

## MODEL DEFERRED DEPOSIT LOAN ACT

### Section 1A. TITLE; PURPOSE

This Act shall be known as the Deferred Deposit Loan Act. This Act shall be liberally construed to effectuate its purpose. The purpose of the Act is to protect consumers who enter into short-term, high rate loans from abuses that occur in the credit marketplace when such lenders are unregulated. This Act is to be construed as a consumer protection statute for all purposes.

### Section 1. DEFINITIONS

- (a) **Deferred deposit loan** includes any arrangement in which a person accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.
- (b) **Licensee** means any person licensed by the Commissioner of \_\_\_ under the provisions of this Act to engage in deferred deposit loans or any facilitator as defined in Section 2(b). For purposes of all sections of this Act with the exception of Section 4, a licensee includes any bank, savings and loan association, credit union, or other state or federally regulated financial institution.
- (c) **Commissioner** shall mean the Commissioner of \_\_\_.
- (d) **Person** shall include any natural person, firm, partnership, association or corporation, or other entity who makes a deferred deposit loan in this state or any facilitator as defined in Section 2(b).
- (e) **Consumer** shall mean any natural person who, singly or jointly with another consumer, enters into a deferred deposit loan.
- (f) **Check** as used in this Act shall mean a negotiable instrument as defined in Article 3 of the Uniform Commercial Code which is drawn on a bank and is to be payable on demand at maturity of the deferred deposit loan.

### Section 2. APPLICABILITY

- (a) **In General.** Except as otherwise provided in this section, this Act applies to any person who, for a fee, service charge or other consideration, accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.
- (b) **Facilitators.** This Act applies to any person who facilitates, enables, or acts as a conduit for another person, who is or may be exempt from

licensing, who makes deferred deposit loans.

- (c) **Financial Institutions.** To the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institution are exempt by virtue of other state or federal laws from the provisions of this Act regarding limitations on interest rates and fees, all other provisions except the requirements for licensure in Section 4 apply to these financial institutions.
- (d) **Evasion of Applicability.** The provisions of this Act shall apply to any person who seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

### Section 3. EXEMPTIONS

- (a) **Retail Sellers.** Retail sellers who cash checks incidental to or independent of a sale and who charge no more than \$2 per check for the service are exempt from the provisions of this Act.
- (b) **Financial Institutions.** To the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions are exempt by virtue of other state or federal laws from the provisions of this Act regarding limitations on interest and rates, all other sections of this Act apply except Section 4.

### Section 4. LICENSING

- (a) **Necessity for License; Prerequisites to Issuance.** --No person shall engage in or offer to engage in the business regulated by this Act unless and until a license has been issued by the Commissioner. The Commissioner shall not issue or renew any such license unless and until the following findings are made:
  - (1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business; and
  - (2) That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, and within the provisions and purposes of this Act;
  - (3) That neither the applicant, nor any principals of the applicant (which includes any persons owning at least 5% of the applicant) have been convicted of any crimes;
  - (4) That the applicant has unencumbered assets of at least \$25,000 per location.
  - (5) That the applicant has provided a sworn statement that the applicant has not used in the past, nor will in the future directly or indirectly use the criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred payment loans not generally available to creditors to collect on loans in default.

