

No. 82
STATE OF MICHIGAN
Journal of the Senate
92nd Legislature
REGULAR SESSION OF 2003

Senate Chamber, Lansing, Wednesday, October 8, 2003.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor John D. Cherry, Jr.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Allen—present
Barcia—present
Basham—present
Bernero—present
Birkholz—present
Bishop—present
Brater—present
Brown—present
Cassis—present
Cherry—present
Clark-Coleman—present
Clarke—excused
Cropsey—present

Emerson—present
Garcia—present
George—present
Gilbert—present
Goschka—present
Hammerstrom—present
Hardiman—present
Jacobs—present
Jelinek—present
Johnson—present
Kuipers—present
Leland—present
McManus—present

Olshove—present
Patterson—present
Prusi—present
Sanborn—present
Schauer—present
Scott—present
Sikkema—present
Stamas—present
Switalski—present
Thomas—present
Toy—excused
Van Woerkom—present

Senator Beverly S. Hammerstrom of the 17th District offered the following invocation:

Heavenly Father, we bow our heads and thank You for Your love and for this beautiful day. Make us strong to do Your work. Provide us the wisdom and the vision to see the way that leads to a better life for the citizens of this great state. Let us treat each other with respect and brotherly and sisterly affection, and cultivate in us a spirit of cooperation as we go about our business here on the Senate floor. We humbly ask for Your blessing and Your guidance throughout the day and along the way.

Almighty Father, grant each of us a few precious moments to marvel at the wonder of this beautiful day and the world You have created. Amen.

The President, Lieutenant Governor Cherry, led the members of the Senate in recital of the *Pledge of Allegiance*.

Motions and Communications

Senators Brown and Olshove entered the Senate Chamber.

Senator Hammerstrom moved that Senators Birkholz, Garcia and Goschka be temporarily excused from today's session.

The motion prevailed.

Senator Hammerstrom moved that Senator Toy be excused from today's session.

The motion prevailed.

Senator Schauer moved that Senators Bernero and Thomas be temporarily excused from today's session.

The motion prevailed.

The Secretary announced that the following House bill was received in the Senate and filed on Tuesday, October 7:
House Bill No. 4950

The Secretary announced the enrollment printing and presentation to the Governor on Tuesday, October 7, for her approval the following bills:

Enrolled Senate Bill No. 395 at 3:48 p.m.

Enrolled Senate Bill No. 701 at 3:50 p.m.

By unanimous consent the Senate proceeded to the order of

Third Reading of Bills

Senator Hammerstrom moved that the following bills be placed at the head of the Third Reading of Bills calendar:

Senate Bill No. 46

Senate Bill No. 47

Senate Bill No. 568

Senate Bill No. 221

Senate Bill No. 508

Senate Bill No. 511

The motion prevailed.

Senators Goschka, Birkholz, Garcia, Bernero and Thomas entered the Senate Chamber.

The following bill was read a third time:

Senate Bill No. 46, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 3115 (MCL 324.3115).

The question being on the passage of the bill,

Senator Brater offered the following amendments:

1. Amend page 4, line 1, after “defendant” by striking out “civilly or”.
 2. Amend page 4, line 2, after “under” by striking out the balance of the line through “or” on line 3 and inserting “subsection”.
 3. Amend page 4, following line 12, by inserting:
 “(7) To find a defendant civilly liable for substantial endangerment under subsection (4), the court shall determine that the defendant acted in careless disregard of the standard of care that a reasonable person should observe in similar circumstances.” and renumbering the remaining subsections.
 4. Amend page 4, line 14, after “(6)” by inserting “or (7)”.
 5. Amend page 5, line 2, after “subsection” by striking out “(8)(c)” and inserting “(9)(c)”.
 6. Amend page 5, line 5, after “subsection” by striking out “(8)(c)” and inserting “(9)(c)”.
 7. Amend page 5, line 8, after “ 8 “ by striking out “(9)” and inserting “(10)”.
- The amendments were not adopted, a majority of the members serving not voting therefor.
 Senator Schauer requested the yeas and nays.
 The yeas and nays were ordered, 1/5 of the members present voting therefor.
 The amendments were not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 442

Yeas—15

Barcia	Cherry	Leland	Scott
Basham	Clark-Coleman	Olshove	Switalski
Bernero	Emerson	Prusi	Thomas
Brater	Jacobs	Schauer	

Nays—21

Allen	Garcia	Hardiman	Patterson
Birkholz	George	Jelinek	Sanborn
Bishop	Gilbert	Johnson	Sikkema
Brown	Goschka	Kuipers	Stamas
Cassis	Hammerstrom	McManus	Van Woerkom
Cropsey			

Excused—2

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The question being on the passage of the bill,
 Senator Hammerstrom moved that further consideration of the bill be postponed temporarily.
 The motion prevailed.

