

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1321

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1321

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1321**

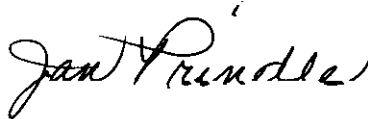
House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **1 February 05**

Tape Number	Side A	Side B	Meter #
2	X		158 - 1722

Committee Clerk Signature



Minutes:

**Chairman Keiser opened the hearing of HB 1321.**

**Ken Tupa, lobbyist for the ND Pawnbrokers Association,** testified in favor of the bill.

**(Testimony Attached.)** His testimony included three proposed amendments and several attachments.

**Rep. Johnson:** In that last section, why would you want the option to hold moved to 60 days instead of 45?

**Tupa:** From talking to the providers, there are situations that may arise where a customer may need some extra time before you deposit their check. The providers would like to have that flexibility so they can work with that customer so that they don't deposit the check and create a situation where the check is returned and the customer gets into a short term cash need. That flexibility would allow them to work with the customers. It's at no cost. No fee is involved. It's

just a flexibility that we would like to have to work with some of the customers. I think of it as friendly consumer protection.

**Rep. Nottestad:** The final decision on whether it goes from 45 to 60 would be from the lender. Correct? If the lender knows he isn't going to get at the end of 60, he probably wouldn't go the extra 15 days.

**Tupa:** That is correct. This situation would be the provider and customer would work together on that and you have that extra flexibility. I understand there have been cases where the provider would like to have been able to hold that for a longer period of time but right now they have to deposit it in 45 days.

**Rep. Keiser:** You and I have had discussions about the third count on this extension. This additional 15-day extension. At what point does it become a non-payday loan? The concept of a payday loan is you borrow the money on the assumption that the next time I get paid I pay it. So now we're requesting to go from 45 to 60 days. What payday is out there 60 days long or 45 days long?

**Tupa:** Most of these loans are going to be a 15-day period--two weeks per loan. That's really what the design is for. They can renew it for one more 15-day period. The overwhelming majority are going to be for 15 days. There are those cases where an individual again has short-term cash issues and we would like the flexibility to hold as long as we're not charging for it, because if we were charging for it, it would be in effect another new loan and that's not what we're seeking here.

**Commissioner \_\_\_\_?** (did not identify himself and did not register) Testified as neutral on the issue. We have worked with the ND Payday Association for the last two sessions we've had

this in place. Mr. Tupa says that we have one of the best laws in the nation on that and I think he is right. I commend the legislature when they gave us the power to enforce that law. We do have the tools necessary to make sure that industry is following. Our biggest problem is the out-of-state lenders. We spend a lot of time trying to get those people licensed. On the 45- to 60-days, we have been told and I think maybe it is a consumer thing. We wanted a time limit in there so that a payday loan should end at some time in the future. The 60 days is a good thing but we do think that at some time there has to be a time when that check is deposited and the consequences must be faced. I just wanted to give you some information. People wonder if this industry is being used in the state. As of year end, and remember that these loans turn over every 14 days, we had approximately \$2,129,000 in outstanding loans as of December 31. That doesn't sound like a lot but that \$2 million is going to roll so on Jan 14 we're going to have that many more new loans outstanding. That's up \$1.8 million from 2003. The first year, 2001, we were only in business for 6 months and we were running about \$950,000. I just wanted you to know that is what we regulate and that is what we license. Now with the Internet people that we don't know about, we just know it's a \$40 billion business nationwide.

**There being no further testimony on HB 1321, Chairman Keiser closed the hearing.**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1321

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-2-05

Tape Number	Side A	Side B	Meter #
2	x		41.9-end
2		x	0-5.2

Committee Clerk Signature

Minutes:

**Chairman Keiser:** Reconvened on HB 1321.

**Representative Froseth:** I move a **DO PASS** on HB 1321.

**Representative Nottestad:** **SECOND** the **DO PASS** motion.

Motion carried. **VOTE: 11-YES 2-NO 1-Absent (EKSTROM).**

**Representative Nottestad** will carry the bill on the floor.

Meeting adjourned.

