

PROPOSED AMENDMENT
SENATE AMENDMENTS TO H.B. 2370
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 6-125, Arizona Revised Statutes, is amended to
3 read:

4 6-125. Annual examination assessment of financial institutions
5 and enterprises; costs of foreign examination; payment

6 A. Before August 31 of each year, the superintendent shall make the
7 following annual assessments:

8 1. ~~Upon~~ ON banks, the annual assessment set by the superintendent.

9 2. ~~Upon~~ ON savings and loan associations, a charge not to exceed the
10 annual assessment set for state banks under paragraph 1 of this subsection.

11 3. ~~Upon~~ ON credit unions, the annual assessment set by the
12 superintendent.

13 B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, the
14 superintendent shall assess against the institution or enterprise examined a
15 charge at the rate set by the superintendent but not to exceed sixty-five
16 dollars per hour for each examiner employed in the following examinations:

17 1. Any examination of a trust company.

18 2. Any examination of the trust operation of a bank or a savings and
19 loan association.

20 3. Any examination of a financial institution ordered by the
21 superintendent in addition to the regular examination required under section
22 6-122.

23 4. Any examination of an enterprise ordered by the superintendent.

24 5. Any examination of a financial institution holding company or
25 international banking facility.

26 6. Any examination of a consumer lender.

27 C. THE SUPERINTENDENT MAY USE CONTRACT PERSONNEL TO EXAMINE A DEFERRED
28 PRESENTMENT COMPANY. THE SUPERINTENDENT SHALL ASSESS A DEFERRED PRESENTMENT

1 COMPANY A FEE FOR THE EXAMINATION IN AN AMOUNT TO BE DETERMINED BY THE
2 SUPERINTENDENT.

3 ~~E.~~ D. For a financial institution or enterprise maintaining an office
4 outside this state, in addition to the annual assessment or examination
5 assessment, the superintendent shall make an assessment equal to the travel
6 and subsistence expense incurred in the examination of the office in the
7 foreign state or country. Notwithstanding any other limitation prescribed by
8 law, examiners engaged in examination of a foreign office shall be reimbursed
9 for their necessary travel and subsistence expenses. Reimbursement for
10 examiners' expenses shall be credited to the appropriation account of the
11 department.

12 ~~D.~~ E. Assessments under this section are due and payable to the
13 department within thirty days after notice of the assessment is mailed by the
14 department. The superintendent shall assess a penalty of fifty dollars for
15 each day after the thirty-day period that the financial institution or
16 enterprise fails to remit the assessment, unless, ~~upon~~ ON good cause shown, a
17 written request for an extension is approved by the superintendent ~~prior to~~
18 BEFORE the expiration of the specified time. In no event shall the total
19 penalty exceed the examination assessment.

20 ~~E.~~ F. The superintendent shall set the amount of the annual
21 assessment to be charged to banks and credit unions. In setting the annual
22 assessment ~~upon~~ ON banks, the superintendent shall consider the annual
23 assessment set by the comptroller of currency for national banks. In setting
24 the annual assessment ~~upon~~ ON credit unions the superintendent shall consider
25 the annual assessment set by the national credit union administration for
26 federal credit unions.

27 Sec. 2. Section 6-1254, Arizona Revised Statutes, is amended to read:

28 6-1254. Qualifications of applicants; licensees

29 A. An applicant for a license:

30 1. Shall be a citizen of the United States.

31 2. Shall be a person of honesty, truthfulness and good moral
32 character.

1 3. Shall not have been convicted of a crime that involves moral
2 turpitude.

3 4. Shall not have defaulted on payment of money collected or received
4 for another person.

5 5. Shall not have been a former licensee pursuant to this chapter
6 whose license was suspended or revoked and not subsequently reinstated.

7 B. If the applicant is a person other than a natural person, the
8 qualifications required by subsection A are also required of any executive
9 officer, director or partner of the firm, partnership or association.

10 C. To qualify for a license an applicant shall have **AND A LICENSEE**
11 **SHALL MAINTAIN:**

12 1. A minimum net worth in cash or cash equivalents, determined in
13 accordance with generally accepted accounting principles, of at least ~~fifty~~
14 **ONE HUNDRED** thousand dollars **PER LICENSED LOCATION, UP TO A MAXIMUM REQUIRED**
15 **NET WORTH OF TWO MILLION DOLLARS. FOR THE PURPOSES OF THIS PARAGRAPH, "NET**
16 **WORTH" MEANS THE CONSOLIDATED SHAREHOLDERS' EQUITY DETERMINED IN ACCORDANCE**
17 **WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

18 2. The financial responsibility, character and experience to warrant a
19 belief that the business is operated lawfully, honestly, fairly and
20 efficiently.

21 Sec. 3. Section 6-1256, Arizona Revised Statutes, is amended to read:
22 **6-1256. Annual renewal of license**

23 A. On or before June 30 of each year, an applicant for licensure
24 renewal shall:

25 1. File with the superintendent a financial statement prepared
26 according to generally accepted accounting principles for the twelve month
27 period ending the previous December 31.

28 2. Make a renewal application to the department on forms prescribed by
29 the superintendent and:

30 (a) Pay the fees prescribed in section 6-126.

1 (b) Include information to assist the superintendent in determining
2 whether the applicant is in default of or in violation of this chapter and
3 whether the applicant meets the requirements of this chapter.

