

# HOUSE BILL No. 5641

February 14, 2002, Introduced by Reps. Richardville, Pappageorge, Middaugh, Kolb, Meyer, Birkholz, Vear, Julian, Switalski and Patterson and referred to the Committee on Insurance and Financial Services.

A bill to regulate deferred deposit loans for issued checks; to provide for licensing and fees; to prescribe the powers and duties of certain state agencies and officials; and to provide for penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "deferred deposit loan act".

3       Sec. 2. As used in this act:

4       (a) "Applicant" means a person seeking a license under this  
5 act.

6       (b) "Check" means a personal check signed by the issuer and  
7 made payable to a deferred deposit loan licensee.

8       (c) "Commissioner" means the commissioner of the office of  
9 financial and insurance services in the department of consumer  
10 and industry services.

1 (d) "Deferred deposit loan" means a transaction under a  
2 written agreement between a licensee and the issuer of a check in  
3 which the licensee, for a fee, service charge, or other consider-  
4 ation, accepts a check dated on the date it was written and  
5 agrees to hold it for a period of days prior to deposit or pre-  
6 sentment, or accepts a check dated subsequent to the date it was  
7 written, and agrees to hold the check for deposit until the date  
8 written on the check.

9 (e) "Licensee" means a person licensed by the commissioner  
10 under this act.

11 (f) "Office" means the office of financial and insurance  
12 services.

13 (g) "Person" means an individual, partnership, association,  
14 corporation, limited liability company, or other legal entity  
15 except a governmental agency.

16 Sec. 3. (1) Except as provided in section 4, a person shall  
17 not engage in the business of providing deferred deposit loans  
18 for consideration without first obtaining a license under this  
19 act.

20 (2) The commissioner shall maintain a list of licensees,  
21 which shall be available to interested persons and the public.  
22 The commissioner shall create a toll-free telephone number  
23 through which a person may obtain information about licensees and  
24 the complaint process.

25 (3) The commissioner shall establish a complaint process  
26 through which an aggrieved person or any member of the public may  
27 file a complaint against a licensee or nonlicensee who violates

1 this act. The commissioner shall hold hearings upon the request  
2 of a party to the complaint, make findings of fact, conclusions  
3 of law, issue cease and desist orders, refer the matter to the  
4 appropriate law enforcement agency for prosecution under this  
5 act, and suspend or revoke a license granted under this act.

6 Sec. 4. (1) Except as provided in subsection (3), this act  
7 does not apply to the cashing of checks by any of the following:

8 (a) A state or national chartered bank or a state or federal  
9 chartered credit union, savings and loan association, or savings  
10 bank.

11 (b) A department or agency of a state or the United States.

12 (c) A foreign bank agency, as defined by the banking code of  
13 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

14 (2) This act does not apply to the receipt of money by an  
15 incorporated telegraph company at an office of the company for  
16 immediate transmission by telegraph.

17 (3) To the extent that a bank, savings and loan association,  
18 savings bank, credit union, or other state or federally regulated  
19 financial institution is exempt by other state or federal laws  
20 from this act regarding limitations on interest and rates, all  
21 other provisions of this act apply except the requirement of  
22 licensing.

23 Sec. 5. (1) A person seeking a license to engage in the  
24 business of providing deferred deposit loans in this state shall  
25 file an application with the commissioner in writing and under  
26 oath that includes all of the following:

1 (a) The name and exact address of the applicant and the name  
2 and address of 1 of the following:

3 (i) If the applicant is a corporation, its officers and  
4 directors.

5 (ii) If the applicant is an association, its officers and  
6 directors.

7 (iii) If the applicant is a partnership, its partners.

8 (iv) If the applicant is a limited liability company, either  
9 its manager or managers if managed by a manager or managers, or  
10 its members.

11 (v) If the applicant is any other legal entity, its manager  
12 or other person designated to control the operation of that legal  
13 entity.

14 (b) A copy of a certificate of an assumed name, if  
15 applicable.

16 (c) One of the following, as applicable:

17 (i) If the applicant is a corporation, a copy of the arti-  
18 cles of incorporation and bylaws.

19 (ii) If the applicant is a partnership, a copy of any part-  
20 nership agreement and partnership certificate.

21 (iii) If the applicant is a limited liability company, a  
22 copy of the articles of organization and operating agreement.

23 (iv) If the applicant is an association, a copy of any orga-  
24 nizational documents of the association.

