

1 SB381  
2 157962-2  
3 By Senator Beason  
4 RFD: Banking and Insurance  
5 First Read: 20-FEB-14

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8 SYNOPSIS: This bill would further license and regulate  
9 the title loan business.

10 This bill would provide definitions.

11 This bill would require licensure of title  
12 loan lenders and offices.

13 This bill would provide for charges,  
14 interest, and fees concerning title loans.

15 This bill would provide that a person who is  
16 exempted from the Deferred Presentment Services Act  
17 would be subject to the provisions of this act.

18 This bill would provide that any loan  
19 contract entered into in violation of this act  
20 would be void.

21 This bill would impose limits on the amounts  
22 of interest that could be charged for a loan; to  
23 prohibit a licensee from extending a loan to a  
24 customer who has an outstanding deferred  
25 presentment transaction with a value of five  
26 hundred dollars or more, who has six or more

1 deferred presentment transactions from all  
2 licensees in any 12-month period, an extended  
3 repayment with a licensee until 14 days after the  
4 plan is paid in full, or the customer or spouse or  
5 dependent of the customer is a member of the  
6 military.

7 This bill would extend the time in which  
8 payment of a check may be deferred and would  
9 provide that the period of the deferred presentment  
10 transaction would not begin until the customer  
11 receives the funds from the licensee.

12 This bill would require licensees to use a  
13 database designated by a supervisor to ensure that  
14 a customer does not have any deferred presentment  
15 transactions over five hundred dollars.

16 This bill would require each licensee to  
17 report within a specified time certain information  
18 to the supervisor.

19 This bill would license and regulate the  
20 title loan business.

21 This bill would require licensure of title  
22 loan lenders and offices and would provide for  
23 charges, interest, and fees concerning title loans.

24 This bill would provide for fines,  
25 penalties, and enforcement for violations.

1                   Amendment 621 of the Constitution of Alabama  
2                   of 1901, now appearing as Section 111.05 of the  
3                   Official Recompilation of the Constitution of  
4                   Alabama of 1901, as amended, prohibits a general  
5                   law whose purpose or effect would be to require a  
6                   new or increased expenditure of local funds from  
7                   becoming effective with regard to a local  
8                   governmental entity without enactment by a 2/3 vote  
9                   unless: it comes within one of a number of  
10                  specified exceptions; it is approved by the  
11                  affected entity; or the Legislature appropriates  
12                  funds, or provides a local source of revenue, to  
13                  the entity for the purpose.

14                  The purpose or effect of this bill would be  
15                  to require a new or increased expenditure of local  
16                  funds within the meaning of the amendment. However,  
17                  the bill does not require approval of a local  
18                  governmental entity or enactment by a 2/3 vote to  
19                  become effective because it comes within one of the  
20                  specified exceptions contained in the amendment.

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

1           Relating to title loans; to license and regulate the  
2 title loan business; to provide definitions; to require  
3 licensure of title loan lenders and offices and to provide for  
4 charges, interest, and fees concerning title loans; to amend  
5 Sections 5-18A-3, 5-18A-12, and 5-18A-13, Code of Alabama  
6 1975, relating to deferred presentment transactions; to  
7 provide that a person who is not exempted from the Deferred  
8 Presentment Services Act would be subject to the provisions of  
9 this act; to provide that any loan contract entered into in  
10 violation of this act would be void; to impose limits on the  
11 amounts of interest that could be charged for a loan; to  
12 prohibit a licensee from extending a loan to a customer who  
13 has an outstanding deferred presentment transaction with a  
14 value of five hundred dollars (\$500) or more, who has six or  
15 more deferred presentment transactions from all licensees in  
16 any 12-month period, an extended repayment with a licensee  
17 until 14 days after the plan is paid in full, or the customer  
18 or the spouse of the customer or dependent is a member of the  
19 military; to extend the time in which payment of a check may  
20 be deferred; to provide that the period of the deferred  
21 presentment transaction would not begin until the customer  
22 receives the funds from the licensee; to require licensees to  
23 use a database designated by a supervisor to ensure that a  
24 customer does not have any deferred presentment transactions  
25 over five hundred dollars (\$500); to require each licensee to  
26 report within a specified time certain information to the

1 supervisor; to license and regulate the title loan business;  
2 to require licensure of title loan lenders and offices and to  
3 provide for charges, interest, and fees concerning title  
4 loans; and to provide for fines, penalties, and enforcement  
5 for violations; and in connection therewith would have as its  
6 purpose or effect the requirement of a new or increased  
7 expenditure of local funds within the meaning of Amendment 621  
8 of the Constitution of Alabama of 1901, now appearing as  
9 Section 111.05 of the Official ReCompilation of the  
10 Constitution of Alabama of 1901, as amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited  
13 as the "Alabama Title Loan Act."

14 Section 2. (a) The Legislature finds that the making  
15 of title loans vitally affects the general economy of this  
16 state and the public interest and welfare of its citizens. It  
17 is the policy of this state and the purpose of this act to:

18 (1) Ensure a sound system of making title loans  
19 through statewide licensing of title loan lenders by the  
20 Alabama State Banking Department.

21 (2) Establish licensing requirements.

22 (3) Provide for the examination and regulation of  
23 title lenders by the Alabama State Banking Department.

24 (4) Ensure financial responsibility to the public by  
25 setting a reasonable interest rate that correctly reflects the  
26 risk incurred by lenders on these secure loans and by

1 requiring consideration of borrowers' ability to repay these  
2 loans.

3 (b) It is the intent of the Legislature that title  
4 loans shall be regulated under this act. This act shall  
5 supersede other state laws affecting title loans to the extent  
6 of any conflict.

7 Section 3. As used in this act, the following words  
8 and phrases shall have the following meanings:

9 (1) BORROWER. The owner of any titled personal  
10 property who pledges the property to a title lender pursuant  
11 to a title loan agreement.

12 (2) COMMERCIALLY REASONABLE. Has the same meaning as  
13 Article 9A, Part 6, Title 7, commencing with Section 7-9A-601,  
14 Code of Alabama 1975. In addition, nonpublic sales or disposal  
15 of personal property between a title loan lender and any  
16 business affiliates of a title loan lender or a member of the  
17 family of a title loan lender are presumed not to be made in a  
18 commercially reasonable manner.

19 (3) DEPARTMENT. The State Banking Department.

20 (4) EXECUTIVE OFFICER. The president, chief  
21 executive officer, chief financial officer, chief operating  
22 officer, executive vice president, senior vice president,  
23 secretary, and treasurer.

24 (5) IDENTIFICATION. A government-issued photographic  
25 identification.

1           (6) INTEREST. The cost of obtaining a title loan and  
2 includes any profit or advantage of any kind whatsoever that a  
3 title loan lender may charge, contract for, collect, receive,  
4 or in any way obtain as a result of a title loan.

5           (7) LICENSE. A permit issued pursuant to this act to  
6 make or service title loans at a single title loan office in  
7 accordance with this act.

8           (8) LICENSEE. A person who is licensed as a title  
9 loan lender under this act.

10          (9) MOTOR VEHICLE. An automobile, motorcycle, mobile  
11 home, truck, trailer, semitrailer, truck tractor, and  
12 semitrailer combination, or any other vehicle operated on the  
13 public highways and streets of this state, used to transport  
14 persons or property, and propelled by power other than  
15 muscular power, but excluding a vehicle which runs only upon a  
16 track and a mobile home that is the primary residence of the  
17 owner.

18          (10) PERSON. One or more individuals, corporations,  
19 partnerships, associations, or other legal entities.

20          (11) PRINCIPAL BALANCE. The balance due and owed  
21 exclusive of any interest, service charges, or other  
22 loan-related charges.

