SENATE BILL NO. 889

May 30, 2024, Introduced by Senator BAYER and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 2005 PA 244, entitled

"Deferred presentment service transactions act,"

by amending section 22 (MCL 487.2142).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1   Sec. 22. (1) On or before December 31, 2006, the ~~commissioner~~

2 **director** shall develop, implement, and maintain a statewide, common

3 database that has real-time access through an internet connection,

4 is accessible at all time to licensees, and to the ~~commissioner~~

5 **director** for purposes of subsections (10) and (11), and meets the

1 requirements of this section. Before the ~~commissioner~~ **director**

2 determines that the database is fully operational for the purposes

3 of this act, for ~~at least~~ **not less than** 30 days the database

4 provider shall operate a pilot program of the database to test all

5 of the processes of the database. The database provider shall make

6 the pilot program available to all applicants and licensees. During

7 the 30-day period that begins on the date the ~~commissioner~~ **director**

8 determines that the database is fully operational, the ~~commissioner~~

9 **director** shall not approve the imposition of any database

10 verification fees under section 34(5).

11   (2) The ~~commissioner~~ **director** may operate the database

12 described in subsection (1) or may select and contract with a

13 single ~~third party~~ **third-party** provider to operate the database. If

14 the ~~commissioner~~ **director** contracts with a ~~third party~~ **third-party**

15 provider for the operation of the database, all of the following

16 apply:

17   (a) The ~~commissioner~~ **director** shall ensure that the ~~third~~

18 ~~party~~ **third-party** provider selected as the database provider

19 operates the database ~~pursuant to the provisions of~~ **in accordance**

20 **with** this act.

21   (b) The ~~commissioner~~ **director** shall consider cost of service

22 and ability to meet all the requirements of this section in

23 selecting a ~~third party~~ **third-party** provider as the database

24 provider.

25   (c) In selecting a ~~third party~~ **third-party** provider to act as

26 the database provider, the ~~commissioner~~ **director** shall give strong

27 consideration to the ~~third party~~ **third-party** provider's ability to

28 prevent fraud, abuse, and other unlawful activity associated with

29 deferred presentment service transactions and provide additional

1   tools for the administration and enforcement of this act.

2   (d) The ~~third party~~ **third-party** provider shall only use the

3   data collected under this act as prescribed in this act and the

4   contract with the office and for no other purpose.

5   (e) If the ~~third party~~ **third-party** provider violates this

6   section, the ~~commissioner~~ **director** shall terminate the contract and

7   the ~~third party~~ **third-party** provider is barred from becoming a

8   party to any other state contracts.

9   (f) A person injured by the ~~third party~~ **third-party** provider's

10   violation of this act may maintain a civil cause of action against

11   the ~~third party~~ **third-party** provider and may recover actual damages

12   plus reasonable attorney fees.

13   (3) The database described in subsection (1) ~~shall~~ **must** allow

14   a licensee accessing the database to do all of the following:

15   (a) Verify whether a customer has any open deferred

16   presentment service transactions with any licensee that have not

17   been closed.

18   (b) Provide information necessary to ensure licensee

19   compliance with any requirements imposed by the ~~federal office of~~

20   ~~foreign asset control~~ **Office of Foreign Assets Control** under

21   federal law.

22   (c) Track and monitor the number of customers who notify a

23   licensee of violations of this act, the number of times a licensee

24   agreed that a violation occurred, the number of times that a

25   licensee did not agree that a violation occurred, the amount of

26   restitution paid, and any other information the ~~commissioner~~

27   **director** requires by rule.

28   (d) Determine whether a customer is eligible for repayment of

29   the deferred presentment service transaction in installments as

1 provided in section 35(2) and notify the licensee of that

2 eligibility.

3   (4) While operating the database **described in subsection (1),**

4 the database provider shall do all of the following:

5   (a) Establish and maintain a process for responding to

6 transaction verification requests due to technical difficulties

7 occurring with the database that prevent the licensee from

8 accessing the database through the internet.

9   (b) Comply with any applicable provisions of the social

10 security number privacy act, 2004 PA 454, MCL 445.81 to 445.87.

11   (c) Comply with any applicable provisions of the identity

12 theft protection act, 2004 PA 452, MCL 445.61 to ~~445.77.~~**445.80c.**

13   (d) Provide accurate and secure receipt, transmission, and

14 storage of customer data.

15   (e) Meet the requirements of this act.

16   (5) When the database provider receives notification that a

17 deferred presentment service transaction is closed under section

18 34, the database provider shall designate the transaction as closed

19 in the database immediately, but in no event after 11:59 p.m. on

20 the day the ~~commissioner~~ **director** or database provider receives

21 notification.