The following bill was read a third time:
Senate Bill No. 47, entitled

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 13c of chapter XVII (MCL 777.13c), as added by 2002 PA 30.

The question being on the passage of the bill,
 The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 443**Yeas—36**

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Scott
Birkholz	Garcia	Kuipers	Sikkema
Bishop	George	Leland	Stamas
Brater	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—0**Excused—2**

Clarke Toy

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

The following bill was read a third time:

Senate Bill No. 568, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” (MCL 324.101 to 324.90106) by adding section 3115b.

The question being on the passage of the bill,

Senator Brater offered the following amendment:

1. Amend page 2, line 12, after “**information**” by inserting “**in an effort to obtain an award**”.

Recess

Senator Hammerstrom moved that the Senate recess subject to the call of the Chair.

The motion prevailed, the time being 10:16 a.m.

10:20 a.m.

The Senate was called to order by the President, Lieutenant Governor Cherry.

The question being on the adoption of the amendment,

Senator Hammerstrom moved that further consideration of the bill be postponed temporarily.

The motion prevailed.

The following bill was read a third time:

Senate Bill No. 221, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending sections 43510 and 43516 (MCL 324.43510 and 324.43516), section 43510 as amended by 1996 PA 585 and section 43516 as added by 1995 PA 57.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 444**Yeas—32**

Allen	Cherry	Hardiman	Prusi
Barcia	Cropsey	Jelinek	Sanborn
Basham	Emerson	Johnson	Schauer
Bernero	Garcia	Kuipers	Sikkema
Birkholz	George	Leland	Stamas
Bishop	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—4

Brater	Clark-Coleman	Jacobs	Scott
--------	---------------	--------	-------

Excused—2

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

The following bill was read a third time:

Senate Bill No. 508, entitled

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 16i of chapter XVII (MCL 777.16i), as amended by 2002 PA 278.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 445**Yeas—36**

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Scott
Birkholz	Garcia	Kuipers	Sikkema
Bishop	George	Leland	Stamas
Brater	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—0**Excused—2**

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

The following bill was read a third time:

Senate Bill No. 511, entitled

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” (MCL 750.1 to 750.568) by adding section 160c. The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 446**Yeas—36**

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Scott
Birkholz	Garcia	Kuipers	Sikkema
Bishop	George	Leland	Stamas
Brater	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—0**Excused—2**

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

By unanimous consent the Senate proceeded to the order of
General Orders

Senator Hammerstrom moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President, Lieutenant Governor Cherry, designated Senator Barcia as Chairperson.

After some time spent therein, the Committee arose; and, the President, Lieutenant Governor Cherry, having resumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bill:

Senate Bill No. 710, entitled

A bill to amend 1939 PA 288, entitled “Probate code of 1939,” by amending section 20 of chapter XII (MCL 712.20), as added by 2000 PA 235.

The bill was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

House Bill No. 4601, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending section 552 (MCL 168.552), as amended by 1999 PA 220.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 6, line 7, after "petitions." by striking out the balance of the line through "(9)." on line 11.

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

Resolutions

Senator Hammerstrom moved that consideration of the following resolution be postponed for today:

Senate Resolution No. 141

The motion prevailed.

Senate Concurrent Resolution No. 13.

A concurrent resolution to memorialize the Congress of the United States to fund fully the Great Lakes Legacy Act and to urge the United States Environmental Protection Agency, the Michigan Department of Environmental Quality, and other parties to make every effort to expedite cleanup efforts in Michigan's designated Areas of Concern.

The question being on the adoption of the concurrent resolution,

The concurrent resolution was adopted.

Senators Leland, Brater, Thomas, Emerson, Schauer and Jacobs offered the following resolution:

Senate Resolution No. 168.

A resolution to memorialize the Congress of the United States to investigate fully the objectivity and credibility of the intelligence reports that led our nation to war in Iraq.

