

1 SB410
2 158150-3
3 By Senators Orr, Beason, Holtzclaw, Glover, Smitherman,
4 Figures, Fielding, Reed, Taylor, Marsh, Beasley, Allen, Irons,
5 Dunn, Smith, Keahey and Scofield
6 RFD: Banking and Insurance
7 First Read: 26-FEB-14

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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 forbid the extension of a
16 deferred presentment transaction.

17 This bill would decrease the extended
18 repayment option from four months to three months.

19 This bill would allow a licensee to collect
20 a bad check fee for each bad check presented.

21 This bill would require licensees to use a
22 database designated by the supervisor to ensure
23 that a customer does not have any deferred
24 presentment transaction over \$500.

25 This bill would require each licensee to
26 report within a specified time certain information

1 to the supervisor and the supervisor to publish the
2 aggregated data to the public.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 5-18A-2, 5-18A-12, and 5-18A-13 of
9 the Code of Alabama 1975, relating to deferred presentment
10 transactions; to allow a customer to repay a deferred
11 presentment transaction over a six month period; to forbid the
12 extension of a deferred presentment transaction; to decrease
13 the extended repayment option from four months to three
14 months; to allow licensees to collect a bad check fee for each
15 bad check presented; to require licensees to use a database
16 designated by the supervisor; require each licensee to report
17 within a specified time certain information to the supervisor
18 and the supervisor to publish the aggregated data to the
19 public.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 5-18A-2, 5-18A-12, and 5-18A-13
22 of the Code of Alabama 1975, are amended as follows:

23 "§5-18A-2.

24 As used in this chapter, the following terms shall
25 have the following meanings:

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

4 ~~(2) CONTINUOUS TRANSACTION. To extend a deferred~~
5 ~~presentment transaction with the same account without~~
6 ~~redemption in full with cash or guaranteed funds.~~

7 ~~(3)~~ (2) DEFERRED PRESENTMENT SERVICES. A transaction
8 pursuant to a written agreement involving the following
9 combination of activities in exchange for a fee:

10 a. Accepting ~~a~~ any check or authorization to debit a
11 checking account and, in connection with that acceptance,
12 advancing funds to the checking account holder.

13 b. Holding ~~the~~ any check or authorization to debit
14 checking account for a period of time prior to payment or
15 deposit.

16 ~~(4)~~ (3) DEPARTMENT. The State Banking Department.

17 ~~(5)~~ (4) LICENSEE. A person licensed to provide
18 deferred presentment services pursuant to this chapter.

19 ~~(6)~~ (5) PERSON. An individual, group of individuals,
20 partnership, association, corporation, or any other business
21 unit or legal entity.

22 ~~(7) ROLLOVER. Any deferred presentment transaction~~
23 ~~where the transaction is not paid in full and the licensee~~
24 ~~agrees to allow the customer to pay the fee only for a new~~
25 ~~deferred presentment transaction.~~

26 ~~(8)~~ (6) SUPERVISOR. The Supervisor of the Bureau of
27 Loans or his or her designee.

1 "§5-18A-12.

2 (a) Subject to the following subsections, every
3 licensee under this chapter may charge and collect a maximum
4 fee on any deferred presentment transaction not to exceed 17.5
5 percent of the amount advanced. The maximum amount that may be
6 advanced in any deferred presentment transaction is five
7 hundred dollars (\$500).

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

20 (c) After the initial loan period ~~and one rollover~~
21 with the same customer, the full outstanding amount of the
22 loan, including, but not limited to, any held check or debt
23 authorization, shall become due. If the customer is unable to
24 repay the outstanding balance in full, the licensee may offer
25 the customer an extended repayment option of ~~four~~ three equal
26 monthly installments of the remaining balance. The licensee
27 shall not commence any civil action to collect on a

1 transaction in default until written notice has been sent
2 notifying the customer of his or her rights. If the customer
3 fails to exercise his or her rights within 15 days of the
4 notice, the licensee may commence action to collect on a
5 transaction in default.

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

18 "§5-18A-13.

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

24 (b) Before a licensee shall present for payment or
25 deposit ~~a~~ any check or debit authorization accepted by the
26 licensee, the check or checks shall be endorsed with the
27 actual name 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~~ any 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~~ six months after the date of
10 the contract. Any agreement for a deferred presentment
11 transaction shall allow a customer to repay the amount of the
12 contract, including applicable fees, using equal monthly
13 payments over the term of the agreement. These payments may be
14 made by check or debit authorization, as provided for by this
15 chapter.

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

1 (e) A licensee shall comply with all provisions of
2 state and federal law regarding cash transactions and cash
3 transaction reporting.

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

1 subsection (c) of Section 5-18A-12. The terms and conditions
2 of the transaction shall be provided in the notification.

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

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

24 (i) No licensee may alter or delete the date on any
25 check accepted by the licensee. No licensee may accept an
26 undated check or debit authorization or a check or debit

1 authorization dated on a date other than the date on which the
2 licensee accepts the check or debit authorization.

3 (j) No licensee shall engage in unfair or deceptive
4 acts, practices, or advertising in the conduct of the licensed
5 business.

6 (k) No licensee shall require a customer to provide
7 security for the transaction or require the customer to
8 provide a guaranty from another person.

9 (l) Each licensee shall pay all proceeds for any
10 deferred presentment transaction in cash and directly to the
11 customer.

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

20 (n) A deferred presentment provider shall not
21 redeem, extend, or otherwise consolidate a deferred deposit
22 agreement with the proceeds of another deferred presentment
23 transaction made by the same or affiliated deferred
24 presentment provider ~~except as expressly provided in Section~~
25 ~~5-18A-12.~~

26 (o) The licensee shall use a ~~third party private~~
27 ~~sector database, where available,~~ common database as

1 designated by the supervisor to ensure that the customer does
2 not have outstanding deferred presentment transactions that
3 exceed five hundred dollars (\$500).

4 (p) The supervisor shall implement a common database
5 with real-time access for deferred presentment providers,
6 pursuant to this section. The database shall be accessible to
7 the supervisor and the deferred presentment providers to
8 verify compliance with this act. The supervisor may impose a
9 fee not to exceed one dollar (\$1) per transaction for data
10 required to be submitted by a deferred presentment provider;
11 however, this fee may not increase the fee paid by the
12 borrower above the maximum provided by law. A deferred
13 presentment provider may rely on the information contained in
14 the database as accurate and is not subject to any
15 administrative penalty or civil liability as a result of
16 relying on inaccurate information contained in the database.
17 The supervisor may adopt rules to administer and enforce this
18 section and insure that the database is used by deferred
19 presentment providers pursuant to this section.

20 (q) Each licensee under this chapter shall annually,
21 on or before December 1, file a written report with the
22 supervisor containing such information as the supervisor may
23 require concerning his business and operations during the
24 preceding calendar year as to each approved office. Reports
25 shall be made under oath and shall be in the form prescribed
26 by the supervisor.

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

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