

1 SB110
2 164518-2
3 By Senator Orr
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 03-MAR-15

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8 SYNOPSIS: Under existing law, a license is required
9 for any person engaged in the business of deferred
10 presentment services.

11 This bill would expand the licensure
12 requirement for persons engaged in the business of
13 deferred presentment services to include services
14 offered by mail, telephone, Internet, mobile device
15 application, or in person.

16 This bill would increase the nonrefundable
17 license fee and provide that one half of the
18 increase would be paid to the State Banking
19 Department and one half to the General Fund.

20 This bill would provide that a person who
21 attempts to evade the licensure requirement for the
22 business of deferred presentment services would be
23 guilty of a criminal offense and would provide
24 penalties.

25 This bill would further regulate the
26 business of deferred presentment services by
27 regulating the fees, interest, number of loans,

1 term of a loan, finance charges, and repayment of a
2 loan.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 5-18A-3, 5-18A-6, 5-18A-12, and
2 5-18A-13, Code of Alabama 1975, relating to the business of
3 deferred presentment services; to increase the nonrefundable
4 license fee and provide that one half of the increase would be
5 paid to the State Banking Department and one half to the
6 General Fund; to expand the licensure requirements for any
7 person engaged in the business of deferred presentment
8 services to include services offered by mail, telephone,
9 Internet, mobile device application, or in person; to provide
10 that a person who attempts to evade the licensure requirement
11 for the business of deferred presentment services would be
12 guilty of a criminal offense; to provide penalties; to further
13 regulate the business of deferred presentment services by
14 regulating the fees, interest, number of loans, term of a
15 loan, finance charges, and repayment of a loan; and in
16 connection therewith would have as its purpose or effect the
17 requirement of a new or increased expenditure of local funds
18 within the meaning of Amendment 621 of the Constitution of
19 Alabama of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of Alabama of 1901,
21 as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 5-18A-3, 5-18A-6, 5-18A-12, and
24 5-18A-13, Code of Alabama 1975, are amended to read as
25 follows:

26 "§5-18A-3.

1 "(a) On or after January 1, 2004, no person shall
2 engage, in whole or in part, through any method, including,
3 but not limited to, mail, telephone, Internet, mobile device
4 application, or in person, in the business of deferred
5 presentment services without having first obtained a license
6 from the supervisor. A separate license shall be required for
7 each location from which the business is conducted.

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

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

19 "(d) A licensee or licensee's agent, not expressly
20 exempted in subsection (b), shall not engage in subterfuge
21 intended to evade the requirements of this chapter through any
22 method including:

23 "(1) Offering, making, or assisting a borrower to
24 obtain a loan or brokering or acting as an agent for a third
25 party in such a transaction, regardless of whether approval,
26 acceptance, or ratification is necessary to create a legal
27 obligation for the third party.

1 "(2) Disguising a short-term consumer loan as a
2 revolving line of credit or making or assisting a borrower to
3 obtain a revolving line of credit for the purpose of avoiding
4 the requirements of this chapter.

5 "(e) Any loan contract entered into while in
6 violation of this section shall be void, and the lender shall
7 have no right to collect, receive, or retain any principal,
8 interest, or charges whatsoever. Further, any person in
9 violation of any provision of this section shall be guilty of
10 a misdemeanor, and, upon conviction thereof, shall be
11 punishable by a fine of not more than five hundred dollars
12 (\$500) nor less than one hundred dollars (\$100), or by
13 imprisonment for not more than six months, or by both such
14 fine and imprisonment in the discretion of the court.

15 "\$5-18A-6.

16 "Each application for a license shall be accompanied
17 by all of the following:

18 "(1) A nonrefundable license fee of five hundred
19 dollars (\$500) payable to the department and a fee of five
20 hundred dollars (\$500) payable to the General Fund for each
21 location, office, or branch at which the applicant conducts
22 business. The license fees are subject to increase by the
23 supervisor through regulation.

24 "(2) A nonrefundable application investigation fee
25 of one hundred dollars (\$100).

26 "(3) A financial statement meeting the requirements
27 of subdivision (1) of subsection (a) of Section 5-18A-4.

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).~~ the following:

8 "(1) A maximum finance charge on any deferred
9 presentment transaction not to exceed 45 percent per annum.

10 "(2) An origination fee up to 20 percent of the
11 first three hundred dollars (\$300) loaned plus 7.5 percent of
12 any amount loaned in excess of three hundred dollars (\$300).

13 "(3) A monthly maintenance fee for each outstanding
14 loan, not to exceed seven dollars fifty cents (\$7.50) per one
15 hundred dollars (\$100) loaned, up to 30 days after the date of
16 the original loan transaction. The monthly maintenance fee may
17 be charged for each month the load is outstanding 30 days
18 after the date of the original loan transaction.

19 "(4) All fees and finance charges shall be included
20 in the calculation of the annual percentage rate, as
21 determined pursuant to Section 107 of the Truth in Lending
22 Act, 15 U.S.C. 1601, et seq., and disclosed in the written
23 agreement. The maximum amount that may be advanced in any
24 deferred presentment transaction is five hundred dollars
25 (\$500). Nothing in this subsection shall preclude a lender
26 from making more than one loan to a customer so long as the
27 total amount financed does not exceed five hundred dollars

1 (\$500) at any one time and there is at least a 30-day waiting
2 period between loans.

3 "(b) The finance charge of up to 45 percent per
4 annum may be assessed only on the amount financed, five
5 hundred dollars (\$500) or less. It may not be assessed on the
6 origination or monthly maintenance fees.

