

1 SB253  
2 114288-1  
3 By Senator Mitchell  
4 RFD: Banking and Insurance  
5 First Read: 14-JAN-10

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8 SYNOPSIS: Under existing provisions of the Alabama  
9 Consumer Credit Act, there are limits to the amount  
10 of late charges that lenders may impose on the  
11 amount of the scheduled payment in default 10 days  
12 or more.

13 This bill would provide for an increase in  
14 the maximum late charge that certain lenders may  
15 charge if the late charge is stipulated in the  
16 contract.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To amend Section 5-19-4, Code of Alabama 1975,  
23 relating to late charges under the Alabama Consumer Credit Act  
24 or the Mini-Code, to provide for an increase in the maximum  
25 late charge that certain lenders may charge if the late charge  
26 is stipulated in the contract.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Section 5-19-4, Code of Alabama 1975, is  
2 amended to read as follows:

3           "§5-19-4.

4           "(a) When a scheduled payment in a consumer credit  
5 transaction is in default 10 days or more, the creditor may  
6 charge and collect a late charge not exceeding the greater of  
7 ~~ten dollars (\$10)~~ eighteen dollars (\$18) or five percent of  
8 the amount of the scheduled payment in default, not to exceed  
9 one hundred dollars (\$100). The late charge may be collected  
10 only once on any scheduled payment, regardless of the period  
11 during which the scheduled payment remains in default.

12           "(b) With respect to the deferral of one or more  
13 wholly unpaid scheduled payments in a consumer credit  
14 transaction, in which the finance charge was determined by the  
15 precomputed method, the creditor may collect, by agreement  
16 with the debtor either before or after default, an additional  
17 charge for each full month that any wholly unpaid scheduled  
18 payments are outstanding after the due date of each scheduled  
19 payment equal to that proportion of the finance charge which  
20 the amount of the deferred monthly scheduled payment bears to  
21 the sum of all monthly balances originally scheduled.

22           "(c) Except as otherwise provided by law, when any  
23 debt is paid in full before the final scheduled payment date,  
24 the debtor may do so without penalty, and the creditor shall  
25 refund or credit the debtor with not less than that portion of  
26 the finance charge which shall be due the debtor as follows:

1           "(1)a. In the case of a consumer credit transaction  
2 with an original term of more than 61 months according to any  
3 generally accepted actuarial method of computation established  
4 or otherwise approved by the administrator; and

5           "b. In all other consumer credit transactions  
6 according to the rule of 78ths or sum of the digits method,  
7 meaning the amount of the refund or credit shall be as great a  
8 proportion of the finance charge originally contracted for as  
9 the sum of the periodic time balances of the debt scheduled to  
10 follow the date of prepayment bears to the sum of all the  
11 periodic time balances of the debt, both sums to be determined  
12 according to the scheduled payments originally contracted for.

13           "(2) No refund of less than one dollar (\$1) need be  
14 made.

15           "(3) If the prepayment is made by the debtor other  
16 than on a scheduled payment date, the nearest scheduled  
17 payment date shall be used in the computation.

18           "(d) Except as otherwise provided by law, when any  
19 debt is renewed or refinanced by any creditor or creditor's  
20 affiliate within a period of 90 days from the date the debt is  
21 made or incurred, the debtor shall be entitled to a pro rata  
22 refund or credit of any unearned portion of the original  
23 finance charge computed as of the date of such refinancing or  
24 renewal. When the renewal or refinancing occurs after 90 days,  
25 any refund or credit shall be calculated as provided in  
26 subsection (c) above. On and after January 1, 1997, except as  
27 otherwise provided by law, when any debt is renewed or

1 refinanced by any creditor or creditor's affiliate within a  
2 period of 120 days from the date the debt is made or incurred,  
3 the debtor shall be entitled to a pro rata refund or credit of  
4 any unearned portion of the original finance charge computed  
5 as of the date of such refinancing or renewal. When the  
6 renewal or refinancing occurs after 120 days, any refund or  
7 credit shall be calculated as provided in subsection (c)  
8 above.

9 "(e) When any consumer debt is renewed or refinanced  
10 by the creditor or an affiliate of the creditor, any minimum  
11 finance charge for a credit sale shall be reduced to the  
12 finance charge which is otherwise permitted by Section 5-19-3.

13 "(f) A creditor may charge and collect in a  
14 transaction secured by real property the following fees and  
15 charges if bona fide and reasonable in amount, and provided  
16 that, other than the appraisal fees authorized by subdivision  
17 (4) and fees and charges authorized by regulations promulgated  
18 by the administrator, the fees are paid to parties unrelated  
19 to the creditor:

20 "(1) Fees for title examination, abstract of title,  
21 title insurance, property survey, pest inspection, flood  
22 inspection, and similar purposes;

23 "(2) Fees for preparing deeds, mortgages, and  
24 reconveyance, settlement, and similar documents;

25 "(3) Notary fees and credit report fees;

26 "(4) Appraisal fees paid to persons licensed under  
27 the provisions of the Alabama Real Estate Appraisers Act,

1 whether or not the appraiser is employed by or otherwise  
2 related to the creditor; and

3 "(5) Fees and charges prescribed by law which are or  
4 will be paid to public officials or agencies for recording or  
5 releasing a lien on property which secured the loan, provided,  
6 however, that a releasing fee may only be charged and  
7 collected at or after the time the lien is released.

8 "(6) The administrator may by regulation promulgated  
9 pursuant to Section 5-19-21 authorize other fees and charges.

10 "(g) A creditor may, pursuant to a consumer credit  
11 transaction contract secured by an interest in real property,  
12 charge and collect points in an amount not to exceed five  
13 percent of the original principal balance in the case of a  
14 closed-end consumer credit transaction, or five percent of the  
15 total line of credit in the case of an open-end credit plan.  
16 Points may be paid in cash at the time of the consumer credit  
17 transaction, or may be deducted from the proceeds and included  
18 in the original amount financed for the purposes of Section  
19 5-19-3 or financed under the open-end credit plan. Points  
20 shall be in addition to all other charges, are fully earned on  
21 the date of the consumer credit transaction, and may be  
22 excluded from the finance charge for the purpose of computing  
23 any finance charge credit or refund.

24 "(h) Subsections (b), (c), (d), and (e) of this  
25 section shall not apply to open-end credit plans. The  
26 requirements of a refund or credit of any unearned finance  
27 charge under subsections (c) and (d) of this section apply

1       only if and to the extent the consumer credit transaction  
2       includes a precomputed or prepaid finance charge."

3               Section 2. This act shall become effective  
4       immediately following its passage and approval by the  
5       Governor, or its otherwise becoming law.