

REFERENCE TITLE: payday loans; interest rates

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

# SB 1101

Introduced by  
Senators Garcia, Aguirre, Pesquiera, Rios

AN ACT

AMENDING SECTIONS 6-1259 AND 6-1260, 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 6-1259, Arizona Revised Statutes, is amended to  
3 read:

4 6-1259. Prohibited acts

5 A. A person shall not engage in the business of providing deferred  
6 presentment services without first obtaining a license pursuant to this  
7 chapter. A separate license is required for each location from which the  
8 business is conducted. The licensee shall post its license to engage in the  
9 business of deferred presentment services at each location that is licensed  
10 pursuant to this chapter.

11 B. A licensee shall not:

12 1. Advance monies on the security of a check without first obtaining  
13 reasonable evidence that indicates that the account on which the presented  
14 check is drawn is an open and active account.

15 2. Assess any fee that is more than the amount prescribed in this  
16 chapter.

17 3. At the licensed location engage in the business of:

18 (a) Making loans of money or extensions of credit other than those  
19 allowed under this chapter or title 44, chapter 11, article 3.

20 (b) Discounting notes, bills of exchange, items or other evidences of  
21 debt.

22 (c) Accepting deposits or bailments of money or items, except as  
23 expressly provided in section 6-1260.

24 4. Use or cause to be published or disseminated any advertisement that  
25 contains false, misleading or deceptive statements or representations.

26 5. Engage in the business of deferred presentment services at  
27 locations other than licensed locations.

28 6. Engage in unfair, deceptive or fraudulent practices.

29 7. Alter or delete the date on a check accepted by the licensee.

30 8. Take possession of an undated check or a check dated on a date  
31 other than the date on which the licensee takes possession of the check or  
32 the date of presentment.

33 9. Require a customer to provide security for the transaction, other  
34 than the presented check, or require the customer to provide a guaranty from  
35 another person.

36 10. Fail to take reasonable measures to ensure that no customer has  
37 more than one deferred presentment loan outstanding at any time with any  
38 licensee in this state.

39 11. Engage in the sale of the following goods or services at any  
40 licensed location:

41 (a) Gaming activities, including the sale of lottery tickets.

42 (b) Alcoholic beverages.

43 12. Tie or otherwise condition the offering of deferred presentment  
44 services to the sale of any good or service.

1 13. Permit others to engage in any activity prohibited in this section  
2 at a location licensed pursuant to this chapter.

3 14. Offer deferred presentment services for less than five days.

4 15. Be required to request or accept any written representation by a  
5 customer as to whether the customer has any outstanding checks for deferred  
6 presentment held by other licensees.

7 16. CHARGE INTEREST AT AN ANNUAL PERCENTAGE RATE EXCEEDING THIRTY-SIX  
8 PER CENT, INCLUDING FEES.

9 Sec. 2. Section 6-1260, Arizona Revised Statutes, is amended to read:

10 6-1260. Deferred presentment; amount; fees; loans to members of  
11 military service

12 A. The licensee may accept for deferred presentment or deposit a check  
13 with a face amount of at least fifty dollars but not more than five hundred  
14 dollars, excluding the fees permitted in subsection F of this section.

15 B. For each check the licensee accepts for deferred presentment or  
16 deposit, the licensee and the customer shall sign a written agreement that  
17 contains the name or trade name of the licensee, the transaction date, the  
18 amount of the check, the amount to be paid by the maker, a statement of the  
19 total amount of the fees charged, expressed both as a dollar amount and as an  
20 effective annual percentage rate, a disclosure statement that complies with  
21 state and federal truth in lending laws and a notice to the customer as  
22 prescribed in subsection C of this section. The written agreement shall  
23 expressly require the licensee to defer presentment or deposit of the check  
24 until a specified date.

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

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

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

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

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

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

3 I. Except as otherwise provided in this subsection, a person may  
4 extend the presentment or deposit of a check not more than three consecutive  
5 times. For each extension the customer and the licensee shall terminate the  
6 previous agreement and sign a separate agreement. During an incomplete  
7 transaction the customer may not receive any additional monies from the  
8 licensee. The licensee may charge a fee as prescribed in subsection F of  
9 this section for each extension. A person who is a member of the military  
10 service of the United States or the member's spouse may not extend the  
11 presentment or deposit of a check. If a customer has completed a deferred  
12 presentment transaction with the licensee, the customer may enter into a new  
13 agreement for deferred presentment services with the licensee. A transaction  
14 is completed when the customer's check is presented for payment, deposited or  
15 redeemed by the customer for cash.

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

23 K. Before engaging in a deferred presentment transaction, a licensee  
24 shall provide to a customer who is a member of the military service of the  
25 United States or the member's spouse a written statement that clearly and  
26 conspicuously states the prohibited practices and requirements prescribed in  
27 subsection L of this section.

28 L. If lending to a member of the military service of the United States  
29 or the spouse of a member of the military service of the United States, a  
30 licensee:

31 1. Shall not garnish any military wages or salary.

32 2. Shall not conduct any collection activity against a customer who is  
33 a member of the military service of the United States or the spouse of the  
34 member during the member's deployment to a combat or combat support posting  
35 or during active duty service by a member of the national guard or any  
36 military reserve unit of any branch of the armed forces of the United States.

37 3. Shall contact the employer of a member of the military service of  
38 the United States about a deferred presentment debt of the member or the  
39 member's spouse. The contact allowed by this paragraph shall only be a  
40 notice for informational purposes and shall not be an attempt to collect on a  
41 loan made to the member or the member's spouse. A licensee shall not attempt  
42 to collect on a loan made to a member of the military service of the United  
43 States or the member's spouse through the member's chain of command.

1           4. Shall not conduct a deferred presentment transaction with a member  
2 of the military service of the United States or the member's spouse in any  
3 location that the member's commanding officer prohibits the member or the  
4 member's spouse from transacting deferred presentment business.

5           5. Is bound by the terms of any repayment agreement that the licensee  
6 negotiates with respect to the customer through military counselors or third  
7 party credit counselors.

8           Sec. 3. [Repeal](#)

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