Roll Call Vote #: Date: 1-2-05

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1321**

House

**INDUSTRY, BUSINESS AND LABOR**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*DO PASS*

Motion Made By

*Rep Froseth*

Seconded By

*Rep. Nottestad.*

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigasaa

Yes	No
X	
X	
X	
	X
X	
X	
X	
X	
X	
X	

Representatives	Yes	No
Rep. B. Amerman	X	
Rep. T. Boe	X	
Rep. M. Ekstrom		
Rep. E. Thorpe		X

Total (Yes)

*11*

No

*2*

Absent

*11 Ekstrom*

Floor Assignment

*Rep. Nottestad.*

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 2, 2005 12:40 p.m.

**Module No: HR-22-1682**  
**Carrier: Nottestad**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1321: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1321 was placed on the Eleventh order on the calendar.



2005 SENATE FINANCE AND TAXATION

HB 1321

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1321**

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 21, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		0.1 - 33.0

Committee Clerk Signature



Minutes:

**CHAIRMAN URLACHER** CALLED THE COMMITTEE TO ORDER AND OPENED THE HEARING ON HB 1321.

**REP. DOSCH:** prime sponsor of the bill appeared in support stating this is known as the pay day loan bill.

**KEN TUPA:** ND Pawn Brokers Association appeared in support with written testimony.

**TIM KARSKY:** Commissioner for the Dept. Of Financial Institutions appeared in support with written testimony and to propose amendments.

**SEN. COOK:** This data base, who has access to all the names that are going to be included on that data base?

**ANSWER;** we feel its going to be the Dept.'s data base that will have control. Right now in Florida and Oklahoma they've got a \_\_\_\_\_ that operates that data base, but the individual lenders themselves don't have access. But every time they'd make a loan, if they make it to Tim

Karsky, if I come in and apply, they will search that data base to make sure that Tim Karsky has no other pay day loans elsewhere or that I'm under the limit, other than that, it will be our data base and we'll make sure that it meets the specifications. Mr. Entringer is the expert on the data base.

**SEN. COOK:** when they search, they can type in Tim Karsky, is that all they are going to see, or are they going to see the whole data base where they can scroll down?

**ANSWER;** no, they'll just get one name and basically a yes, no, denied or approved. It won't say approved but it will just say the amount for that individual borrower has amount available to get the pay day loan and we're going to use that for \_\_\_\_\_ vendors too.

**SEN. COOK:** can they randomly go through the telephone book and start typing in names?

**ANSWER;** no, the only time they will, there is a cost when you enter the name on so by law by rule we believe that if I was giving the loan, they'd have to put my name on the data base and before they can do that they'll have to search to make sure that I'm available and then that name of the loan will be anywhere from 50 cents to a dollar charge to help pay for this data base. Its worked very well in Florida and Oklahoma, there's other states that are talking about this and actually the federal deposit insurance corporation just came out with some rules for banks that are offering pay day loans nation wide and we're even anticipating maybe a nationwide data base here in ND.

**SEN. URLACHER:** what happens if there is more than one Tim Karsky?

**ANSWER;** I believe they will use a social security number with that or some identifying number that will identify.

**SEN. WARDNER:** I'm just interested in the Internet one come into the state. How will you get their information on your data base?

**ANSWER:** I believe it's going to be a web based system, where no matter where your at, you can do it through your personal, your computers in your business and the in Florida actually you can telephone dial up and get the information on the phone. But going after these out-of-state ones will be an easy task and the one advantage we have at the one in Utah is that they were licensed in Utah so that we can put some pressure on Utah to help shut these guys down or go after \_\_\_ penalties if they need.

**SEN. EVERY:** I want to ask about the charge. So I want to borrow \$100, I'm gonna pay \$20 for that \$100 plus I'm gonna pay another 50 cents to a dollar because of this data base, correct?

**ANSWER:** the actual fee thing isn't for certain but we are a patron of data base, we'd probably pass that 50 cents to a dollar charge onto the customer.

**SEN. COOK:** can anyone else access this data base or do you have to be a licensed payday loan giver?

**BOB ENTRINGER:** Assistant Commissioner for the Dept. - No, you'd have to be a licensed payday loan vendor. Your question about the telephone book, I assume that you could do but what I would also assume is that if that were happening that Veratech would notify us that somebody is doing that. It isn't going to cost you to do that, if you want to try to solicit people and go through the telephone book and entered everybody's name to get that payday loan, or if something would be available, you could probably do that, the problem is, no I don't think you could do that because you would need their checking account information, you would need their

social security number in order to enter to see what's available. I would assume also that we would be notified by the vendor that somebody is doing that.

