

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

607H0547

## SENATE ENGROSSED NO. **SB 151** - 02/07/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Munson, Albers, Brown (Arnold), de Hueck, Dennert, Hagen, Hutmacher, Kleven, McIntyre, and Symens and Representatives Davis, Bartling, Begalka, Broderick, Brown (Richard), Burg, Clark, Duniphan, Flowers, Glenski, Hargens, Hennies (Thomas), Holbeck, Koistinen, Madsen, Murschel, Nachtigal, Nesselhuf, Olson (Mel), Peterson (Bill), Peterson (Jim), Pummel, Richter, Solum, Van Gerpen, and Wick

1 FOR AN ACT ENTITLED, An Act to regulate deferred presentment service transactions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Check," a personal check signed by the maker and made payable to a licensee;

5 (2) "Commission," the State Banking Commission;

6 (3) "Completed deferred presentment service transaction," a transaction that is completed

7 when a check is redeemed by the maker by payment in full to the licensee in cash,

8 money order, or certified check or by negotiation or deposit by the licensee;

9 (4) "Deferred presentment service transaction," a transaction made under a written

10 agreement between a licensee and the maker of a check under which the licensee:

11 (a) Pays to the maker of the check the amount of the check, less the fees permitted

12 under this Act, and accepts a check from the maker dated on the date of the



1 transaction and agrees to hold the check for a period of time before negotiation  
2 or presentment; or

3 (b) Accepts a check dated after the date of the transaction and agrees to hold the  
4 check for deposit until the date written on the check;

5 (5) "Director," the director of the Division of Banking of the Department of Commerce  
6 and Regulation;

7 (6) "Division," the Division of Banking;

8 (7) "Licensee," a person licensed under this Act to provide deferred presentment services.

9 Section 2. No person may engage in the business of deferred presentment service transactions  
10 without a license issued under this Act. A separate license is required for each location from  
11 which the business of deferred presentment service transactions is conducted. Any state or  
12 national bank, savings bank, trust company, savings or building and loan association, or federal  
13 credit union is exempt from this Act, and any person selling goods or services and providing  
14 financing for such goods or services is exempt from this Act unless engaged in the business of  
15 deferred presentment service transactions.

16 Section 3. Any person who engages in the business of deferred presentment service  
17 transactions shall apply for a license as prescribed by this Act. The applicant shall apply for a  
18 license under oath on forms supplied by the division. The application shall contain the name of  
19 the applicant's business, proof of surety bond, address of the business, and other information as  
20 required by the director by rule or order. The applicant shall pay an original license fee as set by  
21 rules of the commission pursuant to chapter 1-26 not to exceed two hundred fifty dollars. If the  
22 application of an existing licensee is for an additional location, the application need only include  
23 the location and identity of the location manager, plus any changes from the existing license, or  
24 such other information the director may consider necessary.

1 Section 4. The director shall approve or deny an application for a license within thirty days  
2 of receipt of any application.

3 Section 5. The applicant shall submit with the application for a license a bond in an amount  
4 not to exceed the total of five thousand dollars for the first license and one thousand dollars for  
5 each additional license. The bond shall be satisfactory to the director and issued by a surety  
6 company qualified to do business as a surety in this state. The bond shall be in favor of this state  
7 for the use of this state and any person who has a cause of action under this Act against the  
8 licensee. The bond shall be conditioned on:

9 (1) The licensee's faithful performance under this Act and any rules adopted pursuant to  
10 this Act; and

11 (2) The payment of any amounts that are due to the state or another person during the  
12 calendar year for which the bond is given.

13 The aggregate liability of a surety to all persons damaged by a licensee's violation of this Act  
14 may not exceed the amount of the bond.

15 Section 6. The director shall investigate the facts and, after review, either deny or grant a  
16 license based on the findings.