25 (2) At the time of filing the application, the applicant  
26 shall do all of the following:

1 (a) Pay to the office a nonrefundable license fee of \$500.00  
2 for 1 business location, and \$250.00 for each additional business  
3 location.

4 (b) Furnish financial statements to the office, in a form  
5 satisfactory to the commissioner, showing the applicant has work-  
6 ing capital in excess of \$5,000.00 for each of the applicant's  
7 business locations and cash in excess of \$25,000.00.

8 (c) Furnish a \$50,000.00 surety bond for each of the  
9 applicant's business locations issued by a bonding company or  
10 insurance company authorized to do business in this state and in  
11 a form satisfactory to the commissioner, to secure the per-  
12 formance of the obligations of the applicant with respect to the  
13 receipt of money in connection with the cashing of checks.

14 (d) File an appointment of the commissioner as the agent for  
15 service of process in this state.

16 Sec. 6. After the applicant files the application and com-  
17 plies with section 5(2), the commissioner shall investigate the  
18 financial responsibility, financial and business experience, and  
19 character and general fitness of the applicant. If the commis-  
20 sioner finds these factors and qualities meet the requirements of  
21 this act and reasonably warrant the belief that the applicant's  
22 business will be conducted honestly, fairly, equitably, careful-  
23 ly, efficiently, and in a manner commanding the confidence and  
24 trust of the community, the commissioner shall issue to the  
25 person a license to engage in the business of providing deferred  
26 deposit loans.

1       Sec. 7. On or before January 1 of each year, a licensee  
2 shall pay a license renewal fee of \$250.00 for its principal  
3 business location, and \$100.00 for each additional business loca-  
4 tion, and submit a renewal application in the form prescribed by  
5 the commissioner. The commissioner shall renew the license if,  
6 after considering all relevant factors and any comments or com-  
7 plaints about the licensee, the commissioner determines the  
8 licensee is in compliance with this act.

9       Sec. 8. (1) A licensee shall conduct the business of pro-  
10 viding deferred deposit loans only at locations approved by the  
11 commissioner.

12       (2) A license issued under this act is not transferable, but  
13 with the prior written approval of the commissioner, the licensee  
14 may change its name or principal address.

15       Sec. 9. (1) The commissioner shall not deny, suspend, or  
16 revoke a license issued under this act before notice is sent to  
17 the applicant or licensee setting forth in writing the reasons  
18 for the denial, suspension, or revocation. Within 5 days after  
19 receipt of the notice, the applicant or licensee may make written  
20 demand for a hearing. The commissioner shall hear and determine  
21 the matter as provided under the administrative procedures act of  
22 1969, 1969 PA 306, MCL 24.201 to 24.328. The applicant or  
23 licensee may appeal the order of the commissioner within 30 days  
24 from the date of the order to the circuit court as provided under  
25 the administrative procedures act of 1969, 1969 PA 306,  
26 MCL 24.201 to 24.328. If an appeal is taken from an order

1 revoking a license, the effect of the order may be stayed by the  
2 court pending the final determination of the appeal.

3       (2) The commissioner may conduct investigations and hearings  
4 as the commissioner considers necessary to determine whether a  
5 licensee or other person has violated this act, or whether a  
6 licensee has conducted business in a manner that justifies sus-  
7 pension or revocation of its license.

8       (3) The commissioner may subpoena witnesses, documents,  
9 papers, books, records, and other evidence in a matter over which  
10 the commissioner has jurisdiction, control, or supervision. The  
11 commissioner may administer oaths and affirmations to a person  
12 whose testimony is required.

13       Sec. 10. The commissioner shall promulgate rules that are  
14 necessary for the administration of this act under the adminis-  
15 trative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
16 24.328.

17       Sec. 11. (1) A licensee shall maintain accurate and com-  
18 plete books, accounts, and records of its deferred deposit loan  
19 business in a form satisfactory to the office, and shall preserve  
20 the books, accounts, and records for not less than 3 years.

21       (2) No later than March 1 of each year, the licensee shall  
22 file with the commissioner an annual report that includes all of  
23 the following:

24       (a) The resources, assets, and liabilities of the licensee  
25 at the beginning and the end of the reporting period.

1 (b) The income, expense, gain, loss, and a reconciliation of  
2 surplus or net worth with the balance sheets, and the ratios of  
3 the profits to the assets reported.

4 (c) The total number of deferred deposit loans made in the  
5 calendar year ending as of December 31 of the previous year.

