

REFERENCE TITLE: transactions; deferred presentment; database

State of Arizona
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HB 2643

Introduced by

Representatives Campbell CH, Ableser, Cajero Bedford, Farley, Gallardo,
Kirkpatrick, Lopes, Lujan, Prezelski, Saradnik, Sinema, Thrasher: Alvarez,
Bradley, Brown, Campbell CL, Garcia M, Lopez, Meza, Pancrazi, Schapira,
Tom, Ulmer

AN ACT

**AMENDING SECTIONS 6-1257, 6-1259 AND 6-1260, ARIZONA REVISED STATUTES;
RELATING TO DEFERRED PRESENTMENT COMPANIES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 6-1257, Arizona Revised Statutes, is amended to
3 read:
4 6-1257. Duties of licensees
5 A licensee:
6 1. Shall meet the financial responsibility requirements of this
7 chapter.
8 2. Shall deal openly, fairly and honestly in the conduct of the
9 deferred presentment business.
10 3. Shall at all times and in every branch office conspicuously post a
11 notice in English and Spanish that states the fee charged for deferred
12 presentment services AND TO ALL TELEPHONE INQUIRIES SHALL VERBALLY PROVIDE
13 INFORMATION ON FEES CHARGED FOR DEFERRED PRESENTMENT SERVICES.
14 4. Shall file with the superintendent a statement of the fees charged
15 at every location that is licensed for deferred presentment services. The
16 licensee shall file the statement annually and include the statement with the
17 licensee's renewal application.
18 Sec. 2. Section 6-1259, Arizona Revised Statutes, is amended to read:
19 6-1259. Prohibited acts
20 A. A person shall not engage in the business of providing deferred
21 presentment services without first obtaining a license pursuant to this
22 chapter. A separate license is required for each location from which the
23 business is conducted. The licensee shall post its license to engage in the
24 business of deferred presentment services at each location that is licensed
25 pursuant to this chapter.
26 B. A licensee shall not:
27 1. Advance monies on the security of a check without first obtaining
28 reasonable evidence that indicates that the account on which the presented
29 check is drawn is an open and active account.
30 2. Assess any fee that is more than the amount prescribed in this
31 chapter.
32 3. At the licensed location engage in the business of:
33 (a) Making loans of money or extensions of credit other than those
34 allowed under this chapter or title 44, chapter 11, article 3.
35 (b) Discounting notes, bills of exchange, items or other evidences of
36 debt.
37 (c) Accepting deposits or bailments of money or items, except as
38 expressly provided in section 6-1260.
39 4. Use or cause to be published or disseminated any advertisement that
40 contains false, misleading or deceptive statements or representations.
41 5. Engage in the business of deferred presentment services at
42 locations other than licensed locations.
43 6. Engage in unfair, deceptive or fraudulent practices.
44 7. Alter or delete the date on a check accepted by the licensee.

1 8. Take possession of an undated check or a check dated on a date
2 other than the date on which the licensee takes possession of the check or
3 the date of presentment.

4 9. Require a customer to provide security for the transaction, other
5 than the presented check, or require the customer to provide a guaranty from
6 another person.

7 10. Fail to take reasonable measures to ensure that no customer has
8 more than one deferred presentment loan outstanding at any time with any
9 licensee in this state.

10 11. Engage in the sale of the following goods or services at any
11 licensed location:

12 (a) Gaming activities, including the sale of lottery tickets.

13 (b) Alcoholic beverages.

14 12. Tie or otherwise condition the offering of deferred presentment
15 services to the sale of any good or service.

16 13. Permit others to engage in any activity prohibited in this section
17 at a location licensed pursuant to this chapter.

18 14. Offer deferred presentment services for ~~less~~ FEWER than ~~five~~ SEVEN
19 days OR MORE THAN THIRTY-ONE DAYS.

20 15. Be required to request or accept any written representation by a
21 customer as to whether the customer has any outstanding checks for deferred
22 presentment held by other licensees.