**SEN. COOK:** I'm going to play the devil's advocate, I got 3 adult kids, you want to find out maybe if one of em is taking advantage of payday loans or is involved with payday loans, I could go to a licensed, Jays Pawnshop, and say here's my kids name, here's his SS#, here's his checking account number, can you check out on my kids to see if they got payday loans? He could do that and answer my question, could he not?

**ANSWER;** he could and I would fairly confident that he would not, because the purpose of it is to register the transaction and he would be violating that person's privacy by saying or even telling you as their parent that they have or do not have payday loans outstanding, they would be violating the privacy statute.

**SEN. COOK:** but they'd never know.

**ANSWER;** that's correct, they wouldn't know but I honestly believe that Jay would not do that or any of our payday lenders would not do that because of the violation of privacy. They have to by law, if you look at the testimony that Mr. Tupa handed out, the sample loan is attached, so they have to give you their privacy policy, so by doing that even though its your children he would be violating North Dakota's privacy law and I don't believe any of our vendors would do that.

**SEN. EVERY:** you can look at the back of any tabloid magazine and they are full of the same thing, how do you regulate that? I can go and I can send off to north Hollywood, CA a check for \$100 and get a check for \$200, how do we regulate that and how do we get them in that data base?

**ANSWER;** on the only way to regulate that is when you do that and your mad and you complain to us, that's the only way we're going to find out. With two people we're not going out and looking for these people. You type in the words payday on the Internet on google and your going get back thousands of web sites. We're not going to go after them. The ones we know about that are actually doing business in ND we're going to go after as Mr. Tupa indicated, we've issued 11 cease to assist orders, the one we actually were scheduling to go to a hearing we had to cancel because we were going to lose. That's just the fact of it, we met with our attorneys and said we can go ahead, but we're going to lose.

**SEN. EVERY:** so you can circumvent the data base by going through a tabloid.

**ANSWER;** yes, you can circumvent the law.

**SEN. BERCIER:** there is no age limit on this, is there?

**ANSWER;** I don't think there is a payday lender that would enter into a transaction without someone being 18 or older because it is a contract. As part of our examination process, one of the things we ask every lender, what is your approval process, what do you ask for and they all ask for a copy of the persons drivers license. So you have present a drivers license, they'll photo copy it for their records. They won't enter into a transaction with someone that is 16.

**SEN. COOK;** Is it possible then with this data base that in a future legislative session if asked the question, you could answer and tell us exactly how many people in ND used a payday loan and what the total amount of dollars were loaned in these payday loans?

**ANSWER;** that data base will give us a tremendous amount of information and will assist us in our examinations \_\_\_\_ then we could provide that information. The only way we could do that now is by requesting that the lenders provide us that information.

**SCOTT MILLER:** Attorney General's Office: stating the Attorney General doesn't really look at all the legislation to make sure that, we do look into make sure constitutionality and that type of thing, but as far as policy decision, that is truly the legislatures job and whatever the legislature wants to do. I have helped the department in drafting the amendments in an attempt to take of the Internet issue that we face along with drafting the amendment regarding the data base.

Closed the hearing.

**SEN. WARDNER:** I really pleased that the cooperation between the industry and the security commissioner and that and I think this is good for the state, good for the customer and good for the industry and so I'm gonna **MOVE THE AMENDMENTS** that were provided by the Securities Dept., seconded by Sen. Cook.

**SEN. BERCIER:** I know that \$500 has been mentioned but I think its been raised to \$600.

**KEN TUPA:** \$600 would be the loan amount, \$500 would be the maximum loan amount and \$600 would be the maximum aggregate face value of the check which would include the fee.

The face value of the aggregate couldn't exceed \$600.

**SEN. EVERY:** right now I write you a bad check, you borrowed me \$500, I write you a bad check, it bounces, you can charge \$20 for that bad check. Now we just changed that, what does it say, how much can I be charged? Can I be charged 1 penny more than that \$20 for that bad check?

**ANSWER;** no, \$20 is part of the statute, the maximum allowable under law for NSF or return check charge is currently \$25 and I think that's been changed and it will go up to \$30. We are not concerned with that \$20 is what the statutory limit was in 2001 when legislation was enacted and stayed that way, but no not a penny more than \$20 for that returned check.

