

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Bulletin 2008-14-CF

In the matter of

**Check Presentment and Transaction Closing Procedures for
Deferred Presentment Service Transactions**

Issued and entered
this 1st day of October, 2008
By Ken Ross
Commissioner

The purpose of this bulletin is to clarify the provisions of Sections 31(1), MCL 487.2151(1), 33(4)(b), MCL 487.2153(4)(b) and 2(1)(c), MCL 487.2122(1)(c) of the Deferred Presentment Service Transactions Act, 2005 PA 244, MCL 487.2121 to 487.2173 (Act), and to provide guidance to deferred presentment licensees regarding presenting a customer's check for payment, and in "closing" deferred presentment transactions in the Michigan statewide common database (Database). Licensees must ensure customer checks are properly presented for payment and transactions are appropriately closed in compliance with the Act.

Check Presentment

Section 33(4)(b), MCL 487.2153(4)(b) of the Act prohibits a licensee from establishing a maturity date that is more than 31 days after the date of the transaction. Section 31(1), MCL 487.2151(1) of the Act, states, in part, "A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days." Licensees must present the check held pursuant to a deferred presentment transaction for payment within 31 days of the agreement date of the Act unless the customer is eligible for, and has entered into, a written repayment plan in compliance with Section 35(2), MCL 487.2155(2) of the Act. Licensees must comply with contractual requirements of the deferred presentment service agreement and present each customer's check for payment on the contractual maturity date unless the customer and the licensee agree to "extend" the contractual maturity date as provided in Section 35(1), MCL 487.2155(1) of the Act. Licensees should only "extend" an agreement if it is supported with a written modification signed by the customer. Because Section 31(1) only permits a licensee to defer cashing a check for up to 31 days, the licensee may not "extend" a transaction beyond 31 days from the original agreement date.

Licensees electing to present items electronically should take into account ACH timing requirements and potential effects when using the maximum maturity date of 31 days. Advance notice requirements for ACH debits may effectively result in presentment of checks prior to their maturity date, causing violations of Section 35(5), MCL 487.2155(5) of the Act. Licensees can avoid potential violations by limiting maturity dates to 30 days or less when presenting items electronically.

Transaction Closing Procedures

Section 2(1)(c), MCL 487.2122(1)(c) defines “closed” as 1 of the following having occurred:

- The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash.
- The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.
- The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.
- The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.
- The check is collected by means of a repayment plan agreed upon by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.

When a customer’s check is deposited by a licensee, Section 2(1)(c)(iii), MCL 487.2122(1)(c)(iii) requires evidence of the customer’s satisfaction of the obligation before the definition of closed in the Act is met. This definition precludes a licensee from simply reporting the transaction as closed in the Database at the moment that the licensee deposits or electronically presents a check for payment because the drawee (bank, savings bank, savings and loan association, credit union, or other person upon which the check is drawn) may return the item unpaid. Additionally, if a licensee relies upon the Database “auto-close” provisions within Section 22(6), MCL 487.2122(6) of the Act the check could be returned to the licensee for insufficient funds, a closed account, or a stop payment after the transaction was “auto-closed”. Alternatively, there may be evidence the customer satisfied the obligation prior to the “auto-close” and the transaction would be inappropriately reported as “open” in the Database. In essence, reliance upon the “auto-close” function does not ensure compliance with the statutory definition of closed within Section 2(1)(c)(iii), MCL 487.2122(1)(c)(iii) of the Act.

The “auto-close” function is a requirement of the Database provider. The licensee – not the Database provider – is responsible to accurately and timely report transactions in the Database as closed. Section 34(8), MCL 487.2154(8) of the Act states, in pertinent part: “When a deferred presentment service transaction is closed, the licensee shall designate the transaction as closed and immediately notify the Database provider...” Until a licensee receives positive confirmation (or evidence) that a drawee has honored a check,

the licensee can satisfy this requirement by evaluating the likelihood of the drawee subsequently returning the check to the licensee unpaid. The time elapsed from the date of presentment is a reasonable basis for assessing the probability of an item's return. Accordingly, licensees should:

- Enter the deposit date of each item in the Database.
Maintain credible documentation evidencing the date each item was presented for payment.
- For paper items, keep transactions open in the Database after the deposit date for the lesser of 10 calendar days or the time a customer provides credible evidence from their financial institution that the check has been honored. Keeping a transaction open in the Database beyond 5 days of the transaction maturity date requires a licensee to place a hold on the transaction to prevent the transaction from being "auto-closed" by the Database provider.
- For electronic items subject to return periods defined by NACHA — The Electronic Payments Association Operating Rules, licensees should close the transaction by 11:59 p.m. of the fourth banking day from the effective entry date if the customer's financial institution has not dishonored the request.

Occasionally a licensee must reopen a transaction within the Database because a check is subsequently returned unpaid. If a licensee properly follows the above time frames and guidance, and a reopened transaction results in a customer having more than one transaction with the licensee or more than two transactions statewide, we will consider the licensee to have exercised reasonable effort in closing the transaction.

Any questions regarding this bulletin should be directed to:

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