4 3. FILE WITH THE SUPERINTENDENT A REPORT DESCRIBING AND VERIFYING THE
5 LICENSEE'S DISBURSEMENTS TO ORGANIZATIONS THAT PROVIDE SERVICES TO LOW-INCOME
6 AND MODERATE-INCOME INDIVIDUALS IN COMMUNITIES IN WHICH THE LICENSEE OPERATES
7 A BRANCH OFFICE IN THIS STATE.

8 B. If the renewal applicant is unable to make a financial statement at
9 the time the applicant files the renewal application, the applicant may make
10 a written request for an extension of time to file the financial statement.
11 If the superintendent grants the extension the applicant shall file a
12 financial statement within thirty days after the superintendent issues the
13 renewal license.

14 C. On application to the superintendent each year pursuant to
15 subsection A of this section, the superintendent shall issue the renewal
16 license on OR BEFORE August 1 of each year EXCEPT AS PROVIDED IN SUBSECTION D
17 OF THIS SECTION.

18 D. THE SUPERINTENDENT SHALL DENY AN APPLICATION FOR LICENSURE RENEWAL
19 IF THE APPLICANT HAS NOT DISBURSED AT LEAST ONE AND ONE-HALF PER CENT OF THE
20 AMOUNT REPORTED PURSUANT TO SECTION 6-1264, SUBSECTION A, PARAGRAPH 4 TO
21 ORGANIZATIONS DESCRIBED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

22 Sec. 4. Section 6-1259, Arizona Revised Statutes, is amended to read:
23 6-1259. Prohibited acts

24 A. A person shall not engage in the business of providing deferred
25 presentment services without first obtaining a license pursuant to this
26 chapter. A separate license is required for each location from which the
27 business is conducted. The licensee shall post its license to engage in the
28 business of deferred presentment services at each location that is licensed
29 pursuant to this chapter.

30 B. A licensee shall not:

1 1. Advance monies on the security of a check without first obtaining
2 reasonable evidence that indicates that the account on which the presented
3 check is drawn is an open and active account.

4 2. Assess any fee that is more than the amount prescribed in this
5 chapter.

6 3. At the licensed location engage in the business of:

7 (a) Making loans of money or extensions of credit other than those
8 allowed under this chapter or title 44, chapter 11, article 3.

9 (b) Discounting notes, bills of exchange, items or other evidences of
10 debt.

11 (c) Accepting deposits or bailments of money or items, except as
12 expressly provided in section 6-1260.

13 4. Use or cause to be published or disseminated any advertisement that
14 contains false, misleading or deceptive statements or representations.

15 5. Engage in the business of deferred presentment services at
16 locations other than licensed locations.

17 6. Engage in unfair, deceptive or fraudulent practices.

18 7. Alter or delete the date on a check accepted by the licensee.

19 8. Take possession of an undated check or a check dated on a date
20 other than the date on which the licensee takes possession of the check or
21 the date of presentment.

22 9. Require a customer to provide security for the transaction, other
23 than the presented check, or require the customer to provide a guaranty from
24 another person.

25 ~~10. Fail to take reasonable measures to ensure that no customer has~~
26 ~~more than one deferred presentment loan outstanding at any time with any~~
27 ~~licensee in this state.~~

28 ~~11.~~ 10. Engage in the sale of the following goods or services at any
29 licensed location:

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

31 (b) Alcoholic beverages.

1 ~~12.~~ 11. Tie or otherwise condition the offering of deferred
2 presentment services to the sale of any good or service.

3 ~~13.~~ 12. Permit others to engage in any activity prohibited in this
4 section at a location licensed pursuant to this chapter.

5 ~~14.~~ 13. Offer deferred presentment services for less than five days.

6 ~~15. Be required to request or accept any written representation by a
7 customer as to whether the customer has any outstanding checks for deferred
8 presentment held by other licensees.~~

9 Sec. 5. Section 6-1260, Arizona Revised Statutes, is amended to read:

10 6-1260. Deferred presentment; amount; fees; loans to members of
11 military service; repayment plans

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

15 A. A LICENSEE MAY NOT ENTER INTO A DEFERRED PRESENTMENT TRANSACTION
16 WITH A CUSTOMER WHO HAS ONE OR MORE OUTSTANDING DEFERRED PRESENTMENT
17 TRANSACTIONS IN EXCESS OF FIVE HUNDRED DOLLARS, EXCLUDING FEES ALLOWED
18 PURSUANT TO SUBSECTION F OF THIS SECTION. BEFORE ENTERING INTO A DEFERRED
19 PRESENTMENT TRANSACTION WITH A CUSTOMER, A LICENSEE SHALL OBTAIN SUFFICIENT
20 INFORMATION FROM A CONSUMER REPORTING SERVICE DATABASE PURSUANT TO SECTION
21 6-1263 TO DETERMINE THAT THE CUSTOMER HAS NOT EXCEEDED THE LIMITATION
22 PROVIDED FOR IN THIS SUBSECTION. A LICENSEE SHALL RETAIN THE INFORMATION
23 OBTAINED FROM THE CONSUMER REPORTING SERVICE DATABASE AS PART OF THE CUSTOMER
24 FILE. UNTIL A CONSUMER REPORTING SERVICE DATABASE IS CERTIFIED BY THE
25 DEPARTMENT PURSUANT TO SECTION 6-1263, A LICENSEE SHALL REQUIRE EACH CUSTOMER
26 TO MAKE A WRITTEN REPRESENTATION THAT THE CUSTOMER DOES NOT HAVE OPEN
27 DEFERRED PRESENTMENT TRANSACTIONS IN EXCESS OF THE AMOUNT ALLOWED BY THIS
28 SUBSECTION.

