

1 SB231  
2 156945-1  
3 By Senator Ward  
4 RFD: Banking and Insurance  
5 First Read: 21-JAN-14

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would regulate the lending of  
9 money or the providing of credit to a consumer  
10 pursuant to an agreement under which the consumer  
11 may use the money or credit for a purpose other  
12 than prosecuting a dispute by the consumer, where  
13 repayment of the money or credit is conditioned  
14 upon the consumer's recovery of money in a dispute  
15 or where recourse against the consumer by the  
16 person providing the money or credit is limited  
17 primarily to the amount recovered by the consumer  
18 in a dispute.

19 The bill would provide that the person  
20 providing the money or credit would be defined to  
21 be a "consumer lawsuit lender" under the Alabama  
22 Mini-Code, Code of Alabama 1975, Chapter 19 of  
23 Title 5, and each provision of money or credit  
24 would be deemed to be a consumer loan that is  
25 subject to a certain monetary limitation on the  
26 amount of finance charge applicable to certain  
27 loans. This bill would provide that the terms of a

1 consumer lawsuit lending agreement that are not in  
2 compliance with the requirements of this bill would  
3 be deemed to be unconscionable.

4 This bill would provide that in any  
5 adjudication or arbitration of a dispute which is  
6 the subject of a consumer lawsuit lending  
7 agreement, all documents that the consumer has  
8 provided to the consumer lawsuit lender and a copy  
9 of the consumer lawsuit lending agreement would be  
10 required to be filed with the court or other  
11 tribunal and served on the opposing party without  
12 requirement that the opposing party must request  
13 them.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 Relating to the extension of money or credit to  
20 consumers for a purpose other than the prosecution of a  
21 dispute where repayment of the money or credit is conditioned  
22 upon the consumer's recovery of money in a dispute or where  
23 recourse against the consumer by the person providing the  
24 money or credit is limited primarily to the amount recovered  
25 by the consumer in a dispute; to amend Sections 5-19-1 and  
26 5-19-3 of the Code of Alabama 1975, by expanding the  
27 definitions of the terms "finance charge," "consumer," and

1 "creditor" and by adding definitions of the terms "consumer  
2 lawsuit lending agreement," "consumer lawsuit lender,"  
3 "consumer lawsuit lending," and "dispute"; to provide that the  
4 finance charge limitations under subsection (a) and under  
5 Section 8-8-14, Code of Alabama 1975, apply to a consumer  
6 lawsuit lending transaction regardless of the amount of the  
7 loan or the manner in which the transaction is structured; and  
8 to amend Section 5-19-16, Code of Alabama 1975, to provide  
9 that any provision of a consumer lawsuit lending agreement  
10 that does not conform to the requirements of this bill shall  
11 be deemed to be unconscionable; to add Article 7 commencing  
12 with Section 6-8-120 to Chapter 8, of Title 6, Code of Alabama  
13 1975, to provide that in any dispute with respect to which a  
14 consumer has received money from a consumer lawsuit lender,  
15 and any and all documents that the consumer or the consumer's  
16 representative provided to the consumer lawsuit lender must be  
17 produced to the opposing party without awaiting a discovery  
18 request, and a copy of any consumer lawsuit lending agreement  
19 between the consumer and a consumer lawsuit lender must be  
20 filed with the court or other tribunal hearing the dispute and  
21 served upon the opposing party; to provide that the provisions  
22 of this act are severable; and to provide for the effective  
23 date.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 5-19-1, 5-19-3, and 5-19-16,  
26 Code of Alabama 1975, are amended to read as follows:

27 "§5-19-1.

1           "For the purposes of this chapter, the following  
2 terms shall have the following meanings respectively ascribed  
3 to them by this section:

4           "(1) FINANCE CHARGE. The sum of all charges, payable  
5 directly or indirectly by the person to whom credit is  
6 extended, and imposed directly or indirectly by the creditor  
7 as an incident to the extension of credit. The amount of the  
8 finance charge in connection with any credit transaction (i)  
9 shall be determined, and shall include and exclude the fees  
10 and charges, as provided by Section 106 of the Federal  
11 Truth-in-Lending Act, 15 U.S.C. Section 1605 and the  
12 regulations of the ~~Federal Reserve Board~~ Bureau of Consumer  
13 Financial Protection promulgated pursuant to the Federal  
14 Truth-in-Lending Act, 12 C.F.R. Part ~~226~~ 1026, and the  
15 Official Staff Commentary adopted by the ~~Federal Reserve Board~~  
16 Bureau of Consumer Financial Protection pursuant to that  
17 regulation, and without limiting or affecting the foregoing  
18 subparagraph (i), (ii) shall exclude, without limitation, late  
19 charges and other charges resulting from or arising out of  
20 late payment, delinquency, default, or other like occurrence.  
21 For the purpose of determining the permissible finance charge,  
22 any discount or point paid by the debtor in connection with a  
23 consumer credit transaction secured by a mortgage on real  
24 estate, even though paid at one time, shall be spread over the  
25 stated term of the consumer credit transaction. The  
26 administrator from time to time may promulgate regulations  
27 pursuant to Section 5-19-21 further establishing charges and

