By Representatives Garrett, Faulkner, Mooney, Scott, Boyd, Melton, Forte, Knight, Beech, McCampbell, Morrow, Lawrence, Clarke, Warren, Drummond, Fridy, Rowe, Shedd, Collins, Ledbetter and Pettus

RFD: Financial Services

First Read: 24-FEB-16
SYNOPSIS: Existing law regulates deferred presentment services.

This bill would allow the State Banking Department to require an applicant for a license to engage in deferred presentment services to apply through the Nationwide Multistate Licensing System and Registry and would require a license for each location at which deferred presentment loans are made.

This bill would require a licensee who offers deferred presentment services to offer an extended repayment option prior to the commencement of a civil action; would limit the fee that could be collected on a check returned for insufficient funds; would provide for when the period of the deferred presentment transaction begins and eliminate any additional charge related to the payment of the proceeds of any deferred presentment transaction; and would specify that a licensee must use the statewide database to ensure that a
customer does not have an outstanding deferred presentment transaction in excess of five hundred dollars ($500).

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 5-18A-3, 5-18A-12, and 5-18A-13 of the Code of Alabama 1975, relating to deferred presentment services; to allow the State Banking Department to require an applicant for a license to engage in deferred presentment services to apply through the Nationwide Multistate Licensing System and Registry and require a license for each location where deferred presentment loans are offered; to require a licensee who offers deferred presentment services to offers an extended repayment option prior to the commencement of a civil action; to limit the fee that could be collected on a check returned for insufficient funds; to provide for when the period of the deferred presentment transaction begins and eliminate any additional charge related to the payment of the proceeds of any deferred presentment transaction; and to specify that a licensee must use the statewide database to ensure that a customer does not have an outstanding deferred presentment transaction in excess of five hundred dollars ($500).

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 5-18A-3, 5-18A-12, and 5-18A-13 of the Code of Alabama 1975, are amended to read as follows:

"§5-18A-3.

"(a) On or after January 1, 2004, no person shall engage 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) The State Banking Department may require applicants to apply through the Nationwide Multistate Licensing System and Registry. In order to carry out this requirement, the supervisor is authorized to participate in the Nationwide Multistate Licensing System and Registry. For this purpose, the supervisor may establish by rule or order such requirements as necessary, including, but not limited to, background checks as permitted through the Nationwide Multistate Licensing System and Registry."
Multistate Licensing System and Registry, civil or administrative records, credit history, any other information deemed necessary by the Nationwide Multistate Licensing System and Registry, and the payment of fees to apply for or renew licenses through the Nationwide Multistate Licensing System and Registry.

"(e) Each location where deferred presentment loans are made must be licensed. A location includes any location at which either of the following occurs:

"(1) A deferred presentment loan application is provided, taken, or completed in person.

"(2) A potential customer obtains information about the terms and conditions of deferred presentment loans, including by the use of the Internet, facsimile, telephone, kiosk, or other means.

"(f) Transactions entered without benefit of a license under this chapter are uncollectable and unenforceable.

§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 12.5 percent of the amount advanced. The maximum amount that may be advanced in any deferred presentment transaction is five hundred dollars ($500).

"(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 prior to the commencement of a civil action. 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 the extended repayment option. 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 after actual presentation to the financial institution or drawee obligated to pay the instrument. 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 30 days nor more than 45 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 may pay all proceeds for any a deferred presentment transaction in cash and directly to the customer or by electronic funds transfer directly to the customer or the customer's account. The period of the deferred presentment transaction does not begin until the funds are received by the customer. There may 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, the statewide database as selected by the State Banking Department to ensure that the customer does not have outstanding deferred presentment transactions that exceed five hundred dollars ($500).

"(p) A licensee shall not knowingly enter into a deferred presentment transaction with a customer who has entered into six transactions within a 12-month period. A licensee shall not knowingly enter into a deferred presentment transaction with a customer that has already had loans totaling two thousand five hundred dollars ($2,500) in
principal in a 12-month period. A licensee shall use the same
database specified in subsection (o) to verify a customer's
eligibility to receive a loan."

Section 2. 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.