29 B. For each check the licensee accepts for deferred presentment ~~or~~
30 ~~deposit~~, the licensee and the customer shall sign a written agreement that
31 contains the name or trade name of the licensee, the transaction date, the
32 amount of the check, the amount to be paid by the maker, a statement of the

1 total amount of the fees charged, expressed both as a dollar amount and as an
2 effective annual percentage rate, a disclosure statement that complies with
3 state and federal truth in lending laws and a notice to the customer as
4 prescribed in subsection C of this section. The written agreement shall
5 expressly require the licensee to defer presentment ~~or deposit~~ of the check
6 until a specified date. LICENSEES SHALL PROVIDE ALL AGREEMENTS, NOTICES AND
7 DISCLOSURES IN ENGLISH OR SPANISH AT THE CUSTOMER'S REQUEST, EXCEPT IF STATE
8 OR FEDERAL LAW REQUIRES A SPECIFIC LANGUAGE. EACH AGREEMENT USED BY A
9 LICENSEE SHALL BE WRITTEN IN PLAIN ENGLISH OR SPANISH. EACH WRITTEN
10 AGREEMENT SHALL INCLUDE A PROVISION ALLOWING THE CUSTOMER TO RESCIND THE
11 TRANSACTION IN ITS ENTIRETY WITHIN TWO BUSINESS DAYS AFTER THE EFFECTIVE DATE
12 OF THE AGREEMENT IF THE CUSTOMER RETURNS ALL MONIES PREVIOUSLY OBTAINED FROM
13 THE LICENSEE. THE WRITTEN AGREEMENT SHALL INCLUDE, ADJACENT TO THE CUSTOMER
14 SIGNATURE LINE, THE TELEPHONE NUMBER AND ADDRESS OF THE DEPARTMENT AND A
15 STATEMENT THAT THE DEPARTMENT REGULATES THE LICENSEE AND THAT ANY COMPLAINTS
16 CONCERNING THE AGREEMENT MAY BE ADDRESSED TO THE DEPARTMENT AT THE
17 DEPARTMENT'S TELEPHONE NUMBER AND ADDRESS. FOR THE PURPOSES OF THIS
18 SUBSECTION, "PLAIN ENGLISH OR SPANISH" MEANS:

- 19 1. TERMS ARE DEFINED USING COMMONLY ACCEPTED MEANINGS.
- 20 2. WORDS, SENTENCES AND PARAGRAPHS ARE AS SHORT AS REASONABLY
21 POSSIBLE.
- 22 3. ACTIVE VOICE VERBS ARE USED.
- 23 4. PARTIES TO AGREEMENTS ARE IDENTIFIED USING EITHER ACTUAL NAMES OR
24 PERSONAL PRONOUNS.
- 25 5. SENTENCES DO NOT CONTAIN MORE THAN ONE CONDITION.
- 26 6. CROSS REFERENCES ARE AVOIDED IF POSSIBLE.

27 C. A licensee shall provide a notice in a prominent place on each
28 written agreement that specifies that no customer may have outstanding ~~more~~
29 ~~than one~~ deferred presentment service ~~agreement~~ AGREEMENTS THAT at one time
30 ~~and the face amount~~, exclusive of any fees, ~~cannot be more than~~ EXCEED five
31 hundred dollars. A licensee shall ask every customer who seeks deferred

1 presentment services whether that customer has any outstanding checks payable
2 to other licensees.

3 ~~D. A licensee may rely on the customer's representation of whether the~~
4 ~~customer has any outstanding checks for deferred presentment held by other~~
5 ~~licensees.~~

6 D. NOT LATER THAN JANUARY 1, 2011, THE SUPERINTENDENT SHALL POST ON
7 THE DEPARTMENT'S WEBSITE A DOCUMENT THAT ENCOURAGES CUSTOMERS TO USE CONSUMER
8 CREDIT COUNSELING SERVICES AND SHALL LIST CONSUMER CREDIT COUNSELING SERVICES
9 AS THE SUPERINTENDENT DEEMS APPROPRIATE. WHEN THE DEPARTMENT'S DOCUMENT IS
10 AVAILABLE ON THE DEPARTMENT'S WEBSITE, EACH LICENSEE SHALL REPRODUCE THE
11 DOCUMENT AND SHALL PROVIDE A COPY TO EACH CUSTOMER WHO ENTERS INTO A
12 REPAYMENT PLAN.

13 E. The maker of a check has the right to redeem the check from the
14 licensee before the agreed on date of presentment or deposit if the maker
15 pays the licensee the amount of the check.

16 F. A licensee shall not directly or indirectly charge any fee or other
17 consideration for accepting a check for deferred presentment or deposit that
18 is more than fifteen per cent of the ~~face amount of the check for any initial~~
19 ~~transaction or any extension~~ PRINCIPAL AMOUNT BORROWED BY THE CUSTOMER.