23 16. CHARGE A PREPAYMENT PENALTY IF A CUSTOMER REPAYS A LOAN PURSUANT TO
24 THIS CHAPTER BEFORE MATURITY.

25 Sec. 3. Section 6-1260, Arizona Revised Statutes, is amended to read:
26 6-1260. Deferred presentment; amount; fees; loans to members of
27 military service; grace period

28 A. The licensee may accept for deferred presentment or deposit a check
29 with a face amount of at least fifty dollars but not more than five hundred
30 dollars, excluding the fees permitted in subsection ~~F~~ H of this section.

31 B. For each check the licensee accepts for deferred presentment or
32 deposit, the licensee and the customer shall sign a written agreement that
33 contains the name or trade name of the licensee, the transaction date, the
34 amount of the check, the amount to be paid by the maker, a statement of the
35 total amount of the fees charged, expressed both as a dollar amount and as an
36 effective annual percentage rate, a disclosure statement that complies with
37 state and federal truth in lending laws and a notice to the customer as
38 prescribed in subsection C of this section. The written agreement shall
39 expressly require the licensee to defer presentment or deposit of the check
40 until a specified date. THE WRITTEN AGREEMENT SHALL BE EXECUTED ON THE SAME
41 DAY THAT THE MONIES ARE PAID BY THE LICENSEE TO THE CUSTOMER. THE LICENSEE
42 SHALL PROVIDE THE CUSTOMER WITH A COPY OF THE DEFERRED PRESENTMENT SERVICE
43 AGREEMENT.

44 C. A licensee shall provide a notice IN ENGLISH AND SPANISH in a
45 prominent place on each written agreement that specifies ~~that~~ THE FOLLOWING:

- 1 1. No customer may have outstanding more than one deferred presentment
2 service agreement at one time. ~~and~~
- 3 2. PRIOR DEFERRED PRESENTMENT SERVICE AGREEMENTS SHALL BE CLOSED FOR
4 AT LEAST TWENTY-FOUR HOURS BEFORE THE WRITTEN AGREEMENT IS EXECUTED.
- 5 3. The face amount, exclusive of any fees, cannot be more than five
6 hundred dollars. ~~A licensee shall ask every customer who seeks deferred~~
7 ~~presentment services whether that customer has any outstanding checks payable~~
8 ~~to other licensees.~~
- 9 4. A STATEMENT SUBSTANTIALLY AS FOLLOWS:
10 STATE LAW PROHIBITS A DEFERRED PRESENTMENT COMPANY (THIS
11 BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED
12 PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR
13 REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE
14 DEPOSIT OR PRESENTMENT OF YOUR CHECK OR PAYMENT. IF YOU INFORM
15 THIS COMPANY IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN
16 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,
17 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE
18 AGREEMENT FOR AN ADDITIONAL SIXTY DAYS AFTER THE ORIGINAL
19 TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED
20 PRESENTMENT COMPANY SHALL REQUIRE THAT YOU, AS A CONDITION OF
21 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING
22 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT THIS COMPANY
23 WILL PROVIDE TO YOU. YOU MAY ALSO AGREE TO COMPLY WITH AND
24 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO
25 NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
26 AGENCY, THIS COMPANY MAY DEPOSIT OR PRESENT YOUR CHECK FOR
27 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
28 REPAYMENT OF THE DEBT AT THE END OF THE SIXTY DAY GRACE PERIOD.
- 29 ~~D. A licensee may rely on the customer's representation of whether the~~
30 ~~customer has any outstanding checks for deferred presentment held by other~~
31 ~~licensees.~~
- 32 D. BEFORE A LICENSEE ENTERS INTO A WRITTEN AGREEMENT WITH A CUSTOMER,
33 THE LICENSEE SHALL ACCESS A DATABASE ESTABLISHED BY THE DEPARTMENT PURSUANT
34 TO SUBSECTION O OF THIS SECTION TO VERIFY BOTH OF THE FOLLOWING:
- 35 1. THE CUSTOMER DOES NOT HAVE OUTSTANDING ANOTHER DEFERRED PRESENTMENT
36 SERVICE AGREEMENT.
- 37 2. THE CUSTOMER'S PRIOR DEFERRED PRESENTMENT SERVICE AGREEMENTS HAVE
38 BEEN CLOSED FOR AT LEAST TWENTY-FOUR HOURS.
- 39 E. UNTIL THE DATABASE IS ESTABLISHED BY THE DEPARTMENT PURSUANT TO
40 SUBSECTION O OF THIS SECTION, THE CUSTOMER SHALL PROVIDE THE LICENSEE WITH A
41 WRITTEN STATEMENT THAT THE CUSTOMER DOES NOT HAVE AN OUTSTANDING DEFERRED
42 PRESENTMENT SERVICE AGREEMENT AND HAS NOT TERMINATED SUCH AN AGREEMENT WITHIN
43 THE PAST TWENTY-FOUR HOURS.
- 44 F. THE LICENSEE SHALL IMMEDIATELY PROVIDE THE CUSTOMER WITH THE FULL
45 AMOUNT OF ANY CHECK TO BE HELD. THE LICENSEE SHALL NOT COLLECT THE FEES

