

1 SB284  
2 183291-2  
3 By Senators Orr and Smitherman  
4 RFD: Judiciary  
5 First Read: 07-MAR-17

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8 SYNOPSIS: Under existing law, the maximum rate of  
9 interest on a small loan is three percent a month  
10 on amounts not more than \$200 and two percent a  
11 month for amounts in excess of \$200, and the  
12 maximum term of the small loan is limited to 25  
13 months. Under existing law, in lieu of these  
14 interest rates, the lender may utilize an  
15 alternative rate of charge that consists of an  
16 acquisition fee of up to 10 percent of the  
17 principal and a monthly installment handling fee.  
18 Under existing law, the maximum term of a small  
19 loan on which the alternative rate of charge may be  
20 utilized is 12 months.

21 This bill would provide that the minimum  
22 term for a small loan in which the lender is  
23 charging the alternative rate is six months. This  
24 bill would prohibit the lender from collecting an  
25 additional acquisition charge if the loan is  
26 refinanced within the first six months.

1 Under existing law, the term of a deferred  
2 presentment transaction is between 10 and 31 days,  
3 and the deferred presentment services provider may  
4 charge an interest rate of up to 17.5 percent for  
5 the term. Under existing law, a borrower may renew  
6 a deferred presentment transaction no more than  
7 once, and, if, after one renewal, the borrower is  
8 unable to repay, the deferred presentment services  
9 provider must allow the borrower to repay in four  
10 equal monthly installments.

11 This bill would limit the number of deferred  
12 presentment transactions a borrower could enter  
13 into in a 12-month period to four transactions and  
14 would prohibit a licensee from rolling over a  
15 deferred presentment transaction within seven days  
16 of a prior transaction. This bill would set the  
17 term of all deferred presentment transactions at 30  
18 days. This bill would provide for one automatic  
19 three-month extension. This bill would prohibit a  
20 licensee from engaging in certain actions in an  
21 attempt to collect on a transaction or evading the  
22 requirements of the Deferred Presentment Services  
23 Act by disguising the transaction as another type  
24 of loan product. This bill would provide for  
25 licensing through a national database.

26 Under existing law, a person may pawn the  
27 title of his or her automobile.

1           This bill would specify that no person may  
2 enter into a pawn transaction with respect to  
3 titled personal property.

4           Under existing law, on a loan in which the  
5 principal amount is \$2,000 or more, the parties may  
6 agree to any rate of interest so long as it is not  
7 unconscionable.

8           This bill would cap the interest rate on  
9 loans of more than \$2,000 at a 60 percent  
10 annualized rate as defined by federal regulation.

11           Amendment 621 of the Constitution of Alabama  
12 of 1901 prohibits a general law whose purpose or  
13 effect would be to require a new or increased  
14 expenditure of local funds from becoming effective  
15 with regard to a local governmental entity without  
16 enactment by a 2/3 vote unless: it comes within one  
17 of a number of specified exceptions; it is approved  
18 by the affected entity; or the Legislature  
19 appropriates funds, or provides a local source of  
20 revenue, to the entity for the purpose.

21           The purpose or effect of this bill would be  
22 to require a new or increased expenditure of local  
23 funds within the meaning of Amendment 621. However,  
24 the bill does not require approval of a local  
25 governmental entity or enactment by a 2/3 vote to  
26 become effective because it comes within one of the  
27 specified exceptions contained in Amendment 621.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 Relating to loans and other types of consumer credit  
7 transactions; to amend Sections 5-18-15, 5-18A-3, 5-18A-12,  
8 5-18A-13, and 8-8-5 of the Code of Alabama 1975, to provide  
9 further for small loans; to specify a minimum term for certain  
10 small loans; to prohibit a lender from charging an additional  
11 acquisition fee for a small loan refinanced in the first six  
12 months of the term; to provide further for deferred  
13 presentment transactions; to limit the number of deferred  
14 presentment transactions a borrower may enter into; to further  
15 specify a term for deferred presentment services transactions;  
16 to provide further for roll overs and installment plans for  
17 repayments; to prohibit a deferred presentment services  
18 licensee from engaging in certain actions; to authorize the  
19 State Banking Department to provide for licensing through a  
20 national database; to provide that no person may enter into a  
21 pawn transaction with respect to titled personal property; to  
22 specify the maximum rate of interest on certain loans; and in  
23 connection therewith would have as its purpose or effect the  
24 requirement of a new or increased expenditure of local funds  
25 within the meaning of Amendment 621 of the Constitution of  
26 Alabama of 1901.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Sections 5-18-15, 5-18A-3, 5-18A-12,  
2           5-18A-13, and 8-8-5 of the Code of Alabama 1975, are amended  
3           to read as follows:

4           "§5-18-15.

