

1 HB320
2 148897-1
3 By Representatives Todd, Hall, Coleman-Evans, McAdory, Ison
4 and Buskey
5 RFD: Financial Services
6 First Read: 21-FEB-13

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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 add to this act the term
13 "Principal Balance" and define the term.

14 This bill would provide that a person who is
15 not exempted from the Deferred Presentment Services
16 Act would be subject to the provisions of this act.

17 This bill would provide that any loan
18 contract entered into in violation of the act would
19 be void.

20 This bill would impose limits on the amount
21 of interest that could be charged for a loan.

22 This bill would prohibit a licensee from
23 extending a loan to a customer who has an
24 outstanding deferred presentment transaction with a
25 value of \$500 or more, who has six or more deferred
26 presentment transactions from all licensees in any
27 12-month period, an extended repayment with a

1 licensee until 14 days after the plan is paid in
2 full, or the customer or their spouse or dependent
3 is a member of the military.

4 This bill would extend the time in which
5 payment of a check may be deferred.

6 This bill would provide that a licensee may
7 not use or threaten force or violence against a
8 customer and limit the threatening of criminal
9 prosecution against a customer.

10 This bill would provide that the period of
11 the deferred presentment transaction would not
12 begin until the customer receives the funds from
13 the licensee.

14 This bill would require licensees to use a
15 database designated by the supervisor to ensure
16 that a customer does not have any deferred
17 presentment transaction over \$500.

18 This bill would require each licensee to
19 report within a specified time certain information
20 to the supervisor.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Sections 5-18A-2, 5-18A-12, 5-18A-13, and
27 5-18A-16 of the Code of Alabama 1975, relating to deferred

1 presentment transactions; to add the term "Principal Balance"
2 and define the term; to provide that a person who is not
3 exempted from the Deferred Presentment Services Act would be
4 subject to the provisions of this act; to provide that any
5 loan contract entered into in violation of the act would be
6 void; to impose limits on the amount of interest that could be
7 charged for a loan; to prohibit a licensee from extending a
8 loan to a customer who has an outstanding deferred presentment
9 transaction with a value of \$500 or more, who has six or more
10 deferred presentment transactions from all licensees in any
11 12-month period, an extended repayment with a licensee until
12 14 days after the plan is paid in full, or the customer or
13 their spouse or dependent is a member of the military; to
14 extend the time in which payment of a check may be deferred;
15 to provide that a licensee may not use or threaten force or
16 violence against a customer and limit the threatening of
17 criminal prosecution against a customer; to provide that the
18 period of the deferred presentment transaction would not begin
19 until the customer receives the funds from the licensee; to
20 require licensees to use a database designated by the
21 supervisor to ensure that a customer does not have any
22 deferred presentment transaction over \$500; and to require
23 each licensee to report with a specified time certain
24 information to the supervisor.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 5-18A-2, 5-18A-12, 5-18A-13, and
27 5-18A-16 of the Code of Alabama 1975, are amended to follows:

1 "§5-18A-2.

2 "As used in this chapter, the following terms shall
3 have the following meanings:

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

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

10 "~~(3)~~ (2) DEFERRED PRESENTMENT SERVICES. A
11 transaction pursuant to a written agreement involving the
12 following combination of activities in exchange for a fee:

13 "a. Accepting a check or authorization to debit a
14 checking account and, in connection with that acceptance,
15 advancing funds to the checking account holder.

16 "b. Holding the check or authorization to debit
17 checking account for a period of time prior to payment or
18 deposit.

19 "~~(4)~~ (3) DEPARTMENT. The State Banking Department.

20 "~~(5)~~ (4) LICENSEE. A person licensed to provide
21 deferred presentment services pursuant to this chapter.

22 "~~(6)~~ (5) PERSON. An individual, group of
23 individuals, partnership, association, corporation, or any
24 other business unit or legal entity.

25 "~~(7)~~ (6) ROLLOVER. Any deferred presentment
26 transaction where the transaction is not paid in full and the

1 licensee agrees to allow the customer to pay the fee only for
2 a new deferred presentment transaction.

3 "(7) PRINCIPAL BALANCE. The balance due and owed
4 exclusive of any interest, service charges, or other
5 loan-related charges.

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

8 "§5-18A-3.

9 "(a) On or after January 1, 2004, no person shall
10 engage, in whole or in part, through any method, including but
11 not limited to, mail, telephone, Internet, or in person, in
12 the business of deferred presentment services without having
13 first obtained a license from the supervisor. A separate
14 license shall be required for each location from which the
15 business is conducted.

