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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 customer should use a deferred presentment service transaction only to meet short-term cash needs.
   c. That the 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 not 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 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, 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 not 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 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 value of all outstanding obligations from any one customer exceeding six hundred dollars which is payable to the same or any other licensee. A licensee may not enter 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 customer regarding the existence of any outstanding obligations for deferred presentment held by a licensee other than the licensee receiving the representation until the database 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 database. However, if a licensee has multiple locations, that licensee may not rely on the representation of a customer regarding the existence of any outstanding 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 database 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 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 customer. The agreement must contain the name of the licensee; the transaction date; the amount of the obligation; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate. The 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. 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 any transaction by the close of the 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 obligation. The licensee may contract for and collect a returned check or electronic debit charge not to exceed twenty dollars. Additional fee or charge may not be collected as a result of a returned check or electronic debit or as a result of default by the customer in timely payment to the licensee.

8. A customer who has authority to make a check or authorize an electronic debit and enters 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 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 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 customer by the licensee in a deferred presentment service
transaction must be paid in the form of cash, 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
defered 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 renewal fee must be paid in cash, money order, or cashier's check. The
total period of deferral, including the initial deferral and one renewal, may not exceed
sixty days. An individual renewal period may not be less than fifteen days. After sixty
days the renewed deferred presentment service transaction must be paid off in cash,
money order, electronic payment, or cashier's check by the 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
defered 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 six hundred dollars.

16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.