

1 HB297
2 174362-1
3 By Representatives Garrett, Faulkner, Mooney, Scott, Boyd,
4 Melton, Forte, Knight, Beech, McCampbell, Morrow, Lawrence,
5 Clarke, Warren, Drummond, Fridy, Rowe, Shedd, Collins,
6 Ledbetter and Pettus
7 RFD: Financial Services
8 First Read: 24-FEB-16

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8 SYNOPSIS: Existing law regulates deferred presentment
9 services.

10 This bill would allow the State Banking
11 Department to require an applicant for a license to
12 engage in deferred presentment services to apply
13 through the Nationwide Multistate Licensing System
14 and Registry and would require a license for each
15 location at which deferred presentment loans are
16 made.

17 This bill would require a licensee who
18 offers deferred presentment services to offer an
19 extended repayment option prior to the commencement
20 of a civil action; would limit the fee that could
21 be collected on a check returned for insufficient
22 funds; would provide for when the period of the
23 deferred presentment transaction begins and
24 eliminate any additional charge related to the
25 payment of the proceeds of any deferred presentment
26 transaction; and would specify that a licensee must
27 use the statewide database to ensure that a

1 customer does not have an outstanding deferred
2 presentment transaction in excess of five hundred
3 dollars (\$500).

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 To amend Sections 5-18A-3, 5-18A-12, and 5-18A-13 of
10 the Code of Alabama 1975, relating to deferred presentment
11 services; to allow the State Banking Department to require an
12 applicant for a license to engage in deferred presentment
13 services to apply through the Nationwide Multistate Licensing
14 System and Registry and require a license for each location
15 where deferred presentment loans are offered; to require a
16 licensee who offers deferred presentment services to offers an
17 extended repayment option prior to the commencement of a civil
18 action; to limit the fee that could be collected on a check
19 returned for insufficient funds; to provide for when the
20 period of the deferred presentment transaction begins and
21 eliminate any additional charge related to the payment of the
22 proceeds of any deferred presentment transaction; and to
23 specify that a licensee must use the statewide database to
24 ensure that a customer does not have an outstanding deferred
25 presentment transaction in excess of five hundred dollars
26 (\$500).

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 5-18A-3, 5-18A-12, and 5-18A-13
2 of the Code of Alabama 1975, are amended to read as follows:

3 "§5-18A-3.

4 "(a) On or after January 1, 2004, no person shall
5 engage in the business of deferred presentment services
6 without having first obtained a license from the supervisor. A
7 separate license shall be required for each location from
8 which the business is conducted.

9 "(b) Trust companies, life insurance companies, and
10 federally constituted agencies shall be exempt from licensing
11 under this chapter. Notwithstanding anything to the contrary
12 in this chapter, this chapter shall not apply to any of the
13 following entities, and each of these entities shall be exempt
14 from this chapter: Banks, credit unions, savings associations,
15 savings banks, and thrift institutions organized pursuant to
16 the laws of this state or any other state or the laws of the
17 United States and any parent of any of the foregoing entities.

18 "(c) This chapter shall have no application to
19 persons who do not engage in deferred presentment services.

20 "(d) The State Banking Department may require
21 applicants to apply through the Nationwide Multistate
22 Licensing System and Registry. In order to carry out this
23 requirement, the supervisor is authorized to participate in
24 the Nationwide Multistate Licensing System and Registry. For
25 this purpose, the supervisor may establish by rule or order
26 such requirements as necessary, including, but not limited to,
27 background checks as permitted through the Nationwide

1 Multistate Licensing System and Registry, civil or
2 administrative records, credit history, any other information
3 deemed necessary by the Nationwide Multistate Licensing System
4 and Registry, and the payment of fees to apply for or renew
5 licenses through the Nationwide Multistate Licensing System
6 and Registry.

7 "(e) Each location where deferred presentment loans
8 are made must be licensed. A location includes any location at
9 which either of the following occurs:

10 "(1) A deferred presentment loan application is
11 provided, taken, or completed in person.

12 "(2) A potential customer obtains information about
13 the terms and conditions of deferred presentment loans,
14 including by the use of the Internet, facsimile, telephone,
15 kiosk, or other means.

16 "(f) Transactions entered without benefit of a
17 license under this chapter are uncollectable and
18 unenforceable.