23          (12) SECONDHAND DEALER. Any person, corporation, or  
24 other business organization or entity that is not an  
25 automotive dismantler and part recycler and which is engaged  
26 in the business of purchasing, consigning, or pawning



1 secondhand goods or entering into title loan transactions  
2 including, but not limited to, pawnbrokers, jewelers, precious  
3 metals dealers, garage sale operators, secondhand stores, and  
4 consignment shops.

5 (13) TITLE LOAN AGREEMENT. A written agreement  
6 whereby a title loan lender agrees to make a loan of money to  
7 a borrower, and the borrower agrees to deposit the certificate  
8 of title to the titled property with the lender as security.

9 (14) TITLE LOAN LENDER or LENDER. Any person engaged  
10 in the business of making, offering, or brokering title loan  
11 agreements. The term does not include a bank that is regulated  
12 by the State Banking Department, the Comptroller of the  
13 Currency of the United States, the Federal Deposit Insurance  
14 Corporation, the Board of Governors of the Federal Reserve  
15 System, or any other federal or state authority and all  
16 affiliates of such bank, any state or federally chartered  
17 credit union, and any finance company subject to licensing and  
18 regulation by the State Banking Department.

19 (15) TITLE LOAN OFFICE. The location at which, or  
20 premises from which, a title loan lender regularly conducts  
21 business under this act or any other location that is held out  
22 to the public as a location at which a lender makes or  
23 services title loans.

24 (16) TITLED PERSONAL PROPERTY. A motor vehicle,  
25 which has as evidence of ownership a state-issued certificate  
26 of title, whose certificate of title is given to the lender as

1 security for the title loan. The titled property may not be  
2 the subject of more than one title loan at any time or be  
3 encumbered at the time the agreement is made, but the title  
4 loan lender may encumber the title as part of the title loan  
5 transaction by perfecting its security interest in the titled  
6 property.

7 (17) ULTIMATE EQUITABLE OWNER. A person who,  
8 directly or indirectly, owns or controls an ownership interest  
9 in a corporation, a foreign corporation, an alien business  
10 organization, or any other form of business organization,  
11 regardless of whether the person owns or controls the  
12 ownership interest through one or more persons or one or more  
13 proxies, powers of attorney, nominees, corporations,  
14 associations, partnerships, trusts, joint stock companies, or  
15 other entities or devices, or any combination thereof.

16 Section 4. (a) A person may not act as a title loan  
17 lender, or own or operate a title loan office unless the  
18 person has an active title loan lender license issued by the  
19 department under this act. A title loan lender may not own or  
20 operate more than one title loan office unless the lender  
21 obtains a separate title loan lender license for each title  
22 loan office. This includes offering or agreeing to enter a  
23 title loan agreement with a borrower, or brokering or acting  
24 as an agent for a third party in such a transaction,  
25 regardless of whether approval, acceptance, or ratification is  
26 necessary to create a legal obligation for the third party.

1       Actions, transactions and agreements entered into with  
2       borrowers in the State of Alabama include transactions  
3       conducted through the Internet, facsimile, telephone, kiosk,  
4       or other means.

5               (b) (1) A person applying for licensure as a title  
6       loan lender shall file with the department all of the  
7       following:

8               a. A written application on a form prescribed by the  
9       department.

10              b. The bond required by subsection (c) of Section 5.

11              c. A nonrefundable application fee of one thousand  
12       two hundred dollars (\$1,200).

13              d. A nonrefundable investigation fee of two hundred  
14       dollars (\$200).

15              e. A complete set of fingerprints from each owner  
16       and officer taken by an authorized law enforcement officer.

17              (2) The department shall submit the fingerprints to  
18       the Department of Public Safety for state processing and it  
19       shall forward the fingerprints to the Federal Bureau of  
20       Investigation for national processing.

21              (c) If the department determines that an application  
22       should be approved, the department shall issue a license for a  
23       period not to exceed one year.

24              (d) A license shall be renewed annually by filing a  
25       renewal form and a nonrefundable renewal fee of one thousand  
26       two hundred dollars (\$1,200). A license that is not renewed by

1 the end of the annual period shall automatically revert to  
2 inactive status. An inactive license may be reactivated within  
3 six months after becoming inactive by filing a reactivation  
4 form, payment of the nonrefundable one thousand two hundred  
5 dollars (\$1,200) renewal fee, and payment of a nonrefundable  
6 reactivation fee of one hundred dollars (\$100). A license that  
7 is not reactivated within six months after becoming inactive  
8 shall not be reactivated and automatically expires. The  
9 department shall establish by rule the procedures for renewal  
10 and reactivation of a license and adopt a renewal form and a  
11 reactivation form.

12 (e) Each license shall be conspicuously displayed at  
13 the title loan office. When a licensee wishes to move a title  
14 loan office to another location, the licensee shall provide  
15 prior written notice to the department.

16 (f) A license issued pursuant to this act is not  
17 transferable or assignable.

18 (g) Each licensee shall designate and maintain in  
19 this state a registered agent for service of process.

20 (h) Whenever a person or a group of persons,  
21 directly or indirectly or acting by or through one or more  
22 persons, proposes to purchase or acquire a 50 percent or more  
23 interest in a licensee, the person or group shall submit an  
24 initial application for licensure pursuant to this act prior  
25 to the purchase or acquisition.

1 (i) All moneys collected by the department pursuant  
2 to this act shall be used by the department to regulate all  
3 entities covered by this act, nominees, corporations,  
4 associations, partnerships, trusts, joint stock companies, or  
5 other entities or devices, or any combination thereof.

6 Section 5. (a) A verified application for licensure  
7 pursuant to this act, in a form prescribed by this act, shall  
8 contain all of the following:

9 (1) The name and the residence and business  
10 addresses of the applicant. If the applicant is other than a  
11 natural person, the application shall contain the name and the  
12 residence and business address of each ultimate equitable  
13 owner of 10 percent or more of the entity and each director,  
14 general partner, and executive officer of the entity.

15 (2) A statement whether any individual identified in  
16 subdivision (1) has, within the last 10 years, pleaded guilty  
17 to, or has been convicted of a felony, regardless of whether  
18 adjudication was withheld or was acting as beneficial owner  
19 for someone who has been convicted of a felony in the last 10  
20 years.

21 (3) The county and municipality with the street and  
22 number or location where the business is to be conducted.

23 (4) Additional information as the department  
24 determines by rule to be necessary to ensure compliance with  
25 this act.

1           (b) Notwithstanding subsection (a), the application  
2 need not state the full name and address of each officer,  
3 director, and shareholder if the applicant is owned directly  
4 or beneficially by a person who as an issuer has a class of  
5 securities registered pursuant to Section 12 of the Securities  
6 Exchange Act of 1934 or, pursuant to Section 13 or Section 15  
7 of that act, is an issuer of securities that is required to  
8 file reports with the Securities and Exchange Commission, if  
9 the person files with the department any information,  
10 documents, and reports required by this act to be filed with  
11 the Securities and Exchange Commission.

