

1 SB532
2 140926-1
3 By Senator Taylor
4 RFD: Banking and Insurance
5 First Read: 17-APR-12

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8 SYNOPSIS: This bill would alter the Deferred
9 Presentment Services Act.

10 This bill would provide further for the bad
11 check fee; implement a common database; clarify the
12 roll-over of deferred presentment transactions; and
13 would provide further for violations.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Sections 5-18A-2, 5-18A-12, 5-18A-13, and
20 5-18A-16 of the Code of Alabama 1975, relating to the Deferred
21 Presentment Services Act, to provide further for the bad check
22 fee; to implement a common database; to clarify the roll-over
23 of deferred presentment transactions; and to provide further
24 for violations.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 5-18A-2, 5-18A-12, 5-18A-13, and
2 5-18A-16 of the Code of Alabama 1975, are amended to read as
3 follows:

4 "§5-18A-2.

5 "As used in this chapter, the following terms shall
6 have the following meanings:

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

10 "(2) CONTINUOUS TRANSACTION. To extend or renew a
11 deferred presentment transaction with the same ~~account without~~
12 ~~redemption in full with cash or guaranteed funds~~ borrower for
13 another term. A deferred presentment transaction shall not be
14 continuous if there is at least one day from the time the
15 previous transaction was paid in full with cash or guaranteed
16 funds and a new transaction was executed for the same account.

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

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

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

26 "(4) DEPARTMENT. The State Banking Department.

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

3 "(6) 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)~~(7) 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 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 with cash or guaranteed funds. ~~After the customer has~~
27 ~~redeemed the check in full with cash or guaranteed funds, the~~

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

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

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

1 programs, phone card clubs, or any agreement, including
2 agreements with affiliated persons, with the intent to obtain
3 greater charges than would otherwise be authorized by this
4 chapter.

5 "§5-18A-13.

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

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

15 "(c) Any agreement for a deferred presentment
16 transaction shall be in writing and signed by the checking
17 account holder. The customer in a deferred presentment
18 contract shall have the right to redeem the check or debit
19 authorization from the licensee before the agreed date of
20 deposit upon payment to the licensee of the amount of the
21 contract. A licensee shall not defer presentment of any
22 personal check or debit authorization for less than 10 days
23 nor more than 31 calendar days after the date of the contract.

24 "(d) The licensee shall notify the district attorney
25 for the circuit in which the check was received within five
26 business days after being advised by the payer financial
27 institution that a check or draft has been altered, forged,

1 stolen, obtained through fraudulent or illegal means,
2 negotiated without proper legal authority, or represents the
3 proceeds of illegal activity. If a check or draft is returned
4 to the licensee by the payer financial institution for any of
5 these reasons, the licensee shall not release the check,
6 draft, or money order without the consent of the district
7 attorney or other investigating law enforcement authority.

8 "(e) A licensee shall comply with all provisions of
9 state and federal law regarding cash transactions and cash
10 transaction reporting.

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

1 result of such agreement. This subsection shall not create any
2 inference that a particular method of disclosure was required
3 prior to June 20, 2003. All customers will be notified in
4 clear and conspicuous language that the deferred presentment
5 check or debit authorization after one rollover, will be
6 subject to terms and conditions described in subsection (c) of
7 Section 5-18A-12. The terms and conditions of the transaction
8 shall be provided in the notification.

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

15 "(h) If a check is returned to the licensee from a
16 payer financial institution due to insufficient funds or a
17 closed account, the licensee shall have the right to all civil
18 remedies allowed by law, except as provided for in Section
19 5-18A-12, to collect the check and may recover court costs and
20 a reasonable attorney's fee. The attorney's fee may not exceed
21 15 percent of the face amount of the check or debit
22 authorization. No individual who issues a personal check or
23 authorizes a debit for his or her checking account to a
24 licensee for the purpose of a deferred presentment transaction
25 under this chapter shall be convicted pursuant to Section
26 13A-9-13.1, if the check or debit authorization is returned
27 due to insufficient funds. Checks or debit authorizations

1 returned to the licensee due to a closed account may be
2 collected pursuant to Section 13A-9-13.1.