- (6) Such other information as the Commissioner may deem necessary.
- (b) **Annual Review of Compliance with Law.** No license shall be issued for longer than 1 year and no renewal of a license may be provided if licensee has violated this Act.
- (c) **Public Hearing.** A public hearing shall be held for each original application and for renewals if one is requested in writing by five or more members of the public or the Commissioner.
- (d) **Bond.** Each licensee must post a bond in the amount \$50,000 per location which must continue in effect for 5 years after the licensee ceases operation in the state. Such bond must be available to pay damages and penalties to consumers harmed by any violation of this Act.
- (e) **Fees.** An annual fee of \_\_\_ and investigative fee of \_\_\_ shall be paid by each licensee.
- (f) **Business Location.** Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Article governing issuance of a single license.
- (g) **Other Business.** No licensee shall conduct the business of making loans under this Act within any office, suite, room or place of business in which any other business is solicited or engaged in unless, in the opinion of the Commissioner, such other business would not be contrary to the best interests of consumers and is authorized by the Commissioner in writing.
- (h) **Revocation of License.** If the Commissioner shall find, after due notice and hearing, or opportunity for hearing that any licensee, or an officer, agent, employee or representative thereof, has violated any of the provisions of this Article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Commission, or has failed or refused to make its reports to the Commissioner, or has furnished false information to the Commissioner, the Commissioner may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in this state as a licensee. No revocation, suspension, or surrender of any license shall relieve the licensee from civil or criminal liability for acts committed prior thereto.
- (i) **List of Licensees; Complaint Process; Powers of the Commissioner.** The Commissioner shall maintain a list of licensees which shall be available to interested persons and the public. The Commissioner shall create a toll-free telephone number whereby consumers may obtain information about licensees and complaint forms. The Commissioner shall establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a licensee or non-licensee who violates any provision of this Act. The Commissioner shall hold

hearings upon the request of a party to the complaint, make findings of fact, conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act. The all such proceedings shall be open to the public.

- (j) **Regulations.** The Commissioner may promulgate regulations to carry out the provisions of this Act.

**Section 5. INFORMATION AND ANNUAL REPORTS**

- (a) **Supervision by Commissioner.** Each licensee shall keep and use books, accounts, and records which will enable the Commissioner to determine if the licensee is complying with the provisions of the Act and maintain any other records as required by the Commissioner. The Commissioner, or designee, is authorized to examine such records at any reasonable time.

All such records must be kept for four years following the last entry on a loan and according to generally accepted accounting procedures which means that an examiner must be able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

- (b) **Licensee Information.** Each licensee shall file an annual report with the Commissioner on or before the last day of March for the 12 month period in the preceding year on forms prescribed by the Commissioner. Such reports shall disclose in detail and under appropriate headings:

- (1) the resources, assets, and liabilities of such licensee at the beginning and the end of the period.

- (2) the income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

- (3) the total number of deferred deposit loans made in the calendar year ending as of December 31<sup>st</sup> of the previous year.

- (4) the total number of such loans outstanding as of December 31<sup>st</sup> of the previous year.

- (5) the minimum, maximum, and average dollar amount of checks whose deposits were deferred in the calendar year ending as of December 31<sup>st</sup> of the previous year.

- (6) the average annual percentage rate, the average number of days a deposit of a check is deferred during the calendar year ending as of December 31<sup>st</sup> of the previous

(7) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, the total number and dollar amount of checks charged off during the calendar year ending as of December 31<sup>st</sup> of the previous year.

(8) verification that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred payment loans not generally available to creditors to collect on loans in default during the calendar year ending as of December 31<sup>st</sup> of the previous year.

Such reports shall be verified by the oath or affirmation of the owner, manager, or president of the licensee.

- (c) **Other Business.** If a licensee conducts another business or is affiliated with other licensees under this Act, or if any other situation exists under which allocations of expense are necessary, the licensee shall make such allocation according to appropriate and reasonable accounting principles as approved by the Commissioner. Information about other business conducted on the same premises as that of deferred deposit loans shall be provided as required by the Commissioner.
- (d) **Annual Reports.** The Commissioner shall compile annual reports of deferred deposit lending in this state from the information provided under this Section and provide a copy to the Governor and the Legislature. Annual reports shall be available to interested parties and to the general public.
- (e) **Copy of contract and Fee Schedule.** Each licensee shall file a copy of the contract described in Section 7(b) and the fee schedule described in Section 7(c) with the Commissioner prior to the date of commencement of business at each location, at the time any changes are made to the documents or schedule, and annually thereafter upon renewal of the license. These documents shall be available to interested parties and

to the general public.