12           (c) An applicant for licensure shall file with the  
13 department a bond, in the amount of fifty thousand dollars  
14 (\$50,000) for each license, with a surety company qualified to  
15 do business in this state. However, in no event shall the  
16 aggregate amount of the bond required for a single title loan  
17 lender exceed two hundred fifty thousand dollars (\$250,000).  
18 In lieu of the bond, the applicant may establish a certificate  
19 of deposit or an irrevocable letter of credit in a financial  
20 institution, regulated or licensed by the department in the  
21 amount of the bond. The original bond, certificate of deposit,  
22 or letter of credit shall be filed with the department, and  
23 the department shall be the beneficiary to that document. The  
24 bond, certificate of deposit, or letter of credit shall be in  
25 favor of the department for the use and benefit of any  
26 consumer who is injured pursuant to a title loan transaction

1 by the fraud, misrepresentation, breach of contract, financial  
2 failure, or violation of this act by the title loan lender.  
3 The liability may be enforced either by proceeding in an  
4 administrative action or by filing a judicial suit at law in a  
5 court of competent jurisdiction. However, in the court suit,  
6 the bond, certificate of deposit, or letter of credit posted  
7 with the department shall not be amenable or subject to any  
8 judgment or other legal process issuing out of or from the  
9 court in connection with the lawsuit, but the bond,  
10 certificate of deposit, or letter of credit shall be amenable  
11 to and enforceable only by and through administrative  
12 proceedings before the department. The bond, certificate of  
13 deposit, or letter of credit shall be payable on a pro rata  
14 basis as determined by the department, but the aggregate  
15 amount shall not exceed the amount of the bond, certificate of  
16 deposit, or letter of credit.

17 (d) It is the intent of the Legislature that the  
18 bond, certificate of deposit, or letter of credit shall be  
19 applicable and liable only for the payment of claims duly  
20 adjudicated by order of the department.

21 (e) The department shall approve an application and  
22 issue a license if the department determines that the  
23 applicant satisfies the requirements of this act.

24 Section 6. (a) The department may invoke  
25 disciplinary action as outlined in subsection (b) of this  
26 section, whenever it is to the satisfaction of the department,

1 after notice and a hearing, that any person has been guilty of  
2 any of the following:

3 (1) Failure to comply with this act, any rule or  
4 rules adopted pursuant to this act, or any written agreement  
5 entered into with the department.

6 (2) Fraud, misrepresentation, deceit, or gross  
7 negligence in any title loan transaction, regardless of  
8 reliance by or damage to the borrower.

9 (3) False, deceptive, or misleading advertising by  
10 a title loan lender.

11 (4) Aiding, abetting, or conspiring by a title loan  
12 lender with a person to circumvent or violate any of the  
13 requirements of this act.

14 (5) Failure to maintain, preserve, and keep  
15 available for examination all books, accounts, or other  
16 documents required by this act, by any rule or order adopted  
17 pursuant to this act, or by any agreement entered into with  
18 the department.

19 (6) Refusal to provide information upon request of  
20 the department, to permit inspection of books and records in  
21 an investigation or examination by the department, or to  
22 comply with a subpoena issued by the department.

23 (7) Pleading guilty to or having been convicted or  
24 found guilty, regardless of whether adjudication was withheld,  
25 of a crime involving fraud, dishonest dealing, or any act of  
26 moral turpitude or acting as an ultimate equitable owner of 10



1 percent or more of a licensee who has pled guilty to or has  
2 been convicted or found guilty, regardless of whether  
3 adjudication was withheld, of a crime involving fraud,  
4 dishonest dealing, or any act of moral turpitude.

5 (8) Making or having made a material misstatement of  
6 fact in an initial or renewal application for a license.

7 (9) Having been the subject of any decision,  
8 finding, injunction, suspension, prohibition, revocation,  
9 denial, judgment, or administrative order by any court of  
10 competent jurisdiction or administrative law judge, or by any  
11 state or federal agency, involving a violation of any federal  
12 or state law relating to title loans or any rule or regulation  
13 adopted under the law, or has been the subject of any  
14 injunction or adverse administrative order by a state or  
15 federal agency regulating banking, insurance, finance or small  
16 loan companies, real estate, mortgage brokers, or other  
17 related or similar industries for acts involving fraud,  
18 dishonest dealing, or any act of moral turpitude.

19 (10) Failing to continuously maintain the bond,  
20 certificate of deposit, or letter of credit as required by  
21 subsection (c) of Section 5.

22 (11) Failing to timely pay any fee, charge, or fine  
23 imposed or assessed pursuant to this act or rules adopted  
24 pursuant to this act.

25 (12) Having a license or registration, or the  
26 equivalent, to practice any profession or occupation denied,

1 suspended, revoked, or otherwise acted against by a licensing  
2 authority in any jurisdiction for fraud, dishonest dealing, or  
3 any act of moral turpitude.

4 (13) Having demonstrated unworthiness, as defined by  
5 department rule, to transact the business of a title loan  
6 lender.

7 (b) Upon a finding by the department that any person  
8 has committed any of the acts set forth in subsection (a) of  
9 this section, the department may enter an order taking one or  
10 more of the following actions:

11 (1) Denying an application for licensure under this  
12 act.

13 (2) Revoking or suspending a license previously  
14 granted pursuant to this act.

15 (3) Placing a licensee or an applicant for a license  
16 on probation for a period of time and subject to the  
17 conditions as the department specifies.

18 (4) Issuing a reprimand.

19 (5) Imposing an administrative fine not to exceed  
20 five thousand dollars (\$5,000) for each separate act or  
21 violation.

22 (c) If a person seeking licensure is an entity other  
23 than a natural person, the eligibility requirements of this  
24 section apply to each direct or ultimate equitable owner of 10  
25 percent or more of the outstanding equity interest of the

1 entity and to each director, general partner, and executive  
2 officer.

3 (d) It is sufficient cause for the department to  
4 take any of the actions specified in subsection (b) of this  
5 section, as to any entity other than a natural person, if the  
6 department finds grounds for the action as to any member of  
7 the entity, as to any executive officer or director of the  
8 entity, or as to any person with power to direct the  
9 management or policies of the entity.

10 (e) Each licensee is subject to the provisions of  
11 subsection (b) of this section for the acts of employees and  
12 agents of the licensee if the licensee knew or should have  
13 known about the acts.

14 (f) Licensure under this act may be denied or any  
15 license issued under this act may be suspended or restricted  
16 if an applicant or licensee is charged, in a pending  
17 enforcement action or pending criminal prosecution, with any  
18 conduct that would authorize denial or revocation under this  
19 section.

20 (g) No revocation, suspension, or surrender of any  
21 license shall impart or affect the obligation of any  
22 preexisting lawful contract between the licensee and any  
23 borrower.

24 (h) The department may reinstate suspended licenses  
25 or issue new licenses to a person whose license or licenses  
26 have been revoked if no fact or condition then exists that

1 clearly would have justified the department in originally  
2 refusing to issue a license under this act.

3 Section 7. Any title loan made without benefit of a  
4 license is void, in which case the person making the title  
5 loan forfeits the right to collect any moneys, including  
6 principal and interest charged on the title loan, from the  
7 borrower in connection with the agreement. The person making  
8 the title loan shall return to the borrower the certificate of  
9 title, the titled personal property or the fair market value  
10 of the titled personal property, and all principal and  
11 interest paid by the borrower. The borrower is entitled to  
12 receive reasonable attorney's fees and costs in any action  
13 brought by the borrower to recover from the person making the  
14 title loan the certificate of title, the titled personal  
15 property, or the principal and interest paid by the borrower.

16 Section 8. (a) At the time a title loan lender makes  
17 a title loan, the lender and the borrower shall execute a  
18 title loan agreement, which shall be legibly typed and  
19 completed as to all essential provisions prior to execution by  
20 the borrower and lender. The title loan agreement shall  
21 include all of the following:

22 (1) The make, model, and year of the titled personal  
23 property.

24 (2) The vehicle identification number, or other  
25 comparable identification number, along with the license plate  
26 number, if applicable, of the titled personal property.

1           (3) The name, residential address, date of birth,  
2 physical description, and Social Security number of the  
3 borrower.

4           (4) The date the title loan agreement is executed by  
5 the title loan lender and the borrower.

6           (5) The identification number and the type of  
7 identification, including the issuing agency, accepted from  
8 the borrower.