1 fees which constitute a finance charge and the manner in which  
2 the finance charge is determined to assure consistency between  
3 the meaning of "finance charge" under this chapter and the  
4 meaning and application of "finance charge" under the  
5 above-referenced Federal Truth-in-Lending Act, regulations and  
6 Official Staff Commentary, as the same may be amended from  
7 time to time. In addition, and notwithstanding the foregoing,  
8 any amount paid or payable to the consumer lawsuit lender in  
9 the consumer lawsuit lending transaction in excess of the  
10 amount of money and credit actually provided to the consumer  
11 by the consumer lawsuit lender shall be a finance charge,  
12 regardless of the manner in which the amount paid or payable  
13 is designated or the consumer lawsuit lending transaction is  
14 structured.

15 "(2) CONSUMER. When used as an adjective with  
16 reference to a credit transaction, characterizes the credit  
17 transaction as one in which the party to whom credit is  
18 extended is a natural person and the money, property, or  
19 services which are the subject of the transaction are  
20 primarily for personal, family or household purposes and when  
21 used in the context of a consumer lawsuit lending transaction,  
22 means any party to the transaction who is a natural person and  
23 who is, or who is contemplating being or becoming, a plaintiff  
24 or claimant in any dispute.

25 "(3) CREDITOR. A person that regularly extends or  
26 arranges for the extension of credit for which the payment of  
27 a finance charge is required, whether in connection with

1 loans, sales of property or services, or otherwise. The  
2 provisions of this chapter apply to any such creditor  
3 irrespective of the creditor's status as a natural person or  
4 any type of organization. A person is a creditor only if the  
5 person extended or arranged for the extension of credit more  
6 than 25 times in the preceding calendar year or more than five  
7 times in the preceding calendar year for credit transactions  
8 secured by a residential structure that contains one to four  
9 units. Notwithstanding the foregoing limitations, a consumer  
10 lawsuit lender shall be deemed to be a creditor for purposes  
11 of this chapter.

12 "(4) CREDIT SALE. Any sale with respect to which  
13 credit is extended or arranged by a seller who is a creditor.  
14 The term includes any contract in the form of a bailment or  
15 lease if the bailee or lessee contracts to pay as compensation  
16 for use a sum substantially equivalent to or in excess of the  
17 aggregate value of the property or services involved and it is  
18 agreed that the bailee or lessee may become for no other or a  
19 nominal consideration the owner of the property upon full  
20 compliance with the bailee's or lessee's obligations under the  
21 contract. A rental-purchase agreement which is subject to the  
22 provisions of Chapter 25 of Title 8 is not a credit sale.

23 "(5) OPEN-END CREDIT PLAN. A plan prescribing the  
24 terms of credit transactions which may be made thereunder from  
25 time to time and under the terms of which a finance charge may  
26 be charged from time to time on an outstanding unpaid balance.

1           "(6) ADMINISTRATOR. The Superintendent of Banks of  
2 the State Banking Department.

3           "(7) SUPERVISOR OF THE BUREAU OF LOANS. The  
4 designated deputy administrator for the purpose of enforcing  
5 this chapter as to licensees.

6           "(8) HOME SOLICITATION SALE. A consumer credit sale  
7 of goods or services, other than motor vehicles, in which the  
8 seller or a person acting for the seller engages in a personal  
9 solicitation of the sale at a place other than the seller's  
10 place of business and the buyer's agreement or offer to  
11 purchase is there given to the seller or a person acting for  
12 the seller. The term does not include a sale made pursuant to  
13 a preexisting open-end credit plan, a closed-end plan  
14 providing for a series of sales or a sale made pursuant to  
15 prior negotiations between the parties at the seller's place  
16 of business where goods or services are offered or exhibited  
17 for sale.