**Section 6. REQUIRED ACTS.**

- (a) Each deferred deposit loan must have a minimum term of no less than two weeks for each \$50 owed on the loan.
- (b) A consumer shall be permitted to make partial payments (in amounts equal to no less than \$5 increments) on the loan at any time, without charge.
- (c) The maximum amount of the deferred deposit loan shall not exceed \$300.
- (d) After each payment made, in full or in part, on any loan, the licensee shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance due on the loan.
- (e) The minimum amount of a deferred deposit loan is \$50.
- (f) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.
- (g) Upon receipt of the check from the consumer for a deferred deposit loan, the licensee must immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a deferred deposit loan pursuant to [include the Code citation to this Act] and any holder of this check takes it subject to all claims and defenses of the maker."
- (h) Any facilitator, as defined in Section 2, is subject to enforcement under Sections 4 and the civil remedies provision of Section 10, if the person making the deferred deposit loans fails to comply with the requirements of this Act.
- (i) The licensee must provide the consumer, or each consumer if there are more than one, with a copy of the loan documents described in Section 7 prior to the consummation of the loan.
- (j) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

**Section 7. REQUIRED DISCLOSURES.**

(a) **Information Pamphlet Provided to All Consumers.** Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the Commissioner which explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a deferred deposit loan transaction, includes a toll free number to the Commissioner's office to handle concerns or complaints by consumers, and informs consumers that the Commissioner's office can provide information about

whether a lender is licensed, whether complaints have been filed with the Commissioner, and the resolution of such complaints.

(b) **Loan Documents.** Licensees shall provide consumers with a written agreement on a form specified or approved by the Commissioner that can be kept by the consumer, and must include the following information in English and in the language in which the loan was negotiated:

- (1) The name, address, phone number of the licensee making the deferred deposit loan, and the name and title of the individual employee who signs the agreement on behalf of the licensee;
- (2) An itemization of the fees and interest charges to be paid by the consumer;
- (3) Disclosures required by the federal Truth in Lending Act, regardless of whether the Truth in Lending Act applies to the particular deferred deposit loan.
- (4) Disclosures required under any other state law;
- (5) A clear description of the consumer's payment obligations under the loan.
- (6) In a manner which is more conspicuous than the other information provided in the loan document and is in at least 14 point bold typeface, a statement that "you cannot be prosecuted in criminal court to collect this loan." Such notice shall be located immediately preceding the signature of the consumer.

(c) **Posting Requirements.** The following notices in English, Spanish, as well as other languages in which a significant amount of deferred deposit loan business is conducted, must be conspicuously posted by all licensees in each location of a business providing deferred deposit loans in at least 14 point bold typeface:

- (1) That informs consumers that the licensee cannot use the criminal process against a consumer to collect any deferred deposit loan.
- (2) The schedule of all interest and fees to be charged on such loans with an example of the amounts that would be charged on a \$300 loan payable in 14 days and 30 days, giving the corresponding annual percentage rate.

(d) **Posting Requirements for Financial Institutions Not Governed by Section 8 on Permitted Fees.** Financial institutions making deferred deposit loans, which, because of the application of other state or federal law, are exempt from the fee limitations of this Act in Section 8, which charge fees, interest and charges greater than that authorized in Section 8 of this Act, must post, in a conspicuous place in the branch in which the deferred deposit loans are entered into, the notice below in at least 16 point bold typeface. A single instance of charging a consumer more than the fees, interest and other charges permitted in Section 8 requires the financial institution to post this notice.

"WARNING: The fees and interest charged on deferred deposit loans made at this institution are higher than those charged at other financial institutions."

#### **Section 8. PERMITTED CHARGES**

No licensee shall charge or receive, directly or indirectly, any interest, fees or charges except those specifically authorized by this Section.

- (a) **Fees.** A licensee shall be permitted to charge no more than a \$5 administrative fee for each deferred deposit loan entered into with a consumer.
- (b) **Interest.** In addition to the administrative fee, the licensee shall be permitted to charge interest on the amount of cash delivered to the consumer in a deferred deposit loan in an equivalent no greater than 36% per annum (defined as a 365 day year). The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term. Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance. Principal balance means the balance due and owing exclusive of any interest, service or other loan-related charges.
- (c) **Insufficient Fund Fee.** If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed the lesser of \$15 or the fee imposed upon the licensee by the financial institution. Only one such fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.
- (d) **Rebates of Unearned Charges.** When a loan is repaid before its due date, unearned interest charges must be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.