9           (6) The amount of money advanced, designated as the  
10 "amount financed."

11           (7) The maturity date of the title loan agreement,  
12 which shall be no less than 180 days after the date the title  
13 loan agreement is executed by the title loan lender and the  
14 borrower.

15           (8) The total title loan interest payable over the  
16 loan term, designated as the "finance charge."

17           (9) The amount financed plus the finance charge,  
18 which shall be paid to reclaim the certificate of title on the  
19 maturity date, designated as the "total amount of all  
20 payments."

21           (10) The amount that the borrower shall pay in each  
22 installment, designated as the "installment payments," and the  
23 date that each installment payment is due, designated as  
24 "installment due dates." The installments shall be  
25 substantially equal amounts due at equal periodic intervals.

1           (11) The "annual percentage rate," computed in  
2 accordance with the regulations adopted by the Federal Reserve  
3 Board pursuant to the Federal Truth-in-Lending Act.

4           (12) Any late charge that the title loan lender will  
5 charge the borrower, and an explanation of when it will be  
6 imposed, designated as "late fee."

7           (b) The following information shall also be printed  
8 on all title loan agreements:

9           (1) The name and physical address of the title loan  
10 office.

11           (2) The name and address of the department as well  
12 as a telephone number to which consumers may address  
13 complaints.

14           (3) The following statement in not less than  
15 14-point bold type immediately above the borrower's signature  
16 that shall contain all of the following:

17           "I understand that there is no penalty for early  
18 payments, and that I am entitled to receive a partial refund  
19 of the interest paid if my loan is repaid before the maturity  
20 date. I am required, at a minimum, to make each payment on the  
21 day it is due. If I miss a payment, I may be charged a late  
22 fee if one is agreed upon in this contract. If I do not pay  
23 the payment plus a late fee within 30 days after the payment's  
24 original due date, I will be in default and the lender will  
25 repossess my vehicle. I have 15 days after repossession to  
26 reclaim my vehicle by paying all money owed, including

1 principal, interest and other fees. Otherwise, I will lose any  
2 right to the vehicle and it will be sold to pay off this debt.  
3 I do have a right to the surplus amount from the sale of the  
4 vehicle, which is any amount remaining after the principal,  
5 interest and actual costs of sale are paid to the lender.

6 "I certify that, to the best of my knowledge, I have  
7 a right to enter into this transaction. The vehicle I am using  
8 as collateral for this loan is not stolen and no other  
9 creditor has a claim to or lien against it. I will not apply  
10 for a duplicate certificate of title while the loan agreement  
11 is in effect.

12 "I have read this document and that, to the best of  
13 my knowledge and belief, the facts contained in it are true  
14 and correct."

15 (4) A blank line for the signature of the borrower  
16 and the title loan lender or the lender's agent. All owners of  
17 the titled personal property shall sign the title loan  
18 agreement.

19 (c) At the time of the transaction, the title loan  
20 lender shall deliver to the borrower an exact copy of the  
21 executed title loan agreement. The title loan lender shall  
22 also provide the borrower with a pamphlet, in a form  
23 consistent with regulations adopted by the department,  
24 explaining in plain language the rights and responsibilities  
25 of the borrower and providing a toll free number of the  
26 department for assistance with complaints.

1 (d) Upon execution of a title loan agreement, the  
2 title loan lender may take possession of the certificate of  
3 title and retain possession of it until it is redeemed. The  
4 borrower shall have the exclusive right to redeem the  
5 certificate of title by repaying all amounts legally due under  
6 the agreement. When the certificate of title is redeemed, the  
7 lender shall immediately return the certificate of title and  
8 commence action to release any security interest in the titled  
9 personal property. During the term of the agreement or any  
10 extension of the agreement, a title loan lender may retain  
11 physical possession of the certificate of title only. A title  
12 loan lender shall not take additional security or guaranty as  
13 a condition to entering into a title loan transaction.

14 Section 9. (a) Every title loan lender shall  
15 maintain, at the title loan office of the lender, the books,  
16 accounts, and records of the business conducted under the  
17 license issued for the place of business as will enable the  
18 department to determine the compliance of the licensee with  
19 this act.

20 (b) The department may authorize the maintenance of  
21 books, accounts, and records at a location other than the  
22 title loan office of the lender. The department may require  
23 books, accounts, and records to be produced and available at a  
24 reasonable and convenient location in this state within a  
25 reasonable period of time after the request.



1           (c) The title loan lender shall maintain the  
2 original copy of each completed title loan agreement on the  
3 title loan office premises, and shall not obliterate, discard,  
4 or destroy any of the original copy for a period of at least  
5 two years after making the final entry on any loan recorded in  
6 the office or after a department examination, whichever is  
7 later.

8           (d) A certificate of title that is delivered to a  
9 title loan lender shall be securely stored and maintained at  
10 the title loan office unless the certificate of title has been  
11 forwarded to the appropriate state agency for the purpose of  
12 having a lien recorded or deleted.

13           (e) The department may prescribe by rule the books,  
14 accounts, and records, and the minimum information to be shown  
15 in the books, accounts, and records, of licensees so that the  
16 records will enable the department to determine compliance  
17 with this act.

18           Section 10. (a) A title loan lender may contract for  
19 and receive an interest rate not to exceed 30 percent per  
20 annum computed on the first two thousand dollars (\$2,000) of  
21 the principal amount, 24 percent per annum on that part of the  
22 principal amount exceeding two thousand dollars (\$2,000) and  
23 not exceeding three thousand dollars (\$3,000) and 18 percent  
24 per annum on that part of the principal amount exceeding three  
25 thousand dollars (\$3,000). In determining compliance with the  
26 statutory maximum interest, the computations shall be simple

1 interest and not add-on interest or any other computations.  
2 Such charges shall be computed in advance at the agreed rate  
3 on scheduled unpaid principal balances of the cash advance on  
4 the assumption that all scheduled payments will be made when  
5 due. No other interest arrangement, including the provisions  
6 of Section 8-8-5, Code of Alabama 1975, shall apply to any  
7 title loan agreements under this act. This rate may be imposed  
8 only if disclosed in full at the time the contract is created,  
9 and cannot be modified. No additional fees may be imposed on  
10 the borrower, except a late charge if it is specified in the  
11 title loan agreement and the actual costs expended on  
12 repossession and sale as described in this act.

13 (b) Any interest, charge, or fees contracted for or  
14 received, directly or indirectly, in excess of the amount  
15 permitted under subsection (a) shall be uncollectible and the  
16 title loan agreement shall be void.

17 (c) The annual percentage rate that may be charged  
18 for a title loan may equal, but not exceed, the annual  
19 percentage rate that shall be computed and disclosed as  
20 required by the Federal Truth-in-Lending Act and Regulation Z  
21 of the Board of Governors of the Federal Reserve System. The  
22 department shall establish by rule the rate for each day in a  
23 fraction of a month when the period for which the charge is  
24 computed is more or less than one month.

25 (d) (1) Any interest contracted for or received,  
26 directly or indirectly, by a title loan lender, or an agent of

1 the title loan lender, in excess of the amounts authorized  
2 under this act is prohibited and may not be collected by the  
3 title loan lender or an agent of the title loan lender.

4 (2) If the excess interest resulted from a bona fide  
5 error by the title loan lender, or an agent of the title loan  
6 lender, the title loan agreement shall be voidable and the  
7 lender shall refund the excess interest to the borrower within  
8 20 days after discovery by the lender or borrower of the bona  
9 fide error, whichever occurs first.

