

1 SB335
2 167120-1
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 07-APR-15

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8 SYNOPSIS: Under existing law, deferred presentment
9 transactions, commonly referred to as payday loans,
10 are regulated by the State Banking Department
11 pursuant to the Deferred Presentment Services Act.

12 This bill would allow a customer to repay a
13 deferred presentment transaction over a six-month
14 period.

15 This bill would prohibit the extension of a
16 deferred presentment transaction.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Sections 5-18A-2, 5-18A-12, and 5-18A-13 of
23 the Code of Alabama 1975, relating to deferred presentment
24 transactions; to allow a customer to repay a deferred
25 presentment transaction over a six-month period; to prohibit
26 the extension of a deferred presentment transaction; to
27 decrease the extended repayment option from four months to

1 three months; to allow licensees to collect a bad check fee
2 for each bad check presented; to require each licensee to
3 report within a specified time certain information to the
4 supervisor and require the supervisor to publish the
5 aggregated data to the public.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 "§5-18A-2.

10 "As used in this chapter, the following terms shall
11 have the following meanings:

12 "(1) CHECK. A debit authorization or a check signed
13 by the maker and made payable to a person licensed under this
14 chapter.

15 "~~(2) CONTINUOUS TRANSACTION. To extend a deferred~~
16 ~~presentment transaction with the same account without~~
17 ~~redemption in full with cash or guaranteed funds.~~

18 "~~(3)~~ (2) DEFERRED PRESENTMENT SERVICES. A transaction
19 pursuant to a written agreement involving the following
20 combination of activities in exchange for a fee:

21 "a. Accepting a any check or authorization to debit
22 a checking account and, in connection with that acceptance,
23 advancing funds to the checking account holder.

24 "b. Holding ~~the~~ any check or authorization to debit
25 checking account for a period of time prior to payment or
26 deposit.

27 "~~(4)~~ (3) DEPARTMENT. The State Banking Department.

1 "~~(5)~~(4) LICENSEE. A person licensed to provide
2 deferred presentment services pursuant to this chapter.

3 "~~(6)~~(5) PERSON. An individual, group of individuals,
4 partnership, association, corporation, or any other business
5 unit or legal entity.

6 "~~(7)~~ ROLLOVER. Any deferred presentment transaction
7 where the transaction is not paid in full and the licensee
8 agrees to allow the customer to pay the fee only for a new
9 deferred presentment transaction.

10 "~~(8)~~(6) SUPERVISOR. The Supervisor of the Bureau of
11 Loans or his or her designee.

12 "§5-18A-12.

13 "(a) Subject to the following subsections, every
14 licensee under this chapter may charge and collect a maximum
15 fee on any deferred presentment transaction not to exceed 17.5
16 percent of the amount advanced. The maximum amount that may be
17 advanced in any deferred presentment transaction is five
18 hundred dollars (\$500).

19 "(b) ~~Each licensee may renew or extend a deferred~~
20 ~~presentment transaction with the same customer no more than~~
21 ~~one additional time at this fee for a maximum of two~~
22 ~~continuous transactions. After two continuous transactions~~
23 ~~with the customer, the~~ A licensee shall not enter into a new
24 deferred presentment transaction with that same customer until
25 the next business day after the transaction amount is repaid
26 in full. After the customer has redeemed the check or checks
27 in full with cash or guaranteed funds, the licensee has the

1 same authority as any other licensee to enter into another
2 agreement for deferred presentment services with the customer
3 on another check or checks.

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

17 "(d) If there are insufficient funds to pay ~~a~~ any
18 check on the date of presentment, the licensee may charge a
19 fee for each check authorized in Section 8-8-15; however, only
20 one such fee may be collected ~~with respect to any particular~~
21 ~~transaction~~ for each check. No other fees or charges of any
22 kind may be charged or collected from customers except those
23 authorized herein. No person shall use any device, subterfuge,
24 or pretense whatsoever, including, but not limited to, catalog
25 sales, discount vouchers, Internet instant-rebate programs,
26 phone card clubs, or any agreement, including agreements with

1 affiliated persons, with the intent to obtain greater charges
2 than would otherwise be authorized by this chapter.

3 "§5-18A-13.

4 "(a) A licensee may not knowingly enter into a
5 deferred presentment transaction with a customer that has
6 outstanding deferred presentment transactions from any lender
7 at any location that exceeds five hundred dollars (\$500) for
8 the term of the loan.