16 "(b) Trust companies, life insurance companies, and
17 federally constituted agencies shall be exempt from licensing
18 under this chapter. Notwithstanding anything to the contrary
19 in this chapter, this chapter shall not apply to any of the
20 following entities, and each of these entities shall be exempt
21 from this chapter: Banks, credit unions, savings associations,
22 savings banks, and thrift institutions organized pursuant to
23 the laws of this state or any other state or the laws of the
24 United States and any parent of any of the foregoing entities.

25 "(c) This chapter shall have no application to
26 persons who do not engage in deferred presentment services.

1 "(d) A licensee or licensee's agent, not expressly
2 exempted in subsection (b), shall not engage in any device or
3 subterfuge intended to evade the requirements of this chapter
4 through any method including, but not limited to, in-person,
5 mail, telephone, Internet or any electronic means, including:

6 "(1) Offering, making, or assisting a borrower to
7 obtain a loan or brokering or acting as an agent for a third
8 party in such a transaction, regardless of whether approval,
9 acceptance or ratification is necessary to create a legal
10 obligation for the third party.

11 "(2) Disguising a short-term consumer loan as a
12 revolving line of credit, or making or assisting a borrower to
13 obtain a revolving line of credit for the purpose of avoiding
14 the requirements of this chapter.

15 "(e) Any loan contract entered into while in
16 violation of this section shall be void, and the lender shall
17 have no right to collect, receive, or retain any principal,
18 interest, or charges whatsoever. Additionally, a violation of
19 any provision of this section shall constitute a misdemeanor
20 and, upon conviction thereof, shall be punishable by a fine of
21 not more than five hundred dollars (\$500) nor less than one
22 hundred dollars (\$100), or by imprisonment for not more than
23 six months, or by both such fine and imprisonment in the
24 discretion of the court.

25 "\$5-18A-12.

26 "(a) Subject to the following subsections, every
27 licensee under this chapter may charge and collect a maximum

1 fee on any deferred presentment transaction not to exceed ~~17.5~~
2 ~~percent of the amount advanced~~ an annual percentage rate (APR)
3 of 36 percent. The rate charged on the outstanding balance
4 after maturity must not be greater than the rate charged
5 during the loan term. As specified by Section 5-18A-13(a)(1),
6 the ~~the~~ maximum aggregate amount that may be advanced to a
7 borrower, by any and all licensees, in any deferred
8 presentment transaction is five hundred dollars (\$500). To
9 ensure that this five hundred dollars (\$500) cap is not
10 violated, the licensee shall use the common database, as
11 explained in Section 5-18A-13 (p) and (q).

12 " (b) ~~Each licensee may renew or extend a deferred~~
13 ~~presentment transaction with the same customer no more than~~
14 ~~one additional time at this fee for a maximum of two~~
15 ~~continuous transactions. After two continuous transactions~~
16 ~~with the customer, the licensee shall not enter into a new~~
17 ~~deferred presentment transaction with that same customer until~~
18 ~~the next business day after the transaction amount is repaid~~
19 ~~in full. After the customer has redeemed the check in full~~
20 ~~with cash or guaranteed funds, the licensee has the same~~
21 ~~authority as any other licensee to enter into another~~
22 ~~agreement for deferred presentment services with the customer~~
23 ~~on another check. No licensee shall make, and no borrower~~
24 shall receive, a loan under this chapter that would cause the
25 borrower to have more than six loans in a 12-month period,
26 including rollover or refinancing of an existing loan. Any
27 loan made or collected in violation of this subsection is

1 void, and the licensee shall have no right to collect,
2 receive, or retain any principle, interest, fees, or other
3 charges.

