



STATE OF ALABAMA
STATE BANKING DEPARTMENT



Bob Riley
Governor

Anthony Humphries
Superintendent of Banks

MEMORANDUM FOR
DEFERRED PRESENTMENT APPLICANTS

James A. Whitehead
Supervisor Bureau of Loans

Pursuant to your request, please find enclosed an application(s) for an original license under Alabama's *Deferred Presentment Services Act*. One color-coded application must be completed for each location that you intend to operate. Also enclosed is a copy of "FAQ for Deferred Presentment Providers," which includes the text of a sign that must be posted in your lobby and a sample Customer Agreement with the required disclosures. When completing the application, pay particular attention to the following:

- * Two certified checks must be enclosed: one check for \$100 per location and one check for \$500 per location. Personal or company checks cannot be accepted. Make checks payable to the STATE BANKING DEPARTMENT.
- * Release forms must be completed for each owner, member, director and officer as applicable. Each release must be signed before a notary, who must affix his or her seal.
- * The application must also be signed before a notary, who must affix his or her seal.
- * Verify that all attachments are included with the application. Your application will be returned if incomplete.

Finally, be advised that all information submitted with the application must be accurate. Inaccurate information will be grounds for license denial or revocation.

The Department has 90 days to process your application. PLEASE DO NOT SUBMIT YOUR APPLICATION BEFORE OCTOBER 1. We will contact you if we need more information. If you would like confirmation that we have received your application, then enclose a duplicate copy of the application and a self-addressed, stamped envelope, which we will return to you upon receipt of your application.

A copy of the law is available on the website for the Secretary of State: www.sos.state.al.us Select "Acts of Alabama" from the left-hand index. Enter "2003-359" for the Public Act number.

If you have any questions, please contact this office.

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STATE OF ALABAMA STATE BANKING DEPARTMENT



Vol. 1

FAQs for Deferred Presentment Providers

Here are some Frequently Asked Questions about operating under Alabama's Deferred Presentment Services Act:

1. What is the maximum fee that providers may charge on their Deferred Presentment transactions? The maximum fee is 17.5% of the cash advanced. For example, if a customer wants \$100, then licensees may charge up to \$17.50 and the customer would write a check for \$117.50.

2. What must I disclose to my customers? All providers must conspicuously and continuously display a schedule of all fees and pertinent provisions of the Act in its lobby. This sign must be at least 20 X 20 in size and must contain the wording in Attachment A, as modified for the name of, and fees charged by, each provider. The text of this sign must also be available as an 8.5 X 11 hand-out to customers on request. In addition, providers must make specific disclosures in their Customer Agreement, such as their fee, the maturity date, APR and other TILA disclosures, and the extended repayment plan. A sample Customer Agreement is provided in Attachment B.

3. Are there any restrictions on the term of a deferred presentment transaction? Yes. Deferred Presentment transactions cannot be made for less than 10 days nor more than 31 days after the date of the contract.

4. What is the maximum loan amount allowed for deferred presentment transactions? The maximum loan amount that any one customer may have with all deferred presentment providers is \$500. Providers must access an existing third-party, private sector database to verify that their customers do not have more than \$500 outstanding with other deferred presentment providers.

5. Is there a limitation on renewals or "rollovers"? Yes. Customers may not renew or rollover their deferred presentment transaction more than once when the customer only pays the additional fee to extend the transaction. However, providers may choose not to accept "fee-only" renewals. If a customer pays off their transaction in full, then the provider may enter into another transaction with the same customer provided the customer does not have more than \$500 outstanding elsewhere.

6. May I threaten to put borrowers in jail for passing a worthless check? No. The law prohibits criminal prosecutions for bad checks written in connection with a deferred presentment transaction. Moreover, licensees may only charge one NSF fee for a bounced check.

7. May I pay-out the proceeds of a deferred presentment transaction with a company check? No. The law requires providers to make the deferred presentment advance with cash.

