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3 SENATE BANKING AND INSURANCE COMMITTEE SUBSTITUTE FOR SB284
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8 SYNOPSIS: Under existing law, no person may engage in
9 the business of deferred presentment services
10 without first obtaining a license from the State
11 Banking Department.

12 This bill would specifically prohibit
13 engaging in deferred presentment services by
14 offering these such services by mail, telephone,
15 Internet, and mobile device application, as well as
16 in person.

17 Under existing law, if a borrower is unable
18 to repay the outstanding balance at the end of the
19 term, the licensee may offer the customer an
20 extended repayment plan of four equal monthly
21 installments of the remaining balance. The licensee
22 must provide written notice to a customer in
23 default before commencing a civil action to
24 collect.

25 This bill would require the licensee to
26 provide an extended repayment plan of three equal

1 monthly installments of the unpaid balance if a
2 check or debit authorization is returned or if the
3 customer advises the licensee that the customer is
4 unable to repay the amount in full. This bill would
5 prohibit the licensee from commencing a collection
6 action until the expiration of the extended
7 repayment term.

8 Under existing law, the term of a deferred
9 presentment transaction is between 10 and 31 days.
10 Under existing law, a borrower may renew a deferred
11 presentment transaction no more than once, and, if,
12 after one renewal, the borrower is unable to repay,
13 the deferred presentment services provider must
14 allow the borrower to repay in four equal monthly
15 installments.

16 This bill would set the term of all deferred
17 presentment transactions at 30 days and one
18 three-month extended repayment period. This bill
19 would prohibit a licensee from engaging in certain
20 actions in an attempt to collect on a transaction.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

1 Relating to deferred presentment services
2 transactions; to amend Sections 5-18A-3, 5-18A-12, and
3 5-18A-13 of the Code of Alabama 1975, to provide further for
4 deferred presentment transactions; to provide further for
5 licensing of deferred presentment providers; to further
6 specify a term for deferred presentment services transactions;
7 to provide further for installment plans for repayments; and
8 to prohibit a deferred presentment services licensee from
9 engaging in certain actions to collect on a transaction.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§5-18A-3.

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

22 "(b) Trust companies, life insurance companies, and
23 federally constituted agencies shall be exempt from licensing
24 under this chapter. Notwithstanding anything to the contrary
25 in this chapter, this chapter shall not apply to any of the
26 following entities, and each of these entities shall be exempt

1 from this chapter: Banks, credit unions, savings associations,
2 savings banks, and thrift institutions organized pursuant to
3 the laws of this state or any other state or the laws of the
4 United States and any parent of any of the foregoing entities.

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

7 "(d) Any loan contract entered into in violation of
8 this section shall be void, and the lender shall have no right
9 to collect, receive, or retain any principal, interest, or
10 charges whatsoever.

11 "§5-18A-12.

12 "(a) Subject to the following subsections, every
13 licensee under this chapter may charge and collect a maximum
14 fee on any deferred presentment transaction not to exceed 17.5
15 percent of the amount advanced. The maximum amount that may be
16 advanced in any deferred presentment transaction is five
17 hundred dollars (\$500).

18 "~~(b) Each licensee may renew or extend a deferred~~
19 ~~presentment transaction with the same customer no more than~~
20 ~~one additional time at this fee for a maximum of two~~
21 ~~continuous transactions. After two continuous transactions~~
22 ~~with the customer, the licensee shall not enter into a new~~
23 ~~deferred presentment transaction with that same customer until~~
24 ~~the next business day after the transaction amount is repaid~~
25 ~~in full. After the customer has redeemed the check in full~~
26 ~~with cash or guaranteed funds, the licensee has the same~~

1 ~~authority as any other licensee to enter into another~~
2 ~~agreement for deferred presentment services with the customer~~
3 ~~on another check.~~

4 ~~"(c) After the initial loan period and one rollover~~
5 ~~with the same customer, the full outstanding amount of the~~
6 ~~loan, including, but not limited to, held check or debt~~
7 ~~authorization, shall become due. (b) If the customer is unable~~
8 ~~to repay the outstanding balance in full, either by~~
9 ~~declaration to the licensee or otherwise evidenced by default~~
10 ~~such as a check or debit authorization returned for~~
11 ~~insufficient funds, the licensee may offer the customer an~~
12 ~~extended repayment option of four shall extend the loan for~~
13 ~~three months requiring the borrower to pay three equal monthly~~
14 ~~installments of the remaining balance. The licensee shall~~
15 ~~charge no more than five percent of the outstanding balance~~
16 ~~per month during the extended repayment period. The licensee~~
17 ~~shall not commence any civil action to collect on a~~
18 ~~transaction in default until ~~written notice has been sent~~~~
19 ~~notifying the customer of his or her rights. If the customer~~
20 ~~fails to exercise his or her rights within 15 days of the~~
21 ~~notice, the licensee may commence action to collect on a~~
22 ~~transaction in default the expiration of the mandatory~~
23 ~~extended loan period.~~