10 (3) If the excess interest resulted from an act by  
11 the title loan lender, or an agent of the title loan lender,  
12 to circumvent the maximum title loan interest allowed by this  
13 act, the title loan agreement is void. The lender shall refund  
14 to the borrower any interest paid on the title loan and return  
15 to the borrower the certificate of title. The title loan  
16 lender forfeits the right of the lender to collect any  
17 principal owed by the borrower on the title loan.

18 (4) The department may order a title loan lender, or  
19 an agent of the title loan lender, to comply with the  
20 provisions of subdivisions (2) and (3).

21 Section 11. (a) A borrower shall have no obligation  
22 to redeem the certificate of title or make any payment on a  
23 title loan transaction.

24 (b) A title loan lender may pay all proceeds for a  
25 title loan transaction either in cash directly to the borrower  
26 or through an electronic funds transfer directly to the

1 borrower or borrower's account. The period of the title loan  
2 transaction shall not begin until the funds are received by  
3 the borrower. There shall be no additional charge related to  
4 the payment of the proceeds of any title loan transaction.

5 (c) The title loan lender shall not impose a penalty  
6 for early payment of any amount owed before the installment  
7 due date or maturity date. The lender shall accept payments of  
8 any amount at any time. If the loan is prepaid prior to the  
9 maturity of the loan term, the lender shall refund to the  
10 consumer a pro rata portion of the finance charge based upon  
11 the ratio of time left before maturity to the loan term.

12 (d) When a scheduled installment payment is in  
13 default or delinquent for five or more days, the title loan  
14 lender may charge a late fee not to exceed the greater of  
15 eighteen dollars (\$18) or five percent of the amount of the  
16 scheduled payment in default. Each of the late charges  
17 permitted under this subsection may be collected only once on  
18 any scheduled payment, regardless of the period during which  
19 the payment remains in default or is delinquent, and may only  
20 be collected on or after the fifth day after the due date. The  
21 late fee may be imposed only if the rate or amount was  
22 explained in the title loan contract signed by the borrower.

23 (e) If the borrower does not make the scheduled  
24 installment payment and pay any late charge by 30 days after  
25 the scheduled installment due date, the title loan lender may  
26 take possession of the titled personal property. In taking

1 possession, the title loan lender or his or her agent may  
2 proceed without judicial process if this can be done without  
3 breach of the peace or, if necessary, may proceed by action to  
4 obtain judicial process. At least 15 days before this  
5 deadline, the lender shall provide the borrower with notice of  
6 the amount of the overdue payment, any late charge, and the  
7 deadline to make these payments. The notice shall also inform  
8 the borrower that the property may be repossessed on this  
9 deadline if full payment is not received. This notice shall be  
10 in writing, personally served or sent by certified or  
11 registered mail, return receipt requested.

12 (f) If, within 15 days after the title loan lender  
13 obtains possession of the personal property, the borrower  
14 redeems the titled personal property by paying all outstanding  
15 principal and applicable interest, late charges, and the  
16 actual cost of repossession, the borrower shall be given  
17 possession of the titled personal property and the certificate  
18 of title without further delay. At the time of repossession or  
19 within five days thereafter, the lender shall provide the  
20 borrower with notice of his or her right of redemption, the  
21 deadline to redeem, and any actual costs incurred in  
22 repossessing the titled personal property. This notice shall  
23 be in writing, personally served or sent by certified or  
24 registered mail, return receipt requested.

25 (g) If the borrower fails to redeem the titled  
26 personal property and certificate of title during the 15-day

1 period provided in subsection (f) and has received notice of  
2 the right to redeem according to subsection (f), then the  
3 borrower shall thereby forfeit all right, title, and interest  
4 in and to the titled personal property, other than his or her  
5 interest in the sale proceeds specified in subsection (h), to  
6 the title loan lender who shall thereby acquire an absolute  
7 right of title and ownership to the titled personal property.  
8 The title loan lender shall then have the sole right and  
9 authority to sell or dispose of the titled personal property.

10 (h) If the property is sold after the 15-day period,  
11 the title loan lender shall return to the borrower within 15  
12 days the amount received from the sale less the amount of the  
13 unpaid principal balance and interest, any outstanding late  
14 charge, and the reasonable and necessary actual costs of the  
15 repossession and sale. The cost of repossession shall include  
16 reasonable towing charges, storage charges paid to a third  
17 party, and repairs made to the property to render it operable.  
18 Even if the lender believes that no money is due to the  
19 borrower under this subsection, it shall provide the borrower  
20 with a written statement documenting each of these costs,  
21 including the amount and a short description of each  
22 individual charge incurred in repossession.

23 (i) In taking possession and disposing of titled  
24 personal property by sale or otherwise, the title loan lender  
25 shall at all times proceed in a commercially reasonable  
26 manner.

1           Section 12. (a) Any person presenting identification  
2 of the person as the borrower and presenting a copy of the  
3 title loan agreement of the borrower to the title loan lender  
4 is presumed to be entitled to reclaim the certificate of title  
5 taken by the lender that corresponds to the titled personal  
6 property described in the title loan agreement. However, if  
7 the title loan lender determines that the person is not the  
8 borrower, the title loan lender is not required to allow the  
9 redemption of the certificate of title by the person. The  
10 person reclaiming the certificate of title shall sign the copy  
11 of the title loan agreement of the borrower that the title  
12 loan lender may retain to evidence the receipt of the  
13 certificate of title of the person. A person reclaiming the  
14 certificate of title who is not the borrower shall show  
15 identification to the title loan lender, together with  
16 notarized written authorization from the borrower, and the  
17 title loan lender shall record the name and address of that  
18 person on the title loan agreement retained by the title loan  
19 lender. In that case, the person reclaiming the copy of the  
20 title loan agreement of the borrower shall be provided a copy  
21 of the signed form as evidence of the agreement.

22           (b) If the copy of the title loan agreement of the  
23 borrower is lost, destroyed, or stolen, the borrower shall  
24 notify the title loan lender in writing by certified or  
25 registered mail, return receipt requested, or in person  
26 evidenced by a signed receipt, and receipt of the notice shall

1 invalidate the title loan agreement if the certificate of  
2 title has not previously been reclaimed. Before delivering the  
3 certificate of title or issuing a new title loan agreement,  
4 the title loan lender shall require the borrower to make a  
5 written statement of the loss, destruction, or theft of the  
6 copy of the title loan agreement of the borrower. The title  
7 loan lender shall record on the written statement the type of  
8 identification and the identification number accepted from the  
9 borrower, the date the statement is given, and the number or  
10 date of the title loan agreement lost, destroyed, or stolen.  
11 The statement shall be signed by the title loan lender or the  
12 title loan office employee who accepts the statement from the  
13 borrower. The title loan lender shall not impose any type of  
14 fee for providing the borrower with a copy of the title loan  
15 agreement.

16 Section 13. (a) A title loan lender, or any agent or  
17 employee of a title loan lender, shall not do any of the  
18 following:

19 (1) Falsify or fail to make an entry of any material  
20 matter in a title loan agreement or any extension of the  
21 agreement.

22 (2) Refuse to allow the department to inspect  
23 completed title loan agreements, extensions of the agreements,  
24 or any certificates of title held during the ordinary  
25 operating hours of the business of the title loan lender or  
26 other times acceptable to both parties.



1           (3) Enter into a title loan agreement with a person  
2 under the age of 19 years.

3           (4) Make any agreement requiring or allowing for the  
4 personal liability of a borrower or the waiver of any of the  
5 provisions of this act.

6           (5) Make any loan with a loan term of less than 180  
7 days.

8           (6) Knowingly enter into a title loan agreement with  
9 any person who is under the influence of drugs or alcohol when  
10 the condition is visible or apparent, or with any person using  
11 a name other than the name of the person or the registered  
12 name of the business owned by the person.