Whereas, In recent months, Americans have learned that several key statements used to marshal support for our military initiatives in Iraq were based on information that was not fully accurate. In several instances, in fact, including a statement included in the President's State of the Union Address, statements that were known to be false by administration officials were put forth as facts; and

Whereas, Misleading, incomplete, or clearly false information contributed significantly to the buildup in emotions and preparations that led to the war in Iraq. These inaccuracies were advanced by several key leaders in the administration. Taken together, this intelligence information and the manner in which it was presented did not give the American people a true picture of the situation in Iraq and the reality of dangers threatening our country or our allies; and

Whereas, The question of initiating military actions that result in lives lost is a solemn matter. Our country must be sure that the intelligence we use in making these decisions is sound, thorough, and presented with balance; and

Whereas, Concerns over misinformation that may have led us to war are amplified by the financial toll our military and nation-building tasks are taking on the American economy. At a time when virtually all of the states, including Michigan, are wrestling with difficult financial situations, our actions in Iraq are very disturbing. To many people, the billions we are spending on war could be better spent on homeland security initiatives through more vigilant protection of our homes, communities, public health, and natural and man-made resources; and

Whereas, A thorough bipartisan investigation needs to take place to assess the objectivity and credibility of the intelligence used to take us to war in Iraq; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to investigate fully the objectivity and credibility of the intelligence reports that led our nation to war in Iraq; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

Pursuant to rule 3.204, the resolution was referred to the Committee on Government Operations.

Senators Clark-Coleman and Olshove were named co-sponsors of the resolution.

By unanimous consent the Senate returned to the order of

Third Reading of Bills

By unanimous consent the Senate returned to consideration of the following bill:

Senate Bill No. 46, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 3115 (MCL 324.3115).

(This bill was read a third time earlier today and consideration postponed. See p. 1786.)

The question being on the passage of the bill,
Senator Birkholz offered the following amendments:

1. Amend page 4, line 1, after “defendant” by striking out “civilly or”.
2. Amend page 4, line 2, after “under” by striking out the balance of the line through “or” on line 3 and inserting “subsection”.

3. Amend page 4, following line 12, by inserting:

“(7) To find a defendant civilly liable for substantial endangerment under subsection (4), the court shall determine that the defendant acted in careless disregard of the standard of care that a reasonable person should observe in similar circumstances.” and renumbering the remaining subsections.

4. Amend page 4, line 14, after “(6)” by inserting “or (7)”.

5. Amend page 5, line 2, after “subsection” by striking out “(8)(c)” and inserting “(9)(c)”.

6. Amend page 5, line 5, after “subsection” by striking out “(8)(c)” and inserting “(9)(c)”.

7. Amend page 5, line 8, after “8” by striking out “(9)” and inserting “(10)”.

The amendments were adopted, a majority of the members serving voting therefor.

Senator Hammerstrom requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendments were adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 447

Yeas—36

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Scott
Birkholz	Garcia	Kuipers	Sikkema
Bishop	George	Leland	Stamas
Brater	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—0

Excused—2

Clarke Toy

Not Voting—0

In The Chair: President

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 448

Yeas—36

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Scott

Birkholz	Garcia	Kuipers	Sikkema
Bishop	George	Leland	Stamas
Brater	Gilbert	McManus	Switalski
Brown	Goschka	Olshove	Thomas
Cassis	Hammerstrom	Patterson	Van Woerkom

Nays—0

Excused—2

Clarke Toy

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

By unanimous consent the Senate returned to consideration of the following bill:

Senate Bill No. 568, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” (MCL 324.101 to 324.90106) by adding section 3115b.

(This bill was read a third time earlier today, amendment offered and consideration postponed. See p. 1788.)

The question being on the adoption of the amendment offered by Senator Brater,

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Schauer requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 449

Yeas—21

Barcia	Cherry	Jacobs	Prusi
Basham	Clark-Coleman	Leland	Schauer
Bernero	Emerson	McManus	Scott
Birkholz	George	Olshove	Switalski
Brater	Hardiman	Patterson	Thomas
Brown			

Nays—15

Allen	Garcia	Jelinek	Sikkema
Bishop	Gilbert	Johnson	Stamas
Cassis	Goschka	Kuipers	Van Woerkom
Cropsey	Hammerstrom	Sanborn	

Excused—2

Clarke Toy

Not Voting—0

In The Chair: President

Senator Hammerstrom moved to reconsider the vote by which the amendment was adopted. The question being on the motion to reconsider,
 Senator Hammerstrom moved that further consideration of the bill be postponed for today. The motion prevailed.

