

1 SB404
2 185932-1
3 By Senator Whatley
4 RFD: Banking and Insurance
5 First Read: 27-APR-17

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8 SYNOPSIS: Under existing law, a person who engages in
9 the business of deferred presentment services must
10 be licensed by the State Banking Department. Under
11 existing law, when a deferred presentment services
12 transaction becomes due, the licensee may renew or
13 extend the transaction for one additional term.
14 After one renewal or extension, the licensee may
15 not enter into a new transaction with the customer
16 until the next business day after the previous
17 transaction is paid in full. Under existing law, if
18 the customer is unable to pay upon the expiration
19 of the initial term and one renewal or extension,
20 the licensee may offer an extended repayment plan
21 of four equal monthly installments.

22 This bill would clarify that a person may
23 not engage in the business of deferred presentment
24 services with a consumer in this state by mail,
25 telephone, over the Internet, or in person without
26 a license, and any transaction in violation is
27 void.

1 This bill would remove the provision
2 authorizing one renewal or extension of a deferred
3 presentment transaction and specify that the
4 licensee could not enter into a new transaction
5 with the customer until at least 48 hours after the
6 previous transaction is paid in full.

7 This bill would provide for a free extended
8 repayment plan if the customer is unable to pay at
9 the end of the term of the transaction or if the
10 customer's check or debit authorization is returned
11 for any reason. This bill would allow the customer
12 to request a repayment plan once in a 12-month
13 period. This bill would require a customer
14 participating in the repayment plan to also
15 participate in a financial literary and education
16 program or financial counseling program and to
17 produce documentation of completion of such a
18 program before entering into a new deferred
19 presentment transaction. This bill would allow the
20 licensee to access and collect a late charge and
21 would prohibit any licensee from entering into a
22 new transaction with a customer under an extended
23 repayment plan.

24 This bill would require a licensee who
25 offers other installment loan products to inform a
26 customer of the availability of these products once
27 the customer has successfully used and repaid six

1 transactions in a 12-month period. This bill would
2 also prohibit a licensee from using the proceeds of
3 a loan made under the Small Loan Act or the Alabama
4 Consumer Credit Act to repay a deferred presentment
5 services transaction.

6 This bill would allow a licensee to enter
7 into a deferred presentment transaction with a
8 customer who has made 12 or more transactions in
9 the previous 12 months only after 14 days have
10 passed since the previous transaction is paid in
11 full.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to deferred presentment services; to amend
18 Sections 5-18A-2, 5-18A-3, 5-18A-12, and 5-18A-13, Code of
19 Alabama 1975; to clarify that no person may engage in the
20 business of deferred presentment services by mail, telephone,
21 over the Internet, or in person without a license; to specify
22 that certain transactions in violation are void; to provide
23 for hours of operation of a deferred presentment services
24 business; to prohibit renewal or extension of a deferred
25 presentment transaction at the expiration of the initial term;
26 to provide further for a repayment plan; to limit the
27 extension of a new deferred presentment services transaction

1 until a certain time after repayment and the extension of a
2 new transaction while the customer is utilizing a repayment
3 plan; to require a licensee to notify the customer of the
4 availability of other products in certain circumstances; and
5 to limit the number of deferred presentment transactions that
6 may be offered to a customer.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 5-18A-2, 5-18A-3, 5-18A-12, and
9 5-18A-13, Code of Alabama 1975, are amended to read as
10 follows:

11 "§5-18A-2.

12 "As used in this chapter, the following terms shall
13 have the following meanings:

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

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

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

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

1 "b. Holding the check or authorization to debit
2 checking account for a period of time prior to payment or
3 deposit.

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

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

7 "~~(6)~~ (5) PERSON. An individual, group of individuals,
8 partnership, association, corporation, or any other business
9 unit or legal entity.

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

14 "~~(8)~~ (6) SUPERVISOR. The Supervisor of the Bureau of
15 Loans or his or her designee.

16 "§5-18A-3.

17 "(a) ~~On or after January 1, 2004, no~~ No person shall
18 engage, in whole or in part, through any method, including,
19 but not limited to, mail, telephone, Internet, or in person,
20 in the business of deferred presentment services without
21 having first obtained a license from the supervisor. A
22 separate license shall be required for each location from
23 which the business is conducted.

24 "(b) Any deferred presentment transaction entered
25 into in violation of this section shall be void, and the
26 lender shall have no right to collect, receive, or retain any
27 principal, interest, or charges whatsoever. Provided, however,

1 that none of the clearing houses, as defined in Section
2 7-4-104(a) (4), or processing or other banks, as defined in
3 Section 7-4-105, shall have any liability for processing or
4 handling any check or item associated with the transaction.

