

1 SB552  
2 99759-1  
3 By Senator Barron  
4 RFD: Banking and Insurance  
5 First Read: 27-MAR-08

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8 SYNOPSIS: Under existing law, the business of  
9 deferred presentment services is regulated and  
10 licensed by the state.

11 This bill would allow a consumer to rescind  
12 the payday loan transaction, provide further for  
13 rollover payday loans, allow consumers to request  
14 an extended payment plan, restrict payday loans to  
15 military personnel and their dependents, provide  
16 for a rebate of fees upon prepayment, and prohibit  
17 certain activities.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 To amend Sections 5-18A-12 and 5-18A-13, Code of  
24 Alabama 1975, relating to the business of deferred presentment  
25 services, to allow a consumer to rescind the payday loan  
26 transaction, provide further for rollover payday loans, allow  
27 consumers to request an extended payment plan, restrict payday

1 loans to military personnel and their dependents, provide for  
2 a rebate of fees upon prepayment, and prohibit certain  
3 activities.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§5-18A-12.

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

14 ~~"(b) Each licensee may renew or extend a deferred~~  
15 ~~presentment transaction with the same customer no more than~~  
16 ~~one additional time at this fee for a maximum of two~~  
17 ~~continuous transactions. After two continuous transactions~~  
18 ~~with the customer, the licensee shall not enter into a new~~  
19 ~~deferred presentment transaction with that same customer until~~  
20 ~~the next business day after the transaction amount is repaid~~  
21 ~~in full. After the customer has redeemed the check in full~~  
22 ~~with cash or guaranteed funds, the licensee has the same~~  
23 ~~authority as any other licensee to enter into another~~  
24 ~~agreement for deferred presentment services with the customer~~  
25 ~~on another check. A consumer shall have the right to rescind,~~  
26 ~~at no cost, the deferred presentment services transaction on~~  
27 ~~or before the close of the next business day following the~~

1 transaction. In order to rescind a deferred presentment  
2 services transaction, a consumer need only inform the  
3 licensee, in writing or in person, of the consumer's desire to  
4 rescind and return to the licensee cash in the amount equal to  
5 the amount financed on or before the close of the next  
6 business day following the transaction.

7 ~~"(c) After the initial loan period and one rollover~~  
8 ~~with the same customer, the full outstanding amount of the~~  
9 ~~loan, including, but not limited to, held check or debt~~  
10 ~~authorization, shall become due. If the customer is unable to~~  
11 ~~repay the outstanding balance in full, the licensee may offer~~  
12 ~~the customer an extended repayment option of four equal~~  
13 ~~monthly installments of the remaining balance. The licensee~~  
14 ~~shall not commence any civil action to collect on a~~  
15 ~~transaction in default until written notice has been sent~~  
16 ~~notifying the customer of his or her rights. If the customer~~  
17 ~~fails to exercise his or her rights within 15 days of the~~  
18 ~~notice, the licensee may commence action to collect on a~~  
19 ~~transaction in default. No licensee shall allow a consumer to~~  
20 ~~renew or rollover a deferred presentment services transaction~~  
21 ~~by paying only an additional fee to extend the due date of the~~  
22 ~~existing transaction.~~

23 "(d) Upon the prepayment in full of a deferred  
24 presentment transaction during the first 10 days of such  
25 transaction, the licensee shall refund any and all unearned  
26 charges by a method no less favorable to the consumer than the  
27 actuarial method. Should the consumer make prepayment after

1 the first 10 days of the transaction, the licensee shall not  
2 be required to make any refund.

3 "(e) A licensee must provide a consumer written  
4 notice of the consumer's right to request an extended payment  
5 plan (EPP) according to subsection (e) by displaying the  
6 following statement, in at least 10-point bold type, on the  
7 first page of the parties' written agreement: "At any time you  
8 are unable to pay the full amount owed under the deferred  
9 presentment services transaction, then you may repay this  
10 deferred presentment services transaction by means of an  
11 extended payment plan (EPP). If you elect to exercise your EPP  
12 rights, then you must, before this transaction's due date, pay  
13 all accrued finance charges, request an EPP, and sign an  
14 amendment to this agreement that memorializes the EPP terms.  
15 The EPP terms will allow you, at no cost, to repay this  
16 transaction in at least two equal installments over an  
17 aggregate term of 60 days. The lender may secure each EPP  
18 installment with a check written by you. You may prepay an EPP  
19 in full at any time without penalty. If you fail to pay the  
20 EPP when due, then the EPP is terminated and the lender may  
21 immediately accelerate and collect the unpaid transaction  
22 balance."

23 "(f) If a consumer is unable to pay on the due date  
24 the full amount owing under a deferred presentment services  
25 transaction with a licensee, then the consumer shall have the  
26 right to request in writing from such licensee an extended  
27 payment plan (EPP). A consumer who has requested in writing

1 from such licensee an EPP may repay the amount owed according  
2 to the following terms:

3 "(1) The consumer must request the EPP, in writing,  
4 before the due date of the transaction, pay all accrued  
5 finance charges, and sign an amendment to the parties' written  
6 agreement that memorializes the EPP terms.

7 "(2) The consumer shall agree not to enter into any  
8 additional deferred presentment services transactions during  
9 or for seven days following the payment plan term with any  
10 other licensee.

