



State of Tennessee  
**PUBLIC CHAPTER NO. 205**

**SENATE BILL NO. 1557**

**By Ketron**

Substituted for: House Bill No. 1391

**By Sargent**

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 17, relative to deferred presentment services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-17-102(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) "Check" means any payment instrument, including any customer authorization for electronic payment;

SECTION 2. Tennessee Code Annotated, Section 45-17-102, is further amended by adding the following language as a new, appropriately designated subdivision:

( ) "Payment instrument":

(A) Means a check, draft, warrant, money order, traveler's check or other instrument for payment of money, whether or not negotiable, and also includes any authorization for electronic payment of money; and

(B) Does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit;

SECTION 3. Tennessee Code Annotated, Section 45-17-103, is amended by deleting the section in its entirety and substituting instead the following:

45-17-103.

(a) No person shall engage in the business of deferred presentment services in this state through the use of the internet, facsimile, telephone, or other means without having first obtained a license. A person shall be deemed to be engaged in the business of deferred presentment services in this state, if the person induces a consumer, while located in this state, to enter into a deferred presentment services transaction in this state. A separate license shall be required for each location from which the business of deferred presentment services is conducted.

(b) Any nonresident person, seeking a license under this chapter, shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders issued by the commissioner, or process affecting a licensee under this chapter, may be served. Such nonresident licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until approved by the commissioner.

SECTION 4. Tennessee Code Annotated, Section 45-17-105(2), is amended by deleting it in its entirety and substituting instead the following language:

(2) The location at which the registered agent of the applicant shall be located; provided, that "registered agent of the applicant" includes a person designated by the applicant for accepting notices or orders by the commissioner, or process affecting the applicant, pursuant to § 45-17-103; and

SECTION 5. Tennessee Code Annotated, Section 45-17-111, is amended by deleting subsections (b) and (c) in their entirety and substituting instead the following language:

(b) To assure compliance with this chapter, the commissioner may examine the relevant business, books and records of any licensee. Further, for the purpose of discovering violations of this chapter and determining whether persons are subject to this chapter, the commissioner may examine or investigate persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, by exercising authority that includes, but is not limited to, the power to summon witnesses and examine them under oath, and to compel the production of books and records that may be relevant to the examination or investigation.

(c) Any licensee or unlicensed person subject to the licensing requirements of this chapter, that is examined or investigated in accordance with this chapter, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination. The fees shall be payable in addition to all other fees, taxes and costs required by law.

SECTION 6. Tennessee Code Annotated, Section 45-17-112(a), is amended by adding the following sentence to the end of the subsection:

Any licensee, after receiving the prior written approval of the commissioner, may maintain records at a location within or outside this state.

SECTION 7. Tennessee Code Annotated, Section 45-17-112(b), is amended by deleting the last sentence of the subsection in its entirety and by substituting instead the following:

The fee authorized by this subsection (b) shall not exceed fifteen percent (15%) of the face amount of the check. The fee, when made and collected, shall not be deemed interest for any purpose of law.

SECTION 8. Tennessee Code Annotated, Section 45-17-112(e), is amended by inserting the language "or the customer resides" before the period in the first sentence.

SECTION 9. Tennessee Code Annotated, Section 45-17-112(i), is amended by deleting the subsection in its entirety and by substituting instead the following:

(i) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop-payment order, the licensee shall have the right to all civil means available and allowed by law to collect the check, including the right to collect court costs incurred in bringing the civil action as authorized in §§ 47-29-101(a)(4), (b) and (c). However, no licensee shall have the authority to assess a handling charge against the maker or drawer authorized by § 47-29-102 or the right to collect attorney's fees relating to the check. No other provisions of Title 47, Chapter 29, are applicable to a person licensed under this chapter. No individual who issues a personal check to a licensee under this chapter shall be convicted under § 39-14-121.

SECTION 10. Tennessee Code Annotated, Section 45-17-112, is further amended by adding the following language as a new, appropriately designated subsection:

( ) (1) No deferred presentment services agreement, subject to this chapter shall:

(A) Provide that the law of a jurisdiction other than Tennessee applies;

(B) Provide that the customer consents to the jurisdiction of another state or foreign country;

(C) Fix venue; or

(D) Waive any provision of this chapter.

