

HOUSE BILL NO. 1421

Introduced by

Representatives Thorpe, Griffin, Hawken, N. Johnson

Senators Schneider, Wanzek

1 A BILL for an Act to amend and reenact section 13-08-12 of the North Dakota Century Code,
2 relating to fees for deferred presentment services; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 13-08-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **13-08-12. Fees for service - Deferred presentment service transaction procedures**
7 **- Penalty.**

- 8 1. Before disbursing funds under a deferred presentment service transaction, a
9 licensee shall provide to the customer a clear and conspicuous printed notice
10 indicating:
- 11 a. That a deferred presentment service transaction is not intended to meet
12 long-term financial needs.
 - 13 b. That the customer should use a deferred presentment service transaction only
14 to meet short-term cash needs.
 - 15 c. That the customer will be required to pay additional fees if the deferred
16 presentment service transaction is renewed rather than paid in full when due.
17 If the transaction is renewed, any amount paid in excess of the fee applies to
18 the payoff amount.
 - 19 d. A schedule of fees charged for deferred presentment service.
 - 20 e. Any information required under federal law.
 - 21 f. No property, titles to any property, or mortgages may be received or held
22 directly or indirectly by the licensee as a condition of a deferred presentment
23 service transaction or as a method of collection on a defaulted deferred
24 presentment service transaction without proper civil process.

- 1 2. A licensee may charge a fee for the deferred presentment service, not to exceed
2 ~~twenty~~ fifteen percent of the amount paid to the customer by the licensee. This fee
3 may not be deemed interest for any purpose of law. No other fee or charge may
4 be charged for the deferred presentment service, except that a fee, not to exceed
5 the cost to the licensee, may be charged for registering a transaction on a data
6 base administered or authorized by the commissioner. No property, titles to any
7 property, or mortgages may be received or held directly or indirectly by the
8 licensee as a condition of a deferred presentment service transaction or as a
9 method of collection on a defaulted deferred presentment service transaction
10 without proper civil process.
- 11 3. A licensee may not disburse more than ~~five~~ two hundred fifty dollars to the
12 customer in a deferred presentment service transaction.
- 13 4. A licensee may not engage in a deferred presentment service transaction with a
14 customer who has an aggregate value of all outstanding obligations from any one
15 customer exceeding ~~six~~ three hundred dollars which is payable to the same or any
16 other licensee. A licensee may not enter a new deferred presentment service
17 transaction with a customer within three business days of that customer's
18 completion of a previous deferred presentment service transaction. A licensee
19 may rely on a written or electronic representation of a customer regarding the
20 existence of any outstanding obligations for deferred presentment held by a
21 licensee other than the licensee receiving the representation until the data base
22 provided for under this subsection is in operation, and after that time may not rely
23 on a customer's representation but must verify the fact using the data base.
24 However, if a licensee has multiple locations, that licensee may not rely on the
25 representation of a customer regarding the existence of any outstanding obligation
26 for deferred presentment held by that licensee, or one of the licensee's multiple
27 locations, unless the licensee and the licensee's multiple locations use a point of
28 sale registry or some other accounting system to attempt to prevent violations of
29 this subsection. The commissioner shall administer or authorize the development
30 of a data base in which each transaction must be recorded for the purpose of

- 1 preventing violations of this section. The commissioner shall adopt rules governing
2 the creation, structure, and use of the data base.
- 3 5. Before a licensee may negotiate or present a check for payment, the check must
4 be endorsed with the actual name under which the licensee is doing business.
- 5 6. Each deferred presentment service transaction, including a renewal, must be
6 documented by a written agreement signed or similarly authenticated by the
7 customer. The agreement must contain the name of the licensee; the transaction
8 date; the amount of the obligation; and a statement of the total amount of fees
9 charged, expressed as a dollar amount and as an annual percentage rate. The
10 agreement must authorize the licensee to defer presentment or negotiation of the
11 check, or electronic debit of the customer's account, until a specified date. The
12 maker of a check may redeem the check from the licensee at any time before the
13 negotiation or presentment of the check by making payment to the licensee. A
14 customer agreeing to an electronic deferred presentment service transaction may
15 repay the obligation at any time before the agreed-upon date. A customer may
16 rescind any transaction by the close of the business day following the day on which
17 the customer receives payment from the licensee at no cost. If a customer
18 agreeing to an electronic deferred presentment service transaction rescinds the
19 transaction, the licensee must facilitate the repayment of the funds through the
20 same electronic means the licensee used to deliver the funds to the customer.
- 21 7. If a check or electronic debit is returned to the licensee from a payer financial
22 institution due to insufficient funds, closed account, or a stop payment order, the
23 licensee has the right to all civil remedies available to collect the obligation. The
24 licensee may contract for and collect a returned check or electronic debit charge
25 not to exceed twenty dollars. No other fee or charge may be collected as a result
26 of a returned check or electronic debit or as a result of default by the customer in
27 timely payment to the licensee.
- 28 8. A customer who has authority to make a check or authorize an electronic debit and
29 enters a deferred presentment service agreement is not subject to a criminal
30 penalty relating to the check, electronic debit, or the deferred presentment service
31 agreement unless the customer's account was closed on the original date of the

- 1 transaction. At the time of entering a transaction involving a written check, a
2 licensee shall verify that the account on which the check is written is open. A
3 licensee may not pursue or threaten to pursue criminal penalties against a
4 customer for criminal penalties prohibited by this subsection.
- 5 9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in
6 the conduct of a deferred presentment service business.
- 7 10. The amount paid to the customer by the licensee in a deferred presentment service
8 transaction must be paid in the form of cash, check, or an electronic credit to the
9 customer's account.
- 10 11. Each licensee ~~must~~ shall conspicuously post in the licensee's licensed location a
11 notice of the fees imposed for the deferred presentment service. A licensee that
12 engages in a deferred presentment service transaction via the internet shall require
13 its customers to acknowledge the fees imposed using a click-through or other
14 method that prevents customers from completing the transaction without reviewing
15 the licensee's fees.
- 16 12. A licensee may not renew a deferred presentment service transaction more than
17 once. A licensee's renewal fee may not exceed ~~twenty~~ fifteen percent of the
18 amount being renewed. The renewal fee must be paid in cash, money order, or
19 cashier's check. The total period of deferral, including the initial deferral and one
20 renewal, may not exceed sixty days. An individual renewal period may not be less
21 than fifteen days. After sixty days the renewed deferred presentment service
22 transaction must be paid off in cash, money order, electronic payment, or cashier's
23 check by the customer or, if a check is used, the check must be deposited by the
24 licensee.
- 25 13. A licensee may not renew, repay, refinance, or consolidate a deferred presentment
26 service transaction with the proceeds of another deferred presentment service
27 transaction with that licensee by the same maker or customer. It is presumed that
28 a deferred presentment service transaction initiated within three business days
29 before completion of a deferred presentment service transaction is a violation of
30 this subsection.

- 1 14. A licensee may not conduct another business, other than a bona fide pawnbroking
2 business, within the same office, suite, room, or place of business at which the
3 licensee engages in deferred presentment service transactions unless the
4 commissioner provides written authorization after a determination the other
5 business is not contrary to the best interests of consumers.
- 6 15. A licensee shall provide a notice in a prominent place on each deferred
7 presentment service agreement in no less than ten-point type in substantially the
8 following form:
- 9 State law prohibits this business from allowing customers to have outstanding
10 at any one time, deferred presentment service transactions totaling more than
11 ~~six~~ three hundred dollars.
- 12 16. A licensee or any agent of a licensee who willfully violates this section is guilty of a
13 class A misdemeanor.