22   (6) The database provider shall automatically designate a

23 deferred presentment service transaction as closed in the database

24 5 days after the transaction maturity date unless a licensee

25 reports to the database provider before that time that the

26 transaction remains open because of the customer's failure to make

27 payment, ~~;~~that the transaction is open because the customer's

28 check or an electronic redeposit is in the process of clearing the

29 banking system, ~~;~~or that the transaction remains open because the

1   customer's check is being returned to the licensee for insufficient

2   funds, a closed account, or a stop payment order, or any other

3   factors determined by the ~~commissioner.~~ **director.** If a licensee

4   reports the status of a transaction as open in a timely manner, the

5   transaction remains an open transaction until it is closed under

6   section 34 and the database provider is notified that the

7   transaction is closed under that section.

8   (7) If a licensee stops providing deferred presentment service

9   transactions, the database provider shall designate all open

10   transactions with that licensee as closed in the database 60 days

11   after the date the licensee stops offering deferred presentment

12   service transactions, unless the licensee reports to the database

13   provider before the expiration of the 60-day period which of its

14   transactions remain open and the specific reason each transaction

15   remains open. The licensee shall also provide to the ~~commissioner~~

16   **director** a reasonably acceptable plan that outlines how the

17   licensee will continue to update the database after it stops

18   offering deferred presentment service transactions. The

19   ~~commissioner~~ **director** shall promptly approve or disapprove the plan

20   and immediately notify the licensee of ~~his or her~~ **the director's**

21   decision. If the plan is disapproved, the licensee may submit a new

22   plan or may submit a modified plan for the licensee to follow. If

23   at any time the ~~commissioner~~ **director** reasonably determines that a

24   licensee that has stopped offering deferred presentment service

25   transactions is not updating the database in accordance with its

26   approved plan, the ~~commissioner~~ **director** shall immediately close or

27   instruct the database provider to immediately close all remaining

28   open transactions of that licensee.

29   (8) The response to an inquiry to the database provider by a

1   licensee shall only state that a person is eligible or ineligible

2   for a new deferred presentment service transaction and describe the

3   reason for that determination. Only the person seeking the

4   transaction may make a direct inquiry to the database provider to

5   request a more detailed explanation of a particular transaction

6   that was the basis for the ineligibility determination. Any

7   information regarding ~~any~~ **a** person's transactional history is

8   confidential, is not subject to public inspection, is not a public

9   record subject to the disclosure requirements of the freedom of

10   information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject

11   to discovery, subpoena, or other compulsory process except in an

12   action under section 53, and ~~shall~~ **must** not be disclosed to any

13   person other than the ~~commissioner.~~**director.**

14   (9) The database provider may charge licensees a verification

15   fee for access to the database, in amounts approved by the

16   commissioner under section 34(5).

17   (10) The ~~commissioner~~ **director** may access the database

18   ~~provided under~~ **described in** subsection (1) only for purposes of an

19   investigation of, examination of, or enforcement action concerning

20   an individual database provider, licensee, customer, or other

21   person. The ~~commissioner~~ **director** and any employees of the

22   ~~commissioner,~~ **director**, the ~~office,~~ **department**, or this state shall

23   not obtain or access a customer's ~~social security~~ **Social Security**

24   number, driver license number, or other state-issued identification

25   number in the database except as provided in this subsection. An

26   individual who violates this subsection is guilty of a misdemeanor

27   punishable by imprisonment for not more than 93 days or a fine of

28   not more than $1,000.00, or both, and if convicted, an individual

29   who violates this subsection ~~shall~~ **must** be dismissed from office or

1   discharged from employment.

2   (11) The ~~commissioner~~ **director** shall investigate violations of

3   and enforce this section. The ~~commissioner~~ **director** shall not

4   delegate ~~its~~ **the director's** responsibilities under this subsection

5   to any ~~third party~~ **third-party** provider.

6   (12) The ~~commissioner~~ **director** shall do all of the following:

7   (a) Require by rule that data ~~are~~ **be** retained in the database

8   only as required to ensure licensee compliance with this act.

9   (b) Require by rule that data in the database concerning a

10   customer transaction ~~are~~ **be** archived ~~within~~ **not later than** 365 days

11   after the customer transaction is closed unless needed for a

12   pending enforcement action.

13   (c) Require by rule that any identifying customer information

14   is deleted from the database when data ~~are~~ **is** archived.

15   (d) Require by rule that data in the database concerning a

16   customer transaction ~~are~~ **be** deleted from the database 3 years after

17   the customer transaction is closed or any enforcement action

18   pending 3 years after the customer transaction is closed is

19   completed, whichever is later.

20   (13) The ~~commissioner~~ **director** may maintain access to data

21   archived under subsection (12) for future legislative or policy

22   review.

23   Enacting section 1. This amendatory act does not take effect

24   unless Senate Bill No. 888 of the 102nd Legislature is enacted into

25   law.