9 "(b) Before a licensee shall present for payment or
10 deposit a any check or debit authorization accepted by the
11 licensee, the check or checks shall be endorsed with the
12 actual name under which the licensee is doing business.

13 "(c) Any agreement for a deferred presentment
14 transaction shall be in writing and signed by the checking
15 account holder. The customer in a deferred presentment
16 contract shall have the right to redeem ~~the~~ any check or debit
17 authorization from the licensee before the agreed date of
18 deposit upon payment to the licensee of the amount of the
19 contract. A licensee shall not defer presentment of any
20 personal check or debit authorization for less than ~~10 days~~
21 six months nor more than 31 calendar days after the date of
22 the contract. Any agreement for a deferred presentment
23 transaction shall allow a customer to repay the amount of the
24 contract, including applicable fees, using three equal monthly
25 payments over the term of the agreement. These payments may be
26 made by check or debit authorization, as provided for by this
27 chapter.

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

12 "(e) A licensee shall comply with all provisions of
13 state and federal law regarding cash transactions and cash
14 transaction reporting.

15 "(f) A licensee shall provide each prospective
16 customer, before consummation of the deferred presentment
17 agreement, with a written explanation in clear, understandable
18 language of the fees to be charged by the licensee and the
19 date on which the check or debit authorization may be
20 deposited or presented by the licensee. All fees associated
21 with deferred presentment transactions shall be disclosed as
22 finance charges as required by the Federal Truth-in-Lending
23 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and
24 Official Staff Commentary as adopted by the Federal Reserve
25 Board. The supervisor may promulgate rules establishing
26 additional requirements in order to assure complete and
27 accurate disclosures. The customer, prior to entering into a

1 deferred presentment transaction, shall receive and
2 acknowledge an accurate and complete notification and
3 disclosure of the itemized and total amounts of all fees and
4 other costs that will or potentially could be imposed as a
5 result of such agreement. This subsection shall not create any
6 inference that a particular method of disclosure was required
7 prior to June 20, 2003. All customers will be notified in
8 clear and conspicuous language that ~~the~~ any deferred
9 presentment check or debit authorization ~~after one rollover,~~
10 will be subject to terms and conditions described in
11 subsection (c) of Section 5-18A-12. The terms and conditions
12 of the transaction shall be provided in the notification.

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

19 "(h) If a check is returned to the licensee from a
20 payer financial institution due to insufficient funds or a
21 closed account, the licensee shall have the right to all civil
22 remedies allowed by law, except as provided for in Section
23 5-18A-12, to collect the check and may recover court costs and
24 a reasonable attorney's fee. The attorney's fee may not exceed
25 15 percent of the face amount of the check or debit
26 authorization. No individual who issues a personal check or
27 authorizes a debit for his or her checking account to a

1 licensee for the purpose of a deferred presentment transaction
2 under this chapter shall be convicted pursuant to Section
3 13A-9-13.1, if the check or debit authorization is returned
4 due to insufficient funds. Checks or debit authorizations
5 returned to the licensee due to a closed account may be
6 collected pursuant to Section 13A-9-13.1.

7 "(i) No licensee may alter or delete the date on any
8 check accepted by the licensee. No licensee may accept an
9 undated check or debit authorization or a check or debit
10 authorization dated on a date other than the date on which the
11 licensee accepts the check or debit authorization.

12 "(j) No licensee shall engage in unfair or deceptive
13 acts, practices, or advertising in the conduct of the licensed
14 business.

15 "(k) No licensee shall require a customer to provide
16 security for the transaction or require the customer to
17 provide a guaranty from another person.

18 "(l) Each licensee shall pay all proceeds for any
19 deferred presentment transaction in cash and directly to the
20 customer.

21 "(m) Every licensee shall conspicuously and
22 continuously display a schedule of all fees, charges, and
23 penalties for all services provided by the licensee. The
24 schedule of fees shall contain the following statement in all
25 capital letters and in 12-point type or larger immediately
26 above the space for the borrower's signature: NOTICE: FEES FOR

1 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER
2 THAN FOR OTHER TYPES OF LOANS.

3 "(n) A deferred presentment provider shall not
4 redeem, extend, or otherwise consolidate a deferred deposit
5 agreement with the proceeds of another deferred presentment
6 transaction made by the same or affiliated deferred
7 presentment provider except as expressly provided in Section
8 5-18A-12.

9 "(o) The licensee shall use a third party private
10 sector database, where available, to ensure that the customer
11 does not have outstanding deferred presentment transactions
12 that exceed five hundred dollars (\$500)."

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