5           "(a) Maximum rates of interest and charge. Every  
6           licensee under this chapter may contract for and receive as  
7           interest on any loan of money less than one thousand dollars  
8           (\$1,000) an amount at a rate not exceeding three percent a  
9           month on that part of the unpaid principal balance not in  
10          excess of two hundred dollars (\$200), and two percent a month  
11          on that part of the unpaid principal balance in excess of two  
12          hundred dollars (\$200) but less than one thousand dollars  
13          (\$1,000).

14          "(b) Account maintenance fee. In addition to the  
15          maximum rate of interest and charges pursuant to subsection  
16          (a), a licensee may enter into a contract of loan under this  
17          chapter in which the borrower agrees to pay an account  
18          maintenance fee of not more than three dollars (\$3) for each  
19          month of the scheduled period of repayment of the loan  
20          provided that the scheduled monthly payments are equal to or  
21          greater than thirty dollars (\$30). Such account maintenance  
22          fee shall be determined at the date of the loan, but may not  
23          be prepaid. Such fee as so determined shall not bear interest  
24          and shall constitute a part of the finance charge.

25          "(c) Method of computing charges.

26          "(1) Interest or charges under this chapter shall  
27          not be paid, deducted, discounted, or received in advance or

1 compounded, but the rate of charge authorized by subsections  
2 (a) and (b) may be precomputed as provided in subdivision (2)  
3 of this subsection.

4 "For the purpose of this section, one month shall be  
5 that period of time from any date in a month to a  
6 corresponding date in the next month and, if there is not a  
7 corresponding date, then to the next day of the next month,  
8 and a day shall be considered one thirtieth of a month when  
9 computation is made for a fraction of a month.

10 "(2) When the loan contract requires repayment in  
11 substantially equal and consecutive monthly installments of  
12 principal and charges or interest combined, the charges or  
13 interest may be precomputed at the agreed monthly or periodic  
14 rate not in excess of that provided for in subsections (a) and  
15 (b) on scheduled unpaid principal balances according to the  
16 terms of the contract and added to the principal of the loan.  
17 Every payment may be applied to the combined total of  
18 principal and precomputed charge until the contract is fully  
19 paid. The acceptance or payment of charges on loans made under  
20 the provisions of this subsection shall not be deemed to  
21 constitute payment, deduction, or receipt thereof in advance  
22 nor compounding under subdivision (1) above.

23 "(d) Refunds.

24 "(1) When any loan contract is paid in full by cash,  
25 a new loan, renewal, or otherwise one month or more before the  
26 final installment date, the licensee shall refund or credit  
27 the borrower with that portion of the total charges which

1 shall be due the borrower as determined by schedules prepared  
2 under the rule of seventy-eighths or sum of the digits  
3 principle as follows: The amount of the refund or credit shall  
4 be as great a proportion of the total charges originally  
5 contracted for as the sum of the periodic time balances of the  
6 contract scheduled to follow the date of prepayment bears to  
7 the sum of all the periodic time balances of the contract,  
8 both sums to be determined according to the payment schedule  
9 originally contracted for.

10 "(2) If the loan contract, with charges precomputed  
11 under subsections (a) and (b), is not prepaid in full but  
12 becomes partially prepaid in an amount equal to three or more  
13 installments, the licensee shall reduce the balance due by the  
14 amount that would be required to be refunded for prepayment in  
15 full on the date of the partial prepayment and compute charges  
16 as payments are made thereafter in the manner prescribed in  
17 subdivision (1) of subsection (c), or the licensee may with  
18 the consent of the borrower reschedule the remaining  
19 installments and precompute charges as prescribed in  
20 subdivision (2) of subsection (c).