1 AUTHORIZED BY SUBSECTION H OF THIS SECTION BEFORE THE CUSTOMER'S CHECK IS
2 PRESENTED OR DEPOSITED.

3 ~~F.~~ G. The maker of a check has the right to redeem the check from the
4 licensee before the agreed on date of presentment or deposit if the maker
5 pays the licensee the amount of the check.

6 ~~F.~~ H. A licensee shall not directly or indirectly charge any fee or
7 other consideration for accepting a check for deferred presentment or deposit
8 that is more than ~~fifteen~~ TEN per cent of the face amount of the check for
9 any initial transaction or any extension.

10 ~~G.~~ I. A licensee may impose the fee prescribed in subsection ~~F.~~ H of
11 this section only once for each written agreement. The fee is earned on
12 execution of the written agreement and is not subject to any reimbursement
13 even if the maker redeems the check pursuant to subsection ~~E.~~ G of this
14 section.

15 ~~H.~~ J. The fee charged by the licensee is not interest for purposes of
16 any other law or rule of this state.

17 ~~I.~~ K. Except as otherwise provided in this subsection, a person may
18 extend the presentment or deposit of a check not more than ~~three consecutive~~
19 ~~times~~ ONCE. For ~~each~~ AN extension the customer and the licensee shall
20 terminate the previous agreement and sign a separate agreement. During an
21 incomplete transaction the customer may not receive any additional monies
22 from the licensee. The licensee may charge a fee as prescribed in subsection
23 ~~F.~~ H of this section for ~~each~~ AN extension. A person who is a member of the
24 military service of the United States or the member's spouse may not extend
25 the presentment or deposit of a check. If a customer has completed a
26 deferred presentment transaction with the licensee, the customer may enter
27 into a new agreement for deferred presentment services with the licensee. A
28 transaction is completed when the customer's check is presented for payment,
29 deposited or redeemed by the customer for cash.

30 ~~J.~~ L. If a check is returned to the licensee from a payer financial
31 institution due to insufficient funds, a closed account or a stop payment
32 order, the licensee may use all available civil remedies to collect on the
33 check including the imposition of the dishonored check service fee prescribed
34 in section 44-6852. An individual who issues a personal check to a licensee
35 under a deferred presentment agreement is not subject to criminal prosecution
36 pursuant to title 13, chapter 18.

37 ~~K.~~ M. Before engaging in a deferred presentment transaction, a
38 licensee shall provide to a customer who is a member of the military service
39 of the United States or the member's spouse a written statement that clearly
40 and conspicuously states the prohibited practices and requirements prescribed
41 in subsection ~~L.~~ N of this section.

