

1 HB417
2 167073-1
3 By Representative Todd
4 RFD: Financial Services
5 First Read: 02-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 require licensees to use a
13 database designated by the supervisor to ensure
14 that a customer does not have any deferred
15 presentment transaction over \$500.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 To amend Section 5-18A-13 of the Code of Alabama
22 1975, relating to deferred presentment transactions; to
23 require licensees to use a database designated by the
24 supervisor; and require each licensee to report within a
25 specified time certain information to the supervisor and the
26 supervisor to publish the aggregated data to the public.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 5-18A-13 of the Code of Alabama
2 1975, is amended as follows:

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 check or debit authorization accepted by the
11 licensee, the check shall be endorsed with the actual name
12 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 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 nor more than 31 calendar days after the date of the contract.

22 "(d) The licensee shall notify the district attorney
23 for the circuit in which the check was received within five
24 business days after being advised by the payer financial
25 institution that a check or draft has been altered, forged,
26 stolen, obtained through fraudulent or illegal means,
27 negotiated without proper legal authority, or represents the

1 proceeds of illegal activity. If a check or draft is returned
2 to the licensee by the payer financial institution for any of
3 these reasons, the licensee shall not release the check,
4 draft, or money order without the consent of the district
5 attorney or other investigating law enforcement authority.

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

9 "(f) A licensee shall provide each prospective
10 customer, before consummation of the deferred presentment
11 agreement, with a written explanation in clear, understandable
12 language of the fees to be charged by the licensee and the
13 date on which the check or debit authorization may be
14 deposited or presented by the licensee. All fees associated
15 with deferred presentment transactions shall be disclosed as
16 finance charges as required by the Federal Truth-in-Lending
17 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and
18 Official Staff Commentary as adopted by the Federal Reserve
19 Board. The supervisor may promulgate rules establishing
20 additional requirements in order to assure complete and
21 accurate disclosures. The customer, prior to entering into a
22 deferred presentment transaction, shall receive and
23 acknowledge an accurate and complete notification and
24 disclosure of the itemized and total amounts of all fees and
25 other costs that will or potentially could be imposed as a
26 result of such agreement. This subsection shall not create any
27 inference that a particular method of disclosure was required

1 prior to June 20, 2003. All customers will be notified in
2 clear and conspicuous language that the deferred presentment
3 check or debit authorization after one rollover, will be
4 subject to terms and conditions described in subsection (c) of
5 Section 5-18A-12. The terms and conditions of the transaction
6 shall be provided in the notification.

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

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

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

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

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

12 "(l) Each licensee shall pay all proceeds for any
13 deferred presentment transaction in cash and directly to the
14 customer.

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

23 "(n) A deferred presentment provider shall not
24 redeem, extend, or otherwise consolidate a deferred deposit
25 agreement with the proceeds of another deferred presentment
26 transaction made by the same or affiliated deferred

1 presentment provider except as expressly provided in Section 5-18A-12.

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

7 "(p) The supervisor shall implement a common
8 database with real-time access for deferred presentment
9 providers, pursuant to this section. The database shall be
10 accessible to the supervisor and the deferred presentment
11 providers to verify compliance with this act. The supervisor
12 may impose a fee not to exceed seventy-five cents (\$.75) per
13 transaction for data required to be submitted by a deferred
14 presentment provider; however, this fee may not increase the
15 fee paid by the borrower above the maximum provided by law. A
16 deferred presentment provider may rely on the information
17 contained in the database as accurate and is not subject to
18 any administrative penalty or civil liability as a result of
19 relying on inaccurate information contained in the database.
20 The supervisor may adopt rules to administer and enforce this
21 section and insure that the database is used by deferred
22 presentment providers pursuant to this section.

23 "(q) Each licensee under this chapter shall
24 annually, on or before May 1, file a written report with the
25 supervisor containing such information as the supervisor may
26 require concerning his business and operations during the
27 preceding calendar year as to each approved office. Reports

1 shall be made under oath and shall be in the form prescribed
2 by the supervisor.

3 "(r) Using the information reported to the
4 supervisor under subsection (q) and the information contained
5 in the database, the supervisor shall make and publish
6 annually an analysis and recapitulation of such reports
7 regarding the utilization of deferred presentment services."

8 Section 2. This act shall become effective on
9 January 1, 2016, following its passage and approval by the
10 Governor, or its otherwise becoming law.