

1 SB138
2 189589-1
3 By Senators Orr, Holtzclaw, Williams and Smitherman
4 RFD: Banking and Insurance
5 First Read: 11-JAN-18

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8 SYNOPSIS: Under existing law, the term of a deferred
9 presentment transaction is between 10 and 31
10 calendar days.

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

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14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to deferred presentment transactions; to
19 amend Section 5-18A-13, Code of Alabama 1975; to set the term
20 of all deferred presentment transactions at 30 calendar days.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§5-18A-13.

25 "(a) A licensee may not knowingly enter into a
26 deferred presentment transaction with a customer that has
27 outstanding deferred presentment transactions from any lender

1 at any location that exceeds five hundred dollars (\$500) for
2 the term of the loan.

3 "(b) Before a licensee shall present for payment or
4 deposit a check or debit authorization accepted by the
5 licensee, the check shall be endorsed with the actual name
6 under which the licensee is doing business.

7 "(c) Any agreement for a deferred presentment
8 transaction shall be in writing and signed by the checking
9 account holder. The customer in a deferred presentment
10 contract shall have the right to redeem the check or debit
11 authorization from the licensee before the agreed date of
12 deposit upon payment to the licensee of the amount of the
13 contract. A licensee shall ~~not~~ defer presentment of any
14 personal check or debit authorization for ~~less than 10 days~~
15 ~~nor more than 31~~ 30 calendar days after the date of the
16 contract.

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

1 "(e) A licensee shall comply with all provisions of
2 state and federal law regarding cash transactions and cash
3 transaction reporting.

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

1 Section 5-18A-12. The terms and conditions of the transaction
2 shall be provided in the notification.

3 "(g) A licensee shall issue a copy of the written
4 agreement to each person for whom a licensee defers deposit of
5 a check or debit authorization. The written agreement shall
6 include the information described in subsection (f) and the
7 extended repayment program described in subsection (c) of
8 Section 5-18A-12.

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

24 "(i) No licensee may alter or delete the date on any
25 check accepted by the licensee. No licensee may accept an
26 undated check or debit authorization or a check or debit

1 authorization dated on a date other than the date on which the
2 licensee accepts the check or debit authorization.

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

6 "(k) No licensee shall require a customer to provide
7 security for the transaction or require the customer to
8 provide a guaranty from another person.

9 "(l) Each licensee shall pay all proceeds for any
10 deferred presentment transaction in cash and directly to the
11 customer.

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

20 "(n) A deferred presentment provider shall not
21 redeem, extend, or otherwise consolidate a deferred deposit
22 agreement with the proceeds of another deferred presentment
23 transaction made by the same or affiliated deferred
24 presentment provider except as expressly provided in Section
25 5-18A-12.

26 "(o) The licensee shall use a third party private
27 sector database, where available, to ensure that the customer

1 does not have outstanding deferred presentment transactions
2 that exceed five hundred dollars (\$500)."

3 Section 2. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.