4 "(c) After the ~~initial~~ loan period ~~and one rollover~~
5 ~~with the same customer,~~ the full outstanding amount of the
6 loan, including, but not limited to, held check or debt
7 authorization, shall become due. If the customer is unable to
8 repay the outstanding balance in full, the licensee ~~may~~ shall
9 offer the customer an extended repayment option of four equal
10 monthly installments of the remaining balance. The licensee
11 shall not commence any civil action to collect on a
12 transaction in default until written notice has been sent
13 notifying the customer of ~~his or her rights~~ default of the
14 extended repayment plan option. The notice shall be provided
15 in a separate document from the deferred presentment
16 transaction agreement, and shall include at least the
17 following statement, with the first sentence below in at least
18 16-point bold type and the remainder in at least 12-point bold
19 type, in a separate document accompanying the parties' written
20 agreement: "If you are unable to pay the full amount owed,
21 then you may repay by means of an extended repayment plan
22 (ERP). If you elect to exercise your ERP rights, then you
23 must, before your loan's due date, pay all accrued finance
24 charges, request an ERP and sign an amendment to this
25 agreement that sets out the ERP terms. The ERP terms will
26 allow you, at no cost, to repay this transaction in four
27 substantially equal installments over an aggregate term of 90

1 days. The lender may secure each ERP installment with a check
2 written by you. You may prepay an ERP in full at any time
3 without penalty. If you fail to pay the ERP when due, then the
4 ERP is terminated and the lender may immediately accelerate
5 and collect the unpaid transaction balance." If the customer
6 fails to exercise his or her rights within 15 days of the
7 notice, the licensee may commence action to collect on a
8 transaction in default.

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

23 "§5-18A-13.

24 "(a) A licensee may not knowingly enter into a
25 deferred presentment transaction with a customer in the
26 following circumstances: that has outstanding deferred

1 ~~presentment transactions from any lender at any location that~~
2 ~~exceeds five hundred dollars (\$500) for the term of the loan.~~

3 "(1) If that customer has an outstanding deferred
4 presentment transaction or transactions from any lender at any
5 location that, with an aggregate original principal value of
6 five hundred dollars (\$500) or more;

7 "(2) If engaging in that deferred deposit
8 transaction would result in a customer receiving more than six
9 deferred presentment transactions from all licensees in any
10 12-month period;

11 "(3) If that customer is in an extended repayment
12 plan with any licensee until 14 days after the plan is paid in
13 full; or

14 "(4) If that customer is a member of the military
15 services of the United States, their spouse or dependent,
16 unless in compliance with the Military Lending Act of 2007.

17 "(b) Before a licensee shall present for payment or
18 deposit a check or debit authorization accepted by the
19 licensee, the check shall be endorsed with the actual name
20 under which the licensee is doing business.

21 "(c) Any agreement for a deferred presentment
22 transaction shall be in writing and signed by the checking
23 account holder. The customer in a deferred presentment
24 contract shall have the right to redeem the check or debit
25 authorization from the licensee before the agreed date of
26 deposit upon payment to the licensee of the amount of the
27 contract. A licensee shall not defer presentment of any

1 personal check or debit authorization for less than ~~10 days~~
2 ~~nor more than 31~~ 30 calendar days after the date of the
3 contract.

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

15 "(e) A licensee shall comply with all provisions of
16 state and federal law regarding cash transactions and cash
17 transaction reporting.

18 "(f) A licensee shall provide each prospective
19 customer, before consummation of the deferred presentment
20 agreement, with a written explanation in clear, understandable
21 language of the fees to be charged by the licensee and the
22 date on which the check or debit authorization may be
23 deposited or presented by the licensee. All fees associated
24 with deferred presentment transactions shall be disclosed as
25 finance charges as required by the Federal Truth-in-Lending
26 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and
27 Official Staff Commentary as adopted by the Federal Reserve

1 Board. The supervisor may promulgate rules establishing
2 additional requirements in order to assure complete and
3 accurate disclosures. The customer, prior to entering into a
4 deferred presentment transaction, shall receive and
5 acknowledge an accurate and complete notification and
6 disclosure of the itemized and total amounts of all fees and
7 other costs that will or potentially could be imposed as a
8 result of such agreement. This subsection shall not create any
9 inference that a particular method of disclosure was required
10 prior to June 20, 2003. All customers will be notified in
11 clear and conspicuous language that the deferred presentment
12 check or debit authorization after one rollover, will be
13 subject to terms and conditions described in subsection (c) of
14 Section 5-18A-12. The terms and conditions of the transaction
15 shall be provided in the notification.

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

22 "(h) If a check is returned to the licensee from a
23 payer financial institution due to insufficient funds or a
24 closed account, the licensee shall have the right to all civil
25 remedies allowed by law, except as provided for in Section
26 5-18A-12, to collect the check and may recover court costs and
27 a reasonable attorney's fee. The attorney's fee may not exceed

1 15 percent of the face amount of the check or debit
2 authorization. No individual who issues a personal check or
3 authorizes a debit for his or her checking account to a
4 licensee for the purpose of a deferred presentment transaction
5 under this chapter shall be convicted pursuant to Section
6 13A-9-13.1, if the check or debit authorization is returned
7 due to insufficient funds. Checks or debit authorizations
8 ~~returned to the licensee due to~~ knowingly authorized by a
9 customer using a closed account may be collected pursuant to
10 Section 13A-9-13.1.