Page 7

Senate Finance and Taxation Committee

Bill/Resolution Number HB 1321

Hearing Date March 21, 2005

**SEN. TOLLEFSON:** for a \$100 loan and I write you a bad check, it would cost me \$140?

**ANSWER;** it would probably cost you more than that because the bank would also access a fee.

**ROLL CALL VOTE:** 6-0-0

**AMENDMENT PASSES.**

**SEN. WARDNER:** made a **MOTION AS AMENDED**, seconded by Sen. Cook.

**ROLL CALL VOTE:** 6-0-0

Sen. Wardner will carry the bill.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 1, replace "section" with "sections 13-08-01, 13-08-06 and"

Page 1, line 2, after "limitations" insert "; and to declare an emergency"

Page 1, replace lines 4 through 24 with the following:

**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 whom funds are advanced pursuant to 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 the customer's account in repayment at some future, agreed-upon date.

56. "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 notify all of its North Dakota customers the North Dakota 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 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 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 such time as the database described below

is in operation, and after that time may not rely on a customer's representation but must verify that fact using the database. However, if a licensee has multiple locations, that licensee may not rely on such ~~written~~ representation of a ~~maker~~ customer regarding the existence of any outstanding ~~checks~~ obligations 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. All transactions shall be recorded on a database administered or authorized by the commissioner, when that database is developed, for purposes 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 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 prior to the date agreed upon. 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 those funds through the same electronic means the licensee used to deliver those 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 the 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 who engages in deferred presentment service transactions via the internet must 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.

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 21

Renumber accordingly

Date: 3.21-05  
Roll Call Vote #: 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1321**

Senate

**Finance and Taxation**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken None Amendments

Motion Made By Wardner Seconded By Cook

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3-21-05  
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1321**

Senate

**Finance and Taxation**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Do Pass As Amended*

Motion Made By

*Wardner*

Seconded By

*Cook*

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes)

*6*

No

*0*

Absent

*0*

Floor Assignment

*Wardner*

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

HB 1321: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 13-08-01, 13-08-06, and"

Page 1, line 2, after "limitations" insert "; and to declare an emergency"

Page 1, replace lines 4 through 24 with:

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

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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.
- 5- 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 ~~the~~ 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."

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 21

Renumber accordingly

2005 TESTIMONY

HB 1321

Testimony on HB 1321

February 1, 2005

House IBL Committee

Chairman Keiser and members of the House Industry, Business, and Labor Committee, Good Morning. My name is Ken Tupa. I am a registered lobbyist for the North Dakota Pawnbrokers Association.

I am here this morning to testify before your committee and ask you for a Do Pass recommendation on HB 1321.

The North Dakota Pawnbrokers Association organized in 2001 around one issue – implementation of responsible regulation of deferred presentment services, or more commonly known as payday loans. In addition to pawnbroker businesses, the NDPA also represents member businesses providing only payday loans. Of the sixty-six deferred presentment services providers licensed in ND, our association represents forty-six.

On January 11, HB 1127, relating to fees and renewal requirements for licensees of the Dept. of Financial Institutions, was heard before your committee followed by questions from the Committee, many of them relating to deferred presentment services. Since the passage and implementation of payday loan licensing and regulation legislation 2001, there is still some curiosity as to what exactly is a "payday loan."

Payday loans are intended to meet short term needs of the consumer; hence the name "payday" loan. The customer writes a check to the provider for the amount of the loan plus the loan fee: \$100 loan plus \$20 fee (maximum fee per \$100) – check total is \$120. The provider receives the check and gives the customer \$100 with the understanding the check will be presented for deposit on the fifteenth day following the origination date of the loan. **SEE Attach. #1**

In 2001, the ND Pawnbrokers Association initiated legislation to license and regulate payday loans in ND and provide strict rules of enforcement with strong consumer protections. According to the Dept. of Financial Institutions, since 2001 they have received only one complaint against a licensed deferred presentment service provider. We feel the law governing our providers is one of the best in the nation where state laws can vary from little or no regulation at all with no limits on loans fees or the number of loan renewals.

We can see the affect of having no regulation by looking at internet payday loan providers. I have attached to my testimony two examples of such unregulated providers – emailed to me just yesterday. Internet providers often advertise quick and easy loans that are not subject to the strong consumer protections of our law. According to the Dept.

of Financial Institutions, they have issued eleven cease and desist orders to unlicensed internet vendors. **SEE Attach. #2**

HB 1321 includes three amendments to the current law.