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

14 "~~(c)~~(d) This chapter shall have no application to
15 persons who do not engage in deferred presentment services.

16 "(e) It is a violation of this chapter for any
17 person to engage in the business of deferred presentment
18 services with any person located in Alabama through the use of
19 the Internet, facsimile, telephone, kiosk, or any other means
20 without obtaining a license pursuant to this chapter. Any
21 transaction made without a license required under this chapter
22 shall be uncollectable and unenforceable.

23 "§5-18A-12.

24 "(a) Subject to the following subsections, every
25 licensee under this chapter may charge and collect a maximum
26 fee on any deferred presentment transaction not to exceed 17.5
27 percent of the amount advanced. The maximum amount that may be

1 advanced in any deferred presentment transaction is five
2 hundred dollars (\$500).

3 ~~"(b) Each licensee may renew or extend a deferred~~
4 ~~presentment transaction with the same customer no more than~~
5 ~~one additional time at this fee for a maximum of two~~
6 ~~continuous transactions. After two continuous transactions~~
7 ~~with the customer, the A licensee shall not enter into a new~~
8 ~~deferred presentment transaction with that the same customer~~
9 ~~until the next business day after the 48 hours after the~~
10 ~~customer's previous transaction amount is repaid in full.~~
11 ~~After the customer has redeemed the check in full with cash or~~
12 ~~guaranteed funds, the licensee has the same authority as any~~
13 ~~other licensee to enter into another agreement for deferred~~
14 ~~presentment services with the customer on another check.~~

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

1 "(c) (1) On or before the maturity date of the loan,
2 if the customer advises the licensee that he or she cannot
3 repay the loan in full, the licensee shall offer the customer
4 the option to convert to a free extended repayment plan,
5 repayable within a 60-day period. The licensee may not charge
6 interest or fees on the extended repayment plan loan except
7 for the late fee provided in this subsection. Under the free
8 extended repayment plan, the initial repayment installment
9 shall be due on a date that is no sooner than the number of
10 days in the original term of the loan. Subsequent installment
11 payments shall be determined based on the number of days in
12 the original term. The borrower, at his or her option, may
13 repay the loan in less than 60 days. A borrower may request
14 only one mandatory extended repayment plan in a 12-month
15 period; however, a licensee may offer additional no-cost
16 repayment plan options at its discretion.

17 "(2) If a borrower exercises his or her option to
18 use a repayment plan under this section, the licensee shall
19 provide the borrower with financial literacy and education
20 materials provided by a third party or shall refer the
21 borrower to a financial counseling program approved by the
22 department at no cost to the borrower. The licensee shall
23 maintain records showing it has provided financial literacy
24 and education materials or referral of financial counseling as
25 required by this section. The department shall promulgate
26 rules and procedures to effect the provisions of this section.

1 "(3) A borrower may not enter into a new deferred
2 presentment transaction with a licensee while under an
3 extended repayment plan. Once an extended repayment plan loan
4 is in effect, if the borrower defaults on making timely
5 installment repayments, the licensee may collect a late charge
6 of eighteen dollars (\$18); provided, a late charge may be
7 assessed only once on any missed payment.

8 "(d) If there are insufficient funds to pay a check
9 on the date of presentment, the licensee may charge a fee
10 authorized in Section 8-8-15; however, only one such fee may
11 be collected with respect to any particular transaction. No
12 other fees or charges of any kind may be charged or collected
13 from customers except those authorized herein. No person shall
14 use any device, subterfuge, or pretense whatsoever, including,
15 but not limited to, catalog sales, discount vouchers, Internet
16 instant-rebate programs, phone card clubs, or any agreement,
17 including agreements with affiliated persons, with the intent
18 to obtain greater charges than would otherwise be authorized
19 by this chapter.

20 "§5-18A-13.

21 "(a) A licensee may not knowingly enter into a
22 deferred presentment transaction with a customer that has
23 outstanding deferred presentment transactions from any lender
24 at any location that exceeds five hundred dollars (\$500) for
25 the term of the loan.

26 "(b) Before a licensee shall present for payment or
27 deposit a check or debit authorization accepted by the

1 licensee, the check shall be endorsed with the actual name
2 under which the licensee is doing business.

3 "(c) Any agreement for a deferred presentment
4 transaction shall be in writing and signed by the checking
5 account holder. The customer in a deferred presentment
6 contract shall have the right to redeem the check or debit
7 authorization from the licensee before the agreed date of
8 deposit upon payment to the licensee of the amount of the
9 contract. A licensee shall not defer presentment of any
10 personal check or debit authorization for less than ~~10~~ 14 days
11 nor more than 31 calendar days after the date of the contract.