3 "(i) No licensee may alter or delete the date on any
4 check accepted by the licensee. No licensee may accept an
5 undated check or debit authorization or a check or debit
6 authorization dated on a date other than the date on which the
7 licensee accepts the check or debit authorization.

8 "(j) No licensee shall engage in unfair or deceptive
9 acts, practices, or advertising in the conduct of the licensed
10 business.

11 "(k) No licensee shall require a customer to provide
12 security for the transaction or require the customer to
13 provide a guaranty from another person.

14 "(l) ~~Each licensee shall pay all proceeds for any~~
15 ~~deferred presentment transaction in cash and directly to the~~
16 ~~customer.~~ Each licensee may pay all proceeds for a deferred
17 presentment transaction in cash directly to the customer or by
18 debit card or electronic funds transfer directly to the
19 customer or customer's account. The period of the deferred
20 presentment transaction shall not begin until the funds are
21 received by the customer. There shall be no additional charge
22 related to the payment of the proceeds of any deferred
23 presentment transaction.

24 "(m) Every licensee shall conspicuously and
25 continuously display a schedule of all fees, charges, and
26 penalties for all services provided by the licensee. The
27 schedule of fees shall contain the following statement in all

1 capital letters and in 12-point type or larger immediately
2 above the space for the borrower's signature: NOTICE: FEES FOR
3 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER
4 THAN FOR OTHER TYPES OF LOANS.

5 "(n) A deferred presentment provider shall not
6 redeem, extend, or otherwise consolidate a deferred deposit
7 agreement with the proceeds of another deferred presentment
8 transaction made by the same or affiliated deferred
9 presentment provider except as expressly provided in Section
10 5-18A-12.

11 "(o) The licensee shall use a ~~third party private~~
12 ~~sector database, where available,~~ common database as
13 designated by the supervisor to ensure that the customer does
14 not have outstanding deferred presentment transactions that
15 exceed five hundred dollars (\$500).

16 "(p) The supervisor shall implement a common
17 database with real-time access through an Internet connection
18 for deferred presentment providers, pursuant to this section.
19 The database shall be accessible to the supervisor and the
20 deferred presentment providers to verify whether any deferred
21 presentment transactions are outstanding for a particular
22 person. Deferred presentment providers shall submit the data
23 before entering into each deferred presentment transaction in
24 the format as the supervisor shall require by rule, including
25 the customer's name, Social Security number or employment
26 authorization alien number, address, driver's license number,
27 amount of the transaction, date of transaction, the date that

1 the transaction is closed, and any additional information as
2 is required by the supervisor. The supervisor may impose a fee
3 not to exceed one dollar (\$1) per transaction for data
4 required to be submitted by a deferred presentment provider;
5 however, this fee may not increase the fee paid by the
6 borrower above the maximum provided by law. A deferred
7 presentment provider may rely on the information contained in
8 the database as accurate and is not subject to any
9 administrative penalty or civil liability as a result of
10 relying on inaccurate information contained in the database.
11 The supervisor may adopt rules to administer and enforce this
12 section and insure that the database is used by deferred
13 presentment providers pursuant to this section.

14 "§5-18A-16.

15 "If, after a hearing, the supervisor finds that a
16 person has violated this chapter or any administrative
17 regulation issued pursuant to this chapter, the supervisor may
18 take any one or more of the following enforcement actions:

19 "(1) Order the person to cease and desist violating
20 the chapter or any administrative rules issued pursuant
21 thereto.

22 "(2) Require the refund of any fees collected by
23 such person in violation of this chapter.

24 "(3) Order the person to pay to the supervisor a
25 civil penalty of not more than one thousand dollars (\$1,000)
26 for each transaction in violation of this chapter.

1 "(4) Notwithstanding other violations, it is a
2 violation of this chapter for any person to do any of the
3 following:

4 "a. Directly or indirectly employ any scheme,
5 device, or artifice to defraud or mislead any borrower, to
6 defraud or mislead any lender, or to defraud or mislead any
7 person.

8 "b. Engage in the business of deferred presentment
9 services with any person physically located in Alabama through
10 use of the Internet, facsimile, telephone, kiosk, or other
11 means without obtaining a license pursuant to this chapter.

12 "(5) In addition to any other penalties, any
13 transaction in violation of subsection (4) shall be
14 uncollectable and unenforceable."

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