- Clarify the loan limit of \$500
- Remove the restriction on a returned-check charge
- Extend the loan deferral period to sixty days

The first amendment clarifies an oversight of the original licensing legislation. The intent of the 2001 legislation was to allow for the principle of loans not to exceed \$500 plus the loan fees. You will notice on page 2, line 9 a licensee may not disburse more than \$500 to the customer, however lines 11 through 13 and page 4, line 19 limit the aggregate face value of the checks to \$500 inclusive of the fees and therefore the maximum loan amount cannot exceed \$400.

Page 2, line 14 is an amendment of grammar to the law.

To my knowledge, payday loan providers are the only licensees with restrictions on charges for returned checks. The second amendment on page 3, lines 9 and 10 removes the restriction on providers for the collection of a returned check charge. Currently, providers who contract for the collection of returned checks must limit the contractor to collecting no more than one returned check fee per customer per year not to exceed \$20. This restriction creates a situation where contractors are unwilling to provide this service and may actually create an incentive for the customer to in-effect extend the loan through the collection process while discouraging collection of the returned check.

The final amendment on page 3, lines 30 and 31 extends the loan deferral period from forty-five to sixty days. Currently, the maximum term of a payday loan, including one renewal may not exceed 45 days. In other words, a check must be presented for deposit within forty-five days following the origination date of the loan. This "must deposit" rule allows for flexibility between the provider and the customer should the need arise to hold deposit presentment of the check. While the term of a payday loan is fifteen days, and one renewal extends the loan another fifteen days should the customer choose to renew the loan, the provider has the flexibility to hold the check another fifteen days without cost to the customer. Our providers would like the flexibility to extend this "must deposit" date another fifteen days without cost to the customer.

Chairman Keiser and members of the House IBL Committee, I appreciate the opportunity to present testimony before you this morning and ask this committee for a Do Pass recommendation on HB 1321.



Jays Pawn 1 3101 Memorial Hiway Mandan ND, 58554 701-663-0708

**Terms of Loan**

Promissory Note # JP1-01530

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ Emp ID: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ DOB: \_\_\_\_\_  
 ID: \_\_\_\_\_ Check #: \_\_\_\_\_  
 Bank: \_\_\_\_\_  
 Acct #: \_\_\_\_\_ Approval #: \_\_\_\_\_

I, the undersigned, promise to pay the amount indicated in the Total Payment box to the order of Jays Pawn 1. The note must be paid on or prior to the Date Due stated below. The Service Charge for processing this loan is earned by the creditor at the inception of the loan and is not refundable. I, the undersigned agree that the account from which the check is drawn will have sufficient funds on the payment Date Due. I further agree not to stop payment on the check or take any action that will result in the failure of your bank to honor the check on the payment Date Due. A \$20.00 fee may be added to any check dishonored by the licensed provider once per customer, per year, as prescribed by North Dakota Century Code.

**Full Disclosure Statement**

☒ A Payday Loan is a short-term loan. If you have long-term needs, another source of credit should be considered. Jays Pawn 1 will not discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age; or because all or part of the applicants income derives from any public assistance program; or because the applicant in good faith exercised any right under the Equal Credit Opportunity Act. Fees: 20% for 6 days. APR:1216.67%

☐ No security is held as a condition of the transaction or method of collection.

**Amount of Loan**  
(Cash I received)

**Service Charge**  
(How much the loan cost me)

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Total Payment**  
(The amount I have to pay back)

**Annual Percentage Rate**  
(APR the cost of my loan at a yearly rate)

\$ \_\_\_\_\_

**Original Date Due** \_\_\_\_\_

**Final Due Date** \_\_\_\_\_

**Notice to Consumer**

☒ ND law limits payday loans to no more than \$500 at any one time.

☒ ND law limits payday loans to one 15 day renewal. The maximum term of the payday loan, including the renewal, may not exceed 45 days.

☒ ND law limits the renewal fee to no more than 20% of the Amount of Loan. ND law allows additional fees if the transaction is renewed rather than paid in full when due. If renewed, any amount paid in excess of the fee applies to the payoff amount

☒ A consumer privacy notice is provided with this contract.

☒ The maker may rescind this transaction by the close of the following business day at no cost.

**Signature**

By signing above, you hereby acknowledge that the information provided herein is true, correct, and accurate. You acknowledge that you have read, and understood and accept the terms and conditions of this agreement.