19 "§5-18A-12.

20 "(a) Subject to the following subsections, every
21 licensee under this chapter may charge and collect a maximum
22 fee on any deferred presentment transaction not to exceed ~~17.5~~
23 12.5 percent of the amount advanced. The maximum amount that
24 may be advanced in any deferred presentment transaction is
25 five hundred dollars (\$500).

26 "(b) Each licensee may renew or extend a deferred
27 presentment transaction with the same customer no more than

1 one additional time at this fee for a maximum of two
2 continuous transactions. After two continuous transactions
3 with the customer, the licensee shall not enter into a new
4 deferred presentment transaction with that same customer until
5 the next business day after the transaction amount is repaid
6 in full. After the customer has redeemed the check in full
7 with cash or guaranteed funds, the licensee has the same
8 authority as any other licensee to enter into another
9 agreement for deferred presentment services with the customer
10 on another check.

11 "(c) After the initial loan period and one rollover
12 with the same customer, the full outstanding amount of the
13 loan, including, but not limited to, held check or debt
14 authorization, shall become due. If the customer is unable to
15 repay the outstanding balance in full, the licensee ~~may~~ shall
16 offer the customer an extended repayment option of four equal
17 monthly installments of the remaining balance prior to the
18 commencement of a civil action. The licensee shall not
19 commence any civil action to collect on a transaction in
20 default until written notice has been sent notifying the
21 customer of ~~his or her rights~~ the extended repayment option.
22 If the customer fails to exercise his or her rights within 15
23 days of the notice, the licensee may commence action to
24 collect on a transaction in default.

25 "(d) If there are insufficient funds to pay a check
26 on the date of presentment, the licensee may charge a fee
27 authorized in Section 8-8-15; however, only one such fee may

1 be collected with respect to any particular transaction after
2 actual presentation to the financial institution or drawee
3 obligated to pay the instrument. No other fees or charges of
4 any kind may be charged or collected from customers except
5 those authorized herein. No person shall use any device,
6 subterfuge, or pretense whatsoever, including, but not limited
7 to, catalog sales, discount vouchers, Internet instant-rebate
8 programs, phone card clubs, or any agreement, including
9 agreements with affiliated persons, with the intent to obtain
10 greater charges than would otherwise be authorized by this
11 chapter.

12 "§5-18A-13.

13 "(a) A licensee may not knowingly enter into a
14 deferred presentment transaction with a customer that has
15 outstanding deferred presentment transactions from any lender
16 at any location that exceeds five hundred dollars (\$500) for
17 the term of the loan.

18 "(b) Before a licensee shall present for payment or
19 deposit a check or debit authorization accepted by the
20 licensee, the check shall be endorsed with the actual name
21 under which the licensee is doing business.

22 "(c) Any agreement for a deferred presentment
23 transaction shall be in writing and signed by the checking
24 account holder. The customer in a deferred presentment
25 contract shall have the right to redeem the check or debit
26 authorization from the licensee before the agreed date of
27 deposit upon payment to the licensee of the amount of the

1 contract. A licensee shall not defer presentment of any
2 personal check or debit authorization for less than ~~10~~ 30 days
3 nor more than ~~31~~ 45 calendar days after the date of the
4 contract.

5 "(d) The licensee shall notify the district attorney
6 for the circuit in which the check was received within five
7 business days after being advised by the payer financial
8 institution that a check or draft has been altered, forged,
9 stolen, obtained through fraudulent or illegal means,
10 negotiated without proper legal authority, or represents the
11 proceeds of illegal activity. If a check or draft is returned
12 to the licensee by the payer financial institution for any of
13 these reasons, the licensee shall not release the check,
14 draft, or money order without the consent of the district
15 attorney or other investigating law enforcement authority.

16 "(e) A licensee shall comply with all provisions of
17 state and federal law regarding cash transactions and cash
18 transaction reporting.