13           (7) Knowingly enter into a title loan agreement in  
14 which the titled personal property is encumbered or subject to  
15 any lien.

16           (8) Fail to exercise reasonable care, as defined by  
17 department rule, in the safekeeping of certificates of title  
18 or of titled personal property repossessed pursuant to this  
19 act.

20           (9) Fail to return a certificate of title or  
21 repossessed titled personal property to a borrower, with any  
22 and all of the title loan lender's liens on the property  
23 properly released, upon payment of the full amount due the  
24 title loan lender, unless the property has been seized or  
25 impounded by an authorized law enforcement agency, taken into  
26 custody by a court, or otherwise disposed of by court order.

1           (10) Sell or otherwise charge for any type of  
2 insurance or other ancillary product such as club memberships  
3 in connection with a title loan agreement.

4           (11) Charge or receive any finance charge, interest,  
5 or fees which are not authorized pursuant to this act, or  
6 require the borrower to make installment payments that are not  
7 substantially equal amounts due at equal periodic intervals.

8           (12) Act as a title loan lender without an active  
9 license issued under this act.

10          (13) Refuse to accept partial payments toward  
11 satisfying any obligation owed under a title loan agreement or  
12 extension of the agreement.

13          (14) Charge a prepayment penalty or fail to refund  
14 the pro rata interest as required under this act for any loan  
15 that is prepaid.

16          (15) Act as a title loan lender under this act  
17 within a place of business in which the licensee solicits or  
18 engages in business outside the scope of this act if the  
19 department determines that the licensee's operation of and  
20 conduct pertaining to the other business results in an evasion  
21 of this act. Upon making the determination, the department  
22 shall order the licensee to cease and desist from the evasion,  
23 provided, no licensee shall engage in the pawnbroker business.

24          (16) Refuse or fail to return to the borrower all  
25 personal items contained in the vehicle, not reasonably  
26 considered part of the vehicle, at the time of repossession or

1 otherwise deny the borrower use or access to personal property  
2 not secured by the loan.

3 (17) Use or threaten force or violence against any  
4 borrower, nor threaten criminal prosecution or use printed  
5 materials that resemble legal process. No licensee shall  
6 trespass on a borrower's property, other than taking  
7 possession without a breach of the peace, or make collection  
8 attempts at unreasonable hours of the night.

9 (18) Directly or indirectly employ any scheme,  
10 device, or artifice to defraud or mislead the borrower,  
11 another lender, or the department.

12 (19) Make any title loan without forming a good  
13 faith belief that the borrower has the ability to repay the  
14 title loan. In forming a good faith belief, the lender shall  
15 consider factors adopted by the department by rule. A lender  
16 that meets conditions adopted by the department by rule shall  
17 be deemed to be in compliance with this section.

18 (20) Enter into a title loan agreement with any  
19 member of the military services of the United States, or such  
20 a member's spouse or dependent, unless in compliance with  
21 Title 10 U.S.C. §987 or any regulation adopted pursuant to  
22 same.

23 (b) Title loan companies may not advertise using the  
24 words "interest free loans" or "no finance charges."

25 Section 14. (a) In addition to any other penalty  
26 which may be applicable, any licensee or employee who

1 willfully violates any provision of this act, or who willfully  
2 makes a false entry in any record specifically required by  
3 this act, shall be guilty of a Class A misdemeanor for each  
4 violation, and the title loan agreement is rendered void.

5 (b) In addition to any other penalty which may be  
6 applicable, any licensee or employee who fails to make a  
7 record of a title loan transaction and subsequently sells or  
8 disposes of the titled personal property and/or certificate of  
9 title that is the subject of the transaction shall be punished  
10 as follows:

11 (1) For a first offense, the licensee or employee  
12 shall be guilty of a misdemeanor and, upon conviction thereof,  
13 shall be guilty of a Class A misdemeanor.

14 (2) For a second offense, the licensee or employee  
15 shall be guilty of a Class C felony.

16 Section 15. (a) The department may issue and serve  
17 subpoenas to compel the attendance of witnesses and the  
18 production of documents, papers, books, records, and other  
19 evidence before the department in any matter pertaining to  
20 this act. The department shall administer oaths and  
21 affirmations to any person whose testimony is required. If any  
22 person refuses to testify, produce books, records, and  
23 documents, or otherwise refuses to obey a subpoena issued  
24 under this section, the department may enforce the subpoena in  
25 the same manner that subpoenas issued under the Administrative  
26 Procedure Act are enforced. Witnesses are entitled to the same

1 fees and mileage as they are entitled to by law for attending  
2 as witnesses in the circuit court, unless the examination or  
3 investigation is held at the place of business or residence of  
4 the witness.

5 (b) In addition to any other powers conferred upon  
6 the department to enforce or administer this act, the  
7 department may do any of the following:

8 (1) Bring an action in any court of competent  
9 jurisdiction to enforce or administer this act, any rule or  
10 order adopted under this act, or any written agreement entered  
11 into with the department. In the action, the department may  
12 seek any relief at law or equity, including a temporary or  
13 permanent injunction, appointment of a receiver or  
14 administrator, or an order of restitution.

15 (2) Issue and serve upon a person an order requiring  
16 the person to cease and desist and take corrective action  
17 whenever the department finds that the person is violating,  
18 has violated, or is about to violate any provision of this  
19 act, any rule or order adopted under this act, or any written  
20 agreement entered into with the department.

21 (3) Whenever the department finds that conduct  
22 described in subdivision (2) of this section shall present an  
23 immediate danger to the public health, safety, or welfare  
24 requiring an immediate final order, the department may issue  
25 an emergency cease and desist order reciting with  
26 particularity the facts underlying the findings. The emergency

1       cease and desist order is effective immediately upon service  
2       of a copy of the order on the respondent named in the order  
3       and shall remain effective for 90 days. If the department  
4       begins non-emergency proceedings under subdivision (2) of this  
5       section, the emergency cease and desist order remains  
6       effective until the conclusion of the proceedings.

7               Section 16. (a) The department may investigate and  
8       examine any licensee or other person the department deems  
9       necessary to determine compliance with this act. For this  
10      purpose, the department may examine the books, accounts,  
11      records, and other documents or matters of any licensee or  
12      other person. The department may compel the production of all  
13      relevant books, records, and other documents and materials  
14      relative to an examination or investigation. Examinations  
15      shall not be made more often than once during any 12-month  
16      period unless the department has reason to believe the  
17      licensee is not complying with this act.

18              (b) The department shall conduct all examinations at  
19      a convenient location in this state unless the department  
20      determines that it is more effective or cost-efficient to  
21      perform an examination at the licensee's out-of-state  
22      location. For an examination performed at the licensee's  
23      out-of-state location, the licensee shall pay the travel  
24      expense and per diem subsistence at the rate provided by law  
25      for up to 30 eight-hour days per year for each department  
26      examiner who participates in the examination. However, if the

1 examination involves or reveals possible fraudulent conduct by  
2 the licensee, the licensee shall pay the travel expenses and  
3 per diem subsistence provided by law, without limitation, for  
4 each participating examiner.

5 Section 17. (a) In addition to any other penalties  
6 or remedies which may be applicable, a title loan lender who  
7 fails to comply with any requirement imposed under this act in  
8 any title loan transaction shall also be liable to the  
9 borrower in an amount equal to the sum of the following:

10 (1) Any actual damage sustained by the borrower as a  
11 result of the violation.

12 (2) Twice the amount of the finance charge stated in  
13 the title loan agreement.

14 (b) Any person having reason to believe that this  
15 act has been violated may file with the department a written  
16 complaint setting forth the details of the alleged violation  
17 and the department shall investigate the complaint.