**Customers Copy****Renewed On**

Jays Pawn 1 3101 Memorial Hiway Mandan ND, 58554 701-663-0708

**Terms of Loan**

Promissory Note # JP1-01530

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ Emp ID: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ DOB: \_\_\_\_\_  
 ID: \_\_\_\_\_ Check #: \_\_\_\_\_  
 Bank: \_\_\_\_\_  
 Acct #: \_\_\_\_\_ Approval #: \_\_\_\_\_

I, the undersigned, promise to pay the amount indicated in the Total Payment box to the order of Jays Pawn 1. The note must be paid on or prior to the Date Due stated below. The Service Charge for processing this loan is earned by the creditor at the inception of the loan and is not refundable. I, the undersigned agree that the account from which the check is drawn will have sufficient funds on the payment Date Due. I further agree not to stop payment on the check or take any action that will result in the failure of your bank to honor the check on the payment Date Due. A \$20.00 fee may be added to any check dishonored by the licensed provider once per customer, per year, as prescribed by North Dakota Century Code.

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\$ \_\_\_\_\_

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(The amount I have to pay back)

**Annual Percentage Rate**  
(APR the cost of my loan at a yearly rate)

\$ \_\_\_\_\_

**Original Date Due** \_\_\_\_\_

**Final Due Date** \_\_\_\_\_

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**Signature**

By signing above, you hereby acknowledge that the information provided herein is true, correct, and accurate. You acknowledge that you have read, and understood and accept the terms and conditions of this agreement.

**File Copy****Renewed On**

PayDayRightAway

**This is a FREE, NO OBLIGATION application**

**First Name:** John  
**Initial:** D  
**Last Name:** Doe

**Street Address:** 1234 PayDay Loan Dr.  
**State:** North Dakota  
**Zip:** 58501

**Email:** paydayloan@aptnd.com  
**Home Phone:** 123 456 7890  
**Work Phone:** 123 456 7890 x

**Employer:** PayDay Inc.  
**Monthly Take Home Pay:** \$1000-1199  
**Primary Source of Income:** Employed

**How Often Do You Receive a Paycheck?** Every two weeks  
**Next Payday:** 2 / 8 / 2005

**Length of Time Employed:** 4 Yrs. and 2 Mos.  
**Do You Have Direct Deposit?** Yes

**What Type(s) of Bank Account(s) Do You Have?** Checking & Savings

**Are You a U.S. Resident and 18 and over?**  
☒ Yes ☐ No

**GET CASH NOW!**

**Need a CASH ADVANCE**

of up to  
**\$500**  
in 24 Hours or less

**Complete a 3 Minute Application  
GET CASH WIRED  
into your Bank Account**

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**Fill in the LAST STEP below!**

City:

**Social Security:**

Alternate Phone:

**Best Time to Contact:**

Choose

How many payday loans do you currently have open?

Choose

## About Your Employer

City:

State:

Zip Code:

Choose 

Supervisor Name:

Employer Phone:

**Where Do We Wire Your Cash Advance?** (please provide your Bank Information)

YOUR NAME 01-00 1525  
321 10TH STREET  
YOUR TOWN, CA 94321 99-9999 X  
Pay to the  
Order of  
YOUR VOIDED CHECK  
ABA or Bank Account Check Number

Bank name:

Checking or Savings  
Account Number:

Bank Phone Number:

ABA Routing Number

Access to Fax Machine Suggested

## Submit This Form

ABA or   
Bank Routing  
Number

Bank Account  
Number

-Check Number:

The Top Rated Source for Fast Online Payday Loans

# 1000-LOAN-PAYDAY.com

CLICK  
HERE

NO  
FAXING

**Get up to \$1000 deposited into your checking account in 24 hrs. or LESS!**

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"I needed \$1,000 fast, so I chose 1000-loan-payday. You gave me what I wanted the next day. " --  
Paige Stennis - Springfield, IL

"Summer driving in Chicago city traffic killed my car's air and I needed a new condenser unit. I wanted \$400 quick and you

## How 1000-Loan-Payday.com Works

**IS IT REALLY FAX FREE APPROVAL?**

YES. "No faxing required" means just that.

## Our Unique 24-7 FaxLess<sup>SM</sup> Payday Loan Processing Totally Eliminates Faxing Forever!!

With our online 24-7 FaxLess<sup>SM</sup> processing, faxing is eliminated. FaxLess<sup>SM</sup> means that your application is completed online in minutes and you're finished/done. Our total online process gets rid of sending and receiving faxes-TOTALLY!

