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LEGISLATIVE ACTION

Senate

House

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Floor: 1/AD/2R

03/02/2018 05:05 PM

Senator Bradley moved the following:

Senate Amendment

Delete lines 135 - 393

and insert:

requirements of 12 C.F.R. part 1026 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer Financial Protection ~~Board of Governors of the Federal Reserve Board~~. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated.

(14) A deferred presentment provider or its affiliate may not accept or hold an undated check or a check dated on a date



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12 other than the date on which the deferred presentment provider
13 agreed to hold the check and signed the deferred presentment
14 transaction agreement, except when a customer provides a new
15 payment instrument reflecting the new outstanding transaction
16 balance and anticipated fees upon making a payment on a deferred
17 presentment installment transaction.

18 (19) A deferred presentment provider may not enter into a
19 deferred presentment transaction with a drawer who has an
20 outstanding deferred presentment transaction with that provider
21 or with any other deferred presentment provider, or with a
22 person whose previous deferred presentment transaction with that
23 provider or with any other provider has been terminated for less
24 than 24 hours. The deferred presentment provider must verify
25 such information as follows:

26 (a) The deferred presentment provider must ~~shall~~ maintain a
27 common database and ~~shall~~ verify whether the provider or an
28 affiliate has an outstanding deferred presentment transaction
29 with a particular person or has terminated a transaction with
30 that person within the previous 24 hours. If a provider has not
31 established a database, the provider may rely upon the written
32 verification of the drawer as provided in subsection (20).

33 (b) The deferred presentment provider must ~~shall~~ access the
34 office's database established pursuant to subsection (24) ~~(23)~~
35 and ~~shall~~ verify whether any other deferred presentment provider
36 has an outstanding deferred presentment transaction with a
37 particular person or has terminated a transaction with that
38 person within the previous 24 hours. Before the office has
39 implemented a database to include deferred presentment
40 installment transactions ~~If a provider has not established a~~



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41 ~~database~~, the deferred presentment provider must access the
42 office's current database pursuant to this paragraph and may
43 rely upon the written verification of the drawer as provided in
44 subsection (20).

45 (20) A deferred presentment provider must ~~shall~~ provide the
46 following notice in a prominent place on each deferred
47 presentment agreement in at least 14-point type in substantially
48 the following form and ~~must~~ obtain the signature of the drawer
49 where indicated:

51 NOTICE

52
53 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
54 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
55 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
56 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
57 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
58 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
59 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

60
61 YOU MUST SIGN THE FOLLOWING STATEMENT:

62
63 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
64 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
65 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
66 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

67 (Signature of Drawer)

68
69 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A



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CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU.

3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.

4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.



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100 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
101 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
102 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
103 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
104 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
105 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
106 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
107 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
108 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
109 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
110 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
111 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

112

113 (21) The deferred presentment provider may not deposit or
114 present the drawer's check if the drawer informs the provider in
115 writing or in person that the drawer cannot redeem or pay in
116 full in cash the amount due and owing the deferred presentment
117 provider, unless the drawer fails to comply with subsection (22)
118 or subsection (23), as applicable. No additional fees or
119 penalties may be imposed on the drawer by virtue of any
120 misrepresentation made by the drawer as to the sufficiency of
121 funds in the drawer's account. Additional fees may not be added
122 to the amounts due and owing to the deferred presentment
123 provider.

124 (22) For deferred presentment transactions not repayable in
125 installments, if, by the end of the deferment period, the drawer
126 informs the deferred presentment provider in writing or in
127 person that the drawer cannot redeem or pay in full in cash the



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128 amount due and owing the deferred presentment provider, the
129 deferred presentment provider must ~~shall~~ provide a grace period
130 extending the term of the agreement for an additional 60 days
131 after the original termination date, without any additional
132 charge.

133 (a) The provider must ~~shall~~ require, ~~that~~ as a condition of
134 providing a grace period, that the drawer make an appointment
135 with a consumer credit counseling agency within 7 days after the
136 end of the deferment period and complete the counseling by the
137 end of the grace period. The drawer may agree to, comply with,
138 and adhere to a repayment plan approved by the counseling
139 agency. If the drawer agrees to comply with and adhere to a
140 repayment plan approved by the counseling agency, the provider
141 must also comply with and adhere to that repayment plan. The
142 deferred presentment provider may not deposit or present the
143 drawer's check for payment before the end of the 60-day grace
144 period unless the drawer fails to comply with such conditions or
145 the drawer fails to notify the provider of such compliance.
146 Before each deferred presentment transaction, the provider may
147 verbally advise the drawer of the availability of the grace
148 period consistent with the written notice in subsection (20),
149 and may not discourage the drawer from using the grace period.

