SB91
164518-5
By Senator Orr
RFD: Banking and Insurance
First Read: 02-FEB-16
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:

"§5-18A-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.

"(f) 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, 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.

"§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) 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). A monthly fee of no more than seven
dollars ($7) per one hundred dollars ($100) originally
borrowed. The monthly fee shall be charged no more than once
per month and no more than six times per loan, including
renewals.

"(b) All fees shall be included.

"(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.

"(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 based upon the ratio of
time left before maturity of the loan term.
(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.

(d) 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 installment 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)(e) 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
defered 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
defered 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
defered 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 shall pay all proceeds for

any 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, 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).

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.
Senate

Read for the first time and referred to the Senate committee on Banking and Insurance................. Q2-FEB-16

Read for the second time and placed on the calendar.......................................................... 17-FEB-16

Read for the third time and passed as amended .... Q5-APR-16

Yeas 28
Nays 1

Patrick Harris
Secretary