SB404

185932-1

By Senator Whatley

RFD: Banking and Insurance

First Read: 27-APR-17
SYNOPSIS: Under existing law, a person who engages in the business of deferred presentment services must be licensed by the State Banking Department. Under existing law, when a deferred presentment services transaction becomes due, the licensee may renew or extend the transaction for one additional term. After one renewal or extension, the licensee may not enter into a new transaction with the customer until the next business day after the previous transaction is paid in full. Under existing law, if the customer is unable to pay upon the expiration of the initial term and one renewal or extension, the licensee may offer an extended repayment plan of four equal monthly installments.

This bill would clarify that a person may not engage in the business of deferred presentment services with a consumer in this state by mail, telephone, over the Internet, or in person without a license, and any transaction in violation is void.
This bill would remove the provision authorizing one renewal or extension of a deferred presentment transaction and specify that the licensee could not enter into a new transaction with the customer until at least 48 hours after the previous transaction is paid in full.

This bill would provide for a free extended repayment plan if the customer is unable to pay at the end of the term of the transaction or if the customer's check or debit authorization is returned for any reason. This bill would allow the customer to request a repayment plan once in a 12-month period. This bill would require a customer participating in the repayment plan to also participate in a financial literary and education program or financial counseling program and to produce documentation of completion of such a program before entering into a new deferred presentment transaction. This bill would allow the licensee to access and collect a late charge and would prohibit any licensee from entering into a new transaction with a customer under an extended repayment plan.

This bill would require a licensee who offers other installment loan products to inform a customer of the availability of these products once the customer has successfully used and repaid six
transactions in a 12-month period. This bill would also prohibit a licensee from using the proceeds of a loan made under the Small Loan Act or the Alabama Consumer Credit Act to repay a deferred presentment services transaction.

This bill would allow a licensee to enter into a deferred presentment transaction with a customer who has made 12 or more transactions in the previous 12 months only after 14 days have passed since the previous transaction is paid in full.

A BILL
TO BE ENTITLED
AN ACT
Relating to deferred presentment services; to amend Sections 5-18A-2, 5-18A-3, 5-18A-12, and 5-18A-13, Code of Alabama 1975; to clarify that no person may engage in the business of deferred presentment services by mail, telephone, over the Internet, or in person without a license; to specify that certain transactions in violation are void; to provide for hours of operation of a deferred presentment services business; to prohibit renewal or extension of a deferred presentment transaction at the expiration of the initial term; to provide further for a repayment plan; to limit the extension of a new deferred presentment services transaction
until a certain time after repayment and the extension of a 
new transaction while the customer is utilizing a repayment 
plan; to require a licensee to notify the customer of the 
availability of other products in certain circumstances; and 
to limit the number of deferred presentment transactions that 
may be offered to a customer.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 5-18A-2, 5-18A-3, 5-18A-12, and 
5-18A-13, Code of Alabama 1975, are amended to read as 
follows:

"§5-18A-2.

"As used in this chapter, the following terms shall 
have the following meanings:

"(1) CHECK. A debit authorization or a check signed 
by the maker and made payable to a person licensed under this 
chapter.

"(2) CONTINUOUS TRANSACTION. To extend a deferred 
presentment transaction with the same account without 
redemption in full with cash or guaranteed funds.

"(3) DEFERRED PRESENTMENT SERVICES. A transaction 
pursuant to a written agreement involving the following 
combination of activities in exchange for a fee:

"a. Accepting a check or authorization to debit a 
checking account and, in connection with that acceptance, 
advancing funds to the checking account holder."
"b. Holding the check or authorization to debit checking account for a period of time prior to payment or deposit.

"(4)(3) DEPARTMENT. The State Banking Department.

"(5)(4) LICENSEE. A person licensed to provide deferred presentment services pursuant to this chapter.

"(6)(5) PERSON. An individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

"(7) ROLLOVER. Any deferred presentment transaction where the transaction is not paid in full and the licensee agrees to allow the customer to pay the fee only for a new deferred presentment transaction.

"(8)(6) SUPERVISOR. The Supervisor of the Bureau of Loans or his or her designee.

"§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, 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) Any deferred presentment transaction entered into 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. Provided, however,
that none of the clearing houses, as defined in Section 7-4-104(a) (4), or processing or other banks, as defined in Section 7-4-105, shall have any liability for processing or handling any check or item associated with the transaction.

"(c) 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.

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

"(e) It is a violation of this chapter for any person to engage in the business of deferred presentment services with any person located in Alabama through the use of the Internet, facsimile, telephone, kiosk, or any other means without obtaining a license pursuant to this chapter. Any transaction made without a license required under this chapter shall be 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 17.5 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 customer until the next business day after the customer's previous 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.
"(c)(1) On or before the maturity date of the loan, if the customer advises the licensee that he or she cannot repay the loan in full, the licensee shall offer the customer the option to convert to a free extended repayment plan, repayable within a 60-day period. The licensee may not charge interest or fees on the extended repayment plan loan except for the late fee provided in this subsection. Under the free extended repayment plan, the initial repayment installment shall be due on a date that is no sooner than the number of days in the original term of the loan. Subsequent installment payments shall be determined based on the number of days in the original term. The borrower, at his or her option, may repay the loan in less than 60 days. A borrower may request only one mandatory extended repayment plan in a 12-month period; however, a licensee may offer additional no-cost repayment plan options at its discretion.

"(2) If a borrower exercises his or her option to use a repayment plan under this section, the licensee shall provide the borrower with financial literacy and education materials provided by a third party or shall refer the borrower to a financial counseling program approved by the department at no cost to the borrower. The licensee shall maintain records showing it has provided financial literacy and education materials or referral of financial counseling as required by this section. The department shall promulgate rules and procedures to effect the provisions of this section."
"(3) A borrower may not enter into a new deferred presentment transaction with a licensee while under an extended repayment plan. Once an extended repayment plan loan is in effect, if the borrower defaults on making timely installment repayments, the licensee may collect a late charge of eighteen dollars ($18); provided, a late charge may be assessed only once on any missed payment.

"(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) 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 14 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 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 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 5-10A-12.

"(o) The licensee shall use a the state approved 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).

"(p) If the licensee offers other installment loan products, it shall inform the customer of the availability of
those installment loan products after the customer has
successfully used and repaid six deferred presentment
transactions in the past 12-month period from the original
date of the first deferred presentment transaction. A licensee
may not use the proceeds of a deferred presentment transaction
to repay an existing installment loan made under the Alabama
Small Loan Act or the Alabama Consumer Credit Act.

"(q) Once a customer has entered into 12
transactions within the previous 12 months, the licensee shall
not enter into a new deferred presentment transaction with the
same customer until 14 days after the customer's previous
transaction amount is repaid in full. Subsequent transactions
for the remainder of the 12-month period shall be subject to
subsection (b) of Section 5-18A-12."

Section 2. This act shall become effective on
January 1, 2018.