11 "(3) The EPP terms must allow the consumer, at no  
12 cost, to repay the deferred presentment services transaction  
13 in at least two equal installments over an aggregate term of  
14 60 days. The licensee may secure each EPP installment with a  
15 check written by the consumer. The consumer may prepay an EPP  
16 in full at any time without penalty. If the consumer fails to  
17 pay the EPP when due, then the EPP is terminated and the  
18 licensee may immediately accelerate and collect the unpaid  
19 transaction balance.

20 "(4) The licensee shall not charge a consumer any  
21 additional fee for utilizing an EPP.

22 "(d)(g) If there are insufficient funds to pay a  
23 check on the date of presentment, the licensee may charge a  
24 fee authorized in Section 8-8-15; however, only one such fee  
25 may be collected with respect to any particular transaction.  
26 No other fees or charges of any kind may be charged or  
27 collected from customers except those authorized herein. No

1 person shall use any device, subterfuge, or pretense  
2 whatsoever, including, but not limited to, catalog sales,  
3 discount vouchers, Internet instant-rebate programs, phone  
4 card clubs, or any agreement, including agreements with  
5 affiliated persons, with the intent to obtain greater charges  
6 than would otherwise be authorized by this chapter.

7 "§5-18A-13.

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

13 "(b) A licensee or affiliate shall not knowingly  
14 make a deferred presentment services transaction to a person  
15 who is an active duty member of the military services of the  
16 United States or the spouse or other dependent of an active  
17 duty member of the military services of the United States if  
18 compensation from military service is the sole source of  
19 income of the person.

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

24 "~~(c)~~(d) Any agreement for a deferred presentment  
25 transaction shall be in writing and signed by the checking  
26 account holder. The customer in a deferred presentment  
27 contract shall have the right to redeem the check or debit

1 authorization from the licensee before the agreed date of  
2 deposit upon payment to the licensee of the amount of the  
3 contract. A licensee shall not defer presentment of any  
4 personal check or debit authorization for less than 10 days  
5 nor more than 31 calendar days after the date of the contract.

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

17 ~~"(e)~~ (f) A licensee shall comply with all provisions  
18 of state and federal law regarding cash transactions and cash  
19 transaction reporting.

20 ~~"(f)~~ (g) A licensee shall provide each prospective  
21 customer, before consummation of the deferred presentment  
22 agreement, with a written explanation in clear, understandable  
23 language of the fees to be charged by the licensee and the  
24 date on which the check or debit authorization may be  
25 deposited or presented by the licensee. All fees associated  
26 with deferred presentment transactions shall be disclosed as  
27 finance charges as required by the Federal Truth-in-Lending



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

18 "~~(g)~~ (h) A licensee shall issue a copy of the written  
19 agreement to each person for whom a licensee defers deposit of  
20 a check or debit authorization. The written agreement shall  
21 include the information described in subsection ~~(f)~~ (g) and  
22 the extended repayment program described in subsection (c) of  
23 Section 5-18A-12.

24 "~~(h)~~ (i) If a check is returned to the licensee from  
25 a payer financial institution due to insufficient funds or a  
26 closed account, the licensee shall have the right to all civil  
27 remedies allowed by law, except as provided for in Section

1 5-18A-12, to collect the check and may recover court costs and  
2 a reasonable attorney's fee. The attorney's fee may not exceed  
3 15 percent of the face amount of the check or debit  
4 authorization. No individual who issues a personal check or  
5 authorizes a debit for his or her checking account to a  
6 licensee for the purpose of a deferred presentment transaction  
7 under this chapter shall be convicted pursuant to Section  
8 13A-9-13.1, if the check or debit authorization is returned  
9 due to insufficient funds. Checks or debit authorizations  
10 returned to the licensee due to a closed account may be  
11 collected pursuant to Section 13A-9-13.1.

12 ~~"(i)~~ (j) No licensee may alter or delete the date on  
13 any check accepted by the licensee. No licensee may accept an  
14 undated check or debit authorization or a check or debit  
15 authorization dated on a date other than the date on which the  
16 licensee accepts the check or debit authorization.

17 ~~"(j)~~ (k) No licensee shall engage in unfair or  
18 deceptive acts, practices, or advertising in the conduct of  
19 the licensed business.

20 ~~"(k)~~ (l) No licensee shall require a customer to  
21 provide security for the transaction or require the customer  
22 to provide a guaranty from another person.

23 ~~"(l)~~ (m) Each licensee shall pay all proceeds for any  
24 deferred presentment transaction in cash and directly to the  
25 customer.

26 ~~"(m)~~ (n) Every licensee shall conspicuously and  
27 continuously display a schedule of all fees, charges, and

1 penalties for all services provided by the licensee. The  
2 schedule of fees shall contain the following statement in all  
3 capital letters and in 12-point type or larger immediately  
4 above the space for the borrower's signature: NOTICE: FEES FOR  
5 DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER  
6 THAN FOR OTHER TYPES OF LOANS.

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

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

17 "(q) The licensee shall not participate in any of  
18 the following practices:

19 "(1) Knowingly use a store location, marketing,  
20 promotion, or advertising to target fixed income consumers.

21 "(2) Allow fixed income consumers to borrow amounts  
22 that may not be reasonably paid back.

23 "(3) Arrange depository accounts for consumers.

24 "(4) Use civil or criminal actions to collect from  
25 consumers whose only income is Social Security payments or  
26 disability benefits."

1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.