24 ~~"(d) (c) If there are insufficient funds to pay a~~
25 ~~check on the date of presentment, the licensee may charge a~~
26 ~~fee authorized in Section 8-8-15; however, only one such fee~~

1 may be collected with respect to any particular ~~transaction~~
2 deferred presentment services transaction, regardless of the
3 number of payments owed. No other fees or charges of any kind
4 may be charged or collected from customers except those
5 authorized herein. No person shall use any device, subterfuge,
6 or pretense whatsoever, including, but not limited to, catalog
7 sales, discount vouchers, Internet instant-rebate programs,
8 phone card clubs, or any agreement, including agreements with
9 affiliated persons, with the intent to obtain greater charges
10 than would otherwise be authorized by this chapter.

11 "§5-18A-13.

12 "(a) A licensee may not knowingly enter into a
13 deferred presentment transaction with a customer that has
14 outstanding deferred presentment transactions from any lender
15 at any location that exceeds five hundred dollars (\$500) for
16 the term of the loan.

17 "(b) Before a licensee shall present for payment or
18 deposit a check or debit authorization accepted by the
19 licensee, the check shall be endorsed with the actual name
20 under which the licensee is doing business.

21 "(c) Any agreement for a deferred presentment
22 transaction shall be in writing and signed by the checking
23 account holder. The customer in a deferred presentment
24 contract shall have the right to redeem the check or debit
25 authorization from the licensee before the agreed date of
26 deposit upon payment to the licensee of the amount of the

1 ~~contract. A licensee shall not defer presentment of any~~
2 ~~personal check or debit authorization for less than 10 days~~
3 ~~nor more than 31 calendar days after the date of the contract~~
4 The term of a deferred presentment services transaction shall
5 be 30 calendar days, with an automatic three-month extension
6 if the balance remains unpaid at the expiration of the
7 original 30-day term.

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

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

22 "(f) A licensee shall provide each prospective
23 customer, before consummation of the deferred presentment
24 agreement, with a written explanation in clear, understandable
25 language of the fees to be charged by the licensee and the
26 date on which the check or debit authorization may be

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

24 "(g) A licensee shall issue a copy of the written
25 agreement to each person for whom a licensee defers deposit of
26 a check or debit authorization. The written agreement shall

1 include the information described in subsection (f) ~~and the~~
2 ~~extended repayment program described in,~~ including the terms
3 of any automatic extension under subsection (c) of Section
4 5-18A-12.

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

21 "(i) No licensee may alter or delete the date on any
22 check accepted by the licensee. No licensee may accept an
23 undated check or debit authorization or a check or debit
24 authorization dated on a date other than the date on which the
25 licensee accepts the check or debit authorization.

1 "(j) No licensee shall engage in unfair or deceptive
2 acts, practices, or advertising in the conduct of the licensed
3 business.

4 "~~(k) No licensee shall require a customer to provide~~
5 ~~security for the transaction or require the customer to~~
6 ~~provide a guaranty from another person~~ use or threaten force
7 or violence against any customer. No licensee shall threaten a
8 customer with criminal prosecution, unless the customer's
9 actions are in clear violation of a criminal statute pursuant
10 to Section 13A-9-13.1, relating to negotiating a worthless
11 instrument.

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

23 "(m) Every licensee shall conspicuously and
24 continuously display a schedule of all fees, charges, and
25 penalties for all services provided by the licensee. The
26 schedule of fees shall contain the following statement in all

1 capital letters and in 12-point type or larger immediately
2 above the space for the borrower's signature: NOTICE: FEES FOR
3 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER
4 THAN FOR OTHER TYPES OF LOANS.

5 "(n) A deferred presentment provider shall not
6 redeem, extend, or otherwise consolidate a deferred deposit
7 agreement with the proceeds of another deferred presentment
8 transaction made by the same or affiliated deferred
9 presentment provider except as expressly provided in Section
10 5-18A-12.

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

16 Section 2. This act shall become effective on the
17 August 1, 2017.