11 "(i) No licensee may alter or delete the date on any
12 check accepted by the licensee. No licensee may accept an
13 undated check or debit authorization or a check or debit
14 authorization dated on a date other than the date on which the
15 licensee accepts the check or debit authorization.

16 "(j) No licensee shall engage in unfair or deceptive
17 acts, practices, or advertising in the conduct of the licensed
18 business.

19 "(k) No licensee shall require a customer to provide
20 security for the transaction or require the customer to
21 provide a guaranty from another person.

22 "(l) No licensee shall use or threaten force or
23 violence against any customer. Nor may any licensee threaten
24 criminal prosecution, unless the customer's actions are in
25 clear violation of a criminal statute pursuant to Section
26 13A-9-13.1. No licensee shall trespass on a customer's
27 property, use printed materials that resemble legal process,

1 make collection attempts at unreasonable hours of the night,
2 or deny the customer use of personal property not secured by
3 the loan.

4 ~~"(i) (m) Each licensee shall pay all proceeds for~~
5 ~~any deferred presentment transaction in cash and directly to~~
6 ~~the customer. Each licensee may pay all proceeds for a~~
7 ~~deferred presentment transaction in cash directly to the~~
8 ~~customer or electronic funds transfer directly to the customer~~
9 ~~or customer's account. The period of the deferred presentment~~
10 ~~transaction shall not begin until the funds are received by~~
11 ~~the customer. There shall be no additional charge related to~~
12 ~~the payment of the proceeds of any deferred presentment~~
13 ~~transaction.~~

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

22 ~~"(n) (o) A deferred presentment provider shall not~~
23 ~~redeem, extend, or otherwise consolidate a deferred deposit~~
24 ~~agreement with the proceeds of another deferred presentment~~
25 ~~transaction made by the same or affiliated deferred~~
26 ~~presentment provider except as expressly provided in Section~~
27 ~~5-18A-12.~~

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

6 "(q) The supervisor shall implement a common
7 database with real-time access through an Internet connection
8 for deferred presentment providers, pursuant to this section.
9 The database shall be accessible to the supervisor and the
10 deferred presentment providers to verify whether any deferred
11 presentment transactions are outstanding for a particular
12 person and whether the person is currently in an extended
13 repayment plan. Deferred presentment providers shall submit
14 the data before entering into each deferred presentment
15 transaction in the format as the supervisor shall require by
16 rule, including the customer's name, Social Security number or
17 employment authorization alien number, address driver's
18 license number, amount of principal, amount of interest and
19 any fees, annual percentage rate, date of transaction, date
20 the transaction is scheduled to be paid in full, date that the
21 transaction is closed, whether the loan was secured using
22 Social Security or disability benefits as proof of income,
23 details on any extended repayment plan entered into for the
24 transaction, and any additional information as is required by
25 the supervisor. The supervisor may impose a fee not to exceed
26 one dollar (\$1) per transaction for data required to be
27 submitted by a deferred presentment provider; however, this

1 fee may not increase the fee paid by the borrower above the
2 maximum provided by law. A deferred presentment provider may
3 rely on the information contained in the database as accurate
4 and is not subject to any administrative penalty or civil
5 liability as a result of relying on inaccurate information
6 contained in the database. The supervisor may adopt rules to
7 administer and enforce this section and insure that the
8 database is used by deferred presentment providers pursuant to
9 this section.

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

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

22 "§5-18A-16.

23 "If, after a hearing, the supervisor finds that a
24 person has violated this chapter or any administrative
25 regulation issued pursuant to this chapter, the supervisor may
26 take any one or more of the following enforcement actions:

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

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

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

9 "(4) Notwithstanding other violations, it is a
10 violation of this chapter for any person to do any of the
11 following:

12 "a. Directly or indirectly employ any scheme,
13 device, or artifice to defraud or mislead any borrower, to
14 defraud or mislead any lender, or to defraud or mislead any
15 person.

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

20 "(5) In addition to any other penalties, any
21 transaction in violation of subsection (4) shall be
22 uncollectable and unenforceable."

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