

1 SB446
2 168548-2
3 By Senators Whatley and Sanford
4 RFD: Banking and Insurance
5 First Read: 05-MAY-15

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8 SYNOPSIS: Under existing law, the maximum amount that
9 may be advanced in any deferred presentment
10 transaction is \$500.

11 This bill would increase the maximum amount
12 that may be advanced in any deferred presentment
13 transaction.

14 This bill would provide for a maximum fee
15 that may be charged for each licensee accessing the
16 statewide database.

17 This bill would establish an account within
18 the State Treasury to be known as the Alabama
19 Financial Education Endowment Fund to support
20 statewide financial education and consumer credit
21 building activities and programs.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Sections 5-18A-12 and 5-18A-13 of the Code
2 of Alabama 1975, relating to deferred presentment
3 transactions; to increase the maximum amount that may be
4 advanced in any deferred presentment transaction; to provide
5 for a maximum fee that may be charged for a licensee to access
6 the statewide database; and to add a new Section 5-18A-21.1 to
7 the Code of Alabama 1975, to establish an account within the
8 State Treasury to be known as the Alabama Financial Education
9 Endowment Fund to support statewide financial education and
10 consumer credit building activities and programs.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§5-18A-12.

15 "(a) Subject to the following subsections, every
16 licensee under this chapter may charge and collect a maximum
17 fee on any deferred presentment transaction not to exceed 17.5
18 percent of the amount advanced. The maximum amount that may be
19 advanced in any deferred presentment transaction is ~~five~~
20 ~~hundred dollars (\$500)~~ one thousand dollars (\$1,000).

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

1 in full. After the customer has redeemed the check in full
2 with cash or guaranteed funds, the licensee has the same
3 authority as any other licensee to enter into another
4 agreement for deferred presentment services with the customer
5 on another check.

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

19 "(d) If there are insufficient funds to pay a check
20 on the date of presentment, the licensee may charge a fee
21 authorized in Section 8-8-15; however, only one such fee may
22 be collected with respect to any particular transaction. No
23 other fees or charges of any kind may be charged or collected
24 from customers except those authorized herein. No person shall
25 use any device, subterfuge, or pretense whatsoever, including,
26 but not limited to, catalog sales, discount vouchers, Internet
27 instant-rebate programs, phone card clubs, or any agreement,

1 including agreements with affiliated persons, with the intent
2 to obtain greater charges than would otherwise be authorized
3 by this chapter.

4 "§5-18A-13.

5 "(a) A licensee may not knowingly enter into a
6 deferred presentment transaction with a customer that has
7 outstanding deferred presentment transactions from any lender
8 at any location that exceeds ~~five hundred dollars (\$500)~~ one
9 thousand dollars (\$1,000) for the term of the loan.

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

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

23 "(d) The licensee shall notify the district attorney
24 for the circuit in which the check was received within five
25 business days after being advised by the payer financial
26 institution that a check or draft has been altered, forged,
27 stolen, obtained through fraudulent or illegal means,

1 negotiated without proper legal authority, or represents the
2 proceeds of illegal activity. If a check or draft is returned
3 to the licensee by the payer financial institution for any of
4 these reasons, the licensee shall not release the check,
5 draft, or money order without the consent of the district
6 attorney or other investigating law enforcement authority.

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

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

1 inference that a particular method of disclosure was required
2 prior to June 20, 2003. All customers will be notified in
3 clear and conspicuous language that the deferred presentment
4 check or debit authorization after one rollover, will be
5 subject to terms and conditions described in subsection (c) of
6 Section 5-18A-12. The terms and conditions of the transaction
7 shall be provided in the notification.

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

14 "(h) If a check is returned to the licensee from a
15 payer financial institution due to insufficient funds or a
16 closed account, the licensee shall have the right to all civil
17 remedies allowed by law, except as provided for in Section
18 5-18A-12, to collect the check and may recover court costs and
19 a reasonable attorney's fee. The attorney's fee may not exceed
20 15 percent of the face amount of the check or debit
21 authorization. No individual who issues a personal check or
22 authorizes a debit for his or her checking account to a
23 licensee for the purpose of a deferred presentment transaction
24 under this chapter shall be convicted pursuant to Section
25 13A-9-13.1, if the check or debit authorization is returned
26 due to insufficient funds. Checks or debit authorizations

1 returned to the licensee due to a closed account may be
2 collected pursuant to Section 13A-9-13.1.

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

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

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

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

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

25 "(n) A deferred presentment provider shall not
26 redeem, extend, or otherwise consolidate a deferred deposit
27 agreement with the proceeds of another deferred presentment

1 transaction made by the same or affiliated deferred
2 presentment provider except as expressly provided in Section
3 5-18A-12.

4 "(o) The licensee shall use a third party private
5 sector database, where available, to ensure that the customer
6 does not have outstanding deferred presentment transactions
7 that exceed ~~five hundred dollars (\$500)~~ one thousand dollars
8 (\$1,000).

9 "(p) Notwithstanding any law or rule to the
10 contrary, a licensee may not be charged more than sixty-two
11 cents (\$0.62) for each use or access to the State Banking
12 Department maintained database and the charge may not be
13 assessed by a licensee as an additional fee to the borrower."

14 Section 2. A new Section 5-18A-21.1 is added to the
15 Code of Alabama 1975, to read as follows:

16 §5-18A-21.1.

17 (a) There is established the Alabama Financial
18 Education Endowment Fund within the State Treasury. The fund
19 shall be administered by the department to support statewide
20 financial education and consumer credit building activities
21 and programs, including, but not limited to, the following:

22 (1) Production and dissemination of approved
23 financial education material at licensed locations.

24 (2) Advertising, marketing, and public awareness
25 campaigns to improve the credit profiles and credit scores of
26 consumers in this state.

1 (3) School and youth-based financial literacy and
2 capability.

3 (4) Credit boiling and credit repair.

4 (5) Financial coaching and consumer counseling.

5 (6) Bank account enrollment and incentives for
6 personal saving.

7 (7) Other consumer financial education and asset
8 building initiatives as is considered appropriate by the
9 finance commission.

10 (8) Online financial education programs.

11 (c) The database provider selected by the department
12 shall remit an amount equal to fifteen cents (\$0.15) per
13 transaction of the database fees collected pursuant to Section
14 5-18A-13 to the department for deposit into the fund. The
15 department may allocate additional money from the amount
16 collected from the database fees if the moneys in the fund are
17 not adequate to operate the programs and activities of the
18 fund.

19 (d) The department shall hold the funds received
20 under subsection (a) for deposit in an interest-bearing
21 deposit account. The funds in the account may be spent by the
22 department only for the purpose provided by this section.

23 (e) In implementing this section, the department may
24 solicit gifts, grants, and donations for additional funding
25 for the fund.

26 (f) The department may partner with other state
27 agencies and entities to implement this section.

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