

REFERENCE TITLE: deferred presentment loan transactions

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## HB 2498

Introduced by  
Representatives Nelson, Downing, Jones, Sinema, Senators Aguirre, Martin:  
Representative Weiers JP

AN ACT

AMENDING SECTIONS 6-1251, 6-1259, 6-1260 AND 6-1261, ARIZONA REVISED STATUTES; REPEALING SECTION 6-1263, 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 6-1251, Arizona Revised Statutes, is amended to  
3 read:  
4 6-1251. Definitions  
5 In this chapter, unless the context otherwise requires:  
6 1. "Branch office" means any office operated by a licensee to provide  
7 deferred presentment services.  
8 2. "Check" means a draft signed by the maker and made payable to a  
9 person that is licensed pursuant to this chapter with the name of the maker  
10 preprinted on the face of the check ~~OR A WRITTEN AUTHORIZATION FOR A LICENSEE~~  
11 ~~TO INITIATE A DEBIT OF THE MAKER'S ACCOUNT AT A FINANCIAL INSTITUTION.~~  
12 3. "Deferred presentment services" means a transaction pursuant to a  
13 written agreement in which the licensee accepts a check and agrees to hold  
14 the check for at least five days before presentment for payment or deposit.  
15 ~~4.~~ 4. "DEPLOYMENT" MEANS A PERIOD OF TEMPORARY DUTY AWAY FROM A MILITARY  
16 SERVICE MEMBER'S HOME STATION FOR MORE THAN THIRTY DAYS.  
17 ~~4.~~ 5. "Engaged in the business" means either:  
18 (a) Advertising to or any other solicitation of a resident of this  
19 state ~~OR A MILITARY SERVICE MEMBER~~ that offers deferred presentment services  
20 and that occurs within this state.  
21 (b) Providing three or more deferred presentment services within a  
22 calendar year to residents of this state ~~OR A MILITARY SERVICE MEMBER.~~  
23 ~~5.~~ 6. "License" means a license issued pursuant to this chapter.  
24 ~~6.~~ 7. "Licensee" means a corporation, company, firm, partnership,  
25 association or natural person that is licensed by the superintendent to  
26 engage in the business of providing deferred presentment services pursuant to  
27 this chapter.  
28 ~~7.~~ 8. "Location" means the entire space in which a licensee provides  
29 deferred presentment services.  
30 9. "MILITARY SERVICE MEMBER" MEANS A PERSON WHO IS ON ACTIVE DUTY  
31 STATUS WITH ANY ARMED SERVICE OF THE UNITED STATES, INCLUDING THE NATIONAL  
32 GUARD OR RESERVES, AND WHO IS STATIONED IN THIS STATE.  
33 ~~8.~~ 10. "Partner" means a person who either:  
34 (a) Is authorized by law or a partnership agreement to participate in  
35 the management of the business of the partnership.  
36 (b) Owns more than twenty-five per cent of the applicant or licensee  
37 partnership.  
38 Sec. 2. Section 6-1259, Arizona Revised Statutes, is amended to read:  
39 6-1259. Prohibited acts  
40 A. A person shall not engage in the business of providing deferred  
41 presentment services without first obtaining a license pursuant to this  
42 chapter. A separate license is required for each location from which the  
43 business is conducted. The licensee shall post its license to engage in the  
44 business of deferred presentment services at each location that is licensed  
45 pursuant to this chapter.

