

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE

House Bill 536

(Delegates Wood and Branch)

Commerce and Government Matters

Deferred Presentment Services - Licensing - Fees

This bill authorizes deferred presentment services to operate in the State and requires them to be licensed by the Commissioner of Financial Regulation. The commissioner has enforcement powers and may investigate a licensee's records and business operations. Violators of the bill are subject to criminal and civil penalties.

The bill's licensing provisions may not be construed to apply until January 1, 2002.

Fiscal Summary

State Effect: Combined special and general fund expenditures could increase by \$422,700 in FY 2002, reflecting the bill's October 1, 2001, effective date. Out-year projections reflect annualization and inflation. Special fund revenues could increase by \$300,000 and general fund revenues could increase by \$7,200 in FY 2002. Out-year projections reflect the biennial licensing cycle and industry growth and attrition.

| (in dollars) | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 |
|----------------|-------------|-----------|-------------|-----------|-------------|
| GF Revenue | \$7,200 | \$140 | \$140 | \$140 | \$140 |
| SF Revenue | 300,000 | 600,000 | 168,800 | 600,000 | 168,800 |
| GF Expenditure | 122,700 | 0 | 0 | 0 | 0 |
| SF Expenditure | 300,000 | 310,000 | 326,300 | 343,700 | 362,300 |
| Net Effect | (\$115,500) | \$290,140 | (\$157,360) | \$256,440 | (\$193,360) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: This bill requires deferred presentment services to be licensed by the Commissioner of Financial Regulation. A deferred presentment service is a transaction between a licensee and the drawer of a check that provides that the licensee: (1) accepts a check from the drawer regardless of the check's date; (2) agrees to hold the check for a specified period of time before negotiation or presentment; and (3) pays the amount of the check, minus the authorized fee, to the drawer. To qualify for a license, an applicant must have and maintain liquid assets of at least \$25,000 per location, up to an overall maximum of \$250,000. The bill requires an applicant to undergo a background investigation, for which a \$100 fee is charged. The licensing fee is \$1,000 for applications filed in even numbered calendar years and \$500 for applications filed in odd numbered calendar years. All licenses must be renewed for two years or will expire on December 31 of odd numbered years. The bill requires a separate license, background investigation, and associated fees for each place of business at which deferred presentment services are provided. Applicants must file a surety bond with the commissioner.

The commissioner is required to examine a licensee's records and business operations annually and may do so as often as appropriate. A licensee undergoing an examination must pay \$100 per day for each of the commissioner's employees performing the examination. Applicants must also provide fingerprints for use by the Federal Bureau of Investigation and the Criminal Justice Information System Repository of the Department of Public Safety and Correctional Services (DPSCS) and pay any applicable fees.

A licensee's fees may not exceed 15% of the amount paid to the drawer of the check. A licensee may not renew a deferred presentment service written agreement. The maximum amount that a licensee may pay to the drawer of a check in a deferred presentment service is one-third of the drawer's net monthly income, up to \$300. A licensee may hold only one check at a time for deferred presentment from a given holder. A licensee may not defer presentment or negotiation of a check for more than 14 calendar days after the date of the deferred presentment service agreement. The agreement must be in writing. The bill requires licensees to provide a disclosure, by a separate instrument, that includes a statement of fees and a statement that entering into more than one deferred presentment service at a time is not advisable and may cause significant financial hardship. A deferred presentment customer may rescind a service, with a full refund, before the close of business on the day immediately following the business day

on which the agreement was executed. A deferred presentment service may not be renewed.

After a hearing, the commissioner may issue a cease-and-desist order, require a refund, and suspend or revoke a license for a violation of the bill. The commissioner may also suspend or revoke a license for other specified acts, including making a material misstatement in a license application.

The bill creates a Deferred Presentment Services Fund to cover the costs of regulating the deferred presentment industry. The fund is a special fund consisting of all moneys collected under the bill.

A knowing violation of the bill is a felony, punishable by a fine of up to \$50,000 and/or ten years imprisonment. The commissioner may also impose civil penalties for violations of the bill of up to \$1,000 for each violation. The bill provides that exclusive jurisdiction for violations of the bill resides with the District Court.