150 (b) At the commencement of the grace period, the deferred
151 presentment provider must ~~shall~~ provide the drawer:

152 1. Verbal notice of the availability of the grace period
153 consistent with the written notice in subsection (20).

154 2. A list of approved consumer credit counseling agencies
155 prepared by the office. The office list must ~~shall~~ include
156 nonprofit consumer credit counseling agencies affiliated with



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157 the National Foundation for Credit Counseling which provide
158 credit counseling services to state residents in person, by
159 telephone, or through the Internet. The office list must include
160 phone numbers for the agencies, the counties served by the
161 agencies, and indicate the agencies that provide telephone
162 counseling and those that provide Internet counseling. The
163 office must ~~shall~~ update the list at least once each year.

164 3. The following notice in at least 14-point type in
165 substantially the following form:

166
167 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
168 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
169 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
170 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
171 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
172 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
173 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
174 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
175 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
176 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
177 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
178 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
179 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
180 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
181 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
182 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
183 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
184 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
185 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE



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186 THE DEBT.

187

188 (c) If a drawer completes an approved payment plan, the
189 deferred presentment provider must ~~shall~~ pay one-half of the
190 drawer's fee for the deferred presentment agreement to the
191 consumer credit counseling agency.

192 (23) For deferred presentment installment transactions, if
193 a drawer informs the deferred presentment provider in writing or
194 in person by noon of the business day before a scheduled payment
195 that the drawer cannot pay in full the scheduled payment amount
196 due and owing the provider, the deferred presentment provider
197 must provide the drawer the opportunity to defer the scheduled
198 payment, at no additional fee or charge, until after the last
199 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
200 same time zone in which the deferred presentment agreement was
201 entered into. Only one deferred payment is permitted for each
202 deferred presentment installment transaction. The deferred
203 payment must be due at an interval after the last scheduled
204 payment which is no shorter than the intervals between the
205 originally scheduled payments.

206 (24) (a) ~~(23)~~ The office must ~~shall~~ implement a common
207 database with real-time access through an Internet connection
208 for deferred presentment providers, as provided in this
209 subsection. The database must be accessible to the office and
210 the deferred presentment providers in order to verify whether
211 any deferred presentment transactions are outstanding for a
212 particular person. Deferred presentment providers must ~~shall~~
213 submit such data before entering into each deferred presentment
214 transaction in such format as required by rule, including the



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215 drawer's name, social security number or employment
216 authorization alien number, address, driver license number,
217 amount of the transaction, date of transaction, the date that
218 the transaction is closed, and such additional information as is
219 required by rule.

220 (b) For data that must be submitted by a deferred
221 presentment provider, the commission may by rule impose a fee of
222 up to \$1 per transaction for deferred presentment transactions
223 not repayable in installments, and the commission may impose a
224 fee of up to \$1 for each full or partial 30-day period that a
225 balance is scheduled to be outstanding for a deferred
226 presentment installment transaction ~~for data that must be~~
227 ~~submitted by a deferred presentment provider.~~

228 (c) A deferred presentment provider may rely on the
229 information contained in the database as accurate and is not
230 subject to any administrative penalty or civil liability due to
231 relying on inaccurate information contained in the database.

232 (d) A deferred presentment provider must notify the office,
233 in a manner as prescribed by rule, within 15 business days after
234 ceasing operations or no longer holding a license under part II
235 or part III of this chapter. Such notification must include a
236 reconciliation of all open transactions. If the provider fails
237 to provide notice, the office must ~~shall~~ take action to
238 administratively release all open and pending transactions in
239 the database after the office becomes aware of the closure.

240 (e) This section does not affect the rights of the provider
241 to enforce the contractual provisions of the deferred
242 presentment agreements through any civil action allowed by law.

243 (f) The commission may adopt rules to administer this



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244 subsection and to ensure that the database is used by deferred
245 presentment providers in accordance with this section.

246 (25)~~(24)~~ A deferred presentment provider may not accept
247 more than one check or authorization to initiate more than one
248 automated clearinghouse transaction to collect on a deferred
249 presentment transaction for a single deferred presentment
250 transaction, except for deferred presentment installment
251 transactions in which such checks or authorizations represent
252 multiple scheduled payments.

253 (26) A deferred presentment installment transaction must be
254 fully amortizing and repayable in consecutive installments as
255 nearly equal as mathematically practicable according to a
256 payment schedule agreed upon by the parties with no fewer than
257 13 days and not more than 1 calendar month between payments,
258 except that the first installment period may be longer than the
259 remaining installment periods by not more than 15 days, and the
260 first installment payment may be larger than the remaining
261 installment payments by the amount of charges applicable to the
262 extra days. In calculating charges under this subsection, when
263 the first installment period is longer than the remaining
264 installment periods, the