1           B. A licensee shall not:  
2           1. Advance monies on the security of a check without first obtaining  
3 reasonable evidence that indicates that the account on which the presented  
4 check is drawn is an open and active account.  
5           2. Assess any fee that is more than the amount prescribed in this  
6 chapter.  
7           3. At the licensed location engage in the business of:  
8           (a) Making loans of money or extensions of credit other than those  
9 allowed under this chapter or title 44, chapter 11, article 3.  
10           (b) Discounting notes, bills of exchange, items or other evidences of  
11 debt.  
12           (c) Accepting deposits or bailments of money or items, except as  
13 expressly provided in section 6-1260.  
14           4. Use or cause to be published or disseminated any advertisement that  
15 contains false, misleading or deceptive statements or representations.  
16           5. Engage in the business of deferred presentment services at  
17 locations other than licensed locations.  
18           6. Engage in unfair, deceptive or fraudulent practices.  
19           7. Alter or delete the date on a check accepted by the licensee.  
20           8. Take possession of an undated check or a check dated on a date  
21 other than the date on which the licensee takes possession of the check or  
22 the date of presentment.  
23           9. Require a customer to provide security for the transaction, other  
24 than the presented check, or require the customer to provide a guaranty from  
25 another person.  
26           10. Fail to take reasonable measures to ensure that no customer has  
27 more than one deferred presentment loan outstanding at any time with any  
28 licensee in this state.  
29           11. Engage in the sale of the following goods or services at any  
30 licensed location:  
31           (a) Gaming activities, including the sale of lottery tickets.  
32           (b) Alcoholic beverages.  
33           12. Tie or otherwise condition the offering of deferred presentment  
34 services to the sale of any good or service.  
35           13. Permit others to engage in any activity prohibited in this section  
36 at a location licensed pursuant to this chapter.  
37           14. Offer deferred presentment services for less than five days.  
38           ~~15. Be required to request or accept any written representation by a~~  
39 ~~customer as to whether the customer has any outstanding checks for deferred~~  
40 ~~presentment held by other licensees.~~  
41           Sec. 3. Section 6-1260, Arizona Revised Statutes, is amended to read:  
42           6-1260. Deferred presentment; amount; fees  
43           A. The licensee may accept for deferred presentment or deposit a check  
44 with a face amount of at least fifty dollars but not more than five hundred  
45 dollars, excluding the fees permitted in subsection F of this section.

1           B. For each check the licensee accepts for deferred presentment or  
2 deposit, the licensee and the customer shall sign a written agreement that  
3 contains the name or trade name of the licensee, the transaction date, the  
4 amount of the check, the amount to be paid by the maker, a statement of the  
5 total amount of the fees charged, expressed both as a dollar amount and as an  
6 effective annual percentage rate, **AND** a disclosure statement that complies  
7 with state and federal truth in lending laws ~~and a notice to the customer as~~  
8 ~~prescribed in subsection C of this section.~~ The written agreement shall  
9 expressly require the licensee to defer presentment or deposit of the check  
10 until a specified date. **A COPY OF THE AGREEMENT TRANSLATED INTO SPANISH**  
11 **SHALL BE PROVIDED ON THE REQUEST OF THE CUSTOMER. THE SPANISH LANGUAGE**  
12 **VERSION OF THE AGREEMENT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT**  
13 **ENFORCEABLE IN A COURT OF LAW. THE AGREEMENT REQUIRED BY THIS SUBSECTION**  
14 **SHALL INCLUDE THE FOLLOWING NOTICES IN BOLD FACE AND AT LEAST TWELVE POINT**  
15 **TYPE:**

16           1. THAT A COPY OF THE DEFERRED PRESENTMENT SERVICE AGREEMENT IS  
17 AVAILABLE IN SPANISH. THIS NOTICE SHALL BE PROVIDED IN SPANISH.

18           2. THAT STATE LAW ALLOWS ONLY ONE DEFERRED PRESENTMENT TRANSACTION AT  
19 A TIME. THE CUSTOMER SHALL REPRESENT THAT THE CUSTOMER HAS NO OTHER  
20 OUTSTANDING DEFERRED PRESENTMENT AGREEMENT BY INITIALING THIS NOTICE.

21           3. THAT CUSTOMERS WHO ARE PREVENTED BY LAW FROM EXTENDING AN UNPAID  
22 DEFERRED PRESENTMENT AGREEMENT MAY ENTER INTO A REPAYMENT PLAN PROVIDED FOR  
23 PURSUANT TO SUBSECTION J OF THIS SECTION.

24           ~~C. A licensee shall provide a notice in a prominent place on each~~  
25 ~~written agreement that specifies that no customer may have outstanding more~~  
26 ~~than one deferred presentment service agreement at one time and the face~~  
27 ~~amount, exclusive of any fees, cannot be more than five hundred dollars. A~~  
28 ~~licensee shall ask every customer who seeks deferred presentment services~~  
29 ~~whether that customer has any outstanding checks payable to other licensees.~~

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

33           ~~E. C.~~ The maker of a check has the right to redeem the check from the  
34 licensee before the agreed on date of presentment or deposit if the maker  
35 pays the licensee the amount of the check.

