

1 SB91
2 164518-5
3 By Senator Orr
4 RFD: Banking and Insurance
5 First Read: 02-FEB-16

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 5-18A-3, 5-18A-6, 5-18A-12, and
12 5-18A-13, Code of Alabama 1975, relating to the business of
13 deferred presentment services; to increase the nonrefundable
14 license fee and provide that one half of the increase would be
15 paid to the State Banking Department and one half to the
16 General Fund; to expand the licensure requirements for any
17 person engaged in the business of deferred presentment
18 services to include services offered by mail, telephone,
19 Internet, mobile device application, or in person; to provide
20 that a person who attempts to evade the licensure requirement
21 for the business of deferred presentment services would be
22 guilty of a criminal offense; to provide penalties; to further
23 regulate the business of deferred presentment services by
24 regulating the fees, interest, number of loans, term of a
25 loan, finance charges, and repayment of a loan; and in
26 connection therewith would have as its purpose or effect the
27 requirement of a new or increased expenditure of local funds

1 within the meaning of Amendment 621 of the Constitution of
2 Alabama of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of Alabama of 1901,
4 as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 5-18A-3, 5-18A-6, 5-18A-12, and
7 5-18A-13, Code of Alabama 1975, are amended to read as
8 follows:

9 "§5-18A-3.

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

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

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

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

5 "(1) Offering, making, or assisting a borrower to
6 obtain a loan or brokering or acting as an agent for a third
7 party in such a transaction, regardless of whether approval,
8 acceptance, or ratification is necessary to create a legal
9 obligation for the third party.

10 "(2) Disguising a short-term consumer loan as a
11 revolving line of credit or making or assisting a borrower to
12 obtain a revolving line of credit for the purpose of avoiding
13 the requirements of this chapter.

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

24 "(f) The State Banking Department may require
25 applicants to apply through the Nationwide Multistate
26 Licensing System and Registry. In order to carry out this
27 requirement, the supervisor is authorized to participate in

1 the Nationwide Multistate Licensing System and Registry. For
2 this purpose, the supervisor may establish by rule or order
3 such requirements as necessary, including, but not limited to,
4 background checks as permitted through the Nationwide
5 Multistate Licensing System and Registry, civil or
6 administrative records, credit history, any other information
7 deemed necessary by the Nationwide Multistate Licensing System
8 and Registry, and the payment of fees to apply for or renew
9 licenses through the Nationwide Multistate Licensing System
10 and Registry.

11 "§5-18A-6.

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

14 "(1) A nonrefundable license fee of five hundred
15 dollars (\$500) for each location, office, or branch at which
16 the applicant conducts business. The license fees are subject
17 to increase by the supervisor through regulation.

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

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

22 "§5-18A-12.

23 "(a) Subject to the following subsections, every
24 licensee under this chapter may charge and collect ~~a maximum~~
25 ~~fee on any deferred presentment transaction not to exceed 17.5~~
26 ~~percent of the amount advanced. The maximum amount that may be~~
27 ~~advanced in any deferred presentment transaction is five~~

1 hundred dollars (\$500). a monthly fee of no more than seven
2 dollars (\$7) per one hundred dollars (\$100) originally
3 borrowed. The monthly fee shall be charged no more than once
4 per month and no more than six times per loan, including
5 renewals.

6 "(b) All fees shall be included.

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

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

1 ~~"(b) Each licensee may renew or extend a deferred~~
2 ~~presentment transaction with the same customer no more than one~~
3 ~~additional time at this fee for a maximum of two continuous~~
4 ~~transactions. After two continuous transactions with the~~
5 ~~customer, the licensee shall not enter into a new deferred~~
6 ~~presentment transaction with that same customer until the next~~
7 ~~business day after the transaction amount is repaid in full.~~
8 ~~After the customer has redeemed the check in full with cash or~~
9 ~~guaranteed funds, the licensee has the same authority as any~~
10 ~~other licensee to enter into another agreement for deferred~~
11 ~~presentment services with the customer on another check.~~

12 "(d) All applications for payday loans and payday
13 loan agreements shall clearly and conspicuously disclose that
14 under Alabama law loans may be structured to be repaid in a
15 single installment or multiple installments. If a lender does
16 not offer both installment options, it shall clearly and
17 conspicuously disclose in its applications and loan agreements
18 the options it provides.

19 ~~"(c) After the initial loan period and one rollover~~
20 ~~with the same customer, the full outstanding amount of the~~
21 ~~loan, including, but not limited to, held check or debt~~
22 ~~authorization, shall become due. If the customer is unable to~~
23 ~~repay the outstanding balance in full, the licensee may offer~~
24 ~~the customer an extended repayment option of four equal~~
25 ~~monthly installments of the remaining balance. The licensee~~
26 ~~shall not commence any civil action to collect on a~~
27 ~~transaction in default until written notice has been sent~~

1 ~~notifying the customer of his or her rights. If the customer~~
2 ~~fails to exercise his or her rights within 15 days of the~~
3 ~~notice, the licensee may commence action to collect on a~~
4 ~~transaction in default.~~

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

18 "§5-18A-13.

19 "(a) A licensee may not knowingly enter into a
20 deferred presentment transaction with a customer that has
21 outstanding deferred presentment transactions from any lender
22 at any location that exceeds five hundred dollars (\$500) for
23 the term of the loan.

