SB446  
168548-2  
By Senators Whatley and Sanford  
RFD: Banking and Insurance  
First Read: 05-MAY-15
SYNOPSIS: Under existing law, the maximum amount that may be advanced in any deferred presentment transaction is $500.

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

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

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

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§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) one thousand dollars ($1,000).

(b) 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.

"(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) 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. 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) one thousand dollars ($1,000) 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
defferred 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, to ensure that the customer does not have outstanding deferred presentment transactions that exceed five hundred dollars ($500) one thousand dollars ($1,000).

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

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

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

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

(2) Advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in this state.
(3) School and youth-based financial literacy and capability.

(4) Credit boiling and credit repair.

(5) Financial coaching and consumer counseling.

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

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

(8) Online financial education programs.

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

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

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

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