19 "(f) A licensee shall provide each prospective
20 customer, before consummation of the deferred presentment
21 agreement, with a written explanation in clear, understandable
22 language of the fees to be charged by the licensee and the
23 date on which the check or debit authorization may be
24 deposited or presented by the licensee. All fees associated
25 with deferred presentment transactions shall be disclosed as
26 finance charges as required by the Federal Truth-in-Lending
27 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and

1 Official Staff Commentary as adopted by the Federal Reserve
2 Board. The supervisor may promulgate rules establishing
3 additional requirements in order to assure complete and
4 accurate disclosures. The customer, prior to entering into a
5 deferred presentment transaction, shall receive and
6 acknowledge an accurate and complete notification and
7 disclosure of the itemized and total amounts of all fees and
8 other costs that will or potentially could be imposed as a
9 result of such agreement. This subsection shall not create any
10 inference that a particular method of disclosure was required
11 prior to June 20, 2003. All customers will be notified in
12 clear and conspicuous language that the deferred presentment
13 check or debit authorization after one rollover, will be
14 subject to terms and conditions described in subsection (c) of
15 Section 5-18A-12. The terms and conditions of the transaction
16 shall be provided in the notification.

17 "(g) A licensee shall issue a copy of the written
18 agreement to each person for whom a licensee defers deposit of
19 a check or debit authorization. The written agreement shall
20 include the information described in subsection (f) and the
21 extended repayment program described in subsection (c) of
22 Section 5-18A-12.

23 "(h) If a check is returned to the licensee from a
24 payer financial institution due to insufficient funds or a
25 closed account, the licensee shall have the right to all civil
26 remedies allowed by law, except as provided for in Section
27 5-18A-12, to collect the check and may recover court costs and

1 a reasonable attorney's fee. The attorney's fee may not exceed
2 15 percent of the face amount of the check or debit
3 authorization. No individual who issues a personal check or
4 authorizes a debit for his or her checking account to a
5 licensee for the purpose of a deferred presentment transaction
6 under this chapter shall be convicted pursuant to Section
7 13A-9-13.1, if the check or debit authorization is returned
8 due to insufficient funds. Checks or debit authorizations
9 returned to the licensee due to a closed account may be
10 collected pursuant to Section 13A-9-13.1.

11 "(i) No licensee may alter or delete the date on any
12 check accepted by the licensee. No licensee may accept an
13 undated check or debit authorization or a check or debit
14 authorization dated on a date other than the date on which the
15 licensee accepts the check or debit authorization.

16 "(j) No licensee shall engage in unfair or deceptive
17 acts, practices, or advertising in the conduct of the licensed
18 business.

19 "(k) No licensee shall require a customer to provide
20 security for the transaction or require the customer to
21 provide a guaranty from another person.

22 "(l) Each licensee ~~shall~~ may pay all proceeds for
23 any a deferred presentment transaction in cash and directly to
24 the customer or by electronic funds transfer directly to the
25 customer or the customer's account. The period of the deferred
26 presentment transaction does not begin until the funds are
27 received by the customer. There may be no additional charge

1 related to the payment of the proceeds of any deferred
2 presentment transaction.

3 "(m) Every licensee shall conspicuously and
4 continuously display a schedule of all fees, charges, and
5 penalties for all services provided by the licensee. The
6 schedule of fees shall contain the following statement in all
7 capital letters and in 12-point type or larger immediately
8 above the space for the borrower's signature: NOTICE: FEES FOR
9 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER
10 THAN FOR OTHER TYPES OF LOANS.

11 "(n) A deferred presentment provider shall not
12 redeem, extend, or otherwise consolidate a deferred deposit
13 agreement with the proceeds of another deferred presentment
14 transaction made by the same or affiliated deferred
15 presentment provider except as expressly provided in Section
16 5-18A-12.

17 "(o) The licensee shall use ~~a third party private~~
18 ~~sector database, where available,~~ the statewide database as
19 selected by the State Banking Department to ensure that the
20 customer does not have outstanding deferred presentment
21 transactions that exceed five hundred dollars (\$500).

22 "(p) A licensee shall not knowingly enter into a
23 deferred presentment transaction with a customer who has
24 entered into six transactions within a 12-month period. A
25 licensee shall not knowingly enter into a deferred presentment
26 transaction with a customer that has already had loans
27 totaling two thousand five hundred dollars (\$2,500) in

1 principal in a 12-month period. A licensee shall use the same
2 database specified in subsection (o) to verify a customer's
3 eligibility to receive a loan."

4 Section 2. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.