

SENATE BILL No. 287

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-7.

Synopsis: Deferred presentment transactions. Defines a "deferred presentment transaction" as a transaction in which a person licensed by the department of financial institutions (licensee) cashes a customer's check without presenting the check for payment for up to 31 days. Provides that a deferred presentment transaction is not a loan. Limits the amount of fees and additional charges a licensee can require the maker of a check to pay. Requires a deferred presentment transaction to be in writing. Provides penalties to the customer in a deferred presentment transaction if the maker's account has insufficient funds, is closed, or there is a stop payment order on the check. Prohibits a customer from having more than four deferred presentment transactions totaling more than \$500 at any one time. Prohibits a licensee from taking an assignment of earnings of the maker for payment or security for payment of a deferred presentment transaction.

Effective: July 1, 2000.

Paul

January 10, 2000, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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SENATE BILL No. 287



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 1999]:
- 4 **Chapter 7. Deferred Presentment**
- 5 **Sec. 101. Short Title - This chapter shall be known and may be**
- 6 **cited as Uniform Consumer Credit Code - Deferred Presentment.**
- 7 **Sec. 102. This chapter applies to deferred presentment**
- 8 **transactions as defined in section 106 of this chapter. The**
- 9 **provisions for supervised loans under IC 24-4.5-3-503 through**
- 10 **IC 24-4.5-3-507 apply to this chapter.**
- 11 **Sec. 103. The following definitions apply to this chapter:**
- 12 "Department" Section 7-104
- 13 "Check" Section 7-105
- 14 "Deferred presentment transaction" Section 7-106
- 15 "Maker" Section 7-107
- 16 "Licensee" Section 7-108
- 17 "Renewal" Section 7-109



1 **Sec. 104.** As used in this chapter, "department" means the
2 department of financial institutions.

3 **Sec. 105.** As used in this chapter, "check" means any check,
4 draft, money order, personal money order, traveler's check, or
5 other demand instrument for the transmission or payment of
6 money.

7 **Sec. 106.** As used in this chapter, "deferred presentment
8 transaction" means a transaction where a check is cashed by a
9 person licensed under this chapter and by mutual agreement
10 between the licensee and the maker of the check, and the check's
11 presentment or negotiation is deferred for a period of time not to
12 exceed thirty-one (31) days. A deferred presentment transaction
13 that complies with this chapter may not be construed to be a loan
14 for any purpose.

15 **Sec. 107.** As used in this chapter, "maker" means any person
16 who writes a check and upon whose account the check is drawn.

17 **Sec. 108.** As used in this chapter, "licensee" means a person duly
18 licensed by the department to engage in the deferred presentment
19 business under this chapter.

20 **Sec. 109.** As used in this chapter, "renewal" means the
21 termination of an existing deferred presentment agreement solely
22 by the payment of fees then due the licensee and the substitution of
23 a new check drawn by the maker pursuant to a new deferred
24 presentment agreement.

25 **Sec. 201.** No licensee shall charge fees in excess of eighteen
26 percent (18%) of the amount advanced to the maker of the check
27 whose presentment or negotiation is deferred.

28 **Sec. 202.** (1) A deferred presentment agreement may provide for
29 the payment by the maker of reasonable attorney's fees after
30 default and referral to an attorney who is not a salaried employee
31 of the licensee. A provision in violation of this section is
32 unenforceable.

33 (2) An additional charge not to exceed twenty dollars (\$20) may
34 be made for each return by a bank or other depository institution
35 of a dishonored check, negotiable order of withdrawal, or share
36 draft issued by the maker.

37 **Sec. 301.** (1) Each deferred presentment transaction must be
38 documented by a written agreement. The written agreement must
39 contain the name or trade name of the licensee, the transaction
40 date, the amount of the check, and a statement of the total amount
41 of fees charged, expressed both as a dollar amount and its effective
42 annual percentage rate (APR), and all other disclosures required

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1 under the federal Truth-In-Lending Act (15 U.S.C. 1601) and state
2 law. The written agreement must authorize the licensee to defer
3 presentment or negotiation of the check until a specific date, not
4 later than thirty-one (31) days from the date the check is accepted
5 by the licensee.

6 (2) Makers who write a check for a deferred presentment
7 transaction on an account that was closed on the date of the
8 transaction or that is closed before the agreed upon negotiation
9 date of the deferred presentment are subject to all civil and
10 criminal penalties available at law. If a check is returned to the
11 licensee from a payor financial institution due to insufficient funds,
12 a closed account, or a stop payment order, the licensee may recover
13 the full amount charged by that institution. Except as otherwise
14 provided, an individual who issues a personal check to a licensee
15 under a deferred presentment agreement is not subject to criminal
16 penalty.

17 (3) Proceeds to the maker in a deferred presentment transaction
18 may be made in the form of a licensee's business check, money
19 order, or cash.

20 (4) No licensee may roll over any deferred presentment
21 transaction more than three (3) consecutive times, after which the
22 deferred presentment check must be paid off in cash or its
23 equivalent by the maker or deposited by the licensee.

24 (5) The face amount of a check taken for deferred presentment
25 may not exceed five hundred dollars (\$500), exclusive of the fees
26 allowed by this chapter.

27 (6) No licensee or person related to the licensee by common
28 ownership or control may have outstanding more than four (4)
29 checks from any one (1) customer at any time, nor may the
30 aggregate face value of all outstanding checks from any one (1)
31 maker payable to any licensee exceed five hundred dollars (\$500).
32 Each licensee may rely on a written representation of a maker
33 regarding the existence of any outstanding checks for deferred
34 presentment.

35 (7) A licensee may carry on other business at a location where
36 it engages in deferred presentment transactions unless it carries on
37 such other business for the purpose of evasion or violation of this
38 chapter.

39 (8) A licensee under this chapter shall charge only those fees
40 specifically authorized in this chapter.

41 (9) A licensee shall provide a notice in a prominent place on each
42 deferred presentment agreement in at least 10 point type in

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1 substantially the following form:

2 **NOTICE**

3 **STATE LAW PROHIBITS YOU FROM HAVING MORE**
4 **THAN 4 DEFERRED PRESENTMENT TRANSACTIONS**
5 **TOTALING MORE THAN \$500 OUTSTANDING AT ANY ONE**
6 **TIME. FAILURE TO OBEY THIS LAW COULD CREATE**
7 **SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR**
8 **FAMILY.**

9 **Sec. 401. A licensee may not take an assignment of earnings of**
10 **the maker for payment or as security for payment of a deferred**
11 **presentment transaction or otherwise. An assignment of earnings**
12 **in violation of this section is unenforceable by the assignee of the**
13 **earnings and revocable by the maker. This section does not**
14 **prohibit an employee from authorizing deductions from his**
15 **earnings if the authorization is revocable and is otherwise**
16 **permitted by law.**

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