17 Section 7. A licensee shall keep the license conspicuously posted in the place of business of  
18 the licensee.

19 Section 8. Any license shall be renewed on July first. To renew a license, the licensee shall  
20 file for renewal by June fifteenth. The renewal application shall include a renewal fee not to  
21 exceed two hundred fifty dollars, as set by the commission pursuant to chapter 1-26, proof of  
22 surety bond, and any other information as required by the director, by rule or order.

23 Section 9. The licensee may not transfer or assign the license. The licensee may only transact  
24 business under a name shown on the license. Any name change is subject to prior approval by

1 the director.

2 Section 10. Each licensee's business location shall be licensed. The director shall approve or  
3 deny any change of location. The director shall amend the license to show the new location upon  
4 granting approval.

5 Section 11. The director may, upon ten days notice to the licensee, issue a cease and desist  
6 order from any practice that does not conform to the requirements set forth in this Act or rules  
7 adopted by commission.

8 Section 12. The director may revoke a license for good cause pursuant to chapter 1-26. If  
9 the licensee is the holder of more than one license, the director may revoke any or all of the  
10 licenses.

11 Section 13. An action may also be brought by the attorney general or the division, or both,  
12 to enjoin a licensee from engaging in or continuing a violation or from doing any act in  
13 furtherance thereof. In any action, an order or judgment may be entered awarding a temporary  
14 or permanent injunction.

15 Section 14. In addition to any other means provided by law for the enforcement of a  
16 restraining order or injunction, the court, in which the action is brought, may impound, and  
17 appoint a receiver for, the property and business of the defendant, including books, papers,  
18 documents, and records, as the court may deem reasonably necessary to prevent violations of  
19 this Act. The receiver, when so appointed and qualified, shall control the custody, collection,  
20 administration, and liquidation of the property and business.

21 Section 15. No person may engage in the business of deferred presentment service  
22 transactions without a license. A violation of this section is a Class 1 misdemeanor.

23 Section 16. Any money received by the division pursuant to this Act shall be deposited in the  
24 banking revolving fund.

1 Section 17. Each licensee, whether a corporation or otherwise, shall pay the annual tax  
2 provided in chapter 10-43, upon the net income of the licensee, and measured by the net income  
3 assignable to such business in South Dakota. The annual tax provided by this section may not  
4 be less than twenty-four dollars.

5 Section 18. Except for taxes on real property and license fees and other fees imposed by this  
6 Act, the tax imposed in section 17 of this Act is in lieu of all other taxes and license fees, state,  
7 county, or local, upon the business of the licensee, or upon any money, credits, or other assets  
8 of the licensee whether tangible or intangible, and which money, credits, or other assets are used  
9 for or in connection with the conduct of business transacted in South Dakota. However, amounts  
10 determined to be in excess of business capital requirements are not exempt from other taxes.

11 Section 19. Each licensee shall annually file with its renewal application a report of income  
12 and financial condition for the preceding license year or any other relevant information requested  
13 in writing by the director. These reports shall be under oath and on forms prescribed by the  
14 division by rule or order.

15 Section 20. The division shall annually conduct an examination of business records and  
16 accounts of any licensee licensed under this Act. The director may order an examination if  
17 circumstances require a special examination. The director may charge back to the licensee any  
18 cost associated with an on-site examination. The director may waive an on-site examination and  
19 only require an annual self-examination. If a licensee conducts a self-examination, the licensee  
20 shall provide any information requested under oath and on forms provided by the division by  
21 order or rule.

22 Section 21. Before disbursing funds under a deferred presentment service transaction, a  
23 licensee shall provide to the maker of the check a clear and conspicuous printed notice  
24 indicating:

- 1 (1) That a deferred presentment service transaction is not intended to meet long-term  
2 financial needs;
- 3 (2) That the maker of a check should use a deferred presentment service transaction only  
4 to meet short-term cash needs;
- 5 (3) That the maker of a check will be required to pay additional fees if the deferred  
6 presentment service transaction is renewed rather than paid in full when due. If the  
7 transaction is renewed, any amount paid in excess of the fee applies to the payoff  
8 amount;
- 9 (4) A schedule of fees charged for deferred presentment service;
- 10 (5) Any information required under federal law.