### Payment Options

#### 1-REFINANCE AND PAY THE FINANCE CHARGE ONLY

We will **ONLY** debit the finance charge on your loan due date **UNLESS** you notify us. Remember, this will be done **automatically** on your due date, and the funds will be debited from your checking account. You do **NOT** have to do anything if you choose this option.

**IMPORTANT - IF YOU WANT TO DECLINE THIS OPTION AND PAY DOWN A PORTION OF YOUR PRINCIPAL AMOUNT OR PAY OFF THE ENTIRE LOAN, YOU MUST NOTIFY US AT (866) 539-7504 OR BY FAX AT (866) 539-7503 AT LEAST THREE FULL BUSINESS DAYS PRIOR TO YOUR DUE DATE. Remember, you will still owe your original loan amount along with another finance charge on your following payday.**

**IMPORTANT - You may only use this option four times. On the fifth time and each thereafter, we will debit a minimum payment of \$50 towards your principal loan balance (\$100 on balances over \$500) PLUS your finance charge until the loan is paid in full. You then will have to wait seven days to reactivate your loan once it is paid in full.**

#### 2-PAY THE FINANCE CHARGE AND A PAYMENT TOWARDS YOUR LOAN AMOUNT

We will only debit the finance charge due PLUS a payment towards the principal amount on your loan due date. TO CHOOSE THIS OPTION, YOU MUST NOTIFY US NO LATER THAN THREE FULL BUSINESS DAYS PRIOR TO YOUR LOAN DUE DATE. Remember you will still owe a new finance charge PLUS your new loan balance on your following payday.

#### 3-PAY YOUR LOAN IN FULL

We will debit the full remaining loan balance PLUS the finance charge on your due date. TO CHOOSE THIS OPTION, YOU MUST NOTIFY US NO LATER THAN THREE FULL BUSINESS DAYS PRIOR TO YOUR LOAN DUE DATE.

**1000-LOAN-PAYDAY.com**

**CLICK  
HERE**

**NO  
FAXING**

## Privacy Policy

In most cases, you will have to pay **ONLY** the finance charge on your next payday. If y

"Summer driving in Chicago city traffic killed my car's air and I needed a new condenser unit. I wanted \$400 quick and easy."

## Testimony on HB 1321

March 21, 2005

### Senate Finance and Taxation Committee

Chairman Urlacher and members of the Senate Finance and Taxation Committee, Good Morning. My name is Ken Tupa. I am a registered lobbyist for the North Dakota Pawnbrokers Association.

I am here this morning to testify before your committee and ask you for a Do Pass recommendation on HB 1321.

The North Dakota Pawnbrokers Association organized in 2001 around one issue – implementation of responsible regulation of deferred presentment services, or more commonly known as payday loans. In addition to pawnbroker businesses, the NDPA also represents member businesses providing only payday loans. Of the sixty-six deferred presentment services providers licensed in ND, our association represents forty-six.

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In 2001, the ND Pawnbrokers Association initiated legislation to license and regulate payday loans in ND and provide strict rules of enforcement with strong consumer protections. We feel the law governing our providers is one of the best in the nation where state laws can vary from little or no regulation at all with no limits on loans fees or the number of loan renewals.

We can see the affect of having no regulation by looking at internet payday loan providers. I have attached to my testimony two examples of such unregulated providers – emailed to me recently. Internet providers often advertise quick and easy loans that are not subject to the strong consumer protections of our law. According to the Dept. of Financial Institutions, they have issued eleven cease and desist orders to unlicensed internet vendors. **SEE Attach. #2**

HB 1321 includes three amendments to the current law.

- Clarify the loan limit of \$500
- Remove the restriction on a returned-check charge
- Extend the loan deferral period to sixty days

The first amendment clarifies an oversight of the original licensing legislation. The intent of the 2001 legislation was to allow for the principle of loans not to exceed \$500 plus the loan fees. You will notice on page 2, line 9 a licensee may not disburse more than \$500 to the customer, however lines 11 through 13 and page 4, line 19 limit the aggregate face value of the checks to \$500 inclusive of the fees and therefore the maximum loan amount cannot exceed \$400.

Page 2, line 14 is an amendment of grammar to the law.

