

Alabama Deferred Presentment Services Act Title 5, Chapter 18A

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Chapter 18A, Alabama Deferred Presentment Services Act

Section 5-18A-1

Short title; purpose.

This chapter shall be known and may be cited as the "Deferred Presentment Services Act." The purpose of this chapter is to protect consumers who enter into short-term cash advances from abuses that occur in the marketplace. This chapter shall be liberally construed to effectuate its purpose as a consumer protection statute.

(Act 2003-359, p. 992, §1.)

Section 5-18A-2

Definitions.

As used in this chapter, the following terms shall have the following meanings:

(1) CHECK. A debit authorization or a check signed by the maker and made payable to a person licensed under this chapter.

(2) CONTINUOUS TRANSACTION. To extend a deferred presentment transaction with the same account without redemption in full with cash or guaranteed funds.

(3) DEFERRED PRESENTMENT SERVICES. A transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee:

a. Accepting a check or authorization to debit a checking account and, in connection with that acceptance, advancing funds to the checking account holder.

b. Holding the check or authorization to debit checking account for a period of time prior to payment or deposit.

(4) DEPARTMENT. The State Banking Department.

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

(6) PERSON. An individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

(7) ROLLOVER. Any deferred presentment transaction where the transaction is not paid in full and the licensee agrees to allow the customer to pay the fee only for a new deferred presentment transaction.

(8) SUPERVISOR. The Supervisor of the Bureau of Loans or his or her designee.

(Act 2003-359, p. 992, §2.)

Section 5-18A-3

License - Required; applicability.

(a) On or after January 1, 2004, no person shall engage in the business of deferred presentment services without having first obtained a license from the supervisor. A separate license shall be required for each location from which the business is conducted.

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

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

(Act 2003-359, p. 992, §3.)

Section 5-18A-4

License - Qualifications.

(a) Each applicant for a license shall satisfy all of the following requirements to qualify for a license:

(1) Have a financial statement showing that the applicant has at least twenty thousand dollars (\$20,000) in unencumbered cash assets or its equivalent available for each location of the business prepared in accordance with standard accounting practices and procedures.

(2) Have no record on the part of the applicant, any director, officer, or shareholder owning more than 25 percent of the applicant, of any court findings of fraud or any official suspension or removal by any agency or

department of the United States or any state from participation in the conduct of any lending, deferred presentment, or related business.

(3) Have no record of a conviction of a felony or an offense involving breach of trust, fraud, or dishonesty in any jurisdiction or a history of acting as a beneficial owner for an individual who has been convicted of a felony or an offense involving breach of trust, fraud, or dishonesty in any jurisdiction.

(b) The requirements set forth in this section shall be continuing in nature.

(Act 2003-359, p. 992, §4.)

**Section 5-18A-5
License - Application.**

Each application for a license shall be in writing and under oath to the supervisor, in a form prescribed by the supervisor, and shall include the legal name, residence, business address, and telephone number of the applicant. If the applicant is a partnership, association, or corporation, the application shall include the name and address of every member, officer, and director.

(Act 2003-359, p. 992, §5.)

**Section 5-18A-6
License - Fees; financial statement.**

Each application for a license shall be accompanied by all of the following:

(1) A nonrefundable license fee of five hundred dollars (\$500) for each location, office, or branch at which the applicant conducts business. The license fees are subject to increase by the supervisor through regulation.

(2) A nonrefundable application investigation fee of one hundred dollars (\$100).

(3) A financial statement meeting the requirements of subdivision (1) of subsection (a) of Section 5-18A-4.

(Act 2003-359, p. 992, §6.)

Section 5-18A-7

License - Issuance; display; payment of fees; surrender.

(a) Upon the filing of an application in the form prescribed by the supervisor, accompanied by the fee and documents required pursuant to Section 5-18A-6, the supervisor shall investigate to ascertain whether the qualifications prescribed by Section 5-18A-4 have been satisfied. If the supervisor finds that the qualifications have been satisfied, and approves the documents, the supervisor shall issue to the applicant a license to engage in deferred presentment services business in Alabama. A request shall be either granted or denied within 90 days of receipt. If permission is denied, the applicant for licensure shall have the right to an administrative hearing within 60 days of the denial, if requested, and the right to appeal pursuant to rules promulgated by the supervisor.

(b) The license shall be kept conspicuously posted in the place of business of the licensee and shall not be assignable or transferable or removed to another location without permission of the supervisor.

(c) The annual license fee required in subdivision (1) of Section 5-18A-6 for each office, branch, or place of business of the licensee shall be due on January 1 of each year and shall be valid for a one-year period ending the following December 31. License fees shall be delinquent on February 1 of each year and there shall be a penalty of 10 percent for each month or portion thereof that the licensee is delinquent in the payment of a license fee. All license fees and investigation fees collected pursuant to this chapter shall be paid into the special fund created pursuant to Section 5-2A-20, and shall be used in the supervision and examination of licensees.

(d) A licensee may voluntarily surrender its license to the supervisor; however, the licensee shall not be entitled to receive a refund of any license fees previously paid. Upon surrender of a license, the licensee shall immediately make available to the supervisor all books, records, and papers required to be created and maintained pursuant to this chapter or rule or regulation promulgated hereunder.

(Act 2003-359, p. 992, §7.)

Section 5-18A-8
License - Change of control.

The prior written approval of the supervisor shall be required for the continued operation of a deferred presentment services business whenever a change in control of a license is proposed. Control in the case of a corporation shall mean direct or indirect ownership, or the right to control 25 percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity shall mean the ability to change the principals of the organization, whether active or passive. The supervisor may require any information deemed necessary to determine whether a new application is required.

(Act 2003-359, p. 992, §8.)

Section 5-18A-9
Circumstances requiring written report.

Within 15 days of the occurrence of any one of the following events, a licensee shall file a written report with the supervisor describing the event and its expected impact on the activities of the licensee in this state:

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority and subsequently the outcome of such proceeding.
- (3) The denial of a license to engage in the deferred presentment services business by any state or governmental authority.
- (4) Any felony indictment of the licensee or any of its directors, officers, or principals.
- (5) Any felony conviction of the licensee or any of its directors, officers, or principals.
- (6) All other events as the supervisor may determine and identify by regulation.

(Act 2003-359, p. 992, §9.)

Section 5-18A-10

Rules and regulations; judicial review.

(a) The supervisor may promulgate reasonable rules and regulations for the implementation, administration, execution, and enforcement of this chapter.

(b) Prior to adoption, amendment, or repeal of any regulation, the supervisor shall give at least 35 days' notice of its intended action by filing notice of intended action with the Legislative Reference Service for publication in the Alabama Administrative Monthly. The date of publication in the Alabama Administrative Monthly shall constitute the date of notice. The notice shall include a statement of either the terms or substance of the intended action or a description of the subject and issues involved, shall specify a notice period ending not less than 35 days nor more than 90 days from the date of the notice, during which period interested persons may present their views thereon, and shall specify the place where, and the manner in which interested persons may present their views thereon.

(c) All interested persons shall have a reasonable opportunity to submit data, views, or arguments, orally or in writing. The supervisor shall consider all written and oral submissions respecting the proposed regulation. Upon adoption of a regulation, the supervisor, if conflicting views are submitted on the proposed regulation and if requested in writing to do so by an interested person prior to adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling any considerations urged against its adoption.

(d) Notwithstanding any other provisions of this chapter to the contrary, if the supervisor finds that action is required by or to comply with a federal statute or regulation which requires adoption of a regulation upon fewer than 35 days' notice and states in writing his or her reasons for that finding, the supervisor may proceed without prior notice or hearing or upon any abbreviated notice and hearing that he or she finds practicable, to adopt an emergency regulation. The regulation shall become effective immediately, unless otherwise stated therein. The regulation may be effective for a period of not longer than 120 days unless within such time the supervisor complies with the procedures set forth in subsections (b) and (c). The adoption of the same or substantially similar regulation following the procedures set forth in subsections (b) and (c) at any time is not limited by the adoption of a regulation following the emergency regulation procedure set forth in this subsection.

(e) A person who has exhausted all administrative remedies available within the department, other than rehearing, and who is aggrieved by the final decision of the supervisor with respect to a regulation, is entitled to judicial review under this chapter. All proceedings for a review shall be instituted by filing of notice of appeal or review and a cost bond with the supervisor to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the supervisor or the court on a showing of substantial hardship. The notice of appeal and cost bond shall be filed within 42 days after the date the supervisor issued the final regulation. The appeal shall be filed pursuant to Title 6. The regulation shall be in effect pending the outcome of any appeal unless the supervisor stays the effective date of regulations.

(f) A licensee acting in reasonable reliance upon any written opinion or regulation promulgated by the supervisor or a decision of an appellate court of this state shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the regulation is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason or the particular judicial decision is reversed or modified.

(Act 2003-359, p. 992, §10.)

Section 5-18A-11

Maintenance of business records; notice of intent to conduct business in conjunction with other business; examination of place of business.

(a) Each licensee shall keep and use in its business any books, accounts, and records that the supervisor may require to carry into effect this chapter and the administrative regulations issued hereunder. If a licensee operates any other business licensed by the department, a deferred presentment services business shall be accounted for separately from any other business licensed by the department. Each licensed business shall maintain separate business records.

(b) No licensee shall conduct the business of making deferred presentment transactions under this chapter within any office, suite, room, or place of business in which any other business except check cashing or a business conducted pursuant to Chapter 19A is solicited or engaged in or in association or conjunction with any other business until 15 days' written notice of an intention to do so has been given the supervisor. Upon receipt of written notification, the supervisor may investigate the facts and, if he or she finds that the character of the licensee and the nature of the other business warrant belief that such conduct of business would conceal violation or evasion of this chapter or of regulations lawfully made hereunder, he or she shall enter an order directing the licensee to

discontinue the other business. The order shall be entered in the manner specified in and subject to the provisions of Section 5-18A-7.

(c) For the purpose of determining compliance with this chapter, the supervisor may, at any reasonable time, cause an examination to be made at the licensee's place of business of the records and transactions of such licensee. As cost of examination, the licensee shall pay to the supervisor an examination fee as provided in Section 5-2A-24, which fee shall be collected and paid into the special fund as provided by Section 5-2A-20, and shall be used in the supervision and examination of licensees. Each licensee shall preserve all relevant records for a period of two years after making the last entry on any transaction, and the supervisor shall have free access thereto at the licensee's place of business at all reasonable times. If the supervisor has probable cause to believe that a licensee has engaged in an activity which violates the provisions of this chapter, the supervisor may compel the production of such books and records of the person as he or she has probable cause to believe are relevant to the alleged violation. Any action arising out of any investigation or examination shall be in the Circuit Court of Montgomery County or in the county of the principal place of business of the licensee.

(Act 2003-359, p. 992, §11.)

Section 5-18A-12

Transaction fees; renewal or extension; repayment; bad check charge.

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

(b) Each licensee may renew or extend a deferred presentment transaction with the same customer no more than one additional time at this fee for a maximum of two continuous transactions. After two continuous transactions with the customer, the licensee shall not enter into a new deferred presentment transaction with that same customer until the next business day after the transaction amount is repaid in full. After the customer has redeemed the check in full with cash or guaranteed funds, the licensee has the same authority as any other licensee to enter into another agreement for deferred presentment services with the customer on another check.

(c) After the initial loan period and one rollover with the same customer, the full outstanding amount of the loan, including, but not limited to, held check or debt authorization, shall become due. If the customer is unable to

repay the outstanding balance in full, the licensee may offer the customer an extended repayment option of four equal monthly installments of the remaining balance. The licensee shall not commence any civil action to collect on a transaction in default until written notice has been sent notifying the customer of his or her rights. If the customer fails to exercise his or her rights within 15 days of the notice, the licensee may commence action to collect on a transaction in default.

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

(Act 2003-359, p. 992, §12.)

Section 5-18A-13 **Duties of licensee.**

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

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

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

(d) The licensee shall notify the district attorney for the circuit in which the check was received within five business days after being advised by the payer financial institution that a check or draft has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without

proper legal authority, or represents the proceeds of illegal activity. If a check or draft is returned to the licensee by the payer financial institution for any of these reasons, the licensee shall not release the check, draft, or money order without the consent of the district attorney or other investigating law enforcement authority.

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

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

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

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

9-13.1, if the check or debit authorization is returned due to insufficient funds. Checks or debit authorizations returned to the licensee due to a closed account may be collected pursuant to Section 13A-9-13.1.

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

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

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

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

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

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

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

(Act 2003-359, p. 992, §13.)