42 ~~L.~~ N. If lending to a member of the military service of the United
43 States or the spouse of a member of the military service of the United
44 States, a licensee:

- 45 1. Shall not garnish any military wages or salary.

1 2. Shall not conduct any collection activity against a customer who is
2 a member of the military service of the United States or the spouse of the
3 member during the member's deployment to a combat or combat support posting
4 or during active duty service by a member of the national guard or any
5 military reserve unit of any branch of the armed forces of the United States.

6 3. Shall contact the employer of a member of the military service of
7 the United States about a deferred presentment debt of the member or the
8 member's spouse. The contact allowed by this paragraph shall only be a
9 notice for informational purposes and shall not be an attempt to collect on a
10 loan made to the member or the member's spouse. A licensee shall not attempt
11 to collect on a loan made to a member of the military service of the United
12 States or the member's spouse through the member's chain of command.

13 4. Shall not conduct a deferred presentment transaction with a member
14 of the military service of the United States or the member's spouse in any
15 location that the member's commanding officer prohibits the member or the
16 member's spouse from transacting deferred presentment business.

17 5. Is bound by the terms of any repayment agreement that the licensee
18 negotiates with respect to the customer through military counselors or third
19 party credit counselors.

20 O. BY SEPTEMBER 1, 2008, THE DEPARTMENT SHALL IMPLEMENT A DATABASE
21 WITH REAL-TIME ACCESS THROUGH AN INTERNET CONNECTION FOR LICENSEES. THE
22 DATABASE SHALL BE ACCESSIBLE TO THE DEPARTMENT AND LICENSEES TO VERIFY
23 WHETHER ANY DEFERRED PRESENTMENT TRANSACTIONS ARE OUTSTANDING FOR A
24 PARTICULAR PERSON. BEFORE ENTERING INTO A DEFERRED PRESENTMENT WRITTEN
25 AGREEMENT, LICENSEES SHALL SUBMIT DATA IN A FORMAT REQUIRED BY THE DEPARTMENT
26 BY RULE. THE FORMAT SHALL INCLUDE ALL OF THE FOLLOWING:

- 27 1. THE CUSTOMER'S NAME.
- 28 2. THE CUSTOMER'S SOCIAL SECURITY NUMBER OR EMPLOYMENT AUTHORIZATION
29 ALIEN NUMBER.
- 30 3. THE CUSTOMER'S ADDRESS.
- 31 4. THE CUSTOMER'S DRIVER LICENSE NUMBER.
- 32 5. THE AMOUNT OF THE TRANSACTION.
- 33 6. THE DATE OF THE TRANSACTION.
- 34 7. THE DATE THE TRANSACTION IS CLOSED.

35 P. A LICENSEE MAY RELY ON THE INFORMATION CONTAINED IN THE DATABASE AS
36 ACCURATE AND IS NOT SUBJECT TO AN ADMINISTRATIVE PENALTY OR CIVIL LIABILITY
37 AS A RESULT OF RELYING ON INACCURATE INFORMATION IN THE DATABASE.

38 Q. THE DEPARTMENT MAY ADOPT RULES TO ADMINISTER AND ENFORCE THIS
39 SECTION.

40 R. BY THE END OF THE DEFERMENT PERIOD, IF THE CUSTOMER INFORMS THE
41 LICENSEE IN PERSON THAT THE CUSTOMER CANNOT REDEEM OR PAY IN FULL IN CASH THE
42 AMOUNT OWED TO THE LICENSEE, THE LICENSEE SHALL PROVIDE A GRACE PERIOD
43 EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL SIXTY DAYS AFTER THE
44 ORIGINAL TERMINATION DATE WITHOUT ANY ADDITIONAL CHARGE. AS A CONDITION OF
45 THE GRACE PERIOD, THE CUSTOMER SHALL MAKE AN APPOINTMENT WITH A CONSUMER