To my knowledge, payday loan providers are the only licensees with restrictions on charges for returned checks. The second amendment on page 3, lines 9 and 10 removes the restriction on providers for the collection of a returned check charge. Currently, providers who contract for the collection of returned checks must limit the contractor to collecting no more than one returned check fee per customer per year not to exceed \$20. This restriction creates a situation where contractors are unwilling to provide this service and may actually create an incentive for the customer to in-effect extend the loan through the collection process while discouraging collection of the returned check.

The final amendment on page 3, lines 30 and 31 extends the loan deferral period from forty-five to sixty days. Currently, the maximum term of a payday loan, including one renewal may not exceed 45 days. In other words, a check must be presented for deposit within forty-five days following the origination date of the loan. This "must deposit" rule allows for flexibility between the provider and the customer should the need arise to hold deposit presentment of the check. While the term of a payday loan is fifteen days, and one renewal extends the loan another fifteen days should the customer choose to renew the loan, the provider has the flexibility to hold the check another fifteen days without cost to the customer. Our providers would like the flexibility to extend this "must deposit" date another fifteen days without cost to the customer.

Chairman Urlacher and members of the Senate Finance and Taxation Committee, I appreciate the opportunity to present testimony before you this morning and ask this committee for a Do Pass recommendation on HB 1321.

TESTIMONY FOR HOUSE BILL NO. 1321

Senate Finance and Taxation Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions, in support of House Bill No. 1321, with amendments.

Chairman Urlacher and members of the Senate Finance and Taxation Committee, I am Tim Karsky, Commissioner of the Department of Financial Institutions. I am here to urge your support of House Bill No. 1321, with the attached amendments.

First of all, I would like to say that the Department supports House Bill No. 1321 and has worked with the deferred presentment provider industry for these changes. However, because of recent developments in the Department with deferred presentment providers operating from out-of-state, the following amendments are deemed necessary. First, you will note in the amendments, it deletes the entire bill for House Bill No. 1321, and replaces it with the additional language which includes all of the amendments that were just discussed by Mr. Tupa.

Mr. Chairman, when this bill was first drafted, it contemplated that all deferred presentment service provider transactions would use a check to initiate the transaction. However, due to technology, numerous companies are operating all



over the United States offering payday loans through the use of automated clearinghouse transactions whereby the potential debtor or borrower gives permission for the lender to take money and place money into their checking account. No check is used in this transaction and only electronic funds are wired to and from the lender and borrower.

As you will note in the definitions, the Department has added a definition for customer, which means a person to whom funds are advanced pursuant to a deferred presentment service transaction. Furthermore, the definition for completed deferred presentment transaction adds the language "or when an electronic funds transfer or other transfer of money has taken place to repay the contracted debt". As you will note in number 5 of the definitions, deferred presentment service transaction now means a transaction by which a person uses the old method by check or by which a person pays to the customer an agreed upon amount, and obtains the customer's authorization to transfer or withdraw electronically or otherwise funds from the customers account in repayment at some future agreed upon date. The Department believes these new definitions will give it the ability to regulate deferred presentment service transactions not only which use a check, but also use an electronic means of money through the automated clearinghouse system.

Because out-of-state lenders that use the internet will not have an office in North Dakota, the Department has changed some of the language which will require the lender to notify all of its North Dakota customers the North Dakota license number under which it operates. You will also note in the amendments that the Department deletes the term "maker of check" and uses the definition "customer", which includes electronic funds transmissions.

Section 3, number 2, of the bill also adds language that a licensee may charge a fee plus an amount 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. Although the data base has not yet been completed, when it is available lenders will have to register all deferred presentment transactions on the data base and they will be able to determine if borrowers are able to borrow additional deferred presentment provider loans and do not exceed the limits established by this Section. This will prevent customers going from one lender to another and exceeding the limits authorized by law.

Section 3, number 11, of the bill adds new language that deferred presentment service transactions by way of the internet must require its customers to acknowledge the fees imposed using a click-through or other method that prevents customers from completing a transaction without reviewing the licensee's fees.

Mr. Chairman and members of the Committee, the Department believes the amendments are needed and, again, has worked with the industry regarding these amendments. The industry is in full agreement with the amendments at this time. If these amendments are not passed, lenders from out-of-state will be able to continue to make loans which are not regulated by the State of North Dakota and will also have an advantage over the lenders in the North Dakota who are complying with our laws.

Mr. Chairman, an emergency clause has also been added to this bill so the Department can take enforcement action against these out-of-state lenders if this legislation is passed.

Again, I would urge your support of House Bill No. 1321, and would be happy to answer any questions.

Thank you.