

1 SB449
2 152101-1
3 By Senators Marsh, Beason, and Holtzclaw
4 RFD: Banking and Insurance
5 First Read: 16-APR-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 prohibit a licensee from
21 extending a loan to a customer who has an
22 outstanding deferred presentment transaction with a
23 value of \$500 or more, who has six or more deferred
24 presentment transactions from all licensees in any
25 12-month period, an extended repayment with a
26 licensee until 14 days after the plan is paid in

1 full, or the customer or their spouse or dependent
2 is a member of the military.

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

7 This bill would provide that the period of
8 the deferred presentment transaction would not
9 begin until the customer receives the funds from
10 the licensee.

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

15 This bill would require each licensee to
16 report within a specified time certain information
17 to the supervisor.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 To amend Sections 5-18A-2, 5-18A-12, 5-18A-13, and
24 5-18A-16 of the Code of Alabama 1975, relating to deferred
25 presentment transactions; to add the term "Principal Balance"
26 and define the term; to provide that a person who is not
27 exempted from the Deferred Presentment Services Act would be

1 subject to the provisions of this act; to provide that any
2 loan contract entered into in violation of the act would be
3 void; to prohibit a licensee from extending a loan to a
4 customer who has an outstanding deferred presentment
5 transaction with a value of \$500 or more, who has six or more
6 deferred presentment transactions from all licensees in any
7 12-month period, an extended repayment with a licensee until
8 14 days after the plan is paid in full, or the customer or
9 their spouse or dependent is a member of the military; to
10 provide that a licensee may not use or threaten force or
11 violence against a customer and limit the threatening of
12 criminal prosecution against a customer; to provide that the
13 period of the deferred presentment transaction would not begin
14 until the customer receives the funds from the licensee; to
15 require licensees to use a database designated by the
16 supervisor to ensure that a customer does not have any
17 deferred presentment transaction over \$500; and to require
18 each licensee to report with a specified time certain
19 information to the supervisor.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 5-18A-2, 5-18A-12, 5-18A-13, and
22 5-18A-16 of the Code of Alabama 1975, are amended to 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
8 transaction pursuant to a written agreement involving the
9 following combination of activities in exchange for a fee:

10 "a. Accepting a 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 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
20 individuals, partnership, association, corporation, or any
21 other business unit or legal entity.

22 "~~(7)~~ (6) ROLLOVER. Any deferred presentment
23 transaction where the transaction is not paid in full and the
24 licensee agrees to allow the customer to pay the fee only for
25 a new deferred presentment transaction.

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

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

6 "§5-18A-3.

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

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

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

25 "(d) A licensee or licensee's agent, not expressly
26 exempted in subsection (b), shall not engage in any device or
27 subterfuge intended to evade the requirements of this chapter

1 through any method including, but not limited to, in-person,
2 mail, telephone, Internet or any electronic means, including:

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

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

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

22 "§5-18A-12.

23 "(a) Subject to the following subsections, every
24 licensee under this chapter may charge and collect a maximum
25 fee on any deferred presentment transaction not to exceed ~~17.5~~
26 12.5 percent of the amount advanced. ~~The~~ As specified by
27 Section 5-18A-13(a) (1), the maximum aggregate amount that may

1 be advanced to a borrower, by any and all licensees, in any
2 deferred presentment transaction is five hundred dollars
3 (\$500). To ensure that this five hundred dollars (\$500) cap is
4 not violated, the licensee shall use the common database, as
5 explained in Section 5-18A-13 (p) and (q).

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

25 " (c) After the ~~initial~~ loan period ~~and one rollover~~
26 ~~with the same customer,~~ the full outstanding amount of the
27 loan, including, but not limited to, held check or debt

1 authorization, shall become due. If the customer is unable to
2 repay the outstanding balance in full, the licensee ~~may~~ shall
3 offer the customer an extended repayment option of four equal
4 monthly installments of the remaining balance. The licensee
5 shall not commence any civil action to collect on a
6 transaction in default until written notice has been sent
7 notifying the customer of ~~his or her rights~~ default of the
8 extended repayment plan option. The notice shall be provided
9 in a separate document from the deferred presentment
10 transaction agreement, and shall include at least the
11 following statement, with the first sentence below in at least
12 16-point bold type and the remainder in at least 12-point bold
13 type, in a separate document accompanying the parties' written
14 agreement: "If you are unable to pay the full amount owed,
15 then you may repay by means of an extended repayment plan
16 (ERP). If you elect to exercise your ERP rights, then you
17 must, before your loan's due date, pay all accrued finance
18 charges, request an ERP and sign an amendment to this
19 agreement that sets out the ERP terms. The ERP terms will
20 allow you, at no cost, to repay this transaction in four
21 substantially equal installments over an aggregate term of 90
22 days. The lender may secure each ERP installment with a check
23 written by you. You may prepay an ERP in full at any time
24 without penalty. If you fail to pay the ERP when due, then the
25 ERP is terminated and the lender may immediately accelerate
26 and collect the unpaid transaction balance." If the customer
27 fails to exercise his or her rights within 15 days of the