1 CREDIT COUNSELING AGENCY WITHIN THE FIRST SEVEN DAYS OF THE GRACE PERIOD AND
2 SHALL COMPLETE THE COUNSELING BY THE END OF THE GRACE PERIOD. IF THE
3 CUSTOMER AGREES TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE
4 COUNSELING AGENCY, THE LICENSEE IS REQUIRED TO COMPLY WITH AND ADHERE TO THE
5 REPAYMENT PLAN. THE LICENSEE SHALL NOT DEPOSIT OR PRESENT THE CUSTOMER'S
6 CHECK FOR PAYMENT BEFORE THE END OF THE SIXTY DAY GRACE PERIOD UNLESS THE
7 CUSTOMER FAILS TO COMPLY WITH THIS SUBSECTION OR FAILS TO NOTIFY THE LICENSEE
8 OF THE COMPLIANCE.

9 S. AT THE BEGINNING OF THE GRACE PERIOD, THE LICENSEE SHALL PROVIDE
10 THE CUSTOMER WITH ALL OF THE FOLLOWING:

11 1. VERBAL NOTICE OF THE AVAILABILITY OF THE GRACE PERIOD.

12 2. A LIST OF APPROVED CONSUMER CREDIT COUNSELING AGENCIES PREPARED BY
13 THE DEPARTMENT. THE DEPARTMENT LIST SHALL INCLUDE PHONE NUMBERS FOR THE
14 AGENCIES AND THE COUNTIES SERVED BY THE AGENCIES AND SHALL INDICATE THE
15 AGENCIES THAT PROVIDE TELEPHONE COUNSELING AND THOSE THAT PROVIDE INTERNET
16 COUNSELING. THE DEPARTMENT SHALL UPDATE THE LIST AT LEAST ONCE EACH YEAR.

17 3. A NOTICE IN AT LEAST FOURTEEN POINT TYPE IN SUBSTANTIALLY THE
18 FOLLOWING FORM:

19 AS A CONDITION OF OBTAINING A GRACE PERIOD THAT EXTENDS
20 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
21 ADDITIONAL SIXTY DAYS, UNTIL (DATE), WITHOUT ANY ADDITIONAL
22 FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY
23 AN AGENCY INCLUDED ON THE LIST THAT THIS COMPANY WILL PROVIDE TO
24 YOU. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A
25 REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE
26 CONDUCTED IN PERSON, BY TELEPHONE OR THROUGH THE INTERNET. YOU
27 MUST NOTIFY US WITHIN SEVEN DAYS, BY (DATE), THAT YOU HAVE MADE
28 AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU
29 MUST ALSO NOTIFY US WITHIN SIXTY DAYS, BY (DATE), THAT YOU HAVE
30 COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS
31 INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE
32 SEVEN DAY OR SIXTY DAY NOTICE OR IF YOU HAVE NOT MADE THE
33 APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME
34 REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
35 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE REPAYMENT OF
36 THE DEBT.

37 T. IF A CUSTOMER COMPLETES AN APPROVED PAYMENT PLAN, THE LICENSEE
38 SHALL PAY ONE-HALF OF THE CUSTOMER'S FEE FOR THE DEFERRED PRESENTMENT SERVICE
39 AGREEMENT TO THE CONSUMER CREDIT COUNSELING AGENCY.

40 U. EACH BRANCH OFFICE SHALL DISPLAY IN A PROMINENT PLACE A CHART
41 SHOWING THE ACTUAL COST AND THE ANNUAL PERCENTAGE RATE OF THE INITIAL
42 LOAN. THE CHART SHALL SHOW COSTS FOR EXTENDING THE PRESENTMENT OR DEPOSIT OF
43 BOTH A CHECK WORTH ONE HUNDRED DOLLARS AND A CHECK WORTH FIVE HUNDRED
44 DOLLARS.