36           ~~F. D.~~ A licensee shall not directly or indirectly charge any fee or  
37 other consideration for accepting a check for deferred presentment or deposit  
38 that is more than fifteen per cent of the face amount of the check for any  
39 initial transaction or any extension.

40           ~~G. E.~~ A licensee may impose the fee prescribed in subsection ~~F~~ D of  
41 this section only once for each written agreement. The fee is earned on  
42 execution of the written agreement and is not subject to any reimbursement  
43 even if the maker redeems the check pursuant to subsection ~~E~~ C of this  
44 section.

1           ~~H.~~ F. The fee charged by the licensee is not interest for purposes of  
2 any other law or rule of this state.

3           ~~I.~~ G. A person may extend the presentment or deposit of a check not  
4 more than ~~three~~ TWO consecutive times. For each extension the customer and  
5 the licensee shall terminate the previous agreement and sign a separate  
6 agreement. During an incomplete transaction the customer may not receive any  
7 additional monies from the licensee. The licensee may charge a fee as  
8 prescribed in subsection ~~F.~~ D of this section for each extension. If a  
9 customer has completed a deferred presentment transaction with the licensee,  
10 the customer may enter into a new agreement for deferred presentment services  
11 with the licensee. A transaction is completed when the customer's check is  
12 presented for payment, deposited or redeemed by the customer for cash. A  
13 CUSTOMER SHALL PAY THE DEFERRED PRESENTMENT TRANSACTION FEE BEFORE EXTENDING  
14 ANY INCOMPLETE TRANSACTION.

15           ~~J.~~ H. If a check is returned to the licensee from a payer financial  
16 institution due to insufficient funds, a closed account or a stop payment  
17 order, the licensee may use all available civil remedies to collect on the  
18 check, including the imposition of the dishonored check SERVICE fee  
19 prescribed in section 44-6852. An individual who issues a personal check to  
20 a licensee under a deferred presentment agreement is not subject to criminal  
21 prosecution pursuant to title 13, chapter 18.

22           I. IN ENTERING INTO A DEFERRED PRESENTMENT SERVICE AGREEMENT WITH A  
23 MILITARY SERVICE MEMBER OR THE SPOUSE OF A MILITARY SERVICE MEMBER, A  
24 LICENSEE SHALL:

25           1. AGREE NOT TO DO EITHER OF THE FOLLOWING:

- 26           (a) GARNISH ANY MILITARY EARNINGS.  
27           (b) CONDUCT ANY COLLECTION ACTIVITY AGAINST A BORROWER WHO IS A  
28 MILITARY SERVICE MEMBER OR THE SPOUSE OF THE MILITARY SERVICE MEMBER DURING  
29 THE MILITARY SERVICE MEMBER'S DEPLOYMENT.

30           2. AGREE TO ALL OF THE FOLLOWING:

31           (a) BE BOUND BY THE TERMS OF ANY REPAYMENT AGREEMENT THAT THE LICENSEE  
32 ENTERS INTO WITH RESPECT TO THE BORROWER, INCLUDING ANY REPAYMENT AGREEMENT  
33 THE LICENSEE NEGOTIATES THROUGH MILITARY FINANCIAL COUNSELORS OR THIRD-PARTY  
34 CREDIT COUNSELORS.

35           (b) CONTACT THE MILITARY SERVICE MEMBER'S COMMANDING OFFICER OR CHAIN  
36 OF COMMAND WHEN A CHECK IS RETURNED FOR INSUFFICIENT FUNDS OR BECAUSE AN  
37 ACCOUNT IS CLOSED.

38           (c) DEVOTE SOME OF THE LICENSEE'S EXISTING FINANCIAL LITERACY EFFORT  
39 TOWARD ADDRESSING THE EDUCATIONAL NEEDS OF MILITARY BORROWERS.

40           (d) DEVELOP A BROCHURE WITH INFORMATION SPECIFICALLY RELEVANT TO  
41 MILITARY BORROWERS, INCLUDING ALL OF THE FOLLOWING:

- 42           (i) THE REQUIREMENTS OF THIS SUBSECTION.  
43           (ii) MILITARY POLICIES RELATING TO CREDIT.  
44           (iii) WHERE MILITARY SERVICE MEMBERS MAY FIND FINANCIAL ASSISTANCE  
45 THROUGH ESTABLISHED MILITARY PROGRAMS, WEB SITES AND A MILITARY HOTLINE.