20 G. A licensee may impose the fee prescribed in subsection F of this
21 section only once for each written agreement. The fee is earned on execution
22 of the written agreement and is not subject to any reimbursement even if the
23 maker redeems the check pursuant to subsection E of this section.

24 H. The fee charged by the licensee is not interest for purposes of any
25 other law or rule of this state.

26 I. ~~Except as otherwise provided in this subsection,~~ A person,
27 INCLUDING A LICENSEE, may NOT FOR A FEE extend the presentment or deposit of
28 a check ~~not more than three consecutive times. For each extension the~~
29 ~~customer and the licensee shall terminate the previous agreement and sign a~~
30 ~~separate agreement~~ FOR A CUSTOMER. During an incomplete transaction the
31 customer may not receive any additional monies from the licensee IN EXCESS OF
32 THE LIMIT PRESCRIBED IN SUBSECTION A OF THIS SECTION. ~~The licensee may~~

1 ~~charge a fee as prescribed in subsection F of this section for each~~
2 ~~extension. A person who is a member of the military service of the United~~
3 ~~States or the member's spouse may not extend the presentment or deposit of a~~
4 ~~check.~~ If a customer has completed a deferred presentment transaction with
5 the licensee, the customer may enter into a new agreement for deferred
6 presentment services with the licensee. A transaction is completed when the
7 customer's check is presented for payment, deposited or redeemed by the
8 customer for cash.

9 J. If a check is returned to the licensee from a payer financial
10 institution due to insufficient funds, a closed account or a stop payment
11 order, the licensee may use all available civil remedies to collect on the
12 check including the imposition of the dishonored check service fee prescribed
13 in section 44-6852. **THE LICENSEE SHALL NOT CHARGE A DISHONORED CHECK SERVICE**
14 **FEE MORE THAN TWICE FOR A CHECK RETURNED DUE TO INSUFFICIENT FUNDS. THE**
15 **LICENSEE SHALL NOT CHARGE A DISHONORED CHECK SERVICE FEE MORE THAN ONCE FOR A**
16 **CHECK RETURNED DUE TO A CLOSED ACCOUNT OR A STOP PAYMENT ORDER. A LICENSEE**
17 **MAY NOT CHARGE ANY ADDITIONAL FEES FOR THE DEFERRED PRESENTMENT TRANSACTION**
18 **IF A CHECK IS RETURNED TO THE LICENSEE FROM A PAYER FINANCIAL INSTITUTION DUE**
19 **TO INSUFFICIENT FUNDS, A CLOSED ACCOUNT OR A STOP PAYMENT ORDER, EXCEPT AS**
20 **PROVIDED IN THIS SUBSECTION.** An individual who issues a personal check to a
21 licensee under a deferred presentment agreement is not subject to criminal
22 prosecution pursuant to title 13, chapter 18.

23 K. Before engaging in a deferred presentment transaction, a licensee
24 shall provide to a customer who is a member of the military service of the
25 United States or the member's spouse a written statement that clearly and
26 conspicuously states the prohibited practices and requirements prescribed in
27 subsection L of this section.

28 L. If lending to a member of the military service of the United States
29 or the spouse of a member of the military service of the United States, a
30 licensee:

- 31 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 M. A LICENSEE WHO ENTERS INTO A DEFERRED PRESENTMENT TRANSACTION WITH
21 A BORROWER WHO IS A COVERED MEMBER AS DEFINED IN THE JOHN WARNER NATIONAL
22 DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083;
23 10 UNITED STATES CODE SECTION 987) AND REGULATIONS MADE UNDER THE ACT AND WHO
24 VIOLATES ANY PROVISION OF THE ACT OR REGULATIONS IN EFFECT ON THE EFFECTIVE
25 DATE OF THIS AMENDMENT TO THIS SECTION IS IN VIOLATION OF THIS TITLE.

26 N. IF A CUSTOMER REQUESTS A REPAYMENT PLAN BEFORE THE CLOSE OF
27 BUSINESS ON THE DATE THAT A DEFERRED PRESENTMENT TRANSACTION IS DUE, THE
28 LICENSEE SHALL ENTER INTO A REPAYMENT PLAN WITH THE CUSTOMER THAT COMPLIES
29 WITH THE FOLLOWING TERMS:

30 1. THE REPAYMENT PLAN SHALL DIVIDE THE CUSTOMER'S OUTSTANDING BALANCE
31 INTO FOUR SUBSTANTIALLY EQUAL PAYMENTS THAT COINCIDE WITH THE CUSTOMER'S
32 EXPECTED PAYDAYS OR IF THE CUSTOMER IS UNEMPLOYED AT THE TIME, FOUR MONTHLY