21 "(e) Default or extension charges. If the contract  
22 so provides, when a scheduled payment is in default or  
23 delinquent for 10 or more days, the licensee may charge and  
24 collect an additional late charge not to exceed the greater of  
25 ten dollars (\$10) or five percent of the amount of the  
26 scheduled payment in default. Each of the late charges  
27 permitted under this subsection may be collected only once on



1 any scheduled payment, regardless of the period during which  
2 the payment remains in default or is delinquent. It is the  
3 intent of this subsection that if the payment date of all  
4 wholly unpaid installments is deferred or extended one or more  
5 full months and the contract so provides, the licensee may  
6 charge and collect a deferment or default charge only on the  
7 installment which is delinquent at the date the contract is  
8 extended or deferred.

9 "(f) Rules and regulations. In addition to the  
10 general authority granted to him or her by subsection (a) of  
11 Section 5-18-12, the supervisor may make such rules and  
12 regulations as he or she may deem necessary or advisable to  
13 insure that rebates, default charges, and deferment charges  
14 are so computed, paid to or collected from borrowers that the  
15 total charges collected by licensees under this section are  
16 substantially equivalent to charges authorized to be collected  
17 by licensees under this section.

18 "(g) Recording fees. The licensee may collect from  
19 the borrower the actual fees paid a public official or agency  
20 of the state for filing, recording, or releasing any  
21 instrument securing the loan.

22 "(h) Further charges; splitting of contracts. No  
23 further or other charges shall be directly or indirectly  
24 contracted for or received by any licensee, including  
25 insurance premiums of any kind, except those specifically  
26 authorized by this chapter or by Chapter 8 of Title 8. No  
27 licensee shall divide into separate parts any contract made

1 for the purpose of or with the effect of obtaining charges in  
2 excess of those authorized by this section. All balances due  
3 to a licensee from any person as a borrower, or as an  
4 endorser, guarantor, or surety for any borrower or otherwise,  
5 shall be considered a part of any loan being made by a  
6 licensee to the person for the purpose of computing charges.

7 "(i) Installment payments; contract period. No  
8 licensee shall enter into any contract of loan under this  
9 chapter in which the borrower agrees to make any scheduled  
10 repayment of the cash advance more than 25 calendar months  
11 from the date of making the contract of loan. Every loan  
12 contract shall require payment of the cash advance and charges  
13 in installments which shall be payable at approximately equal  
14 periodic intervals; except, that payment dates may be omitted  
15 to accommodate borrowers with seasonal incomes. No installment  
16 contracted for shall be substantially larger than any  
17 preceding installment.

18 "(j) Interest after due date of final installment.  
19 Interest as provided in this section shall not accrue or be  
20 recovered or charged on any loan made under this chapter for  
21 any longer than six months after the due date of the final  
22 installment of principal or interest. After the expiration of  
23 said six-month period, interest may be charged at a rate not  
24 to exceed eight percent per annum.

25 "(k) Inducing borrower to become obligated under  
26 more than one contract. No licensee shall induce or permit any  
27 person or any husband and wife, jointly or severally, to

1 become obligated directly or contingently or both under more  
2 than one contract of loan at the same time for the purpose of  
3 obtaining a higher rate of charge than would otherwise be  
4 permitted by this section. It shall be unlawful for any  
5 licensee to evade or attempt to evade this section by inducing  
6 a customer to borrow from another loan company in which he or  
7 she has a pecuniary interest or with whom he or she has an  
8 arrangement for exchange of customers.