18 (c) Any borrower shall be entitled to pursue a  
19 private right of action against a licensee for violation of  
20 the provisions set forth in this act. Any borrower who is  
21 successful in a claim under this subsection shall be entitled  
22 to attorneys' fees.

23 (d) Any intentional violation of this section  
24 constitutes an unfair or deceptive trade practice under the  
25 Alabama Deceptive Trade Practices Act, commencing with Section  
26 8-19-1, Code of Alabama 1975.

1 (e) The remedies provided in this section are not  
2 intended to be the exclusive remedies available to a consumer  
3 for a violation of this act.

4 Section 18. If any titled personal property from a  
5 title loan transaction is found to be stolen and is returned  
6 to the rightful owner by law enforcement authorities and if  
7 the licensee who accepted the titled property has complied  
8 with all of the duties and responsibilities as specified in  
9 this act during the transaction, then the rightful owner of  
10 the titled personal property shall be liable to the licensee  
11 for the loan agreement amount if the rightful owner fails to  
12 prosecute or cooperate in the criminal prosecution related to  
13 the title loan agreement. It shall also be the responsibility  
14 of the licensee to assist or cooperate in the criminal  
15 prosecution related to the title loan transaction. If the  
16 identity of a person who obtained a title loan using the  
17 stolen goods can be determined, the district attorney may  
18 prosecute the person for any applicable violations.

19 Section 19. Nothing in this act precludes a  
20 municipality from adopting ordinances more restrictive, in  
21 whole or in part, than the provisions of this act. This act  
22 shall not repeal or be construed to repeal any provision of  
23 the Uniform Commercial Code, Sections 7-1-101, Code of Alabama  
24 1975, et seq.

25 Section 20. To administer this act, the department  
26 may promulgate and enforce specific rules and regulations



1 establishing criteria, guidelines, and specific procedures to  
2 be followed by persons affected by this act.

3 Section 21. (a) No titled personal property may be  
4 confiscated by local law enforcement without the following  
5 action having been accomplished:

6 (1) A police report being made in a timely manner.

7 (2) A warrant sworn out for the person who obtained  
8 a title loan using the titled personal property.

9 (b) Titled personal property may be put on a  
10 one-time seven-day hold by the authorized law enforcement  
11 authorities. This request for a seven-day hold shall be made  
12 in writing by the authorized law enforcement authorities.

13 (c) Confiscated titled property shall be returned to  
14 the title loan lender by the law enforcement authorities as  
15 soon as possible when determined that the titled personal  
16 property has no rightful owner

17 Section 22. (a) Each licensee under this act shall  
18 annually, on or before December 1, file a written report with  
19 the department containing such information as the department  
20 may require concerning his or her business and operations  
21 during the preceding calendar year as to each approved office.  
22 Reports shall be made under oath and shall be in the form  
23 prescribed by the department.

24 (b) Using the information reported to the department  
25 under subsection (a), the department shall make and publish

1 annually an analysis and recapitulation of such reports  
2 regarding the utilization of title loans in Alabama.

3 Section 23. Each title loan lender in operation as  
4 of the effective date of this act shall have until January 1,  
5 2015, to apply for a license under this act.

6 Section 24. Sections 5-18A-3, 5-18A-12, and  
7 5-18A-13, Code of Alabama 1975, are amended to read as  
8 follows:

9 "§5-18A-3.

10 "(a) On or after January 1, 2004, no person shall  
11 engage, in whole or in part, through any method, including,  
12 but not limited to, mail, telephone, Internet, or in-person,  
13 in the business of deferred presentment services without  
14 having first obtained a license from the supervisor. A  
15 separate license shall be required for each location from  
16 which the business is conducted.

17 "(b) Trust companies, life insurance companies, and  
18 federally constituted agencies shall be exempt from licensing  
19 under this chapter. Notwithstanding anything to the contrary  
20 in this chapter, this chapter shall not apply to any of the  
21 following entities, and each of these entities shall be exempt  
22 from this chapter: Banks, credit unions, savings associations,  
23 savings banks, and thrift institutions organized pursuant to  
24 the laws of this state or any other state or the laws of the  
25 United States and any parent of any of the foregoing entities.

1           "(c) This chapter shall have no application to  
2 persons who do not engage in deferred presentment services  
3 unless a person seeks to evade its application by any method  
4 or subterfuge, including, but not limited to, disguising a  
5 short-term consumer loan as a revolving line of credit or  
6 brokering or acting as an agent for a third party in a  
7 short-term consumer loan transaction.

8           "(d) Any loan contract entered into while in  
9 violation of this section shall be void, and the lender shall  
10 have no right to collect, receive, or retain any principal,  
11 interest, or charges whatsoever. Further, a lender in  
12 violation of any provision of this section shall be guilty of  
13 a misdemeanor and, upon conviction thereof, shall be  
14 punishable by a fine of not more than five hundred dollars  
15 (\$500) nor less than one hundred dollars (\$100), or by  
16 imprisonment for not more than six months, or by both such  
17 fine and imprisonment in the discretion of the court.

18           "§5-18A-12.

19           "(a) Subject to the following subsections, every  
20 licensee under this chapter may charge and collect a maximum  
21 fee on any deferred presentment transaction not to exceed ~~17.5~~  
22 ~~percent of the amount advanced~~ an annual percentage rate (APR)  
23 of 30 percent. The maximum aggregate amount that may be  
24 advanced to a borrower, by any and all licenses, in any  
25 ~~deferred presentment transaction~~ is five hundred dollars  
26 (\$500).

1           ~~"(b) Each licensee may renew or extend a deferred~~  
2 ~~presentment transaction with the same customer no more than~~  
3 ~~one additional time at this fee for a maximum of two~~  
4 ~~continuous transactions. After two continuous transactions~~  
5 ~~with the customer, the licensee shall not enter into a new~~  
6 ~~deferred presentment transaction with that same customer until~~  
7 ~~the next business day after the transaction amount is repaid~~  
8 ~~in full. After the customer has redeemed the check in full~~  
9 ~~with cash or guaranteed funds, the licensee has the same~~  
10 ~~authority as any other licensee to enter into another~~  
11 ~~agreement for deferred presentment services with the customer~~  
12 ~~on another check. No licensee shall make, and no borrower~~  
13 ~~shall receive, a loan under this chapter that would cause the~~  
14 ~~borrower to have more than six loans in a 12-month period,~~  
15 ~~including rollover or refinancing of an existing loan. Any~~  
16 ~~loan made or collected in violation of this subsection is~~  
17 ~~void, and the licensee shall have no right to collect,~~  
18 ~~receive, or retain any principal, interest, fees, or other~~  
19 ~~charges.~~

20           ~~"(c) After the initial loan period and one rollover~~  
21 ~~with the same customer, the full outstanding amount of the~~  
22 ~~loan, including, but not limited to, held check or debt~~  
23 ~~authorization, shall become due. If the customer is unable to~~  
24 ~~repay the outstanding balance in full, the licensee ~~may~~ shall~~  
25 ~~offer the customer an extended repayment option of four equal~~  
26 ~~monthly installments of the remaining balance. The licensee~~

1 shall not commence any civil action to collect on a  
2 transaction in default until written notice has been sent  
3 notifying the customer of ~~his or her rights~~ the extended  
4 repayment plan option. If the customer fails to exercise his  
5 or her rights within 15 days of the notice, the licensee may  
6 commence action to collect on a transaction in default.

7 "(d) If there are insufficient funds to pay a check  
8 on the date of presentment, the licensee may charge a fee  
9 authorized in Section 8-8-15; however, only one such fee may  
10 be collected with respect to any particular transaction. No  
11 other fees or charges of any kind may be charged or collected  
12 from customers except those authorized herein. No person shall  
13 use any device, subterfuge, or pretense whatsoever, including,  
14 but not limited to, catalog sales, discount vouchers, Internet  
15 instant-rebate programs, phone card clubs, or any agreement,  
16 including agreements with affiliated persons, with the intent  
17 to obtain greater charges than would otherwise be authorized  
18 by this chapter.

