A BILL for an Act to amend and reenact sections 13-08-01 and 13-08-12 of the North Dakota Century Code, relating to deferred presentment service transaction fees; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-08-01 of the North Dakota Century Code is amended and reenacted as follows:

13-08-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly rate, as calculated under the federal Truth in Lending Act [Pub. L. 90-321; 8 Stat. 146; 15 U.S.C. 1601 et seq.]. The calculation of the annual percentage rate includes all interest, fees, and charges, including fees and charges for any ancillary products sold in connection with the deferred presentment service transaction.

2. "Check" means a personal check signed by the maker and made payable to a licensee.

3. "Commissioner" means the commissioner of financial institutions.

4. "Completed deferred presentment service transaction" means a transaction that is completed when a check is redeemed by the maker by payment in full to the licensee in cash, money order, or certified check or by negotiation or deposit by the licensee, or when an electronic funds transfer or other transfer of money has taken place to repay the contracted debt.

5. "Customer" means a person to which funds are advanced under a deferred presentment service transaction.

6. "Deferred presentment service transaction" means a transaction by which a person:
a. Pays to a customer the amount of a check, less the fees permitted under this chapter, and accepts a check from the customer dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment;
b. Accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check; or
c. Pays to the customer an agreed-upon amount, and obtains the customer’s authorization to transfer or withdraw, electronically or otherwise, funds from a customer’s account in repayment at some future, agreed-upon date.

6.7. "Licensee” means a person licensed under this chapter to provide deferred presentment services.

SECTION 2. 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, however, a licensee may neither contract for nor receive a fee or charge pursuant to a deferred presentment service transaction in excess of an annual percentage rate of thirty-six percent. 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 person may not engage in any device, subterfuge, or pretense to evade the requirements of subsection 2, including making a deferred presentment service transaction disguised as a personal property sale and leaseback transaction; disguising deferred presentment service transaction proceeds as a cash rebate for the pretextual installment sale of goods or services; or making, offering, assisting, or arranging a customer to obtain a deferred presentment service transaction with a greater rate of interest, consideration, fee or charge than is permitted by this chapter through any method, including mail, telephone, internet, or any electronic means, regardless of whether the person has a physical location in the state.

4. A licensee may not disburse more than five hundred dollars to the customer in a deferred presentment service transaction.

4.5. 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 \textbf{shall} 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.

5.6. 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.

6.7. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed or similarly authenticated by the customer. The original agreement must contain the name of the licensee; the transaction date; the amount of the obligation; a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent an annual percentage rate of thirty-six percent of the amount being renewed, as provided under subsection 2; a statement that the maximum term of the transaction, including the renewal, may not exceed sixty calendar days; a statement that the term of the renewal period may not be less than fifteen calendar days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for
payment of wages or other compensation for services; a provision in which the check
maker agrees not to assert any claim or defense arising out of the agreement; a
waiver of any provision of this chapter; any representation from the check maker as to
the sufficiency of funds regarding any past deferred presentment service transactions;
or any statement regarding criminal prosecution with respect to the agreement. A
renewal agreement must be contained in a separate section, as part of the original
written agreement or in other form as approved by the commissioner. The renewal
agreement must restate the original transaction date, the renewal transaction date, the
amount of the check paid to the check maker, the fee charged in dollars, the annual
percentage rate, and the maturity date. 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.

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 the collection fees and costs authorized in subdivision c of subsection 2 of
section 6-08-16. No other fee or charge may 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. Fees or charges authorized under this subsection are not subject to
subsection 2.

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
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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.

9-10. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the
conduct of a deferred presentment service business.

40-11. 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.

44-12. 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 the licensee's
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.

42-13. 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 amount set forth under subsection 2. 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.

43-14. 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
defined presentment service transaction initiated within three business days before
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14-15. 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.

16. 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.

16-17. A deferred presentment service transaction made in violation of this section is void and uncollectible as to any principal, fee, charge, or interest.

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

SECTION 3. APPLICATION. This Act applies to deferred presentment service transactions made on and after the effective date of this Act.