9 "(1) Liabilities of licensees making excess charges.  
10 Any licensee making any charge in excess of the amount  
11 authorized herein, except as the result of a deliberate  
12 violation of or reckless disregard for this chapter, shall  
13 refund to the borrower the total amount of the actual economic  
14 damages which at the licensee's option may be done by payment  
15 to the borrower, or by reducing the amount of the borrower's  
16 principal obligation. If the borrower is entitled to a refund  
17 and the licensee refuses to refund within 60 days after  
18 written demand, including the filing of a legal action, the  
19 licensee shall forfeit, in addition to the actual economic  
20 damages his or her right to any finance charge. If the  
21 licensee has made an excess charge in deliberate violation of  
22 or in reckless disregard for this chapter, the licensee and  
23 the several members, officers, directors, agents, and  
24 employees thereof who shall have participated in a deliberate  
25 violation of or reckless disregard for this chapter, shall be  
26 guilty of a misdemeanor which, upon conviction, shall be  
27 punishable by a fine of not more than five hundred dollars

1 (\$500) and not less than one hundred dollars (\$100) or by  
2 imprisonment of not more than six months, or by both fine and  
3 imprisonment in the direction of the court. The remedies  
4 provided herein shall be the remedy of the borrower under this  
5 chapter as the result of this violation. No action under this  
6 section may be brought more than 18 months after the due date  
7 of the last scheduled payment of the agreement pursuant to  
8 which the charge was made.

9 "(m) Alternative rates of charge.

10 "(1) As an alternative to the interest rates and  
11 charges permitted to be charged by a licensee pursuant to  
12 subsections (a) and (b) on loans of less than one thousand  
13 dollars (\$1,000), a licensee may charge an acquisition charge  
14 for making the loan in an amount not in excess of 10 percent  
15 of the amount of the principal and an installment account  
16 handling charge in an amount no greater than the following:

17 "a. Twelve dollars (\$12) per month on any loan of an  
18 amount of one hundred dollars (\$100) or more, up to and  
19 including the amount of three hundred dollars (\$300).

20 "b. Fourteen dollars (\$14) per month on any loan of  
21 an amount in excess of three hundred dollars (\$300), but not  
22 more than four hundred dollars (\$400).

23 "c. Sixteen dollars (\$16) per month on any loan of  
24 an amount in excess of four hundred dollars (\$400), but not  
25 more than five hundred dollars (\$500).

1            "d. Seventeen dollars (\$17) per month on any loan of  
2 an amount in excess of five hundred dollars (\$500), but not  
3 more than eight hundred dollars (\$800).

4            "e. Twenty dollars (\$20) per month on any loan of an  
5 amount in excess of eight hundred dollars (\$800), but less  
6 than one thousand dollars (\$1,000).

7            "Provided, however, that the scheduled payments are  
8 in amounts equal to or greater than forty dollars (\$40) per  
9 month, inclusive of the installment account handling charge.  
10 The acquisition charge and the installment account handling  
11 charge may be calculated for the term of the contract and  
12 added to the amount of the principal. The acceptance or  
13 payment of charges on loans made under this subsection shall  
14 not be deemed to constitute payment, deduction, or receipt  
15 thereof in advance nor compounding under this subsection.

16            "(2) The maximum term of any loan made under this  
17 subsection is 12 months. For contracts entered into on or  
18 after August 1, 2017, the minimum term of any loan made under  
19 this subsection shall be six months. On and after August 1,  
20 2017, no acquisition charge may be collected on any loan that  
21 was refinanced within the first six months of the date of the  
22 original loan contract. For purposes of this section,  
23 refinanced loans include any loan extended within seven days  
24 of the original loan payoff.

25            "(3) Upon the prepayment in full of any loan under  
26 this subsection, the installment account handling charge is

1 subject to subsection (d), as it relates to refunds. The  
2 acquisition charge shall not be subject to refund.

3 "(4) No insurance charge under Section 5-18-17, no  
4 interest surcharge under Section 8-8-14, nor any other charge  
5 of any nature whatsoever, is permitted for loans made pursuant  
6 to the rate structure of this subsection, except for  
7 acquisition charges and installment account handling charges  
8 as provided under this subsection, default charges under  
9 subsection (e), recording fees under subsection (g), bad check  
10 charges under Section 8-8-15, and assessed court costs.

11 "(5) The loan charges allowed under this subsection  
12 may not be imposed on a loan to a borrower who has more than  
13 one loan outstanding with the licensee and upon which loan  
14 charges were imposed under this subsection.

