated by the ~~maker~~  
19 ~~of the check~~ customer. The ~~written~~ agreement must contain the name of the  
20 licensee; the transaction date; the amount of the ~~check~~ obligation; and a statement  
21 of the total amount of fees charged, expressed as a dollar amount and as an  
22 annual percentage rate. The ~~written~~ agreement must authorize the licensee to  
23 defer presentment or negotiation of the check, or electronic debit of the customer's  
24 account, until a specified date. The maker of a check may redeem the check from  
25 the licensee at any time before the negotiation or presentment of the check by  
26 making payment to the licensee; ~~however, the maker.~~ A customer agreeing to an  
27 electronic deferred presentment service transaction may repay the obligation at  
28 any time before the agreed-upon date. A customer may rescind the any  
29 transaction by the close of the ~~following~~ business day following the day on which  
30 the customer receives payment from the licensee at no cost. If a customer  
31 agreeing to an electronic deferred presentment service transaction rescinds the

- 1           transaction, the licensee must facilitate the repayment of the funds through the  
2           same electronic means the licensee used to deliver the funds to the customer.
- 3           7. If a check or electronic debit is returned to the licensee from a payer financial  
4           institution due to insufficient funds, closed account, or a stop payment order, the  
5           licensee has the right to all civil remedies available to collect the ~~check~~ obligation.  
6           The licensee may contract for and collect a returned check or electronic debit  
7           charge not to exceed twenty dollars ~~per customer, per year~~. No other fee or  
8           charge may be collected as a result of a returned check or electronic debit or as a  
9           result of default by the ~~maker of the check~~ customer in timely payment to the  
10          licensee.
- 11          8. A ~~maker of a check~~ customer who has authority to make ~~the~~ a check or authorize  
12          an electronic debit and enters ~~into~~ a deferred presentment service agreement is  
13          not subject to a criminal penalty relating to the check, electronic debit, or the  
14          deferred presentment service agreement unless the customer's account on which  
15          ~~the check was written~~ was closed on the original date of the transaction. At the  
16          time of entering a transaction involving a written check, a licensee shall verify that  
17          the account on which the check is written is open. A licensee may not pursue or  
18          threaten to pursue criminal penalties against a ~~maker of a check~~ customer for  
19          criminal penalties prohibited by this subsection.
- 20          9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in  
21          the conduct of a deferred presentment service business.
- 22          10. The amount paid to the ~~maker~~ customer by the licensee in a deferred presentment  
23          service transaction must be paid in the form of cash ~~or~~ check, or an electronic  
24          credit to the customer's account.
- 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. A licensee that engages  
27          in a deferred presentment service transaction via the internet shall require its  
28          customers to acknowledge the fees imposed using a click-through or other method  
29          that prevents customers from completing the transaction without reviewing the  
30          licensee's fees.

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

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