(2) Any such provision contained in any deferred presentment services agreement subject to this chapter shall be void and not enforceable as a matter of public policy.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1557

PASSED: May 4, 2011

  
RON RAMSEY  
SPEAKER OF THE SENATE

  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 20 day of May 2011

  
BILL HASLAM, GOVERNOR




**BILL HASLAM**  
GOVERNOR

STATE OF TENNESSEE  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**  
414 UNION STREET, SUITE 1000  
NASHVILLE, TENNESSEE 37219  
(615) 741-2236 FAX (615) 741-2883

**GREG GONZALES**  
COMMISSIONER

To: All Providers of Deferred Presentment Services

From: Mike Igney,  Assistant Commissioner/Compliance Division

Subject: 2011 Amendments to the Deferred Presentment Services Act

Date: June 29, 2011

On May 20, 2011, amendments to the Deferred Presentment Services Act, Tenn. Code Ann. §§ 45-17-101, *et seq.* (the "Act"), were signed into law. The purpose of this communication is to inform providers of deferred presentment services about some of the more significant changes made by the amendments. The amendments became effective on May 20, 2011, and include the following changes to existing law:

- The definition of "check" has been changed to mean any payment instrument, including any customer authorization for electronic payment;
- A definition for "payment instrument" has been added, and the definition includes any authorization for electronic payment of money;
- A person is specifically prohibited from engaging in the business of deferred presentment services in Tennessee through the use of the internet or other means without first obtaining a license, and a person is deemed to be engaged in the business of deferred presentment services if the person induces a consumer, while located in Tennessee, to enter into a deferred presentment services transaction in Tennessee;
- Any licensee or unlicensed person subject to the licensing requirements of the Act is required to pay the reasonable and actual expenses of any investigation or examination conducted on behalf of the Commissioner;
- The thirty dollar (\$30.00) fee limitation has been removed, and licensees may now charge a fee of fifteen percent (15%) of the face amount of the check, regardless of the amount of the fee;
- Licensees no longer have the authority to assess a handling charge for a returned check; and
- No deferred presentments services agreement may:
  - Provide that the law of a jurisdiction other than Tennessee applies;

- Provide that the customer consents to the jurisdiction of another state or foreign country;
- Fix venue; or
- Waive any provision of the Act.

Any such provision contained in any deferred presentment services agreement subject to the Act is void and not enforceable as a matter of public policy.

This communication is for informational purposes only, and is not intended to be an exhaustive or all-inclusive description of the 2011 amendments to the Act. The 2011 amendments to the Act are contained in SB1557/HB1391, as amended, which has been assigned Public Chapter No. 205, and which may be accessed on the website of the Tennessee Secretary of State, <http://www.tn.gov/sos/index.htm>, under Publications, Acts and Resolutions, Public Acts Search. Public Chapter No. 205 may also be accessed on the home page of the Department's website, <http://www.tennessee.gov/tdfi/>, under Hot Topics at the bottom of the page.

All licensees and other interested persons are strongly encouraged to read the entirety of Public Chapter No. 205. Any questions may be directed to the Department's Compliance Division at (615) 741-3186, or e-mailed to [ask.Licensing@tn.gov](mailto:ask.Licensing@tn.gov).

Questions specific to licensing issues may be directed to:

Steve Henley  
Director of Licensing  
(615) 532-6993  
[Steve.Henley@tn.gov](mailto:Steve.Henley@tn.gov)

Sharon Barnard  
Financial Analyst  
(615) 532-0081  
[Sharon.Barnard@tn.gov](mailto:Sharon.Barnard@tn.gov)

Questions specific to examination issues may be directed to:

Nicole Chamblee  
Safety and Soundness Manager  
(865) 594-2137  
[Nicole.Chamblee@tn.gov](mailto:Nicole.Chamblee@tn.gov)

Jack Lay  
Safety and Soundness Supervisor  
(865) 594-2137  
[Jack.Lay@tn.gov](mailto:Jack.Lay@tn.gov)