18           "(9) CREDIT TRANSACTION. A loan or credit sale made  
19 by a creditor. For purposes only of Sections 5-19-1(1) and  
20 5-19-3, "credit transaction" shall include nonconsumer loans  
21 and credit sales as well as consumer loans and consumer credit  
22 sales with an original amount financed of less than two  
23 thousand dollars (\$2,000). Otherwise, the term "credit  
24 transaction" refers only to consumer loans and consumer credit  
25 sales irrespective of whether the term is preceded by the word  
26 "consumer."



1           "(10) AMOUNT FINANCED. The sum determined by adding  
2 the principal loan amount or the cash price in a credit sale,  
3 less any down payment, and any other amounts that are financed  
4 by the creditor.

5           "(11) CONSUMER LAWSUIT LENDING AGREEMENT. A contract  
6 or other arrangement that governs and sets out the terms of a  
7 consumer lawsuit lending transaction.

8           "(12) CONSUMER LAWSUIT LENDER. A person that engages  
9 in consumer lawsuit lending.

10           "(13) CONSUMER LAWSUIT LENDING. Providing money or  
11 credit to a consumer under an agreement or arrangement with  
12 the consumer that does not prohibit the consumer from using  
13 the money or credit for a purpose other than prosecuting a  
14 dispute by the consumer, where repayment of the money or  
15 credit is conditioned upon the consumer's recovery of money in  
16 a dispute pursuant to a judgment, award, settlement, or  
17 otherwise, or where recourse against the consumer by the  
18 person providing the money or credit is limited primarily to  
19 all or part of the amount recovered by the consumer in a  
20 dispute. Each such provision of money or credit to a consumer  
21 shall be deemed to be a credit transaction that is a loan,  
22 whether the transaction under which the money or credit is  
23 provided is structured as a loan to the consumer, an  
24 investment, or a purchase from or other assignment by the  
25 consumer of all or part of the consumer's contingent right to  
26 a recovery in a dispute. The principal loan amount of the loan

1 shall be the full amount of money and credit actually provided  
2 to the consumer.

3 "(14) DISPUTE. Any civil action, alternative  
4 dispute-resolution proceeding, or administrative proceeding  
5 before any agency or instrumentality of a state or the United  
6 States.

7 "§5-19-3.

8 "(a) Except under open-end credit plans, the maximum  
9 finance charge for any credit transaction where the original  
10 amount financed is less than two thousand dollars (\$2,000),  
11 may equal but may not exceed the total of the following:

12 "(1) Fifteen dollars (\$15) per one hundred dollars  
13 (\$100) per year for the first seven hundred fifty dollars  
14 (\$750) of the original amount financed; and

15 "(2) Ten dollars (\$10) per one hundred dollars  
16 (\$100) per year for that portion of the original amount  
17 financed exceeding seven hundred fifty dollars (\$750) and less  
18 than two thousand dollars (\$2,000).

19 "The maximum finance charge under this subsection  
20 shall be determined by computing the maximum rates authorized  
21 by this subsection on the original amount financed for the  
22 full term of the contract without regard to scheduled payments  
23 and the maximum finance charge so determined, or any lesser  
24 amount, may be added to the original amount financed. The  
25 finance charge may be calculated and expressed as a simple  
26 interest charge or by any method which does not result in a

1 finance charge yield greater than the yield permitted by this  
2 subsection.

3 "(b) A creditor, in connection with any credit sale  
4 other than a sale made under an open-end credit plan, may  
5 contract for and receive a minimum finance charge not in  
6 excess of the following amounts:

7 "(1) Four dollars (\$4) on any credit sale in which  
8 the amount financed is twenty-five dollars (\$25) or less; and

9 "(2) Six dollars (\$6) on any credit sale in which  
10 the amount financed is more than twenty-five dollars (\$25).

11 "(c) In an open-end credit plan, if there is an  
12 unpaid balance on the date as of which the finance charge is  
13 applied, a creditor may contract for and receive a minimum  
14 finance charge in an amount not exceeding fifty cents (\$.50)  
15 per month.

16 "(d) Other than under an open-end credit plan, in  
17 any credit transaction where the finance charge is computed on  
18 the unpaid balance of the amount financed outstanding from  
19 time to time, for the actual time outstanding:

20 "(1) Each payment shall be applied first to accrued  
21 charges and the remainder of the payment applied to the unpaid  
22 balance of the amount financed, except that if the amount of  
23 the payment is insufficient to pay the accumulated charges,  
24 unpaid charges continue to accumulate to be paid from the  
25 proceeds of subsequent payments and are not added to the  
26 unpaid amount financed.