24 "(b) Before a licensee shall present for payment or
25 deposit a check or debit authorization accepted by the
26 licensee, the check shall be endorsed with the actual name
27 under which the licensee is doing business.

1 "(c) Any agreement for a deferred presentment
2 transaction shall be in writing and signed by the checking
3 account holder. The customer in a deferred presentment
4 contract shall have the right to redeem the check or debit
5 authorization from the licensee before the agreed date of
6 deposit upon payment to the licensee of the amount of the
7 contract. ~~A licensee shall not defer presentment of any
8 personal check or debit authorization for less than 10 days
9 nor more than 31 calendar days after the date of the contract.~~

10 "(d) The licensee shall notify the district attorney
11 for the circuit in which the check was received within five
12 business days after being advised by the payer financial
13 institution that a check or draft has been altered, forged,
14 stolen, obtained through fraudulent or illegal means,
15 negotiated without proper legal authority, or represents the
16 proceeds of illegal activity. If a check or draft is returned
17 to the licensee by the payer financial institution for any of
18 these reasons, the licensee shall not release the check,
19 draft, or money order without the consent of the district
20 attorney or other investigating law enforcement authority.

21 "(e) A licensee shall comply with all provisions of
22 state and federal law regarding cash transactions and cash
23 transaction reporting.

24 "(f) A licensee shall provide each prospective
25 customer, before consummation of the deferred presentment
26 agreement, with a written explanation in clear, understandable
27 language of the fees to be charged by the licensee and the

1 date on which the check or debit authorization may be
2 deposited or presented by the licensee. All fees associated
3 with deferred presentment transactions shall be disclosed as
4 finance charges as required by the Federal Truth-in-Lending
5 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and
6 Official Staff Commentary as adopted by the Federal Reserve
7 Board. The supervisor may promulgate rules establishing
8 additional requirements in order to assure complete and
9 accurate disclosures. The customer, prior to entering into a
10 deferred presentment transaction, shall receive and
11 acknowledge an accurate and complete notification and
12 disclosure of the itemized and total amounts of all fees and
13 other costs that will or potentially could be imposed as a
14 result of such agreement. This subsection shall not create any
15 inference that a particular method of disclosure was required
16 prior to June 20, 2003. All customers will be notified in
17 clear and conspicuous language that the deferred presentment
18 check or debit authorization ~~after one rollover,~~ will be
19 subject to terms and conditions described in subsection (c) of
20 Section 5-18A-12. The terms and conditions of the transaction
21 shall be provided in the notification.

22 "(g) A licensee shall issue a copy of the written
23 agreement to each person for whom a licensee defers deposit of
24 a check or debit authorization. The written agreement shall
25 include the information described in subsection ~~(f) and the~~
26 ~~extended repayment program described in subsection (c) of~~
27 ~~Section 5-18A-12~~ (g).

1 "(h) If a check is returned to the licensee from a
2 payer financial institution due to insufficient funds or a
3 closed account, the licensee shall have the right to all civil
4 remedies allowed by law, except as provided for in Section
5 5-18A-12, to collect the check and may recover court costs and
6 a reasonable attorney's fee. The attorney's fee may not exceed
7 15 percent of the face amount of the check or debit
8 authorization. No individual who issues a personal check or
9 authorizes a debit for his or her checking account to a
10 licensee for the purpose of a deferred presentment transaction
11 under this chapter shall be convicted pursuant to Section
12 13A-9-13.1, if the check or debit authorization is returned
13 due to insufficient funds. Checks or debit authorizations
14 ~~returned to the licensee due to~~ knowingly authorized by a
15 customer using a closed account may be collected pursuant to
16 Section 13A-9-13.1.

17 "(i) No licensee may alter or delete the date on any
18 check accepted by the licensee. No licensee may accept an
19 undated check or debit authorization or a check or debit
20 authorization dated on a date other than the date on which the
21 licensee accepts the check or debit authorization.

22 "(j) No licensee shall engage in unfair or deceptive
23 acts, practices, or advertising in the conduct of the licensed
24 business.

25 "(k) No licensee shall ~~require a customer to provide~~
26 ~~security for the transaction or require the customer to~~
27 ~~provide a guaranty from another person~~ use or threaten force

1 or violence against any customer nor may any licensee threaten
2 criminal prosecution, unless the customer's actions are in
3 clear violation of a criminal statute pursuant to Section
4 13A-9-13.1. No licensee shall trespass on a customer's
5 property, use printed materials that resemble legal process,
6 make collection attempts at unreasonable hours of the night,
7 or deny the customer use of personal property not secured by
8 the loan.

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

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

1 "(n) A deferred presentment provider shall not
2 redeem, extend, or otherwise consolidate a deferred deposit
3 agreement with the proceeds of another deferred presentment
4 transaction made by the same or affiliated deferred
5 presentment provider except as expressly provided in Section
6 5-18A-12.

7 "(o) The licensee shall use ~~a third party private~~
8 ~~sector database, where available,~~ the statewide database as
9 selected by the State Banking Department to ensure that the
10 customer does not have outstanding deferred presentment
11 transactions that exceed five hundred dollars (\$500)."

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

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

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Senate

Read for the first time and referred to the Senate
committee on Banking and Insurance..... 02-FEB-16

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

Read for the third time and passed as amended 05-APR-16

Yeas 28
Nays 1

Patrick Harris
Secretary