The following bill was read a third time:

Senate Bill No. 474, entitled

A bill to regulate the business of deferred presentment services; to require the licensing of providers of deferred presentment services; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

The question being on the passage of the bill,
 Senator Scott offered the following substitute:
 Substitute (S-5).

The substitute was not adopted, a majority of the members serving not voting therefor.
 Senator Schauer requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The substitute was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 450**Yeas—16**

Barcia	Cherry	Johnson	Schauer
Basham	Clark-Coleman	Leland	Scott
Bernero	Emerson	Olshove	Switalski
Brater	Jacobs	Prusi	Thomas

Nays—20

Allen	Cropsey	Hammerstrom	Patterson
Birkholz	Garcia	Hardiman	Sanborn
Bishop	George	Jelinek	Sikkema
Brown	Gilbert	Kuipers	Stamas
Cassis	Goschka	McManus	Van Woerkom

Excused—2

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

Senator Scott offered the following amendment:

1. Amend page 12, line 12, after “exceed” by striking out “18%” and inserting “10%”.
 The amendment was not adopted, a majority of the members serving not voting therefor.
 Senator Schauer requested the yeas and nays.
 The yeas and nays were ordered, 1/5 of the members present voting therefor.
 The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 451**Yeas—15**

Barcia
 Basham
 Bernero
 Brater

Cherry
 Clark-Coleman
 Emerson
 Jacobs

Leland
 Olshove
 Prusi
 Schauer

Scott
 Switalski
 Thomas

Nays—20

Allen
 Birkholz
 Bishop
 Brown
 Cassis

Cropsey
 Garcia
 George
 Gilbert
 Goschka

Hammerstrom
 Hardiman
 Jelinek
 Kuipers
 McManus

Patterson
 Sanborn
 Sikkema
 Stamas
 Van Woerkom

Excused—2

Clarke

Toy

Not Voting—1

Johnson

In The Chair: President

Senator Jacobs offered the following amendment:

1. Amend page 12, line 12, after “exceed” by striking out “18%” and inserting “13%”.

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Schauer requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 452**Yeas—16**

Barcia
 Basham
 Bernero
 Brater

Cherry
 Clark-Coleman
 Emerson
 Jacobs

Leland
 Olshove
 Patterson
 Prusi

Schauer
 Scott
 Switalski
 Thomas

Nays—19

Allen
 Birkholz
 Bishop
 Brown
 Cassis

Cropsey
 Garcia
 George
 Gilbert
 Goschka

Hammerstrom
 Hardiman
 Jelinek
 Kuipers
 McManus

Sanborn
 Sikkema
 Stamas
 Van Woerkom

Excused—2

Clarke Toy

Not Voting—1

Johnson

In The Chair: President

Senator Garcia offered the following amendment:

1. Amend page 12, line 12 after “exceed” by striking out “18%” and inserting “16%”.

The amendment was adopted, a majority of the members serving voting therefor.

Senator Hammerstrom requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 453**Yeas—35**

Allen	Cherry	Hardiman	Prusi
Barcia	Clark-Coleman	Jacobs	Sanborn
Basham	Cropsey	Jelinek	Schauer
Bernero	Emerson	Johnson	Sikkema
Birkholz	Garcia	Kuipers	Stamas
Bishop	George	Leland	Switalski
Brater	Gilbert	McManus	Thomas
Brown	Goschka	Olshove	Van Woerkom
Cassis	Hammerstrom	Patterson	

Nays—0**Excused—2**

Clarke Toy

Not Voting—1

Scott

In The Chair: President

Senator Garcia offered the following amendment:

1. Amend page 20, line 18 by inserting:

“Sec. 39a. (1) On or before December 31, 2004, the commissioner may designate a third-party provider to develop, implement, and maintain a database with real-time access through an internet connection in accordance with the provisions of this section. The database must be accessible to the commissioner and the licensee to ensure

compliance with this article. The commissioner shall select a database provider based on an assessment of cost of service and an ability to perform the reporting requirements of this article. The commissioner shall give strong consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. The commissioner may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section. The database shall be available to the commissioner at all times.