1           "(2) Except for permissible prepaid finance charges,  
2 the finance charge shall not be payable in advance, or  
3 compounded; however, if part or all of the consideration for a  
4 new credit transaction contract is the unpaid amount financed  
5 and unpaid accrued charges of a prior credit transaction, then  
6 the amount financed under the new credit transaction contract  
7 may include any unpaid accrued charges. The resulting credit  
8 transaction contract shall be deemed a new and separate credit  
9 transaction for all purposes.

10           "(3) Debtors may pay in advance the unpaid balance  
11 of the amount financed and all accrued finance charges without  
12 penalty.

13           "(4) For purposes of computing finance charges for a  
14 fraction of a month, a day may be considered one-thirtieth of  
15 a month, at the option of the creditor.

16           "(e) The provisions of this section shall not apply  
17 to any credit transaction with an original amount financed  
18 that is equal to or greater than two thousand dollars  
19 (\$2,000). The finance charge for any credit transaction with  
20 an original amount financed or original principal balance not  
21 less than two thousand dollars (\$2,000) and for any open-end  
22 credit plan with a credit limit not less than two thousand  
23 dollars (\$2,000) shall be subject to the provisions of Section  
24 8-8-5, or Sections 5-20-2, et seq., as applicable. The  
25 maximum finance charge for any open-end credit plan with a  
26 credit limit of less than two thousand dollars (\$2,000) shall  
27 be determined by Section 8-8-14, or Sections 5-20-2, et seq.,

1 as applicable. The foregoing provisions of this subsection are  
2 subject to the provisions of subsection (f).

3 "(f) Notwithstanding the limitation on the maximum  
4 amount of a credit transaction that is subject to the finance  
5 charge limitations under subsection (a), and notwithstanding  
6 the provisions of subsection (e), the limitations on the  
7 finance charge under subsection (a) and under Section 8-8-14,  
8 as applicable, shall apply to a consumer lawsuit lending  
9 transaction regardless of the amount financed, and the  
10 provisions of Section 8-8-5 do not apply to a consumer lawsuit  
11 lending transaction or consumer lawsuit lending agreement.

12 "§5-19-16.

13 "With respect to a consumer credit transaction, if  
14 the court as a matter of law finds the contract or any  
15 provision of the contract to have been unconscionable at the  
16 time it was made, the court may refuse to enforce the  
17 contract, or it may enforce the remainder of the contract  
18 without the unconscionable provision, or it may so limit the  
19 application of any unconscionable provision as to avoid any  
20 unconscionable result. In a consumer lawsuit lending  
21 transaction, any provision of the consumer lawsuit lending  
22 agreement that does not conform to the requirements of this  
23 chapter shall be deemed to be unconscionable."

24 Section 2. A new Article 7, commencing with Section  
25 6-8-120, is added to Chapter 8 of Title 6, Code of Alabama  
26 1975, to read as follows:

27 Article 7. Disclosures.

1 §6-8-120.

2 (a) In any dispute with respect to which a consumer  
3 has received money from a consumer lawsuit lender, as the  
4 terms "dispute," "consumer," and "consumer lawsuit lender" are  
5 defined in Section 5-19-1:

6 (1) Any and all documents that the consumer or the  
7 consumer's representative provided to the consumer lawsuit  
8 lender must be produced to the opposing party without awaiting  
9 a discovery request; and

10 (2) A copy of any consumer lawsuit lending agreement  
11 between the consumer and a consumer lawsuit lender must be  
12 filed with the court or other tribunal hearing the dispute and  
13 served upon the opposing party.

14 (b) If the consumer lawsuit lending agreement is  
15 executed before the complaint or other demand is served, the  
16 agreement shall be filed promptly upon its execution or the  
17 filing of the complaint or other demand, whichever is later,  
18 and shall be served with the complaint or other demand as  
19 provided in the Alabama Rules of Civil Procedure or other  
20 rules governing the dispute.

21 (c) If the consumer lawsuit lending agreement is  
22 executed after the complaint or other demand is served, the  
23 agreement shall be filed and served upon the opposing party  
24 within 10 days after its execution.

25 Section 3. The provisions of this act are severable.  
26 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part  
2 which remains.

3           Section 4. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law;  
6 provided, that any consumer lawsuit lender that is first  
7 required to be licensed under Section 5-19-22, Code of Alabama  
8 1975, upon the effective date of this act shall obtain such  
9 license not later than September 30, 2014, and the license fee  
10 for such license for the period ending December 31, 2014,  
11 shall be a prorated fee of \$125 for each office, branch, or  
12 place of business of the licensee.