

1 HB145  
2 159497-5  
3 By Representative Todd  
4 RFD: Financial Services  
5 First Read: 14-JAN-14  
6 PFD: 01/10/2014

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To amend Section 5-18A-13 of the Code of Alabama  
9 1975, relating to deferred presentment transactions; to  
10 require licensees to use a database designated by the  
11 supervisor; and require each licensee to report within a  
12 specified time certain information to the supervisor and the  
13 supervisor to publish the aggregated data to the public.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 5-18A-13 of the Code of Alabama  
16 1975, is amended as follows:

17 "§5-18A-13.

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

23 (b) Before a licensee shall present for payment or  
24 deposit a check or debit authorization accepted by the  
25 licensee, the check shall be endorsed with the actual name  
26 under which the licensee is doing business.

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

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

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

24 (f) A licensee shall provide each prospective  
25 customer, before consummation of the deferred presentment  
26 agreement, with a written explanation in clear, understandable  
27 language of the fees to be charged by the licensee and the

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

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

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

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

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

24 (k) No licensee shall require a customer to provide  
25 security for the transaction or require the customer to  
26 provide a guaranty from another person.

1           (1) Each licensee shall pay all proceeds for any  
2 deferred presentment transaction in cash and directly to the  
3 customer.

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

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

18           (o) The licensee shall use a ~~third party private~~  
19 ~~sector database, where available,~~ common database as  
20 designated by the supervisor to ensure that the customer does  
21 not have outstanding deferred presentment transactions that  
22 exceed five hundred dollars (\$500).

23           

(p) The supervisor shall implement a common database  
24 with real-time access for deferred presentment providers,  
25 pursuant to this section. The database shall be accessible to  
26 the supervisor and the deferred presentment providers to  
27 verify compliance with this act. The supervisor may impose a

1 fee not to exceed seventy-five cents (\$.75) per transaction  
2 for data required to be submitted by a deferred presentment  
3 provider; however, this fee may not increase the fee paid by  
4 the borrower above the maximum provided by law. A deferred  
5 presentment provider may rely on the information contained in  
6 the database as accurate and is not subject to any  
7 administrative penalty or civil liability as a result of  
8 relying on inaccurate information contained in the database.  
9 The supervisor may adopt rules to administer and enforce this  
10 section and insure that the database is used by deferred  
11 presentment providers pursuant to this section.

12 (q) Each licensee under this chapter shall annually,  
13 on or before May 1, file a written report with the supervisor  
14 containing such information as the supervisor may require  
15 concerning his business and operations during the preceding  
16 calendar year as to each approved office. Reports shall be  
17 made under oath and shall be in the form prescribed by the  
18 supervisor.

19 (r) Using the information reported to the supervisor  
20 under subsection (q) and the information contained in the  
21 database, the supervisor shall make and publish annually an  
22 analysis and recapitulation of such reports regarding the  
23 utilization of deferred presentment services.

24 Section 2. This act shall become effective on  
25 January 1, 2015, following its passage and approval by the  
26 Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
  
16  
17  
18  
19

House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Financial Ser-  
vices..... . . . . 14-JAN-14

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . 05-MAR-14

Read for the third time and passed  
as amended..... . . . . 13-MAR-14

Yeas 93, Nays 1, Abstains 0

Jeff Woodard  
Clerk