8. Do these same restrictions apply to Catalog Sales, Phone Card Clubs and Internet Instant Rebate check cashing? Yes. The law applies to anyone that advances money to customers by holding a check or authorization to debit a customer's checking account. Providers using catalog sales, phone

card clubs or Internet service as a marketing tool for their deferred presentment services may not charge any additional fees.

9. *Is there a maximum fee that can be charged for traditional check cashing transaction?* No. The fees charged for cashing third-party checks, payroll checks, government checks, etc., where the check is not held before depositing to a bank are not regulated by this law.

10. *What records am I required to keep?* Providers must keep the following information for their deferred presentment business:

(a) Customer Account file: Each customer's file must contain all information kept by the provider, including each original Customer Agreement with a copy of the check or debit authorization and "approval" message from the database attached; copy of any returned check and records of any collection activity or extended repayment plans; copies of any other documents kept on the customer.

(b) Daily register of Agreements executed: Customer Agreements must be consecutively numbered. Each customer must sign a receipt of the exact amount of cash received for each Agreement executed each day. The register must contain at a minimum the customer's name, transaction date and Agreement number. In lieu of a daily register, providers may keep a notebook with a copy of each Agreement executed in consecutive order.

(c) Daily register of Denials: Providers must account for any "voided" Agreements or lapses in numbering sequence. A copy of the "denial" message from the database must be attached to each unexecuted Agreement.

(d) Daily bank deposits

(e) Daily cash summary

(f) Litigation Log: An up-to-date list of suits filed against customers providing at a minimum the customer's full name and address, transaction date, Agreement number, amount of check, maturity date, amount of claim, name of court and judge, date filed, date of judgment and amount awarded, date(s) and amount(s) paid; notation when paid-in-full.

Deferred Presentment records must be kept on-site for at least two years after making the last entry on a transaction. Providers must also keep their business records regarding deferred presentment transactions separate from any other business records.

11. *What is the cost of an examination?* Licensees will be examined by Loan Examiners from the State Banking Department. Our current examination fee is \$100 per examiner per day, or part thereof. We expect that most providers can be examined by one examiner in one day or less.

12. *Do loan receivables count as unencumbered cash assets?* No. In order to receive a license to engage in the deferred presentment services business, applicants must have and maintain at least \$20,000 in unencumbered cash assets for each location. The term "unencumbered cash asset" does not include receivables, furniture, buildings or computers. It must be cash on hand for the business, which cannot be proceeds from a loan made to the business. Nor may a bond substitute for this requirement. A financial statement completed by a CPA must be submitted with the license application.

Alabama's Deferred Presentment Services Act

NOTICE: FEES FOR DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER THAN FOR OTHER TYPES OF LOANS.

Maximum Fee: The most that any Deferred Presentment provider may charge for Deferred Presentment transactions is 17.5% of the cash advanced. [LICENSEE'S NAME] charges [FEE RATE] for these transactions. The following table illustrates [LICENSEE'S NAME] fee structure:

| <u>Loan Amount</u> | <u>Fee Rate</u> | <u>Fee Amount</u> | <u>Total of Payments</u> |
|--------------------|-----------------|-------------------|--------------------------|
| \$100 | []% | [\$] | [\$] |
| \$150 | []% | [\$] | [\$] |
| \$200 | []% | [\$] | [\$] |
| \$250 | []% | [\$] | [\$] |
| \$300 | []% | [\$] | [\$] |
| \$350 | []% | [\$] | [\$] |
| \$400 | []% | [\$] | [\$] |
| \$450 | []% | [\$] | [\$] |
| \$500 | []% | [\$] | [\$] |

No other fees may be charged for these transactions, except if a check "bounces" once it is deposited at a bank, then the provider may charge a one-time NSF fee of up to \$30.00. And if the provider must go to court to enforce payment of this loan, then you may be assessed court costs and up to 15% of the face amount of the check as attorney's fees. *You cannot be arrested or sent to jail for passing a "worthless" deferred presentment check except due to closed account.*

Maximum Loan Amount: The law limits the maximum loan amount that any one borrower may have with all Deferred Presentment providers to \$500. The provider will be verifying your other outstanding deferred presentment loans with a database to determine compliance with the law.