15 "(6) No licensee shall file a claim against a  
16 decedent borrower's estate for any unpaid indebtedness for a  
17 loan whose charges include an acquisition charge or an  
18 installment account handling charge under this subsection.

19 "§5-18A-3.

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

1           "(b) Trust companies, life insurance companies, and  
2           federally constituted agencies shall be exempt from licensing  
3           under this chapter. Notwithstanding anything to the contrary  
4           in this chapter, this chapter shall not apply to any of the  
5           following entities, and each of these entities shall be exempt  
6           from this chapter: Banks, credit unions, savings associations,  
7           savings banks, and thrift institutions organized pursuant to  
8           the laws of this state or any other state or the laws of the  
9           United States and any parent of any of the foregoing entities.

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

12           "(d) Subject to the exemption provided in subsection  
13           (b), a licensee or licensee's agent shall not evade the  
14           requirements of this chapter through any method including:

15           "(1) Offering, making, or assisting a borrower to  
16           obtain a loan or brokering or acting as an agent for a third  
17           party in such a transaction, regardless of whether approval,  
18           acceptance, or ratification is necessary to create a legal  
19           obligation for the third party.

20           "(2) Disguising a short-term consumer loan as a  
21           revolving line of credit or making or assisting a borrower to  
22           obtain a revolving line of credit.

23           "(e) Any loan contract entered into in violation of  
24           this section shall be void, and the lender shall have no right  
25           to collect, receive, or retain any principal, interest, or  
26           charges whatsoever. Any person who violates any provision of  
27           this section shall be guilty of a misdemeanor, which, upon

1 conviction thereof, shall be punishable by a fine of not more  
2 than five hundred dollars (\$500) nor less than one hundred  
3 dollars (\$100), or by imprisonment for not more than six  
4 months, or by both fine and imprisonment in the discretion of  
5 the court.

6 "(f) The State Banking Department may require  
7 applicants to apply for a license through the Nationwide  
8 Multistate Licensing System and Registry. In order to carry  
9 out this requirement, the supervisor may participate in the  
10 Nationwide Multistate Licensing System and Registry. For this  
11 purpose, the supervisor may establish by rule or order such  
12 requirements as necessary, including, but not limited to,  
13 background checks as permitted through the Nationwide  
14 Multistate Licensing System and Registry, civil or  
15 administrative records, credit history, any other information  
16 deemed necessary by the Nationwide Multistate Licensing System  
17 and Registry, and the payment of fees to apply for or renew  
18 licenses through the Nationwide Multistate Licensing System  
19 and Registry.

20 "§5-18A-12.

21 "(a) Subject to the following subsections, every  
22 licensee under this chapter may charge and collect a maximum  
23 fee on any deferred presentment transaction not to exceed 17.5  
24 percent of the amount advanced. The maximum amount that may be  
25 advanced in any deferred presentment transaction is five  
26 hundred dollars (\$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.~~

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

1 ~~notifying the customer of his or her rights. If the customer~~  
2 ~~fails to exercise his or her rights within 15 days of the~~  
3 ~~notice, the licensee may commence action to collect on a~~  
4 ~~transaction in default~~ the expiration of the mandatory  
5 extended loan period.

6           "~~(d)~~ (c) If there are insufficient funds to pay a  
7 check on the date of presentment, the licensee may charge a  
8 fee authorized in Section 8-8-15; however, only one such fee  
9 may be collected with respect to any particular ~~transaction~~  
10 deferred presentment services transaction, regardless of the  
11 number of payments owed. No other fees or charges of any kind  
12 may be charged or collected from customers except those  
13 authorized herein. No person shall use any device, subterfuge,  
14 or pretense whatsoever, including, but not limited to, catalog  
15 sales, discount vouchers, Internet instant-rebate programs,  
16 phone card clubs, or any agreement, including agreements with  
17 affiliated persons, with the intent to obtain greater charges  
18 than would otherwise be authorized 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 or who has had more than four deferred  
25 presentment transactions in a 12-month period. A licensee may  
26 not rollover any deferred presentment transaction or offer a

1 customer a new deferred presentment transaction within seven  
2 days of payment of a prior transaction.

