SB110

164518-2

By Senator Orr

RFD: Fiscal Responsibility and Economic Development

First Read: 03-MAR-15
SYNOPSIS: Under existing law, a license is required for any person engaged in the business of deferred presentment services.

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

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

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

This bill would further regulate the business of deferred presentment services by regulating the fees, interest, number of loans,
1 term of a loan, finance charges, and repayment of a
2 loan.

Amendment 621 of the Constitution of Alabama
3 of 1901, now appearing as Section 111.05 of the
4 Official Recompilation of the Constitution of
5 Alabama of 1901, as amended, prohibits a general
6 law whose purpose or effect would be to require a
7 new or increased expenditure of local funds from
8 becoming effective with regard to a local
governmental entity without enactment by a 2/3 vote
9 unless: it comes within one of a number of
10 specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.
14
15 The purpose or effect of this bill would be
16 to require a new or increased expenditure of local
17 funds within the meaning of the amendment. However,
18 the bill does not require approval of a local
19 governmental entity or enactment by a 2/3 vote to
20 become effective because it comes within one of the
21 specified exceptions contained in the amendment.

A BILL

TO BE ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"S5-18A-3.
"(a) On or after January 1, 2004, no person shall engage, in whole or in part, through any method, including, but not limited to, mail, telephone, Internet, mobile device application, or in person, in the business of deferred presentment services without having first obtained a license from the supervisor. A separate license shall be required for each location from which the business is conducted.

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

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

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

"(1) Offering, making, or assisting a borrower to obtain a loan or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance, or ratification is necessary to create a legal obligation for the third party.
"(2) Disguising a short-term consumer loan as a revolving line of credit or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of this chapter.

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

"§5-18A-6.

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

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

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

"(3) A financial statement meeting the requirements of subdivision (1) of subsection (a) of Section 5-18A-4.
§5-18A-12.

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

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

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

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

"(4) All fees and finance charges shall be included in the calculation of the annual percentage rate, as determined pursuant to Section 107 of the Truth in Lending Act, 15 U.S.C. 1601, et seq., and disclosed in the written agreement. The maximum amount that may be advanced in any deferred presentment transaction is five hundred dollars ($500). Nothing in this subsection shall preclude a lender from making more than one loan to a customer so long as the total amount financed does not exceed five hundred dollars.
($500) at any one time and there is at least a 30-day waiting period between loans.

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

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

"(d) Each licensee may renew or extend a deferred presentment transaction with the same customer no more than one additional time at this fee for a maximum of two continuous transactions. After two continuous transactions with the customer, the licensee shall not enter into a new deferred presentment transaction with that same customer until the next business day after the transaction amount is repaid in full. After the customer has redeemed the check in full with cash or guaranteed funds, the licensee has the same
authority as any other licensee to enter into another agreement for deferred presentment services with the customer on another check for any amount up to five hundred dollars ($500) and assess an additional finance charge not to exceed an annual percentage rate of 45 percent. Upon renewal of a deferred presentment services transaction, the lender may not charge an origination fee or monthly maintenance fees. If the amount owed exceeds five hundred dollars ($500), the lender may refinance up to five hundred dollars ($500) and the customer must pay any remaining amount. If the deferred presentment transaction is renewed prior to the maturity date, the lender shall refund to the customer a prorated portion of the finance charge based upon the ratio of time left before the maturity of the loan.

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

“(c) After the initial loan period and one rollover with the same customer, the full outstanding amount of the loan, including, but not limited to, held check or debt authorization, shall become due. If the customer is unable to repay the outstanding balance in full, the licensee may offer the customer an extended repayment option of four equal
monthly installments of the remaining balance. The licensee shall not commence any civil action to collect on a transaction in default until written notice has been sent notifying the customer of his or her rights. If the customer fails to exercise his or her rights within 15 days of the notice, the licensee may commence action to collect on a transaction in default.

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


"(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 (g).

"(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 knowingly authorized by a customer using 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, use or threaten force or violence against any customer nor may any licensee threaten criminal prosecution, unless the customer's actions are in clear violation of a criminal statute pursuant to Section 13A-9-13.1. No licensee shall trespass on a customer's property, use printed materials that resemble legal process, make collection attempts at unreasonable hours of the night, or deny the customer use of personal property not secured by the loan.

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

(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, to ensure that the customer
does not have outstanding deferred presentment transactions
that exceed five hundred dollars ($500)."

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

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