6 (d) The total number of loans outstanding as of December 31  
7 of the previous year.

8 (e) The minimum, maximum, and average dollar amount of  
9 checks whose deposits were deferred in the calendar year ending  
10 as of December 31 of the previous year.

11 (f) The average annual percentage rate and the average  
12 number of days a deposit of a check is deferred during the calen-  
13 dar year ending as of December 31 of the previous year.

14 (g) The total number and dollar amount of returned checks,  
15 the total number and dollar amount of checks recovered, and the  
16 total number and dollar amount of checks charged off during the  
17 calendar year ending as of December 31 of the previous year.

18 (h) Verification that the licensee has not used the criminal  
19 process or caused the criminal process to be used in the collec-  
20 tion of any deferred deposit loans or used any civil process to  
21 collect the payment of deferred payment loans not generally  
22 available to creditors to collect on loans in default during the  
23 calendar year ending as of December 31 of the previous year.

24 (i) A copy of the licensee's standard deferred deposit loan  
25 agreement.

26 (j) A copy of the licensee's schedule of fees and charges.



1       Sec. 12. (1) A deferred deposit loan transaction shall be  
2 documented by a written agreement signed by both the issuer of  
3 the check and the licensee accepting the check. The licensee  
4 shall provide a copy of the written agreement to the issuer.

5       (2) The written agreement shall authorize the licensee to  
6 defer presentment or negotiation of the check until a specific  
7 date, which date may not be later than 31 calendar days following  
8 the date of the transaction.

9       (3) The written agreement shall include all of the following  
10 information:

11       (a) The name, address, phone number of the licensee making  
12 the deferred deposit loan, and the name and title of the individ-  
13 ual employee who signs the agreement on behalf of the licensee.

14       (b) An itemization of the fees and interest charges to be  
15 paid by the consumer.

16       (c) Disclosures required by the truth in lending act, title  
17 I of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613,  
18 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f, regardless  
19 of whether that act applies to deferred deposit loans.

20       (d) Disclosures required under any other laws of this  
21 state.

22       (e) A clear description of the consumer's payment obligation  
23 under the loan.

24       (f) A schedule of all fees and charges associated with the  
25 loan and include an example of the amounts the issuer would pay  
26 based on the amount of the loan.

1 (g) A description of the process an issuer may use to file a  
2 complaint against a licensee.

3 Sec. 13. A licensee of a deferred deposit loan transaction  
4 shall provide the following notice in a prominent place on each  
5 deferred deposit loan agreement in at least 10-point type:

6 "(A) A DEFERRED DEPOSIT LOAN TRANSACTION IS NOT INTENDED TO  
7 MEET LONG-TERM FINANCIAL NEEDS.

8 (B) YOU SHOULD USE A DEFERRED DEPOSIT LOAN TRANSACTION ONLY  
9 TO MEET SHORT-TERM CASH NEEDS.

10 (C) THE LICENSEE CANNOT USE ANY CRIMINAL PROCESS TO COLLECT  
11 ANY DEFERRED DEPOSIT LOAN."

12 Sec. 14. (1) In addition to an administration fee of \$5.00  
13 per deferred deposit loan, a licensee may charge a service fee  
14 for each deferred deposit loan transaction, which shall not  
15 exceed an amount that would equate to a 25% annual interest rate  
16 on the amount paid by the licensee to the issuer of the check.

17 (2) No other fees or charges shall be charged or collected  
18 by the licensee for the deferred deposit loan transaction.

19 Sec. 15. (1) Each deferred deposit loan must have a minimum  
20 term of no less than 2 weeks and an issuer shall be permitted to  
21 make partial payments on the loan at any time, without charge.

22 (2) The maximum amount of the deferred deposit loan shall  
23 not exceed \$500.00 and not be less than \$50.00.

24 (3) After each payment made, in full or in part, on any  
25 loan, the licensee shall give to the person making the payment a  
26 signed, dated receipt showing the amount paid and the balance due  
27 on the loan.

1 (4) Upon receipt of the check from the issuer for a deferred  
2 deposit loan, the licensee shall immediately stamp the back of  
3 the check with an endorsement that states: "This check is being  
4 negotiated as part of a deferred deposit loan and any holder of  
5 this check takes it subject to all claims and defenses of the  
6 maker." and the check written by the consumer in a deferred  
7 deposit loan must be made payable to the licensee.

