HB417

167073-1

By Representative Todd

RFD: Financial Services

First Read: 02-APR-15
SYNOPSIS:         Under existing law, deferred presentment transactions, commonly referred to as payday loans, are regulated by the State Banking Department pursuant to the Deferred Presentment Services Act. This bill would require licensees to use a database designated by the supervisor to ensure that a customer does not have any deferred presentment transaction over $500.

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Section 5-18A-13 of the Code of Alabama 1975, is amended as follows:


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

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

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

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

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

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

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

"(h) If a check is returned to the licensee from a payer financial institution due to insufficient funds or a closed account, the licensee shall have the right to all civil remedies allowed by law, except as provided for in Section 5-18A-12, to collect the check and may recover court costs and a reasonable attorney's fee. The attorney's fee may not exceed 15 percent of the face amount of the check or debit authorization. No individual who issues a personal check or authorizes a debit for his or her checking account to a licensee for the purpose of a deferred presentment transaction under this chapter shall be convicted pursuant to Section 13A-9-13.1, if the check or debit authorization is returned due to insufficient funds. Checks or debit authorizations returned to the licensee due to a closed account may be collected pursuant to Section 13A-9-13.1.
"(i) No licensee may alter or delete the date on any check accepted by the licensee. No licensee may accept an undated check or debit authorization or a check or debit authorization dated on a date other than the date on which the licensee accepts the check or debit authorization.

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

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

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

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

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

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

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

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

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

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