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

7 "(c) Any agreement for a deferred presentment  
8 transaction shall be in writing and signed by the checking  
9 account holder. The customer in a deferred presentment  
10 contract shall have the right to redeem the check or debit  
11 authorization from the licensee before the agreed date of  
12 deposit upon payment to the licensee of the amount of the  
13 contract. ~~A licensee shall not defer presentment of any  
14 personal check or debit authorization for less than 10 days  
15 nor more than 31 calendar days after the date of the contract~~  
16 The term of a deferred presentment services transaction shall  
17 be 30 calendar days, with an automatic three-month extension  
18 if the balance remains unpaid at the expiration of the  
19 original 30-day term.

20 "(d) The licensee shall notify the district attorney  
21 for the circuit in which the check was received within five  
22 business days after being advised by the payer financial  
23 institution that a check or draft has been altered, forged,  
24 stolen, obtained through fraudulent or illegal means,  
25 negotiated without proper legal authority, or represents the  
26 proceeds of illegal activity. If a check or draft is returned  
27 to the licensee by the payer financial institution for any of

1 these reasons, the licensee shall not release the check,  
2 draft, or money order without the consent of the district  
3 attorney or other investigating law enforcement authority.

4 "(e) A licensee shall comply with all provisions of  
5 state and federal law regarding cash transactions and cash  
6 transaction reporting.

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

1 that he or she is unable to pay or if the deferred presentment  
2 check or debit authorization after one rollover, is returned  
3 for insufficient funds, the deferred presentment transaction  
4 will be subject to terms and conditions ~~described in~~  
5 consistent with subsection (c) of Section 5-18A-12. The terms  
6 and conditions of the transaction shall be provided in the  
7 notification.

8 "(g) A licensee shall issue a copy of the written  
9 agreement to each person for whom a licensee defers deposit of  
10 a check or debit authorization. The written agreement shall  
11 include the information described in subsection (f) ~~and the~~  
12 ~~extended repayment program described in,~~ including the terms  
13 of any automatic extension under subsection (c) of Section  
14 5-18A-12.

15 "(h) If a check is returned to the licensee from a  
16 payer financial institution due to insufficient funds or a  
17 closed account, the licensee shall have the right to all civil  
18 remedies allowed by law, except as provided for in Section  
19 5-18A-12, to collect the check and may recover court costs and  
20 a reasonable attorney's fee. The attorney's fee may not exceed  
21 15 percent of the face amount of the check or debit  
22 authorization. No individual who issues a personal check or  
23 authorizes a debit for his or her checking account to a  
24 licensee for the purpose of a deferred presentment transaction  
25 under this chapter shall be convicted pursuant to Section  
26 13A-9-13.1, if the check or debit authorization is returned  
27 due to insufficient funds. Checks or debit authorizations

1 ~~returned to the licensee due to~~ knowingly authorized by a  
2 customer using a closed account may be collected pursuant to  
3 Section 13A-9-13.1.

4 "(i) No licensee may alter or delete the date on any  
5 check accepted by the licensee. No licensee may accept an  
6 undated check or debit authorization or a check or debit  
7 authorization dated on a date other than the date on which the  
8 licensee accepts the check or debit authorization.

9 "(j) No licensee shall engage in unfair or deceptive  
10 acts, practices, or advertising in the conduct of the licensed  
11 business.

12 "(k) No licensee shall ~~require a customer to provide~~  
13 ~~security for the transaction or require the customer to~~  
14 ~~provide a guaranty from another person~~ use or threaten force  
15 or violence against any customer. No licensee shall threaten a  
16 customer with criminal prosecution, unless the customer's  
17 actions are in clear violation of a criminal statute pursuant  
18 to Section 13A-9-13.1, relating to negotiating a worthless  
19 instrument. No licensee shall trespass on a customer's  
20 property, use printed materials that resemble legal process,  
21 make collection attempts at unreasonable hours of the night,  
22 or deny the customer use of personal property not secured by  
23 the loan.