Current Law: Unless otherwise provided by law, the maximum permissible interest on a loan is 6% per annum. A person issuing consumer credit is required to obtain a license from the Commissioner of Financial Regulation. The permissible annual interest rate is 33% for small loans (under \$6,000). The small loan law applies to a lender who by any device or pretense of charging for the lender's services or otherwise, seeks to obtain any interest, charges, discount, or like consideration. The law states that its purpose is to prevent evasion of the small loan provisions by means of a purchase or assignment of wages. Arguably, the commissioner has the authority to regulate the deferred presentment industry under the small loans statute.

Background: Chapter 932 of 1945, Maryland's law regarding small loans, was enacted in response to the practice common in the earlier part of the twentieth century of a lender structuring a consumer loan as a salary-purchase agreement in which the lender would buy the borrower's wages at a discount in advance of the borrower's payday.

Under federal law, a federally-insured depository institution, whether federal or state-chartered, may charge the interest rate permitted in its home state to borrowers across state lines, regardless of the legal rate in the borrower's state. Thus, for example, a bank in South Dakota, which has no interest limit, may charge a Maryland borrower an interest rate exceeding the State's 33% limit. A credit services business, operating in Maryland, may broker the transaction between the borrower and the lender.

State Fiscal Effect: All existing deferred presentment businesses would require background investigations and examinations after January 1, 2002. The revenues would

appear in fiscal 2002. For the initial licensing period, the fee for background investigations would be \$100, and the licensing fee would be \$500 for one year. Each location would also incur the \$100 per day per employee examination fee. The average length of an examination for non-depository institutions is two days and involves two examiners.

The Commissioner of Financial Regulation estimates that 400 deferred presentment locations could become licensed under the bill. Assuming this, special fund revenues to the Deferred Presentment Services Fund could increase by \$300,000 in fiscal 2002, accounting for background investigations, licensing fees, and examinations. Out-year projections assume 2% growth and attrition rates. Thus, special fund revenues to the fund would be \$600,000 from licensing fees, background investigations, and examinations in even numbered calendar years. These revenues would appear in odd numbered fiscal years. In odd numbered calendar years (even numbered fiscal years), special fund revenues from license fees and background investigations, and examinations could be approximately \$168,800.

The bill represents a new area of regulation for the commissioner. The special fund revenues generated by the bill, as discussed above, would not meet the bill's operating requirements in fiscal 2002. It is assumed that a general fund appropriation would make up the difference. Combined special and general fund expenditures for the commissioner could increase by an estimated \$413,700 in fiscal 2002, which accounts for the bill's October 1, 2001, effective date. This estimate reflects the cost of hiring four financial examiners, one office clerk, and two administrative specialists to regulate the check deferred presentment industry. It includes salaries, fringe benefits, one-time start-up costs, examiner travel and training expenses, software upgrades to perform online licensing, and other ongoing operating expenses.

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|---|------------------|
| Salaries and Fringe Benefits | \$200,300 |
| Software | 160,000 |
| Other Operating Expenses | <u>53,400</u> |
| Total FY 2002 State Expenditures | \$413,700 |

Future year expenditures reflect: (1) full salaries with 6.5% annual increases in fiscal 2002 and a 4.5% increase thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

DPSCS charges an \$18 fee to cover the costs of fingerprint checks. General fund revenues would increase by \$7,200 in fiscal 2002, assuming 400 potential licensees applied for licensure under the bill. General fund expenditures for DPSCS could increase

by \$9,000 in fiscal 2002 to hire contractual administrative staff to process the fingerprint checks. Workload in the out-years could be handled with existing staff.

The civil and criminal penalty provisions of this bill are not expected to affect State finances or operations significantly.

Small Business Effect: To the extent small businesses enter the deferred presentment field, they will be regulated and subject to civil and criminal penalties for their actions. In a hypothetical deferred presentment transaction under the bill, an individual would write a personal check for \$115, including a fee of \$15, to borrow \$100 for two weeks. If expressed as interest, this would be an annual percentage rate of 390%.

Additional Information

Prior Introductions: A substantially similar bill, HB 1078, was introduced in the 2000 session and was withdrawn.

Cross File: SB 601 (Senator Blount, *et al.*) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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