1 (iv) WHERE MILITARY SERVICE MEMBERS MAY FIND INFORMATION ABOUT LOCAL  
2 CREDIT COUNSELING ALTERNATIVES.

3 J. A BORROWER, WITHIN THREE DAYS BEFORE THE DUE DATE OF A SECOND  
4 AGREEMENT TO EXTEND THE PRESENTMENT OR DEPOSIT DATE OF THE BORROWER'S CHECK,  
5 MAY DIRECT THE LICENSEE IN WRITING NOT TO INITIATE A DEBIT OF THE BORROWER'S  
6 ACCOUNT IF THE BORROWER ENTERS INTO A REPAYMENT PLAN WITH THE LICENSEE.

7 K. A REPAYMENT PLAN MADE PURSUANT TO SUBSECTION J OF THIS SECTION  
8 SHALL DIVIDE THE BORROWER'S OUTSTANDING BALANCE INTO THREE SUBSTANTIALLY  
9 EQUAL PAYMENTS TO BE MADE EVERY TWO WEEKS BEGINNING ON THE DATE THE REPAYMENT  
10 AGREEMENT IS SIGNED. NO ADDITIONAL CHARGES MAY BE ASSESSED ON THE  
11 OUTSTANDING BALANCE PAID PURSUANT TO THE REPAYMENT PLAN IF THE BORROWER  
12 FULFILLS THE TERMS OF THE PAYMENT PLAN. A REPAYMENT PLAN IS NOT AN AGREEMENT  
13 FOR DEFERRED PRESENTMENT SERVICES AND IS NOT A LOAN. THE TERMS OF THE  
14 DEFERRED PRESENTMENT AGREEMENT REMAIN IN FULL FORCE AND EFFECT. DURING THE  
15 TERM OF THE REPAYMENT PLAN, THE LICENSEE MAY NOT SEEK TO COLLECT ANY AMOUNT  
16 DUE EXCEPT PURSUANT TO THE TERMS OF THE REPAYMENT PLAN. IF THE BORROWER  
17 MAKES EACH OF THE PAYMENTS REQUIRED UNDER THE REPAYMENT PLAN, THE OUTSTANDING  
18 DEFERRED PRESENTMENT SERVICES AGREEMENT SHALL BE COMPLETED.

19 L. IF A CHECK, PRESENTED BY A LICENSEE PURSUANT TO THE TERMS OF A  
20 REPAYMENT PLAN, IS RETURNED FROM A PAYER FINANCIAL INSTITUTION DUE TO  
21 INSUFFICIENT FUNDS, A CLOSED ACCOUNT OR A STOP PAYMENT ORDER, THE REPAYMENT  
22 PLAN SHALL BE NULL AND VOID. AN INDIVIDUAL WHO ISSUES A CHECK TO A LICENSEE  
23 UNDER A REPAYMENT PLAN IS NOT SUBJECT TO CRIMINAL PROSECUTION PURSUANT TO  
24 TITLE 13, CHAPTER 18.

25 Sec. 4. Section 6-1261, Arizona Revised Statutes, is amended to read:  
26 6-1261. Books, accounts and records; examinations; costs

27 A. A LICENSEE SHALL DESIGNATE A PRINCIPAL PLACE OF BUSINESS IN THIS  
28 STATE FOR THE TRANSACTION OF BUSINESS. A licensee shall maintain IN THIS  
29 STATE, EITHER in its branch ~~and home offices~~ OFFICE OR PRINCIPAL PLACE OF  
30 BUSINESS, all books, accounts and records that the superintendent reasonably  
31 requires. The licensee shall:

32 1. Ensure that the books, accounts and records are sufficiently  
33 detailed to comply with all applicable statutes and rules.

34 2. Maintain the books, accounts and records separately from any other  
35 business in which the licensee is engaged and shall retain the books,  
36 accounts and records for at least three years.

37 B. The superintendent may examine the books, accounts and records to  
38 determine if the licensee has complied with this chapter and any rule adopted  
39 pursuant to this chapter. The licensee shall pay the cost of the examination  
40 determined in accordance with section 6-125 to the department.

41 Sec. 5. Repeal

42 Section 6-1263, Arizona Revised Statutes, is repealed.