1 notice, the licensee may commence action to collect on a
2 transaction in default.

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

17 "§5-18A-13.

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

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

1 "(2) If engaging in that deferred deposit
2 transaction would result in a customer receiving more than six
3 deferred presentment transactions from all licensees in any
4 12-month period;

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

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

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~~ 14 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~~ knowingly authorized by a
2 customer using a closed account may be collected pursuant to
3 Section 13A-9-13.1.

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

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

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

15 "(l) No licensee shall use or threaten force or
16 violence against any customer. Nor may any licensee threaten
17 criminal prosecution, unless the customer's actions are in
18 clear violation of a criminal statute pursuant to Section
19 13A-9-13.1. No licensee shall trespass on a customer's
20 property, use printed materials that resemble legal process,
21 make collection attempts at unreasonable hours of the night,
22 or deny the customer use of personal property not secured by
23 the loan.

24 "~~(i)~~ (m) Each licensee shall pay all proceeds for
25 any deferred presentment transaction in cash and directly to
26 the customer. Each licensee may pay all proceeds for a
27 deferred presentment transaction in cash directly to the

1 customer or electronic funds transfer directly to the customer
2 or customer's account. The period of the deferred presentment
3 transaction shall not begin until the funds are received by
4 the customer. There shall be no additional charge related to
5 the payment of the proceeds of any deferred presentment
6 transaction.

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

15 ~~"(n)~~ (o) A deferred presentment provider shall not
16 redeem, extend, or otherwise consolidate a deferred deposit
17 agreement with the proceeds of another deferred presentment
18 transaction made by the same or affiliated deferred
19 presentment provider except as expressly provided in Section
20 5-18A-12.

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

26 "(q) The supervisor shall implement a common
27 database with real-time access through an Internet connection

1 for deferred presentment providers, pursuant to this section.
2 The database shall be accessible to the supervisor and the
3 deferred presentment providers to verify whether any deferred
4 presentment transactions are outstanding for a particular
5 person and whether the person is currently in an extended
6 repayment plan. Deferred presentment providers shall submit
7 the data before entering into each deferred presentment
8 transaction in the format as the supervisor shall require by
9 rule. The supervisor may impose a fee not to exceed one dollar
10 (\$1) per transaction for data required to be submitted by a
11 deferred presentment provider. A deferred presentment provider
12 may rely on the information contained in the database as
13 accurate and is not subject to any administrative penalty or
14 civil liability as a result of relying on inaccurate
15 information contained in the database. The supervisor may
16 adopt rules to administer and enforce this section and insure
17 that the database is used by deferred presentment providers
18 pursuant to this section.

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

26 "(s) Using the information reported to the
27 supervisor under subsection (r) and the information contained

1 in the database, the supervisor shall make and publish
2 annually an analysis and recapitulation of such reports
3 regarding the utilization of deferred presentment services.

4 "§5-18A-16.

5 "(a) If, after a hearing, the supervisor finds that
6 a person has violated this chapter or any administrative
7 regulation issued pursuant to this chapter, the supervisor may
8 take any one or more of the following enforcement actions:

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

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

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

17 "(b) Notwithstanding other violations, it is a
18 violation of this chapter for any person to do any of the
19 following:

20 "(1) Directly or indirectly employ any scheme,
21 device, or artifice to defraud or mislead any borrower, to
22 defraud or mislead any lender, or to defraud or mislead any
23 person.

24 "(2) Engage in the business of deferred presentment
25 services with any person physically located in Alabama through
26 the use of the Internet, facsimile, telephone, kiosk, or other
27 means without obtaining a license pursuant to this chapter.

1 "(c) In addition to any other penalties, any
2 transaction in violation of subsection (4) shall be
3 uncollectable and unenforceable."

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