1 PAYMENTS. NO ADDITIONAL FEES OR INTEREST MAY BE ASSESSED ON THE OUTSTANDING
2 BALANCE PAID PURSUANT TO THE REPAYMENT PLAN IF THE CUSTOMER FULFILLS THE
3 TERMS OF THE REPAYMENT PLAN. A REPAYMENT PLAN IS NOT AN AGREEMENT FOR
4 DEFERRED PRESENTMENT SERVICES AND IS NOT A LOAN. EXCEPT FOR THE REVISED
5 PAYMENT SCHEDULE, THE TERMS OF THE DEFERRED PRESENTMENT AGREEMENT REMAIN IN
6 FULL FORCE AND EFFECT. IF THE CUSTOMER COMPLIES WITH THE TERMS OF THE
7 REPAYMENT PLAN, DURING THE TERM OF THE REPAYMENT PLAN THE LICENSEE MAY NOT
8 SEEK TO COLLECT ANY AMOUNT DUE EXCEPT PURSUANT TO THE TERMS OF THE REPAYMENT
9 PLAN. IF THE CUSTOMER MAKES EACH OF THE PAYMENTS AS REQUIRED UNDER THE
10 REPAYMENT PLAN, THE OUTSTANDING DEFERRED PRESENTMENT SERVICES AGREEMENT SHALL
11 BE COMPLETED. IF THE CUSTOMER FAILS TO ADHERE TO THE ORIGINAL REPAYMENT
12 PLAN, THE LICENSEE MAY ENGAGE IN ANY LAWFUL COLLECTION ACTIVITY.

13 2. A LICENSEE MAY NOT ALLOW A CUSTOMER TO ENTER INTO THE AGREEMENT
14 PROVIDED FOR IN THIS SUBSECTION MORE THAN ONCE PER THREE HUNDRED AND
15 SIXTY-FIVE DAY PERIOD COMMENCING ON THE EFFECTIVE DATE OF THE REPAYMENT PLAN.
16 IN ADDITION TO THE REPAYMENT PLAN PRESCRIBED BY THIS SUBSECTION, A CUSTOMER
17 AND A LICENSEE MAY ENTER INTO A MUTUALLY AGREEABLE REPAYMENT PLAN ON ANY
18 TERMS AND CONDITIONS AT ANY TIME, EXCEPT THAT NO REPAYMENT PLAN MAY IMPOSE
19 ANY FEES OR COSTS IN EXCESS OF THOSE ALLOWED BY THIS CHAPTER.

20 Sec. 6. Section 6-1262, Arizona Revised Statutes, is amended to read:

21 6-1262. Violation; classification; individual liability

22 A. A person that provides deferred presentment services without a
23 license is guilty of a class 1 misdemeanor.

24 B. A licensee that violates this chapter or the rules adopted pursuant
25 to this chapter is subject to revocation of the licensee's license and is
26 guilty of a class 1 misdemeanor.

27 C. An officer or agent of a corporation or association who
28 participates in a violation of this chapter is subject to the penalties
29 prescribed in this section.

30 D. Except as the result of an accidental or bona fide error, if the
31 licensee charges, contracts for or receives any amount in excess of the fees
32 expressly permitted by this chapter, the deferred presentment is voidable and

1 the licensee has no right to collect or receive any fees in connection with
2 the deferred presentment transaction. Any deferred presentment transaction
3 that is made by a person who is required to be licensed pursuant to this
4 chapter but who is not licensed is void, and the person has no right to
5 MAINTAIN A COURT ACTION OR OTHERWISE collect, receive or retain any principal
6 or other fees in connection with that deferred presentment transaction. ANY
7 MONIES THAT A CUSTOMER RECEIVES FROM A PERSON WHO MUST BE LICENSED PURSUANT
8 TO THIS ARTICLE AND WHO IS NOT LICENSED IS DEEMED A GIFT TO THE CUSTOMER.

9 Sec. 7. Repeal; retroactivity

10 A. Section 6-1263, Arizona Revised Statutes, is repealed.

11 B. If the emergency clause is not enacted, this section is effective
12 retroactively to from and after June 30, 2010.

13 Sec. 8. Title 6, chapter 12.1, article 1, Arizona Revised Statutes, is
14 amended by adding a new section 6-1263 and section 6-1264, to read:

15 6-1263. Commercially reasonable methods for verification;
16 verification fee; database; liability

17 A. BEGINNING MAY 1, 2011, BEFORE ENTERING INTO A DEFERRED PRESENTMENT
18 AGREEMENT WITH A CUSTOMER, A LICENSEE MUST USE A COMMERCIALY REASONABLE
19 METHOD TO VERIFY THAT THE CUSTOMER DOES NOT HAVE OPEN WITH ANY LICENSEE A
20 DEFERRED PRESENTMENT AGREEMENT IN EXCESS OF THE LIMIT PRESCRIBED IN SECTION
21 6-1260, SUBSECTION A. NOTWITHSTANDING SECTION 6-1260, SUBSECTION F, A
22 LICENSEE MAY CHARGE A CUSTOMER A VERIFICATION FEE IN AN AMOUNT EQUAL TO THE
23 LESSER OF THE AMOUNT CHARGED TO THE LICENSEE BY A CONSUMER REPORTING SERVICE
24 FOR OBTAINING THIS INFORMATION OR ONE DOLLAR.

25 B. BEFORE JANUARY 1, 2011, THE SUPERINTENDENT SHALL CERTIFY A CONSUMER
26 REPORTING SERVICE DATABASE AS A COMMERCIALY REASONABLE METHOD OF
27 VERIFICATION. THE DEPARTMENT SHALL POST NOTICE OF THE CONSUMER REPORTING
28 SERVICE DATABASE THAT THE SUPERINTENDENT CERTIFIES AS PROVIDING A
29 COMMERCIALY REASONABLE METHOD OF VERIFICATION ON THE DEPARTMENT'S WEBSITE
30 AND SHALL MAIL THE NOTICE TO EACH LICENSEE BY FIRST CLASS MAIL AT THE ADDRESS
31 OF RECORD AS SHOWN ON THE DEPARTMENT'S LICENSING FILES.

