SB138

189589-1

By Senators Orr, Holtzclaw, Williams and Smitherman

RFD: Banking and Insurance

First Read: 11-JAN-18
SYNOPSIS: Under existing law, the term of a deferred presentment transaction is between 10 and 31 calendar days.

This bill would set the term of all deferred presentment transactions at 30 calendar days.

A BILL
TO BE ENTITLED
AN ACT

Relating to deferred presentment transactions; to amend Section 5-18A-13, Code of Alabama 1975; to set the term of all deferred presentment transactions at 30 calendar days.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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


"(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 presentation of any
personal check or debit authorization for less than 10 days
nor more than 30 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
defered 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
Section 2. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.