11 A violation of this section is a Class 1 misdemeanor.

12 Section 22. A licensee may not disburse more than five hundred dollars to the maker of a  
13 check in a deferred presentment service transaction. A violation of this section is a Class 1  
14 misdemeanor.

15 Section 23. A licensee may not engage in a deferred presentment service transaction with a  
16 customer who has an aggregate face value of all outstanding checks from any one maker  
17 exceeding five hundred dollars which is payable to the same or any other licensee. A licensee may  
18 rely on a written representation of a maker regarding the existence of any outstanding checks for  
19 deferred presentment held by a licensee other than the licensee receiving the representation. A  
20 violation of this section is a Class 1 misdemeanor.

21 Section 24. A licensee may not renew a deferred presentment service transaction more than  
22 four times. No renewal may be allowed unless the maker of the check pays the outstanding fee  
23 at the time of the renewal.

24 Section 25. Each deferred presentment service transaction, including a renewal, must be

1 documented by a written agreement signed by the maker of the check. The written agreement  
2 must contain the following:

- 3 (1) The name of the licensee;
- 4 (2) The transaction date;
- 5 (3) The amount of the check;
- 6 (4) The dates any payments are due and the amount of payments;
- 7 (5) A statement of the total amount of fees charged, expressed as a dollar amount and as  
8 an annual percentage rate;
- 9 (6) The method used to compute the charges;
- 10 (7) An explanation of the charges; and
- 11 (8) Any charge that may be applied for delinquency.

12 The written agreement must authorize the licensee to defer presentment or negotiation of the  
13 check until a specified date. The maker of a check may redeem the check from the licensee at any  
14 time before the negotiation or presentment of the check without prepayment penalty by making  
15 payment to the licensee. However, the maker may rescind the transaction by the close of the  
16 following business day at no cost. A violation of this section is a Class 1 misdemeanor.

17 Section 26. If a check is returned to the licensee from a payer financial institution due to  
18 insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil  
19 remedies available to collect the check. The licensee may contract for and collect a returned  
20 check charge not to exceed thirty dollars per customer, per check, per year. No other fee or  
21 charge may be collected as a result of a returned check or as a result of default by the maker of  
22 the check in timely payment to the licensee. A violation of this section is a Class 1 misdemeanor.

23 Section 27. Each licensee shall conspicuously post in the licensee's licensed location a notice  
24 of the fees imposed for the deferred presentment service. A violation of this section is a Class

1 1 misdemeanor.

2 Section 28. A licensee may not renew, repay, refinance, or consolidate a deferred  
3 presentment service transaction with the proceeds of another deferred presentment service  
4 transaction with that licensee by the same maker or customer. A violation of this section is a  
5 Class 1 misdemeanor.

6 Section 29. A licensee shall provide a notice in a prominent place on each deferred  
7 presentment service agreement in no less than twelve-point type in substantially the following  
8 form:

9 State law prohibits this business from allowing customers to have outstanding at any one  
10 time, deferred presentment service transactions totaling more than five hundred dollars.

11 A violation of this section is a Class 1 misdemeanor.

12 Section 30. Any licensee may advertise in any medium. No licensee may advertise any  
13 statement or representation, including rates, terms, or conditions for making or negotiating loans  
14 that is false, misleading, or deceptive, or that refers to the supervision of business by the state.  
15 A violation of this section is a Class 1 misdemeanor.

16 Section 31. That § 54-4-37 be amended to read as follows:

17 54-4-37. Any state or national bank, savings bank, trust company, savings or building and  
18 loan association, ~~or federal credit union,~~ or any business conducting deferred presentment service  
19 transactions pursuant to this Act is exempt from §§ 54-4-36 to 54-4-63, inclusive.