1 C. A CUSTOMER SEEKING DEFERRED PRESENTMENT SERVICES MAY MAKE A DIRECT
2 INQUIRY TO THE CONSUMER REPORTING SERVICE TO REQUEST A COPY OF THE
3 INFORMATION THAT THE CONSUMER REPORTING SERVICE HAS OBTAINED ABOUT THE
4 CUSTOMER AND THE CONSUMER REPORTING SERVICE SHALL PROVIDE THE INFORMATION.

5 D. IN CERTIFYING A COMMERCIALY REASONABLE METHOD OF VERIFICATION, THE
6 SUPERINTENDENT SHALL ENSURE THAT THE CERTIFIED CONSUMER REPORTING SERVICE:

7 1. PROVIDES REAL-TIME ACCESS THROUGH AN INTERNET CONNECTION OR, IF
8 REAL-TIME ACCESS THROUGH AN INTERNET CONNECTION BECOMES UNAVAILABLE DUE TO
9 TECHNICAL PROBLEMS INCURRED BY THE CONSUMER REPORTING SERVICE, THROUGH
10 ALTERNATIVE REAL-TIME VERIFICATION MECHANISMS, INCLUDING REAL-TIME
11 VERIFICATION BY TELEPHONE.

12 2. CONTAINS A REAL-TIME REGULATOR INTERFACE THAT ALLOWS THE DEPARTMENT
13 TO ACCESS THE CONSUMER REPORTING SERVICE DATABASE FOR REQUIRED MONITORING AND
14 REPORTING FUNCTIONS, INCLUDING REGULATORY REPORTING AND PROGRAM MONITORING
15 AND INCLUDING THE ABILITY TO DETERMINE CUSTOMER ELIGIBILITY AND THE ABILITY
16 TO ACCESS REPORTS FOR LICENSEE EXAMINATIONS.

17 3. PROVIDES LICENSEES WITH SUFFICIENT INFORMATION TO ALLOW LICENSEES
18 TO DETERMINE IF A CUSTOMER IS ELIGIBLE OR INELIGIBLE FOR DEFERRED PRESENTMENT
19 SERVICES. IN ADDITION TO VERIFYING THAT A CUSTOMER HAS NOT EXCEEDED THE
20 OUTSTANDING TRANSACTION LIMIT PRESCRIBED IN SECTION 6-1260, SUBSECTION A, THE
21 CERTIFIED CONSUMER REPORTING SERVICE SHALL PROVIDE INFORMATION THAT IS
22 REASONABLY AVAILABLE TO PERMIT A LICENSEE TO USE ITS BEST EFFORTS TO VERIFY
23 THAT A CUSTOMER:

24 (a) HAS NOT BEEN IDENTIFIED AS A SPECIALLY DESIGNATED NATIONAL BY THE
25 OFFICE OF FOREIGN ASSET CONTROL OF THE UNITED STATES DEPARTMENT OF TREASURY.

26 (b) HAS PROVIDED SUFFICIENT INFORMATION TO REASONABLY INDICATE THAT
27 THE CUSTOMER MAINTAINS AN OPEN ACCOUNT WITH A FEDERALLY INSURED DEPOSITORY
28 INSTITUTION.

29 (c) HAS A VERIFIABLE SOCIAL SECURITY NUMBER ISSUED BY THE SOCIAL
30 SECURITY ADMINISTRATION.

31 (d) HAS NOT BEEN DESIGNATED AS A PREVIOUSLY OR CURRENT DEPORTEE FROM
32 ANY GOVERNMENTAL AGENCY.

1 (e) IS NOT AN ACTIVE DUTY MEMBER OF THE UNITED STATES MILITARY.

2 E. THE DEPARTMENT MAY TEMPORARILY WAIVE ANY OF THE REQUIREMENTS
3 PRESCRIBED IN SUBSECTION D OF THIS SECTION IF IT DETERMINES THAT THERE IS NO
4 COMMERCIALY REASONABLE SOURCE OF DATA TO VERIFY A CUSTOMER'S STATUS.

5 F. THE OPERATOR OF THE CONSUMER REPORTING SERVICE DATABASE SHALL:

6 1. ENSURE THAT INFORMATION SUBMITTED TO THE CERTIFIED DATABASE IS
7 CONFIDENTIAL AND SHALL NOT BE RELEASED OR OTHERWISE MADE AVAILABLE TO THE
8 PUBLIC.

9 2. DEMONSTRATE A WORKING SYSTEM TO THE DEPARTMENT BEFORE THE
10 CERTIFICATION.

11 G. THE DEPARTMENT SHALL REQUIRE THAT THE CONSUMER REPORTING SERVICE
12 DATABASE PROVIDER BE SUBJECT TO THE APPLICABLE RULES AND REGULATIONS APPLIED
13 BY THE FEDERAL TRADE COMMISSION UNDER THE FAIR CREDIT REPORTING ACT (15
14 UNITED STATES CODE SECTIONS 1681 THROUGH 1681x).