#### **Section 9. PROHIBITED ACTS.**

No licensee making deferred deposit loans shall commit, or have committed on behalf of the licensee, any of the following prohibited acts:

- (a) Engaging in the business of deferred deposit lending unless the Commissioner has first issued a valid license.
- (b) Threatening to use or using the criminal process in this or any other state to collect on the loan or any civil process to collect the payment of deferred payment loans not generally available to creditors to collect on loans in default.
- (c) Altering the date or any other information on the check.



- (d) Using any device or agreement which would have the effect of charging or collecting more fees, charges or interest than allowed by this Act, including but not limited to entering into a different type of transaction with the consumer.
- (e) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a deferred deposit loan.
- (f) Entering into a deferred deposit loan with a consumer which is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration shall be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's net income for the term of the loan.
- (g) Charging to cash a check representing the proceeds of the deferred deposit loan.
- (h) Using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law.
- (i) Accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate.
- (j) Making more than 1 deferred deposit loan to a consumer at a time.
- (k) Making a deferred deposit loan, which when combined with another outstanding deferred deposit loan owed to another licensee, exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. The licensee shall make inquiry of the consumer or utilize available information bases to determine whether such loans are outstanding. In no event, shall a licensee make a loan to a consumer who has two or more such loans outstanding, regardless of the total value of the loans.
- (l) Renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made by the same consumer. Upon termination of a deferred deposit loan through the payment of the consumer's check by drawee bank, the return of a check to a consumer who redeems it for consideration, or any other method of termination, the licensee shall not enter into another deferred deposit loan with the same consumer for at least 30 days thereafter; provided, that a licensee may extend the term of the loan beyond the due date without charge.
- (m) Accepting any collateral for a deferred deposit loan.
- (n) Charging any interest, fees or charges other than those specifically authorized by this Act, including but not limited to:
  - (1) charges for insurance;
  - (2) attorneys fees or other collection costs.

- (o) Threatening to take any action against a consumer that is prohibited by this Act, or making any misleading or deceptive statements regarding the deferred deposit loan or any consequences thereof.
- (p) Making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license.
- (q) Including any of the following provisions in loan documents required by Section 7(b):
  - (1) A hold harmless clause;
  - (2) A confession of judgment clause;
  - (3) A waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;
  - (4) A mandatory arbitration clause;
  - (5) Any assignment of or order for payment of wages or other compensation for services;
  - (6) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract;
  - (7) A waiver of any provision of the Act.
- (r) Selling any insurance of any kind whether or not sold in connection with the making or collecting of a deferred deposit loan.

## **Section 10. ENFORCEMENT**

- (a) **Civil.** The remedies provided herein are cumulative and apply to licensees and unlicensed persons to whom this Act applies and who failed to obtain a license:
  - (1) Any violation of any state law prohibiting unfair or deceptive trade practices constitutes a violation of this Act.
  - (2) Any violation of this Act constitutes a violation of any state law prohibiting unfair or deceptive trade practices.
  - (3) The violation of any provision of this Act, or regulation thereunder, except as the result of accidental or bona fide error of computation, renders the loan void, and the person shall have no right to collect, receive or retain any principal, interest, or other charges whatsoever with respect to the loan.
  - (4) Any person found to have violated this Act shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of \$1000 for each violation (to be increased by the Commissioner to reflect inflation), plus costs, and attorneys fees.
  - (5) A consumer may sue for injunctive and other appropriate equitable relief to stop a any person from violating any provisions of this Act.
  - (6) The consumer may bring a class action suit to enforce this Act.

- (7) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

(b) **Criminal**

Any person, including members, officers, and directors of the person who knowingly violates this act is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or is subject to imprisonment not exceeding 6 months, or both.

**Section 11: SEVERABILITY**

If any portion of this Act is determined to be invalid for any reason by a final nonappealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.