8 Sec. 16. (1) A licensee shall not have more than 1 out-  
9 standing deferred deposit loan transaction with any issuer at the  
10 same time, and the face value of the deferred deposit loan shall  
11 not exceed \$500.00, exclusive of the service fee authorized by  
12 section 14.

13 (2) A licensee providing a deferred deposit loan transaction  
14 shall provide the following notice in a prominent place on each  
15 deferred deposit loan agreement in at least 10-point type:

16 "STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING AT ANY 1  
17 TIME DEFERRED DEPOSIT LOANS TOTALING MORE THAN \$500.00 (EXCLUDING  
18 APPLICABLE SERVICE FEES). FAILURE TO OBEY THIS LAW COULD CREATE  
19 FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.".

20 (3) An issuer shall not use the proceeds of a deferred  
21 deposit loan to renew, extend, refinance, or consolidate a preex-  
22 isting deferred deposit loan transaction.

23 Sec. 17. (1) After the issuer of a check has completed a  
24 deferred deposit loan transaction with a licensee, the issuer  
25 shall not enter into a new agreement for a deferred deposit loan  
26 with that licensee for a period not less than 24 hours.

1       (2) A licensee shall not enter into a deferred deposit loan  
2 transaction with the issuer of a check if the issuer has any  
3 outstanding deferred deposit loan transactions with the licensee  
4 or with any other licensee. The licensee shall require the  
5 issuer of a check to represent in writing that the issuer does  
6 not have any outstanding deferred deposit loan transactions with  
7 the licensee or with any other licensee.

8       (3) The licensee shall also take such other actions, includ-  
9 ing, but not limited to, electronic searches, to insure that the  
10 issuer is in compliance with this section.

11       Sec. 18. A licensee shall pay the proceeds from a deferred  
12 deposit loan transaction to the issuer of the check in the form  
13 of the licensee's business check, money order, or cash. No addi-  
14 tional fee may be charged by a licensee for cashing the  
15 licensee's business check.

16       Sec. 19. Before a licensee may negotiate or present a check  
17 for payment, the check shall be endorsed with the actual name  
18 under which the licensee is doing business.

19       Sec. 20. The issuer of a check shall have the right to  
20 redeem the check from the licensee holding the check at any time  
21 before the negotiation or presentment of the check by paying the  
22 full amount of the check in the form of cash or its equivalent.

23       Sec. 21. The licensee may contract for and collect a  
24 returned check charge not to exceed \$25.00. No other fees may be  
25 collected as a result of a returned check or the default by the  
26 issuer under a deferred deposit loan agreement.

1       Sec. 22. A licensee offering deferred deposit loan  
2 transactions shall post at the point of sale a notice of the  
3 charges imposed for the deferred deposit loan transactions.

4       Sec. 23. (1) The issuer of a check held in connection with  
5 a deferred deposit loan transaction may rescind the transaction  
6 at no cost and for any reason if the issuer, not later than 5  
7 p.m. on the business day following the date of the transaction,  
8 delivers to the licensee cash or a cash equivalent in an amount  
9 equal to the amount of the issuer's check.

10       (2) The issuer of a check who enters into a deferred deposit  
11 loan agreement shall not be subject to any criminal penalty for  
12 entering into the agreement and shall not be subject to any crim-  
13 inal penalty in the event the issuer's check is dishonored,  
14 unless the account on which the check was written was closed on  
15 the date of the transaction or before the agreed-upon negotiation  
16 date.

17       Sec. 24. A licensee may conduct any other types of business  
18 allowed by law at a location where the licensee offers deferred  
19 deposit loans.

20       Sec. 25. A licensee shall not engage in unfair or deceptive  
21 acts, practices, or advertising in connection with a deferred  
22 deposit loan transaction.

23       Sec. 26. A person injured by a licensee's violation of this  
24 act may maintain a civil cause of action against the licensee and  
25 may recover actual damages and an amount equal to twice the serv-  
26 ice fee paid in connection with each deferred deposit loan

1 transaction that is found to violate this act, plus reasonable  
2 attorney fees.

3       Sec. 27. (1) A licensee that violates this act is guilty of  
4 a misdemeanor punishable by imprisonment for not more than 90  
5 days or a fine of not more than \$1,000.00, or both.

6       (2) Each transaction conducted in violation of this act  
7 shall be a separate violation under subsection (1).

8       Sec. 28. The attorney general shall have the same powers  
9 and authority in enforcing this act as provided for under the  
10 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
11 445.922.