19 "§5-18A-13.

20 "(a) A licensee may not knowingly enter into a  
21 deferred presentment transaction with a customer ~~that has~~  
22 ~~outstanding deferred presentment transactions from any lender~~  
23 ~~at any location that exceeds five hundred dollars (\$500) for~~  
24 ~~the term of the loan.~~ in the following circumstances:

25 "(1) If that customer has one or more outstanding  
26 deferred presentment transactions from any lender, at any

1 location, with an aggregate original principal value of five  
2 hundred dollars (\$500).

3 "(2) If engaging in that deferred deposit  
4 transaction would result in a customer receiving more than six  
5 deferred presentment transactions from all licensees in any  
6 12-month period.

7 "(3) If that customer is in an extended repayment  
8 plan with any licensee.

9 "(4) If that customer is an active duty member of  
10 the military services of the United States, or a spouse or  
11 dependent of an active duty serviceperson, unless in  
12 compliance with the Military Lending Act of 2007.

13 "(b) Before a licensee shall present for payment or  
14 deposit a check or debit authorization accepted by the  
15 licensee, the check shall be endorsed with the actual name  
16 under which the licensee is doing business.

17 "(c) Any agreement for a deferred presentment  
18 transaction shall be in writing and signed by the checking  
19 account holder. The customer in a deferred presentment  
20 contract shall have the right to redeem the check or debit  
21 authorization from the licensee before the agreed date of  
22 deposit upon payment to the licensee of the amount of the  
23 contract. A licensee shall not defer presentment of any  
24 personal check or debit authorization for less than ~~10 days~~  
25 ~~nor more than 31~~ 30 calendar days after the date of the  
26 contract.

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

12           "(e) A licensee shall comply with all provisions of  
13 state and federal law regarding cash transactions and cash  
14 transaction reporting.

15           "(f) A licensee shall provide each prospective  
16 customer, before consummation of the deferred presentment  
17 agreement, with a written explanation in clear, understandable  
18 language of the fees to be charged by the licensee and the  
19 date on which the check or debit authorization may be  
20 deposited or presented by the licensee. All fees associated  
21 with deferred presentment transactions shall be disclosed as  
22 finance charges as required by the Federal Truth-in-Lending  
23 Act, 15 U.S.C. §1605, its regulations, 12 C.F.R. Part 226, and  
24 Official Staff Commentary as adopted by the Federal Reserve  
25 Board. The supervisor may promulgate rules establishing  
26 additional requirements in order to assure complete and

1 accurate disclosures. The customer, prior to entering into a  
2 deferred presentment transaction, shall receive and  
3 acknowledge an accurate and complete notification and  
4 disclosure of the itemized and total amounts of all fees and  
5 other costs that will or potentially could be imposed as a  
6 result of such agreement. This subsection shall not create any  
7 inference that a particular method of disclosure was required  
8 prior to June 20, 2003. All customers will be notified in  
9 clear and conspicuous language that the deferred presentment  
10 check or debit authorization will be subject to terms and  
11 conditions described in subsection (c) of Section 5-18A-12.  
12 The terms and conditions of the transaction shall be provided  
13 in the notification.

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

20 "(h) If a check is returned to the licensee from a  
21 payer financial institution due to insufficient funds or a  
22 closed account, the licensee shall have the right to all civil  
23 remedies allowed by law, except as provided for in Section  
24 5-18A-12, to collect the check and may recover court costs and  
25 a reasonable attorney's fee. The attorney's fee may not exceed  
26 15 percent of the face amount of the check or debit



1 authorization. No individual who issues a personal check or  
2 authorizes a debit for his or her checking account to a  
3 licensee for the purpose of a deferred presentment transaction  
4 under this chapter shall be convicted pursuant to Section  
5 13A-9-13.1, if the check or debit authorization is returned  
6 due to insufficient funds. Checks or debit authorizations  
7 returned to the licensee due to a closed account may be  
8 collected pursuant to Section 13A-9-13.1.

9 "(i) No licensee may alter or delete the date on any  
10 check accepted by the licensee. No licensee may accept an  
11 undated check or debit authorization or a check or debit  
12 authorization dated on a date other than the date on which the  
13 licensee accepts the check or debit authorization.

14 "(j) No licensee shall engage in unfair or deceptive  
15 acts, practices, or advertising in the conduct of the licensed  
16 business.

17 "(k) No licensee shall require a customer to provide  
18 security for the transaction or require the customer to  
19 provide a guaranty from another person.

20 "~~(l) Each licensee shall pay all proceeds for any~~  
21 ~~deferred presentment transaction in cash and directly to the~~  
22 ~~customer.~~ Each licensee may pay all proceeds for a deferred  
23 presentment transaction in cash directly to the customer or by  
24 electronic funds transfer to the customer's financial  
25 institution account. The period of the deferred presentment

1 transaction shall not begin until the funds are received by  
2 the customer.

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

11 "(n) A deferred presentment provider shall not  
12 redeem, extend, or otherwise consolidate a deferred deposit  
13 agreement with the proceeds of another deferred presentment  
14 transaction made by the same or affiliated deferred  
15 presentment provider except as expressly provided in Section  
16 5-18A-12.

17 "(o) The licensee shall use a ~~third party private~~  
18 ~~sector database, where available,~~ common database as  
19 designated by the supervisor to ensure that the customer does  
20 not have outstanding deferred presentment transactions that  
21 exceed five hundred dollars (\$500).

22 "(p) The supervisor shall implement a common  
23 database with real-time access for deferred presentment  
24 providers, pursuant to this section. The database shall be  
25 accessible to the supervisor and the deferred presentment  
26 providers to verify whether any deferred presentment

1 transactions are outstanding for a particular person and  
2 whether the person is currently in an extended repayment plan.  
3 The supervisor may impose a fee not to exceed one dollar (\$1)  
4 per transaction for data required to be submitted by a  
5 deferred presentment provider; however, this fee may not  
6 increase the fee paid by the borrower above the maximum  
7 provided by law. A deferred presentment provider may rely on  
8 the information contained in the database as accurate and is  
9 not subject to any administrative penalty or civil liability  
10 as a result of relying on inaccurate information contained in  
11 the database. The supervisor may adopt rules to administer and  
12 enforce this section and insure that the database is used by  
13 deferred presentment providers pursuant to this section.

14 "(q) Each licensee under this chapter shall  
15 annually, on or before December 1, file a written report with  
16 the supervisor containing such information as the supervisor  
17 may require concerning his or her business and operations  
18 during the preceding calendar year as to each approved office.  
19 Reports shall be made under oath and shall be in the form  
20 prescribed by the supervisor.

21 "(r) Using the information reported to the  
22 supervisor under subsection (q) and the information contained  
23 in the database, the supervisor shall make and publish  
24 annually an analysis and recapitulation of such reports  
25 regarding the utilization of deferred presentment services."

1           Section 25. Although this bill would have as its  
2 purpose or effect the requirement of a new or increased  
3 expenditure of local funds, the bill is excluded from further  
4 requirements and application under Amendment 621 because the  
5 bill defines a new crime or amends the definition of an  
6 existing crime.

7           Section 26. The provisions of this act are  
8 severable. If any part of this act is declared invalid or  
9 unconstitutional, that declaration shall not affect the part  
10 which remains.

11           Section 27. This act shall become effective on the  
12 first day of the third month following its passage and  
13 approval by the Governor, or its otherwise becoming law.