(2) The database must be able to do the following:

(a) Check the borrower's social security number and report to the licensee if any such social security number is invalid, has been issued within the past 5-year prior to the date of submission, or represents a deceased person.

(b) Validate whether a new deferred presentment transaction may be extended to the borrower based on the allowable number of transactions and transaction amount pursuant to this article.

(c) Provide information necessary to ensure licensee compliance with the Department of Homeland Security - Office of Foreign Asset Control requirements.

(d) Provide access to the database 24 hours a day, 7 days a week.

(e) In selecting the database provider, the commissioner shall give strong consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. This additional data can be made available to the deferred presentment providers at their option and sole expense. This additional data could include:

(i) Past performance data on deferred presentment transactions the customer has secured within or outside of the state.

(ii) Inquiry information from deferred presentment providers outside the state that would indicate deferred presentment transactions outside the state may have been secured by the customer.

(iii) Access to other performance information about the customer in relation to other sub-prime industries.

(3) The commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(4) As provided in section 33(1), a licensee may charge a customer any database verification fee imposed by the database provider and approved by the commissioner to pay the costs required to validate whether a deferred presentment transaction may be extended to the borrower pursuant to this article. Licensees may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(5) A licensee may not enter into any deferred presentment transaction with a person who has an outstanding transaction, if the principal amount would exceed \$1,000.00. The licensee must verify the following information:

(a) The licensee shall maintain an intracompany database and shall verify the total number of and dollar amount between a person and the licensee.

(b) Upon full implementation of the statewide common database, the licensee shall access the database established pursuant to this section and shall verify whether a loan may be made to the borrower based on the allowable number of loans and loan amounts pursuant to this article.

(6) Before entering into each deferred presentment transaction, a licensee shall submit the required borrower data in the format the commissioner shall reasonably require, including the borrower's name, social security number, address, driver's license number, amount of the transaction, borrower's check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the commissioner.

(7) Prior to implementation of the database or during times when the database is unavailable to licensees due to technical problems, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 10-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED PRESENTMENT TRANSACTIONS WITH AN OUTSTANDING BALANCE EXCEEDING \$1,000.00 WITH THIS OR ANY OTHER LICENSED DEFERRED PRESENTMENT PROVIDER.

(8) Any deferred presentment transaction that has been fully paid and satisfied, as defined in subsection (9) of this section, shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of \$100.00 for each day that the licensee fails to indicate in the database that the loan has been paid. A licensee shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond the licensee's control, including the database temporarily experiencing technical problems.

(9) A deferred presentment transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(a) Redeemed by the customer by payment to the licensee of the face amount of the check in cash.

(b) Exchanged by the licensee for a cashier's check or cash from the borrower's financial institution.

(c) Deposited by the licensee and the licensee has evidence that the check has cleared.

(d) Collected by the licensee or its agent through any civil remedy available under state law.

(e) Collected by means of a repayment plan agreed upon by the borrower and the licensee or as the result of credit counseling where the licensee has been paid the amount agreed upon by the licensee under the plan.

(10) Notwithstanding the provisions of subsection (9) of this section, the designated third-party provider shall automatically close any outstanding customer transaction 5 days following the loan maturity date unless a licensee reports to the database prior to that time that any of the following apply:

(a) The transaction remains open, due to the borrower's failure to make payment.

(b) The transaction is pending, due to the borrower's check or an electronic redeposit being in the process of clearing the banking system.

(c) The transaction remains open, due to the borrower's check being returned to the licensee for insufficient funds, closed accounts, or stop payment order.

(11) If a licensee timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (7) of this section and reported as such by the licensee. If a licensee ceases offering deferred presentment loans, all open transactions with the licensee shall automatically close 60 days following the date the licensee ceases offering deferred deposit loans, unless the licensee reports to the designated third-party provider prior to the expiration of the 60-day period: (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the commissioner a reasonably acceptable plan which outlines how the licensee will continue to update the database following the ceasing of its deferred presentment operations. If at any time the commissioner reasonably determines that a licensee who has ceased its deferred presentment operations is not updating the database in accordance with its approved plan, the commissioner shall immediately close all remaining transactions attributable to the licensee.

(12) Inquiries to the database by licensees shall only state that a person is eligible or ineligible for a new deferred presentment transaction, together with a description of the reason for the determination. Only information previously registered and recorded by the licensee on the database shall be made available to the licensee by the database or the commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection, and is not a public record.