7 "(c) The minimum loan term shall be six months from
8 the loan transaction date and payable in substantially equal
9 monthly payments. Interest-only or otherwise front-loaded
10 payments are prohibited. The lender shall accept prepayment
11 from a consumer prior to the maturity date and shall not
12 charge the consumer a penalty if the consumer opts to prepay
13 the loan. If the loan is prepaid prior to maturity of the loan
14 term, the lender shall refund all funds due to the customer
15 within three business days including, but not limited to, a
16 prorated portion of the finance charge and origination fee
17 based upon the ratio of time left before maturity of the loan
18 term.

19 ~~"(b)(d) Each licensee may renew or extend a deferred~~
20 ~~presentment transaction with the same customer no more than~~
21 ~~one additional time at this fee for a maximum of two~~
22 ~~continuous transactions. After two continuous transactions~~
23 ~~with the customer, the licensee shall not enter into a new~~
24 ~~deferred presentment transaction with that same customer until~~
25 ~~the next business day after the transaction amount is repaid~~
26 ~~in full. After the customer has redeemed the check in full~~
27 ~~with cash or guaranteed funds, the licensee has the same~~

1 ~~authority as any other licensee to enter into another~~
2 ~~agreement for deferred presentment services with the customer~~
3 ~~on another check for any amount up to five hundred dollars~~
4 ~~(\$500) and assess an additional finance charge not to exceed~~
5 ~~an annual percentage rate of 45 percent. Upon renewal of a~~
6 ~~deferred presentment services transaction, the lender may not~~
7 ~~charge an origination fee or monthly maintenance fees. If the~~
8 ~~amount owed exceeds five hundred dollars (\$500), the lender~~
9 ~~may refinance up to five hundred dollars (\$500) and the~~
10 ~~customer must pay any remaining amount. If the deferred~~
11 ~~presentment transaction is renewed prior to the maturity date,~~
12 ~~the lender shall refund to the customer a prorated portion of~~
13 ~~the finance charge based upon the ratio of time left before~~
14 ~~the maturity of the loan.~~

15 ~~"(e) All applications for payday loans and payday~~
16 ~~loan agreements shall clearly and conspicuously disclose that~~
17 ~~under Alabama law loans may be structured to be repaid in a~~
18 ~~single installment or multiple installments. If a lender does~~
19 ~~not offer both installments options, it shall clearly and~~
20 ~~conspicuously disclose in its applications and loan agreements~~
21 ~~the options it provides.~~

22 ~~"(c) After the initial loan period and one rollover~~
23 ~~with the same customer, the full outstanding amount of the~~
24 ~~loan, including, but not limited to, held check or debt~~
25 ~~authorization, shall become due. If the customer is unable to~~
26 ~~repay the outstanding balance in full, the licensee may offer~~
27 ~~the customer an extended repayment option of four equal~~

1 ~~monthly installments of the remaining balance. The licensee~~
2 ~~shall not commence any civil action to collect on a~~
3 ~~transaction in default until written notice has been sent~~
4 ~~notifying the customer of his or her rights. If the customer~~
5 ~~fails to exercise his or her rights within 15 days of the~~
6 ~~notice, the licensee may commence action to collect on a~~
7 ~~transaction in default.~~

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

21 "§5-18A-13.

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

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

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

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

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

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

26 "(g) A licensee shall issue a copy of the written
27 agreement to each person for whom a licensee defers deposit of

1 a check or debit authorization. The written agreement shall
2 include the information described in subsection ~~(f)~~ and the
3 ~~extended repayment program described in subsection (c) of~~
4 ~~Section 5-18A-12~~ (g).

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

21 "(i) No licensee may alter or delete the date on any
22 check accepted by the licensee. No licensee may accept an
23 undated check or debit authorization or a check or debit
24 authorization dated on a date other than the date on which the
25 licensee accepts the check or debit authorization.

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

4 "(k) No licensee shall ~~require a customer to provide~~
5 ~~security for the transaction or require the customer to~~
6 ~~provide a guaranty from another person~~ use or threaten force
7 or violence against any customer nor may any licensee threaten
8 criminal prosecution, unless the customer's actions are in
9 clear violation of a criminal statute pursuant to Section
10 13A-9-13.1. No licensee shall trespass on a customer's
11 property, use printed materials that resemble legal process,
12 make collection attempts at unreasonable hours of the night,
13 or deny the customer use of personal property not secured by
14 the loan.

15 "(l) Each licensee ~~shall~~ may pay all proceeds ~~for~~
16 ~~any~~ from a deferred presentment transaction in cash, money
17 order, or stored value card and directly to the customer or
18 electronic funds transfer directly to the customer or
19 customer's account. The customer may not be charged an
20 additional fee for cashing the lender's business instrument or
21 for negotiation forms of the loan proceeds other than cash.
22 The period of the deferred presentment transaction shall not
23 begin until the funds are received by the customer. There
24 shall be no additional charge related to the payment of the
25 proceeds of any deferred presentment transaction.

26 "(m) Every licensee shall conspicuously and
27 continuously display a schedule of all fees, charges, and

1 penalties for all services provided by the licensee. The
2 schedule of fees shall contain the following statement in all
3 capital letters and in 12-point type or larger immediately
4 above the space for the borrower's signature: NOTICE: FEES FOR
5 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER
6 THAN FOR OTHER TYPES OF LOANS.

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

13 "(o) The licensee shall use a third party private
14 sector database, where available, to ensure that the customer
15 does not have outstanding deferred presentment transactions
16 that exceed five hundred dollars (\$500)."

17 Section 2. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended, because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

25 Section 3. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

