

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 5-18A-2, 5-18A-12 and 5-18A-13, Code of Alabama 1975, relating to the Deferred Presentment Services Act; to require licensees under the Act to formally present a check to the depository institution prior to imposition of the permissible “bad check” fee; to limit consecutive transactions; clarify the circumstances where a extended repayment plan must be offered; to require the Supervisor, Bureau of Loans to implement a common database to verify eligibility for loans under the Act; clarify and permit licensees to pay the proceeds of a transaction under the Act in cash, debit-card or electronic funds transfer; and provide for violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 5-18A-2, 5-18A-12 and 5-18A-13, 5-18A-16, 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 or renew a deferred presentment transaction with the same borrower ~~account without redemption in full with cash or guaranteed funds.~~ for another term. A deferred presentment transaction will not be continuous if there is at least one day from the time the previous transaction was paid in

full with cash or guaranteed funds and a new transaction was executed for the same borrower.

(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) Department. The State Banking Department.

(5) Licensee. A person licensed to provide deferred presentment services pursuant to this chapter.

(6) 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)~~ (7) Supervisor. The Supervisor of the Bureau of Loans or his or her designee.

“§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 same customer until the next business day after the transaction amount is repaid in full with cash or guaranteed funds. ~~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,~~ two continuous transactions, 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 shall ~~may~~ offer the customer an extended repayment option of four equal monthly installments of the remaining balance prior to the commencement of a civil action. 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 the extended repayment option ~~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.

(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 after actual presentment to the financial institution or drawee obligated to pay the instrument. 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.

“5-18A-13.

(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 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.~~ Each licensee may pay all proceeds for a deferred presentment transaction in cash directly to the customer or by debit-card or electronic funds transfer directly to the customer or customer's account. The period of the deferred presentment transaction shall not begin until the funds are received by the customer. There shall be no additional charge related to the payment of the proceeds of any deferred presentment transaction.

(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,~~ common database as designated by the Supervisor to ensure that the customer does not have outstanding deferred presentment transactions that exceed five hundred dollars (\$500).

(p) The Supervisor shall implement a common database with real-time access through an Internet connection for deferred presentment providers, as provided in this section. The database must be accessible to the Supervisor and the deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit such data accurately before entering into each deferred presentment transaction in such format as the Supervisor shall require by rule, including the customer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by the Supervisor. The Supervisor may impose a fee to licensees not to exceed \$1 per transaction for data required to be submitted by a deferred presentment provider; however, this fee may not increase the fee paid by the borrower above the maximum provide by law. A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative

penalty or civil liability as a result of relying on inaccurate information contained in the database. The Supervisor may adopt rules to administer and enforce the provisions of this section and to assure that the database is used by deferred presentment providers in accordance with this section.

“5-18A-16.

“If, after a hearing, the supervisor finds that a person has violated this chapter or any administrative regulation issued pursuant to this chapter, the supervisor may take any one or more of the following enforcement actions:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto.

(2) Require the refund of any fees collected by such person in violation of this chapter.

(3) Order the person to pay to the supervisor a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter.

(4) Notwithstanding other violations, it is a violation of this chapter for any person to:

a. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

b. Engage in the business of deferred presentment services with any person physically located in Alabama through use of the internet, facsimile, telephone, kiosk, or other means without obtaining license under this chapter.

(5) In addition to any other penalties, any transaction in violation of subsection 4 of this section is uncollectable and unenforceable.