(13) As used in this section:

(a) "Open transaction or open" means a deferred presentment transaction that has been registered and recorded in the database but not closed or pending.

(b) "Pending transaction or pending" means an open transaction that is in the process of clearing the banking system.

(c) "Closed transaction or closed" means a deferred presentment transaction that has been terminated as defined in subsection (9) of this section."

Recess

Senator Hammerstrom moved that the Senate recess subject to the call of the Chair.
The motion prevailed, the time being 11:13 a.m.

11:20 a.m.

The Senate was called to order by the President, Lieutenant Governor Cherry.

The question being on the adoption of the amendment,

Senator Garcia offered the following amendments to the amendment:

1. Amend Senator Garcia's Amendment, page 3, line 7, section 39a(5), after "has" by inserting "an".

2. Amend Senator Garcia's Amendment, page 3, line 7, section 39a(5), after "transaction," by inserting "if".

The amendments to the amendment were adopted.

The question being on the adoption of the amendment, as amended,

Senator Schauer moved that further consideration of the bill be postponed temporarily:

The motion prevailed.

By unanimous consent the Senate proceeded to the order of

Introduction and Referral of Bills

Senator Kuipers introduced

Senate Bill No. 761, entitled

A bill to amend 1937 PA 306, entitled "An act to promote the safety, welfare, and educational interests of the people of the state of Michigan by regulating the construction, reconstruction, and remodeling of certain public or private

school buildings or additions to such buildings, by regulating the construction, reconstruction, and remodeling of buildings leased or acquired for school purposes, and to define the class of buildings affected by this act; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts,” by amending section 1 (MCL 388.851), as amended by 2002 PA 628.

The bill was read a first and second time by title and referred to the Committee on Education.

Senators Basham and Thomas introduced

Senate Bill No. 762, entitled

A bill to establish a roadside heritage initiative; and to prescribe certain duties of certain state agencies.

The bill was read a first and second time by title and referred to the Committee on Transportation.

Senator Basham introduced

Senate Bill No. 763, entitled

A bill to amend 1976 PA 442, entitled “Freedom of information act,” by amending section 2 (MCL 15.232), as amended by 1996 PA 553; and to repeal acts and parts of acts.

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senators Garcia, Goschka, Sanborn, McManus, Gilbert and Allen introduced

Senate Bill No. 764, entitled

A bill to amend 1998 PA 386, entitled “Estates and protected individuals code,” by amending section 5314 (MCL 700.5314), as amended by 2000 PA 469, and by adding section 5314a.

The bill was read a first and second time by title and referred to the Committee on Families and Human Services.

Senator Brater introduced

Senate Bill No. 765, entitled

A bill to amend 1984 PA 270, entitled “Michigan strategic fund act,” by amending section 4 (MCL 125.2004), as amended by 1987 PA 278.

The bill was read a first and second time by title and referred to the Committee on Natural Resources and Environmental Affairs.

Senators Van Woerkom, Cropsey, Barcia, Jelinek, Kuipers and Birkholz introduced

Senate Bill No. 766, entitled

A bill to amend 1998 PA 58, entitled “Michigan liquor control code of 1998,” by amending section 703 (MCL 436.1703), as amended by 1999 PA 53.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

House Bill No. 4950, entitled

A bill to amend 1947 PA 359, entitled “The charter township act,” (MCL 42.1 to 42.34) by adding section 10a.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

By unanimous consent the Senate returned to the order of

Third Reading of Bills

By unanimous consent the Senate returned to consideration of the following bill:

Senate Bill No. 474, entitled

A bill to regulate the business of deferred presentment services; to require the licensing of providers of deferred presentment services; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

(This bill was read a third time earlier today, amendment offered and consideration postponed. See p. 1794.)

The question being on the adoption of the amendment offered by Senator Garcia, as amended,

The amendment was adopted, a majority of the members serving voting therefor.