Term: Deferred Presentment transactions cannot be made for a term of less than 10 days or more than 31 days.

Renewal: Your transaction is due on the maturity date. You may obtain another transaction once this one is paid-in-full. However, if you cannot repay the total amount due, then, if offered by the provider, you may renew this transaction one more time upon payment of an additional fee. If you cannot pay the total amount due at that time, then, at the provider's option, you may extend your repayment into four equal monthly installments at no additional cost.

Customer Agreement: You must be given a copy of the provider's Deferred Presentment Services Agreement. You have the right to read the Agreement before you sign it. You have the right to ask questions of the provider's staff until you thoroughly understand everything in the Agreement. You also have the right to walk away from the Agreement before you sign it.

Complaints: [LICENSEE'S NAME] is a licensed Deferred Presentment provider in Alabama. To report any unresolved problems with [LICENSEE'S NAME], contact the STATE BANKING DEPARTMENT, 401 Adams Ave. – Ste. 680, Montgomery, Alabama. Telephone: 334/242-3452. Website: www.bank.state.al.us

(B)

No. 00000

DEFERRED PRESENTMENT SERVICES AGREEMENT

Licensee's Name
Licensee's Address

Borrower Name
Borrower Address

| | | | |
|--|---|--|---|
| ANNUAL PERCENTAGE RATE: The cost of your credit as a yearly rate. <div style="text-align: right;">%</div> | FINANCE CHARGE: The dollar amount the credit will cost you. <div style="text-align: right;">\$</div> | Amount Financed: The amount of cash advanced to you. <div style="text-align: right;">\$</div> | Total of Payments: The total amount you will pay upon maturity. <div style="text-align: right;">\$</div> |
|--|---|--|---|

Payment Schedule: One payment in the amount of \$ _____ is due on _____.

The Amount Financed consists solely of the cash being advanced to you.

Prepayment: If you pay off early, you will not be entitled to a refund of part of the finance charge.

Late Fee: None.

Security: None.

See below for additional information regarding loan terms.

Deferred Presentment Fee: ____% of the cash advanced. Check Number: _____.

Deferred Deposit: Your check will be deposited at the bank on the maturity date, or you may redeem your check in person with cash or guaranteed funds.

Renewal: Your transaction is due on the maturity date. You may obtain another transaction once this one is paid-in-full. However, if you cannot repay the total amount due, then, we may offer to renew this transaction one more time upon payment of an additional deferred presentment fee. If you cannot pay the total amount due at that time, then, at our option, we may extend your repayment into four equal monthly installments.

Returned Check: If your check bounces for insufficient funds, then you may be charged a one-time fee of up to \$30. You may also be charged court costs and up to 15% of the face amount of the check as attorney's fees if legal action is necessary to collect payment of the check. You cannot be arrested for passing a worthless check in connection with a deferred presentment transaction unless due to a closed account.

Acknowledgment: I understand the fees described above and that I can walk away from this Agreement.

NOTICE: FEES FOR DEFERRED PRESENTMENT TRANSACTIONS MAY BE SIGNIFICANTLY HIGHER THAN FOR OTHER TYPES OF LOANS.

Borrower's Signature

Date

APR FOR DEFERRED PRESENTMENT TRANSACTIONS

The Annual Percentage Rate (APR) as required by the Truth-In-Lending Act (TILA) for deferred presentment transactions is calculated by multiplying the interest rate for the term by the number of terms in a 365-day year, or symbolically:

$$\text{(Interest Rate for the term)} * \text{(365/term in days)}$$

For example, a 14-day deferred presentment loan at 17.5% interest has an APR of:

$$17.5\% * (365/14) = 456.25\%$$

A 15-day deferred presentment loan at 17.5% interest has an APR of:

$$17.5\% * (365/15) = 425.83\%$$

A 14-day deferred presentment loan at 15% interest has an APR of:

$$15\% * (365/14) = 391.07\%$$

A 15-day deferred presentment loan at 15% interest has an APR of:

$$15\% * (365/15) = 365\%$$

See Reg. Z, Appendix J(b)(5)(vii).