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

23 "(e) A licensee shall comply with all provisions of
24 state and federal law regarding cash transactions and cash
25 transaction reporting.

26 "(f) A licensee shall provide each prospective
27 customer, before consummation of the deferred presentment

1 agreement, with a written explanation in clear, understandable
2 language of the fees to be charged by the licensee and the
3 date on which the check or debit authorization may be
4 deposited or presented by the licensee. All fees associated
5 with deferred presentment transactions shall be disclosed as
6 finance charges as required by the Federal Truth-in-Lending
7 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and
8 Official Staff Commentary as adopted by the Federal Reserve
9 Board. The supervisor may promulgate rules establishing
10 additional requirements in order to assure complete and
11 accurate disclosures. The customer, prior to entering into a
12 deferred presentment transaction, shall receive and
13 acknowledge an accurate and complete notification and
14 disclosure of the itemized and total amounts of all fees and
15 other costs that will or potentially could be imposed as a
16 result of such agreement. This subsection shall not create any
17 inference that a particular method of disclosure was required
18 prior to June 20, 2003. All customers will be notified in
19 clear and conspicuous language that the deferred presentment
20 check or debit authorization ~~after one rollover~~, will be
21 subject to terms and conditions described in subsection (c) of
22 Section 5-18A-12. The terms and conditions of the transaction
23 shall be provided in the notification.

24 "(g) A licensee shall issue a copy of the written
25 agreement to each person for whom a licensee defers deposit of
26 a check or debit authorization. The written agreement shall
27 include the information described in subsection (f) and the

1 extended repayment program described in subsection (c) of
2 Section 5-18A-12.

3 "(h) If a check is returned to the licensee from a
4 payer financial institution due to insufficient funds or a
5 closed account, the licensee shall have the right to all civil
6 remedies allowed by law, except as provided for in Section
7 5-18A-12, to collect the check and may recover court costs and
8 a reasonable attorney's fee. The attorney's fee may not exceed
9 15 percent of the face amount of the check or debit
10 authorization. No individual who issues a personal check or
11 authorizes a debit for his or her checking account to a
12 licensee for the purpose of a deferred presentment transaction
13 under this chapter shall be convicted pursuant to Section
14 13A-9-13.1, if the check or debit authorization is returned
15 due to insufficient funds. Checks or debit authorizations
16 returned to the licensee due to a closed account may be
17 collected pursuant to Section 13A-9-13.1.

18 "(i) No licensee may alter or delete the date on any
19 check accepted by the licensee. No licensee may accept an
20 undated check or debit authorization or a check or debit
21 authorization dated on a date other than the date on which the
22 licensee accepts the check or debit authorization.

23 "(j) No licensee shall engage in unfair or deceptive
24 acts, practices, or advertising in the conduct of the licensed
25 business.

1 "(k) No licensee shall require a customer to provide
2 security for the transaction or require the customer to
3 provide a guaranty from another person.

4 "(l) Each licensee shall pay all proceeds for any
5 deferred presentment transaction in cash and directly to the
6 customer.

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

15 "(n) A deferred presentment provider shall not
16 redeem, extend, or otherwise consolidate a deferred deposit
17 agreement with the proceeds of another deferred presentment
18 transaction made by the same or affiliated deferred
19 presentment provider ~~except as expressly provided in Section~~
20 ~~5-18A-12.~~

21 "(o) The licensee shall use a the state approved
22 third party private sector database, where available, to
23 ensure that the customer does not have outstanding deferred
24 presentment transactions that exceed five hundred dollars
25 (\$500).

26 "(p) If the licensee offers other installment loan
27 products, it shall inform the customer of the availability of

1 those installment loan products after the customer has
2 successfully used and repaid six deferred presentment
3 transactions in the past 12-month period from the original
4 date of the first deferred presentment transaction. A licensee
5 may not use the proceeds of a deferred presentment transaction
6 to repay an existing installment loan made under the Alabama
7 Small Loan Act or the Alabama Consumer Credit Act.

8 "(q) Once a customer has entered into 12
9 transactions within the previous 12 months, the licensee shall
10 not enter into a new deferred presentment transaction with the
11 same customer until 14 days after the customer's previous
12 transaction amount is repaid in full. Subsequent transactions
13 for the remainder of the 12-month period shall be subject to
14 subsection (b) of Section 5-18A-12."

15 Section 2. This act shall become effective on
16 January 1, 2018.