15 H. A LICENSEE SHALL NOTIFY THE CERTIFIED CONSUMER REPORTING SERVICE
16 DATABASE IF ANY OF THE FOLLOWING OCCURS:

17 1. A CUSTOMER ENTERS INTO A DEFERRED PRESENTMENT SERVICE AGREEMENT.

18 2. A CUSTOMER ENTERS INTO A REPAYMENT PLAN.

19 3. A DEFERRED PRESENTMENT SERVICE AGREEMENT OR REPAYMENT PLAN IS PAID
20 IN FULL.

21 4. A LICENSEE DETERMINES A REPAYMENT PLAN IS IN DEFAULT.

22 I. THE CONSUMER REPORTING SERVICE DATABASE PROVIDER IS NOT LIABLE FOR
23 INADEQUATE REPORTING ON ITS DATABASE IF IT DOES NOT HAVE ALL OF THE RELEVANT
24 INFORMATION PERTAINING TO A CUSTOMER BECAUSE THE INFORMATION HAS NOT BEEN
25 FURNISHED BY A LICENSEE OR HAS NOT BEEN ENTERED INTO THE DATABASE DUE TO A
26 CONDITION OF FORCE MAJEURE OR OTHER CAUSES REASONABLY BEYOND THE CONSUMER
27 REPORTING SERVICE'S CONTROL.

28 J. A LICENSEE MAY RELY ON THE INFORMATION CONTAINED IN THE CERTIFIED
29 DATABASE AS ACCURATE AND IS NOT SUBJECT TO ANY PENALTY OR LIABILITY AS A
30 RESULT OF RELYING ON INACCURATE INFORMATION CONTAINED IN THE DATABASE.

31 K. IN DETERMINING WHETHER A CREDIT REPORTING SERVICE SHOULD BE
32 CERTIFIED AS A COMMERCIALY REASONABLE METHOD OF VERIFICATION, THE

1 SUPERINTENDENT SHALL CONSIDER WHETHER THE CREDIT REPORTING SERVICE IS
2 ADEQUATELY CAPITALIZED, DEMONSTRATES THE RESOURCES AND ABILITY TO PERFORM THE
3 SERVICES REQUIRED PURSUANT TO THIS SECTION AND HAS APPROPRIATE SURETY TO
4 ENSURE PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS SECTION AND TO
5 REASONABLY PROTECT CLAIMANTS IF ACTIONS OR INACTIONS OF THE CREDIT REPORTING
6 SERVICE RESULT IN DAMAGES TO LICENSEES OR CUSTOMERS.

7 L. THE CONSUMER REPORTING SERVICE DATABASE CERTIFIED BY THE DEPARTMENT
8 SHALL INCLUDE A MECHANISM THAT ALLOWS CUSTOMERS TO RESTRICT THEIR OWN ABILITY
9 TO ENTER INTO DEFERRED PRESENTMENT AGREEMENTS. A CUSTOMER MAY PRESENT A
10 WRITTEN, NOTARIZED REQUEST TO ANY LICENSEE TO NOT ALLOW THAT CUSTOMER TO
11 ENTER INTO ANY DEFERRED PRESENTMENT AGREEMENTS. ON RECEIVING THIS REQUEST
12 THE LICENSEE SHALL NOTIFY THE CERTIFIED CONSUMER REPORTING SERVICE DATABASE
13 TO REFLECT THAT NO FUTURE TRANSACTIONS ARE AUTHORIZED FOR THE REQUESTING
14 CUSTOMER. THE CONSUMER REPORTING SERVICE DATABASE SHALL REPORT THAT THE
15 CUSTOMER HAS NOT AUTHORIZED ANY FUTURE TRANSACTIONS UNTIL THE CUSTOMER HAS
16 SUBMITTED A WRITTEN, NOTARIZED REVOCATION TO A LICENSEE AND THE LICENSEE HAS
17 NOTIFIED THE CERTIFIED CONSUMER REPORTING SERVICE DATABASE. THE CERTIFIED
18 CONSUMER REPORTING SERVICE DATABASE SHALL RECORD THE LICENSEES THAT PLACED
19 AND REMOVED A CUSTOMER FROM THE LIST OF UNAUTHORIZED CUSTOMERS. LICENSEES
20 SHALL RETAIN, FOR A PERIOD OF AT LEAST THREE YEARS AFTER RECEIPT, THE
21 CUSTOMER'S WRITTEN REQUESTS TO BE AN UNAUTHORIZED AND AUTHORIZED CUSTOMER.

22 6-1264. Licensee reporting

23 A. CONCURRENT WITH THE LICENSE RENEWAL APPLICATION REQUIRED BY SECTION
24 6-1256, EACH LICENSEE SHALL REPORT TO THE DEPARTMENT THE FOLLOWING
25 INFORMATION:

26 1. THE TOTAL NUMBER AND DOLLAR AMOUNT OF DEFERRED PRESENTMENT
27 TRANSACTIONS ENTERED INTO AS OF DECEMBER 31 OF THE PREVIOUS YEAR.

28 2. THE TOTAL NUMBER AND DOLLAR AMOUNT OF DEFERRED PRESENTMENT
29 TRANSACTIONS OUTSTANDING AS OF DECEMBER 31 OF THE PREVIOUS YEAR.

30 3. THE AVERAGE ANNUAL PERCENTAGE RATE, THE AVERAGE DOLLAR AMOUNT AND
31 THE AVERAGE NUMBER OF DAYS OF DEFERRED PRESENTMENT TRANSACTIONS ENTERED INTO
32 DURING THE PREVIOUS CALENDAR YEAR.