Section 5-18A-14

Denial of application; hearing.

(a) If the supervisor determines that an applicant is not qualified to receive a license, the supervisor shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the supervisor denies an application or if the supervisor fails to act on an application within 90 days after the filing of a properly completed application, the applicant may make a written demand to the supervisor for a hearing as provided in subsection (a) of Section 5-18A-7 before the supervisor on the question of whether the license should be granted.

(c) At the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the supervisor following any hearing on the denial of a license may be subject to review by the circuit court pursuant to Title 6.

(Act 2003-359, p. 992, §14.)

Section 5-18A-15

Suspension or revocation of license; hearing.

(a) The supervisor may, after notice and hearing, suspend or revoke any license if the supervisor finds that the licensee has knowingly or through lack of due care committed any of the following actions:

(1) Failed to pay the annual license fee imposed by this chapter or an examination fee imposed by the supervisor under the authority of this chapter.

(2) Committed fraud, engaged in a dishonest activity, or made misrepresentations.

(3) Violated a provision of this chapter, an administrative regulation issued pursuant to this chapter, or has violated any other law in the course of its or his or her dealings as a licensee.

(4) Made a false statement in the application for the license or failed to give a true reply to a question in the application.

(5) Demonstrated incompetence or untrustworthiness to act as a licensee.

(6) Entered or caused to be entered or allowed to be entered any false information on any business record of the licensed activity, including, but

not limited to, any information in customer agreements and on deferred presentment checks or debit authorizations.

(b) If the reason for revocation or suspension of a license of the licensee at any one location is of general application to all locations operated by a licensee, the supervisor may revoke or suspend all licenses issued to a licensee.

(c) A hearing shall be held on written notice given at least 20 days prior to the date of the hearings.

(Act 2003-359, p. 992, §15.)

Section 5-18A-16
Violations of chapter.

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

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

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

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

(Act 2003-359, p. 992, §16.)

Section 5-18A-17
Consent orders; civil or criminal penalties; extraordinary circumstances.

(a) The supervisor may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation, or order promulgated or issued pursuant to this chapter has been violated, nor need it constitute a finding by the supervisor that such person has violated any provision of this chapter or any rule, regulation, or order promulgated or issued hereunder.

(b) Notwithstanding the issuance of a consent order, the supervisor may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the supervisor may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing.

(Act 2003-359, p. 992, §17.)

Section 5-18A-18

Written complaint; investigation; compliance with subpoena.

(a) Any person aggrieved by the conduct of a licensee under this chapter in connection with the regulated activities of the licensee may file a written complaint with the supervisor who may investigate the complaint.

(b) In the course of the investigation of the complaint, the supervisor may do the following:

(1) Subpoena witnesses.

(2) Administer oaths.

(3) Examine any individual under oath.

(4) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.

(c) If a person fails to comply with a subpoena of the supervisor under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the supervisor may petition any court of competent jurisdiction for enforcement.

(d) The license of any licensee under this chapter who fails to comply with a subpoena of the supervisor may be suspended pending compliance with the subpoena.

(Act 2003-359, p. 992, §18.)

Section 5-18A-19
Public notice of provisions.

Every licensee shall conspicuously post a sign, as designed by the department, notifying the public of the pertinent provisions of this chapter and any consequences related to entering into a deferred presentment transaction pursuant to this chapter.

(Act 2003-359, p. 992, §19.)

Section 5-18A-20
Excessive charges.

Any person who willfully makes charges in excess of those permitted by Section 5-18A-12 or any person who willfully engages in the business of cashing deferred presentment checks in violation of Section 5-18A-3, or both, is guilty of a Class B misdemeanor for the first offense and a Class B felony for the second or subsequent offense.

(Act 2003-359, p. 992, §20.)

Section 5-18A-21
Disposition of funds.

All license fees and administrative penalties collected under this chapter shall be paid into the special fund provided by Section 5-2A-20, and used in the supervision and examination of applicants and licensees.

(Act 2003-359, p. 992, §21.)

Section 5-18A-22
Claims preceding effective date of chapter.

The provisions of this chapter shall not be construed to take away or negatively impact the customers' claims in pending lawsuits against persons operating deferred presentment services on or before June 20, 2003.

(Act 2003-359, p. 992, §22.)