24 "(l) Each licensee ~~shall~~ may pay all proceeds ~~for~~  
25 ~~any~~ from a deferred presentment transaction in cash, money  
26 order, or stored value card and directly to the customer or by  
27 means of an electronic funds transfer directly to the customer

1 or the customer's account. The customer may not be charged an  
2 additional fee for cashing the lender's business instrument or  
3 for negotiating the forms of loan proceeds other than cash.  
4 The period of the deferred presentment services transaction  
5 shall not begin until the customer receives the funds. There  
6 shall be no additional charge related to the payment of the  
7 proceeds of any deferred presentment transaction.

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

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

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

27 "§8-8-5.

1           "(a) Any person or persons, corporations, trust,  
2           general partnership or partnerships, limited partnership or  
3           partnerships, or association may agree to pay such rate or  
4           rates of interest not to exceed 60 percent annualized  
5           percentage rate as defined by Regulation Z of the Truth in  
6           Lending Act of 1968 for the loan or forbearance of money and  
7           for any credit sales as such person, corporation, trust,  
8           general partnership, limited partnership, or association may  
9           determine, notwithstanding any law of this state otherwise  
10          prescribing or limiting such rate or rates of interest;  
11          provided, that the original principal balance of the loan or  
12          forbearance of money or credit sales is not less than \$2,000;  
13          provided further, that all laws relating to unconscionability  
14          in consumer transactions including but not limited to the  
15          provisions of Chapter 19 of Title 5, known as the Mini-Code,  
16          shall apply to transactions covered by this section.

17          "(b) As to any such loan or forbearance of money or  
18          credit sales made in compliance with subsection (a) of this  
19          section, neither such person, corporation, trust, general  
20          partnership, limited partnership, or association, nor their  
21          heirs, successors, or assigns, nor any surety, guarantor,  
22          endorser, or any other person, firm, partnership, association,  
23          trust, or corporation which may become liable, in whole or in  
24          part, for the payment of the debt and interest agreed to be  
25          paid thereon in accordance with the terms hereof, or any  
26          extension, amendment, or renewal thereof, may raise or claim  
27          the defense or benefit of the usury laws or any other law



1       prescribing, regulating, or limiting such rate or rates of  
2       interest.

3               "(c) The term "original principal balance," as used  
4       herein, shall include the total principal amount of  
5       indebtedness incurred or contracted for in a loan, forbearance  
6       of money, credit sales, or in a single issue or sale of bonds,  
7       debentures, promissory notes, or like transaction, without  
8       regard either to the face amount or denomination of any bond,  
9       debenture, note, or other evidence of indebtedness  
10       constituting a part of such issue or sale, or to the amount of  
11       the initial or any subsequent advance pursuant to such loan,  
12       forbearance, or credit sales. The term "interest" as used  
13       herein shall include all direct or indirect charges imposed as  
14       an incident to a loan, forbearance of money, or credit sales.

15               "(d) This section shall apply to any person or  
16       entity, whether or not organized for profit, and to  
17       transactions both prior to and after default, but shall not  
18       apply to any agreement involving the loan or forbearance of  
19       money or credit sales where the original principal balance is  
20       less than \$2,000.

21               "(e) The provisions of this section are cumulative  
22       to, and not in derogation of, rights under other provisions of  
23       state or federal law and shall not in any way repeal, amend,  
24       or modify the provisions of Public Law 96-221 enacted by the  
25       Congress of the United States and approved March 31, 1980, as  
26       amended."

1           Section 2. After the effective date of this act, no  
2 person licensed pursuant to Chapter 19A of Title 5 of the Code  
3 of Alabama 1975, shall enter into a new transaction in which  
4 money is advanced in exchange for a security interest in  
5 unencumbered titled personal property owned by a consumer,  
6 whether it be a pawn, loan, or pledge, and these transactions  
7 shall be regulated pursuant to either Chapter 18 or Chapter  
8 19A of Title 5, Code of Alabama 1975, depending on the  
9 principal amount advanced in exchange for the security  
10 interest.

11           Section 3. Although this bill would have as its  
12 purpose or effect the requirement of a new or increased  
13 expenditure of local funds, the bill is excluded from further  
14 requirements and application under Amendment 621 because the  
15 bill defines a new crime or amends the definition of an  
16 existing crime.

17           Section 4. This act shall become effective on the  
18 August 1, 2017.