1 4. THE TOTAL DOLLAR AMOUNT OF FEES COLLECTED FROM DEFERRED PRESENTMENT
2 TRANSACTIONS DURING THE PREVIOUS CALENDAR YEAR.

3 5. THE NUMBER AND DOLLAR AMOUNT OF DEFERRED PRESENTMENT TRANSACTIONS
4 WRITTEN OFF DURING THE PREVIOUS CALENDAR YEAR.

5 6. THE TOTAL NUMBER OF CUSTOMERS WHO ENTERED INTO A REPAYMENT PLAN
6 DURING THE PREVIOUS CALENDAR YEAR.

7 7. THE TOTAL NUMBER OF CUSTOMERS WHO ENTERED INTO MORE THAN ONE
8 DEFERRED PRESENTMENT TRANSACTION DURING THE PREVIOUS CALENDAR YEAR.

9 B. THE DEPARTMENT SHALL SPECIFY AN ELECTRONIC FORMAT THAT THE
10 LICENSEES SHALL USE TO REPORT THE INFORMATION REQUIRED BY SUBSECTION A OF
11 THIS SECTION.

12 C. NOT LATER THAN NOVEMBER 1 OF EACH YEAR, THE DEPARTMENT SHALL
13 AGGREGATE THE INFORMATION OBTAINED PURSUANT TO SUBSECTION A OF THIS SECTION
14 INTO A REPORT, PROVIDE A COPY OF THE REPORT TO THE GOVERNOR, THE SPEAKER OF
15 THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE SECRETARY
16 OF STATE AND MAKE THE REPORT AVAILABLE ON THE DEPARTMENT'S WEBSITE. THE
17 INFORMATION OBTAINED BY THE DEPARTMENT PURSUANT TO SUBSECTION A OF THIS
18 SECTION SHALL BE TREATED AS A RECORD OF A FINANCIAL INSTITUTION AND SHALL BE
19 MAINTAINED PURSUANT TO SECTION 6-129.

20 Sec. 9. Section 12-671, Arizona Revised Statutes, is amended to read:

21 12-671. Drawing check or draft on no account or insufficient
22 account with intent to defraud; civil action;
23 definition of credit; prima facie evidence

24 A. A person who, for himself or for another, with intent to defraud,
25 makes, draws, utters or delivers to another person or persons a check or
26 draft on a bank or depository for payment of money, knowing at the time of
27 such making, drawing, uttering or delivery, that he or his principal does not
28 have an account or does not have sufficient funds in, or credit with, such
29 bank or depository to meet the check or draft in full ~~upon~~ ON presentation,
30 shall be liable to the holder of such check or draft for twice the amount of
31 such check or draft or fifty dollars, whichever is greater, together with
32 costs and reasonable ~~attorney's~~ ATTORNEY fees as allowed by the court on the

1 basis of time and effort expended by such attorney on behalf of plaintiff,
2 EXCEPT THAT THE LIABILITY FOR A CHECK OR DRAFT PRESENTED PURSUANT TO TITLE 6,
3 CHAPTER 12.1 IS LIMITED TO ONLY THE FACE VALUE OF THE CHECK OR DRAFT TOGETHER
4 WITH COSTS AND REASONABLE ATTORNEY FEES AND ANY APPLICABLE DISHONORED CHECK
5 SERVICE FEE PRESCRIBED IN SECTION 44-6852.

6 B. The word "credit" as used in this section shall be construed to be
7 an express agreement with the bank or depository for payment of the check or
8 draft.

9 C. Proof that, at the time of presentment, the maker, issuer or drawer
10 did not have sufficient funds with the bank or depository, and that he failed
11 within twelve days after receiving notice of nonpayment or dishonor to pay
12 the check or draft is prima facie evidence of intent to defraud.

13 D. Where a check, draft or order is protested, on the ground of
14 insufficiency of funds or credit, the notice of formal protest thereof shall
15 be admissible as proof of presentation, nonpayment and protest and shall be
16 prima facie evidence of the insufficiency of funds or credit with the bank or
17 depository, or person, or firm or corporation.

18 E. "Notice", as used in this section, means notice given to the person
19 entitled thereto, either in person, or in writing. Such notice in writing
20 shall be given by certified mail, return receipt requested, to the person at
21 his address as it appears on such check or draft.

22 F. Nothing in this section shall be applicable to any criminal case or
23 affect eligibility or terms of probation.

24 Sec. 10. Section 44-6852, Arizona Revised Statutes, is amended to
25 read:

26 44-6852. Dishonored checks; service fee

27 Notwithstanding any other law AND EXCEPT AS PROVIDED IN SECTION 6-1260,
28 the holder, payee or assignee of the holder or payee of a dishonored check,
29 draft, order or note may charge and collect from the maker or drawer a
30 service fee of not more than twenty-five dollars plus any actual charges
31 assessed by the financial institution of the holder, payee or assignee of the
32 holder or payee as a result of the dishonored instrument.

1 Sec. 11. Emergency

2 This act is an emergency measure that is necessary to preserve the
3 public peace, health or safety and is operative immediately as provided by
4 law."

5 Amend title to conform

RUSSELL PEARCE

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