Senator Schauer requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 454**Yeas—21**

Allen	George	Jelinek	Sikkema
Barcia	Gilbert	McManus	Stamas
Birkholz	Goschka	Olshove	Switalski
Brown	Hammerstrom	Prusi	Thomas
Cassis	Hardiman	Sanborn	Van Woerkom
Garcia			

Nays—15

Basham	Cherry	Jacobs	Patterson
Bernero	Clark-Coleman	Johnson	Schauer
Bishop	Cropsey	Kuipers	Scott
Brater	Emerson	Leland	

Excused—2

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The question being on the passage of the bill,
The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 455**Yeas—26**

Allen	Garcia	Johnson	Sanborn
Barcia	George	Kuipers	Sikkema
Birkholz	Gilbert	Leland	Stamas
Bishop	Goschka	McManus	Switalski
Brown	Hammerstrom	Patterson	Thomas
Cassis	Hardiman	Prusi	Van Woerkom
Cropsey	Jelinek		

Nays—10

Basham	Cherry	Jacobs	Schauer
Bernero	Clark-Coleman	Olshove	Scott
Brater	Emerson		

Excused—2

Clarke	Toy
--------	-----

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

Protest

Senator Scott, under her constitutional right of protest (Art. 4, Sec. 18), protested against the passage of Senate Bill No. 474 and moved that the statements she made during the discussion of the bill be printed as her reasons for voting “no.”

The motion prevailed.

Senator Scott’s first statement is as follows:

I’m asking my colleagues to support the Scott substitute. The difference between the (S-4) and the (S-5) is that the fee cap is 10 percent or 18 percent. The database tracking system that OFIS can accept needs to be effectively able to enforce this law.

Let me just read you a few of the things that are needed in order for us to have a good bill. Be owned by the state and provide direct access by regulatory as needed. Allow for ad hoc analysis and reporting. Centralize all necessary information easily accessible by regulatory in one place. Be used only by licensed providers and reduce ease by which unlicensed activity can take place. Be Web-based and operate in real time. Establish separately identifiable transaction number for each transaction to establish an audit trail. Enhance examination and investigation process. Ensure adherence to state-mandated terms and conditions for entering into a payday loan. This provides up-front enforcement rather than after the fact establishing violations. Be self-funded and self-sustaining. For interaction between industry and database, utilize software currently in use by industry. Work with industry to make interaction seamless. And finally, establish a customer assistance program with toll-free access to provide technical assistance to providers as well as consumers. The customer assistance program will review and attempt to resolve Web-based interaction issues, allegations of illegal activities, and unclosed transactions.

I would hope that my colleagues would adhere to what OFIS will accept. So I ask you to support the Scott substitute.

Senator Scott’s second statement is as follows:

This database is a third-party database, and I am asking for 10 percent. If they make money in Florida off of 10 percent, then they can make money in Michigan off 10 percent. I am asking my colleagues—you know, if you care about your constituents out here, the ones who really use this kind of payday lending operation are the kind of people we need to protect.

So I am asking my colleagues to please support this bill.

Senator Scott’s third statement is as follows:

I don’t know who this compromise is with, but I passed out what OFIS would support and this is not it. So I ask you to defeat this amendment.

Committee Reports**COMMITTEE ATTENDANCE REPORT**

The Subcommittee on Department of Community Health submitted the following:

Joint meeting held on Wednesday, October 1, 2003, at 1:00 p.m., Senate Hearing Room, Boji Tower (formerly Michigan National Tower)

Present: Senators Stamas (C), George, Cherry and Clarke

Excused: Senators Garcia and Johnson

Scheduled Meetings

Agriculture, Forestry and Tourism - Thursday, October 9, 9:00 a.m., Room 110, Farnum Building (373-1635)

Education - Thursday, October 9, 2:00 p.m., Room 210, Farnum Building (373-6920)

Families and Human Services - Thursday, October 9, 8:30 a.m., Room 210, Farnum Building (373-1801)

Finance - Monday, October 13, 10:00 a.m., DeVos Center, Room 138, Grand Valley State University, 401 W. Fulton Street, Grand Rapids (373-1758)

Local, Urban and State Affairs - Thursday, October 9, 1:00 p.m., Room 110, Farnum Building (373-1707)

Michigan Capitol Committee - Thursday, October 9, 9:00 a.m., Room 426, Capitol Building (373-0289)

Senior Citizens and Veterans Affairs - Wednesday, October 15, 1:00 p.m., Room 100, Farnum Building (373-1707)

Senator Hammerstrom moved that the Senate adjourn.
The motion prevailed, the time being 11:34 a.m.

The President, Lieutenant Governor Cherry, declared the Senate adjourned until Thursday, October 9, 2003, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate