

1 SB29
2 162602-3
3 By Senator Coleman
4 RFD: Banking and Insurance
5 First Read: 03-MAR-15
6 PFD: 02/09/2015

2
3
4
5
6
7
8 SYNOPSIS: Under existing law a debt collector is
9 required to be licensed to collect debt in Alabama.

10 This bill would require debt buyers and
11 other debt collectors to possess certain basic
12 information about the debt before initiating
13 collection efforts, including proof of indebtedness
14 by the consumer, date of the debt, identity of the
15 original creditor, and itemization of all fees,
16 charges, and payments.

17 This bill would prohibit the collection of a
18 consumer debt by any party not in possession of at
19 least a copy of the original contract, or other
20 documentation evidencing the consumer's liability.

21 This bill would require a creditor and each
22 subsequent holder of the debt to retain and pass on
23 to the next holder all communications from the
24 consumer concerning the debt and information about
25 all known disputes and defenses.

26 This bill would allow consumers to record
27 abusive telephone calls by debt collectors.

1 This bill would prohibit consumers from
2 arrest or imprisonment for failure to pay a
3 consumer debt.

4 This bill would provide that any changes to
5 a consumer form contract involving financial
6 services shall be agreed to by the consumer in
7 writing.

8 This bill would prohibit "choice of law"
9 provisions in consumer form contracts that select
10 laws of states other than the consumer's home
11 state.

12 This bill would prohibit forum selection
13 provisions in consumer form contracts.

14 This bill would provide that any consumer
15 credit obligation is void if the entity extending
16 the credit did not have a license required by state
17 law.

18 This bill would provide a single uniform,
19 reasonable statute of limitations for consumer
20 debts.

21 This bill would provide that the statute of
22 limitations cannot be voluntarily given up or
23 waived.

24 This bill would extinguish the debt after
25 the statute of limitations passes.

26 This bill would prevent any collection
27 activities for stale debts.

1 This bill would require a creditor to
2 provide a consumer with a notice 30 days before
3 filing a legal action or arbitration proceeding to
4 collect a debt.

5 This bill would require a creditor taking
6 legal action or initiating arbitration to collect a
7 debt to provide adequate documentation about that
8 debt.

9 This bill would require each debt collector
10 or buyer of a debt to provide a copy of the
11 original contract or other documentation reflecting
12 that the consumer actually incurred the debt.

13 This bill would provide that the failure to
14 respond will not be deemed as an admission of facts
15 to establishing liability for the debt.

16 This bill would require an additional notice
17 of the lawsuit to be mailed to the
18 consumer-defendant by the clerk of the court.

19 This bill would require that any party
20 seeking a judgment for a consumer debt provide the
21 court with sufficient documentation as to the
22 amount, nature, and ownership of the debt.

23 This bill would allow a court to grant a
24 default judgment to a consumer if he or she appears
25 for trial to defend himself or herself against a
26 collector who fails to appear in court.

1 This bill would allow a consumer certain
2 amounts of time to ask the court to remove or set
3 aside a default judgment.

4 This bill would prohibit state courts from
5 confirming an arbitration award unless certain
6 conditions were met, including compliance with
7 other parts of the law.

8 This bill would limit the amount of interest
9 that can be assessed to a consumer debtor when a
10 debt collector prevails in a collection lawsuit
11 against the consumer debtor.

12 This bill would prohibit a creditor from
13 seeking attorney's fees from a consumer in a
14 collection lawsuit to only those instances in which
15 the underlying contract or other document obligates
16 the consumer for the fees.

17 This bill would provide certain exemptions.

18 This bill would provide for the waivers of
19 personal property exemptions and security interests
20 in exempt personal property.

21 This bill would provide for homestead
22 exemption.

23 This bill would provide for scope of
24 exemptions.

25 This bill would provide for tracing of
26 exempt property.

1 arrest or imprisonment for failure to pay a consumer debt; to
2 provide that any changes to a consumer form contract involving
3 financial services shall be agreed to by the consumer in
4 writing; to prohibit provisions in consumer form contracts
5 that select laws of states other than the home state of the
6 consumer; to prohibit forum selection provisions in consumer
7 form contracts; to provide that any consumer credit obligation
8 is void if the entity extending the credit did not have a
9 license required by state law; to provide a single uniform,
10 reasonable statute of limitations for consumer debts; to
11 provide that the statute of limitations cannot be voluntarily
12 given up or waived; to extinguish the debt after the statute
13 of limitations passes; to prevent any collection activities
14 for stale debts; to require a creditor to provide a consumer
15 with a notice 30 days before filing a legal action or
16 arbitration proceeding to collect a debt; to require a
17 creditor taking legal action or initiating arbitration to
18 collect a debt to provide adequate documentation about that
19 debt; to require each debt collector or buyer of a debt to
20 provide a copy of the original contract or other documentation
21 reflecting that the consumer actually incurred the debt; to
22 provide that the failure to respond will not be deemed as an
23 admission of facts to establishing liability for the debt; to
24 require an additional notice of the lawsuit to be mailed to
25 the consumer-defendant by the clerk of the court; to require
26 that any party seeking a judgment for a consumer debt provide
27 the court with sufficient documentation as to the amount,

1 nature, and ownership of the debt; to allow the court to grant
2 a default judgment to a consumer if he or she appears for
3 trial to defend himself or herself against a collector who
4 fails to appear in court; to allow a consumer certain amounts
5 of time to ask the court to remove or set aside a default
6 judgment; to prohibit state courts from confirming an
7 arbitration award unless certain conditions were met,
8 including compliance with other parts of the law; to limit the
9 amount of interest that can be assessed to a consumer debtor
10 when a debt collector prevails in a collection lawsuit against
11 the consumer debtor; to prohibit a creditor from seeking
12 attorney's fees from a consumer in a collection lawsuit to
13 only those instances in which the underlying contract or other
14 document obligates the consumer for the fees; to provide
15 certain exemptions; to provide for the waivers of personal
16 property exemptions and security interests in exempt personal
17 property; to provide for homestead exemption; to provide for
18 scope of exemptions; to provide for tracing of exempt
19 property; to provide for the adjustment of dollar amounts; to
20 provide for the procedures relating to property exempt from
21 levy; to provide for protection from discharge; and to provide
22 for remedies for wrongful seizure of exempt property.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act may be known and cited as the
25 Family Financial Protection Act.

26 Section 2. The Legislature finds and declares the
27 following:

1 (1) The purpose of the act is to protect consumers.

2 (2) This act should be construed as a consumer
3 protection statute for all purposes.

4 Section 3. The following words shall have the
5 following meanings unless the context clearly indicates
6 otherwise:

7 (1) CONSUMER. A natural person.

8 (2) CONSUMER DEBT. An obligation or alleged
9 obligation of a consumer to pay money arising out of a
10 transaction in which the money, property, insurance, or
11 services which are the subject of the transaction are
12 primarily for personal, family, or household purposes, whether
13 or not the obligation has been reduced to judgment.

14 (3) CONSUMER FORM CONTRACT. A contract in writing
15 between a business and a consumer involving goods and
16 services, including credit or financial services, primarily
17 for personal, family, or household purposes.

18 (4) CREDITOR. A person to whom a debt is owed and
19 includes a judgment creditor and any other person that obtains
20 an execution on a debt.

21 (5) DEBT BUYER. A person or entity that is engaged
22 in the business of purchasing delinquent or charged-off
23 consumer loans or consumer credit accounts, or other
24 delinquent consumer debt for collection purposes, whether it
25 collects the debt itself or hires a third party for collection
26 or an attorney for litigation in order to collect the debt. A

1 debt buyer is considered to be a debt collector for all
2 purposes.

3 (6) DEBT COLLECTOR. Any person who regularly
4 collects or attempts to collect, directly or indirectly,
5 consumer debts owed or due or asserted to be owed or due
6 another. The term does not include any officer or employee of
7 a creditor who, in the name of the creditor, collects debts
8 for the creditor, but it does include any creditor who, in the
9 process of collecting its own debts, uses any name other than
10 its own which would indicate that a third person is collecting
11 or attempting to collect the debts.

12 (7) DEPENDENT. A person who relies in whole or in
13 significant part on the debtor for his or her support or
14 maintenance.

15 (8) DISPOSABLE EARNINGS. That part of the earnings
16 of any individual remaining after the deduction from those
17 earnings of any amounts required by law to be withheld such as
18 taxes, Social Security or alternative pension and Medicare
19 withholding, and after further deduction of up to 15 percent
20 of the remainder for contributions for health insurance, a
21 medical expense account, a pension, or a retirement account.

22 (9) EARNINGS. Compensation paid or payable for
23 personal services, whether denominated as wages, salary,
24 commission, bonus, payment for skilled, personal or
25 professional services, or otherwise, whether earned as an
26 employee or as an independent contractor, and also includes
27 alimony.

1 (10) EXECUTION. Includes an attachment, levy,
2 garnishment, or other disablement, freeze, or seizure of
3 property, whether pre-judgment or post-judgment, to satisfy a
4 debt. Except for purposes of Section 22, it also includes a
5 creditor's exercise of a right of setoff to collect a debt. It
6 does not include self-help repossession of collateral.

7 (11) EXECUTING OFFICER. The official, creditor, or
8 other person who issues or implements an execution.

9 (12) EXEMPT. Unless otherwise specified, not subject
10 to execution, levy, attachment, garnishment, setoff,
11 self-help, seizure, or any other form of process, court order,
12 creditor, or other action for the purpose of debt collection
13 or restitution or other equitable claim. Funds that are exempt
14 remain exempt when they are paid or transferred to the debtor,
15 the debtor's spouse, beneficiary, or dependent or to an
16 account for the benefit of the debtor, the debtor's spouse,
17 beneficiary, or dependent.

18 (13) GARNISHMENT. A legal or equitable procedure
19 through which the earnings, property, or funds of any person
20 are required to be withheld by another person for payment of a
21 debt owed to a creditor.

22 (14) ORIGINAL CREDITOR. The entity, other than a
23 debt collector, to which a consumer debtor made his or her
24 last payment on a consumer debt before it was first sold to a
25 debt buyer, or, if the consumer never made a payment, the
26 entity that last sent the consumer a bill or demand for
27 payment before the debt was first sold to a debt buyer. When

1 this act requires the original creditor to be identified, the
2 name shall be that which was used in its dealings with the
3 consumer.

4 (15) NECESSARY. Reasonably essential to or needed
5 for everyday living, including any special needs by reason of
6 health or physical or mental infirmity.

7 (16) RESIDENT. A person living in this state
8 temporarily or permanently.

9 (17) RESIDENCE. Includes real or personal property,
10 including a share in a residential cooperative, a beneficial
11 interest in a trust applying to the property, or a
12 manufactured home, that is owned individually or in any form
13 of joint ownership by the debtor, the debtor's dependent, or
14 spouse.

15 (18) VALUE. Current fair market value of accounts,
16 goods or property less the amount of any liens or security
17 interests in the accounts, goods, or property, based on the
18 price that would be paid, assuming a willing buyer and a
19 willing seller, for accounts, goods, or property of similar
20 age and condition. A debtor's testimony as to the value of
21 property the debtor owns or as to the advertised value of
22 property similar to that claimed as exempt shall be admissible
23 as evidence of the value of an item.

24 Section 4. A business including its officers,
25 agents, employees, or representative of a person may not
26 individually or in conjunction or cooperation with another
27 business or person solicit the execution of, receive, or rely

1 upon a consumer form contract, including reliance upon the
2 contract as a basis for a suit or claim, unless the business
3 or person has complied with this act and the contract is in
4 compliance with this act.

5 Section 5. (a) A choice of law provision in a
6 consumer form contract which provides that the contract is to
7 be governed or interpreted pursuant to the laws of another
8 state is void, if the contract is signed by the consumer or
9 otherwise formed while the consumer resides in this state.
10 Enforcement and interpretation of a contract shall be governed
11 by the laws of this state if enforcement of the contract is
12 sought in a court of this state.

13 (b) A forum selection provision in a consumer form
14 contract which provides that any claims or actions related to
15 the contract shall be litigated in a forum outside of this
16 state is void, if the contract is signed by the consumer or
17 otherwise formed while the consumer resides in this state.

18 (c) All consumer form contracts involving a loan,
19 extension of credit, deposit account, or other financial
20 services shall be signed by the consumer in writing or
21 electronically in compliance with Section 101(c) of the
22 Electronic Signatures in Global and National Commerce Act, 15
23 U.S.C. § 7001(c).

24 (d) Any change of terms to a consumer form contract
25 described in subsection (b) shall be agreed to by the consumer
26 by affirmative consent, signed by the consumer in writing or
27 electronically in full compliance with the Electronic

1 Signatures in Global and National Commerce Act, 15 U.S.C. §
2 7001(c) and a copy of the charges shall be provided to the
3 consumer.

4 (e) A consumer form contract may not contain any of
5 the following:

6 (1) A provision that the consumer will hold the
7 other party harmless, or that otherwise relieves the other
8 party of liability, for any harm or damage caused to the
9 consumer arising from the contract.

10 (2) A confession of judgment clause.

11 (3) A waiver of the right to a jury trial, if
12 applicable, in any action brought by or against the consumer.

13 (4) Any assignment of or order for payment of wages
14 or other compensation for services.

15 (5) A provision in which the consumer agrees not to
16 assert any claim or defense arising out of the contract, or to
17 seek any remedies pursuant to any consumer protection law.

18 (6) A waiver of any provision of this act or any
19 other consumer protection statute. Any waiver shall be deemed
20 null, void, and of no effect.

21 (7) A provision requiring or having the practical
22 effect of requiring that any aspect of a resolution of a
23 dispute between the parties to the agreement be kept
24 confidential. This provision may not affect the right of the
25 parties to agree that certain specified information is a trade
26 secret or otherwise confidential or to later agree, after the
27 dispute arises, to keep a resolution confidential.

1 (f) Any consumer form contract or provision thereof
2 violating this act shall be void and unenforceable. If only
3 one provision of a consumer form contract violates this act, a
4 court may refuse to enforce other provisions of the contract
5 as equity may require.

6 (g) Any consumer credit transaction entered into by
7 a consumer with a person who is required to be licensed but is
8 not licensed is void, and neither the obligee nor any assignee
9 of the obligation shall have any right to collect, receive, or
10 retain any principal, finance charge, or other fees in
11 connection with the transaction.

12 Section 6. (a) A person may not attempt to collect
13 on a consumer debt without obtaining reasonable verification
14 that the debtor owes the debt in the amount claimed, which
15 shall include all of the following:

16 (1) Complete, authenticated documentation that the
17 person attempting collection is the owner of the specific debt
18 instrument or account at issue.

19 (2) Reasonable verification of the debtor's
20 liability and the amount of the debt allegedly owed by the
21 debtor. For purposes of this subdivision, reasonable
22 verification shall include all of the following:

23 a. Documentation of the name of the original
24 creditor.

25 b. The name, last address, date of birth and last
26 four digits of the Social Security number of the debtor as it
27 appeared on the original creditor's records.

1 c. The debtor's last account number with the
2 original creditor.

3 d. The date that the debt was incurred, and the date
4 and amount of the last payment by the consumer toward the
5 debt; in the case of credit, the date that the debt was
6 incurred shall be the last extension made for the purchase of
7 goods or services, for the lease of goods, or as a loan of
8 money.

9 e. A copy of the signed contract, signed
10 application, or other documents that provide evidence of the
11 consumer's liability and the terms thereof.

12 f. An itemized accounting of the amount claimed to
13 be owed, including the amount of the principal; the amount of
14 any interest, fees, or charges; and whether the charges were
15 imposed by the original creditor, a debt collector, or a
16 subsequent owner of the debt. If the debt arises from a credit
17 card, the account shall include copies of the last 24 periodic
18 statements required by the Truth in Lending Act, 15 U.S.C. §
19 1637(b), that evidence the transactions, purchases, fees, and
20 charges that comprise the debt. Copies of actual business
21 records of the original creditor and any debt collector or
22 subsequent owner of the debt containing the above
23 documentation shall be provided to the consumer, upon request
24 and without fee, within 20 days of the request.

25 (b) A seller of a consumer debt, whether the
26 original creditor or a debt buyer, shall provide all of the
27 following to the buyer or assignee when selling the debt:

1 (1) The documentation listed in subsection (a).

2 (2) A statement disclosing the following:

3 a. Whether the consumer has disputed or asserted any
4 defenses to any portion of the debt, and notes or recordings
5 of all related communications.

6 b. Any validation, or lack thereof, that the seller
7 has provided the consumer pursuant to the federal Fair Debt
8 Collection Practices Act or has received from the original
9 creditor or previous seller in response to a dispute or
10 request for validation by the consumer.

11 c. Whether any settlement has been reached
12 concerning any portion of the debt.

13 d. Whether the debt is within the limitation period
14 set forth in Section 7.

15 e. Whether the consumer is or has been represented
16 by an attorney and the attorney's contact information.

17 f. Whether the consumer has informed the collector
18 that a time or place is inconvenient to the consumer for
19 communication or has requested that collection contacts cease.

20 g. Whether the debt has been discharged or listed in
21 bankruptcy.

22 h. Any illness or disability claimed by the consumer
23 or known to the seller of the debt.

24 i. Whether the consumer has a disability, is over
25 age 62, or is a limited English speaker.

26 j. Whether the consumer is or has been a service
27 member at any time since the formation of the contract.

1 k. Whether the consumer is known to receive income
2 that is exempt from garnishment or attachment.

3 (c) A debt collector that is a debt buyer or acting
4 on behalf of a debt buyer may not make any written statement
5 in connection with any attempt to initiate or pursue the
6 collection of a debt unless that statement is supported by the
7 evidence set forth in subsection (a) which has been reviewed
8 by the debt buyer. The documentary evidence shall be retained
9 on file by the debt buyer for a period of at least five years
10 and shall be provided to any affected debtor without a fee
11 within 10 business days of a request. An affidavit or other
12 sworn statement referring to documents not attached or
13 included as part of that statement is not sufficient to meet
14 this requirement.

15 (d) Whenever a payment is received by a debt
16 collector, including a debt buyer, toward payment of a
17 consumer debt, an original receipt or an exact copy thereof
18 shall be furnished to the person from whom payment is received
19 within 10 days of payment. All receipts shall:

20 (1) Show the amount and date paid, the name of the
21 debt buyer, the account number assigned by the debt buyer, the
22 name of the original creditor and the account number issued by
23 the original creditor, redacted for security purposes to show
24 only the last four digits. If the debt buyer is in possession
25 of the names of any prior purchasers of the debt and the
26 account numbers issued by those purchasers, this information
27 shall also be included.

1 (2) State clearly and conspicuously whether the
2 payment is accepted as payment in full or as a full and final
3 compromise of the debt. If any part of the debt is owed after
4 the payment is made, the receipt shall state clearly and
5 conspicuously the balance due after payment is credited.
6 Copies of all receipts issued pursuant to this section shall
7 be kept by the debt collector for three years.

8 (e) A debt collector shall provide written
9 confirmation to the consumer, within five business days, of
10 any debt payment schedule or settlement agreement reached
11 regarding a consumer debt.

12 (f) In all communications concerning a consumer
13 debt, the debt collector shall list a telephone number for
14 which a call to that number shall be either:

15 (1) Answered by a natural person qualified to
16 address consumer inquiries concerning communications the debt
17 collection agency has with consumers.

18 (2) Routed to a natural person within 60 seconds
19 after the call is linked to the collector's telephone line for
20 the number and that shall be answered by the natural person
21 within 60 seconds after the call is routed. The required
22 call-back number shall be answered by a natural person during
23 all times when the collector conducts business with consumers.

24 (g) Notwithstanding any other provision of law, it
25 is lawful for a consumer to record any telephone conversation
26 between the consumer and a debt collector or debt buyer,
27 without the knowledge or consent of the collector. The

1 recording shall be admissible in federal and state courts or
2 other legal proceedings respecting debt collection practices
3 or seeking collection of a consumer debt.

4 (h) Notwithstanding any other law, a debt collector
5 may not seek a warrant for the arrest of a debtor for any
6 action or failure to act that arises or relates to a civil
7 lawsuit, unless the debtor has committed a violation of the
8 criminal law of this state.

9 (i) Notwithstanding any other provision of law, a
10 debtor may not be imprisoned for failing to pay a consumer
11 debt or for violating an order to pay a consumer debt.

12 Section 7. (a) Any action for the collection of a
13 consumer debt shall be commenced within three years of the
14 accrual of the cause, which shall be the earlier of the date
15 of charge-off, placement for collection, or 180 days after the
16 last regular payment. This period shall apply whether the
17 claim sounds in contract, account stated, open account or
18 other cause, and notwithstanding the provisions of any other
19 statute of limitations unless that statute provides for a
20 shorter limitations period. This subsection shall apply to all
21 claims brought after the date of enactment of this act.

22 (b) A waiver by a consumer of any protection
23 provided by or any right of the consumer under this section is
24 void, and may not be enforced by any federal or state court or
25 any other person.

26 (c) If a consumer debt has been charged-off or
27 placed for collection, or there has not been any payment on

1 the debt for over 180 days, any subsequent payment toward the
2 debt may not extend the three-year limitation period, nor
3 shall it bar the consumer from asserting any defenses to the
4 collection of a consumer debt. If a payment on a defaulted or
5 charged-off debt completely cures the default and pays off any
6 delinquency, then a new cause of action may accrue upon a
7 subsequent default or charge-off.

8 (d) When the period within which an action may be
9 commenced under this section has expired, the right to collect
10 the consumer debt is extinguished as well as the remedy. No
11 person shall attempt to collect a consumer debt after the
12 three-year period described in subsection (a) has expired.

13 (e) If a consumer debt was created by or based upon
14 a consumer form contract, any action for collection of that
15 consumer debt shall be based on only a claim for breach of
16 contract and not on an open account, account stated, quantum
17 meruit, or other cause of action. Regardless of the cause of
18 action asserted, a consumer may raise a defense based upon the
19 reasonable value of goods or services provided.

20 (f) An action upon a judgment or decree on a
21 consumer debt, including any execution upon the judgment or
22 decree, shall be commenced within five years after the entry
23 of the judgment or decree.

24 Section 8. (a) A debt collector may not bring suit
25 or initiate an arbitration proceeding against a consumer to
26 collect on a consumer debt without first giving the consumer
27 debtor written notice of the intent to file a legal action at

1 least 30 days in advance. The written notice shall include the
2 name, address, and telephone number of the debt collector, the
3 name of the original creditor, the original creditor's last
4 account number, redacted for security purposes to show only
5 the last four digits, a copy of the contract or other document
6 evidencing the consumer debt, and an itemized accounting of
7 all amounts claimed to be owed.

8 (b) In any action brought by a debt collector to
9 collect a consumer debt, all of the following materials shall
10 be attached to the complaint:

11 (1) A copy of the contract or other writing
12 evidencing the original debt, which shall contain a written
13 signature of the defendant or evidence of the debtor's
14 agreement by electronic means in compliance with Section
15 101(c) of the Electronic Signatures in Global and National
16 Commerce Act, 15 U.S.C. § 7001(c). If the debt arises from a
17 credit card and no document signed by the consumer to evidence
18 liability ever existed, then reasonable verification shall
19 include copies of documents generated when the credit card was
20 actually used, including the disclosures required by 15 U.S.C.
21 § 1637(a) and (b).

22 (2) An itemization of the amount sought, containing
23 all of the following:

24 a. The amount owed for goods or services or for the
25 lease of goods, or the amount of credit extended.

26 b. Interest, fees, and charges imposed by the
27 original creditor.

1 c. Interest, fees, and charges imposed by any debt
2 buyer or other assignee of the debt, if applicable.

3 d. Attorney's fees.

4 e. Any other fees, costs, or charges sought or
5 imposed.

6 f. The amount and date of the last payment by the
7 consumer before default or charge-off, whichever is earlier.

8 g. Each payment credited to the debt after default
9 or charge-off.

10 (3) If the action is brought by a debt buyer or
11 other assignee of the debt, a complete copy of the assignment
12 or other writing establishing that the debt buyer or assignee
13 is entitled to collect the debt. If the debt has been assigned
14 more than once, each assignment or other writing evidencing
15 transfer of the interest in the debt shall be attached and
16 authenticated to establish an unbroken chain of ownership or
17 assignment. Each assignment or other writing evidencing
18 transfer of ownership or the right to collect shall contain
19 the original creditor's account number, redacted for security
20 purposes to show only the last four digits, of the debt
21 purchased or otherwise assigned, the date of purchase and
22 assignment, and shall clearly show the debtor's correct name
23 associated with the original account number. The assignment or
24 other writing attached shall be that by which the debt buyer
25 or other assignee acquired the debt, not a document prepared
26 for litigation.

1 (c) In any action to collect a consumer debt, a
2 failure of the debtor to respond to a request for admissions
3 may not be deemed an admission unless the request is served in
4 accordance with Rule 4 of the Alabama Rules of Civil Procedure
5 upon an attorney for the debtor.

6 (d) In any action by a debt collector, the complaint
7 shall allege as part of the cause of action that the plaintiff
8 is duly licensed and shall contain the name and number, if
9 any, of the license and the governmental agency that issued
10 it. A debt collector that has failed to obtain the proper
11 license shall be prohibited from bringing any action in the
12 courts of this state to collect a consumer debt.

13 Section 9. (a) Immediately prior to commencing a
14 legal action to collect a consumer debt, the plaintiff shall
15 undertake a reasonable investigation to verify the current
16 address of the defendant for service of process.

17 (b) In any action to collect a consumer debt, the
18 plaintiff, at the time of filing with the clerk of the proof
19 of service of the summons and complaint, shall submit to the
20 clerk an envelope properly addressed to the defendant, with
21 first-class postage affixed, together with a written notice.
22 This notice is in addition to the requirement in the Alabama
23 Rules of Civil Procedure requiring service of the complaint
24 and summons on the defendant. This additional notice shall
25 consist exclusively of the following language, or language
26 prescribed by the Alabama Supreme Court that addresses the

1 same topics, in clear type of no less than 12-point in size,
2 in both English and Spanish:

3 NOTICE OF LAWSUIT

4 DATE

5 (NAME OF COURT

6 COUNTY

7 STREET ADDRESS, ROOM NUMBER

8 PLAINTIFF (person suing): _____

9 DEFENDANT (person sued): _____

10 NAME OF ORIGINAL CREDITOR, UNLESS

11 SAME: _____

12 CASE NUMBER: _____

13 ATTENTION: A lawsuit has been filed against you
14 claiming that you owe money for an unpaid credit card,
15 medical, student loan, or other debt. You should expect to get
16 a copy of a document called a "complaint" with a summons. You
17 should go to the courthouse at the above address as soon as
18 possible to respond in writing to the lawsuit. You can ask the
19 clerk's office for a copy of the complaint if you have not
20 received it within one week of this notice.

21 You may wish to contact an attorney. If you cannot
22 afford an attorney, help may be available from a legal
23 services organization, or the Alabama Bar Association.

24 If you do not respond in writing to the lawsuit, the
25 court may enter a judgment against you. Once entered, a
26 judgment can be used against you for five years, and your
27 money, including a portion of your paycheck, bank account, or

1 both, may be taken. A judgment will hurt your credit score and
2 can affect your ability to rent a home, find a job, or take
3 out a loan.

4 There can be other very serious consequences for you
5 if a judgment is entered against you.

6 It is important that you mail a written response to
7 the clerk of the court which issued the summons and complaint
8 to you and appear at the time and place stated above for any
9 scheduled hearing.

10 (b) The face of the envelope set forth in subsection
11 (a) shall be addressed to the defendant at the address at
12 which process was served, and shall contain the defendant's
13 name, address, including apartment number, and zip code. The
14 face of the envelope also shall state the appropriate clerk's
15 office as its return address. The face of the envelope may not
16 contain any other markings, including any indication it is an
17 attempt to collect a debt or the name of the plaintiff or
18 original creditor.

19 (c) The clerk promptly shall mail to the defendant
20 the envelope containing the additional notice set forth in
21 subsection (a). A default judgment may not be entered based on
22 the failure of the defendant to answer unless there has been
23 compliance with this section, and at least 20 days have
24 elapsed from the date of mailing by the clerk. A default
25 judgment may not be entered based on the defendant's failure
26 to answer if the envelope containing the additional notice is
27 returned as undeliverable.

1 Section 10. (a) Prior to entry of a default judgment
2 or summary judgment against a consumer in any action initiated
3 by a debt collector to collect a consumer debt, the plaintiff
4 shall file the following:

5 Evidence with the court to establish the amount and
6 nature of the consumer debt. The only evidence sufficient to
7 establish the amount and nature of the debt shall be properly
8 authenticated business records that satisfy the requirements
9 of Rules 901, 902, and 903 of the Alabama Rules of Evidence
10 relating to authentication of records. The authenticated
11 business records shall include all of the following items:

12 a. The original creditor's last account number,
13 redacted for security purposes to show only the last four
14 digits.

15 b. The name of the original creditor.

16 c. The amount of the original debt.

17 d. An itemization of interest, charges, and fees
18 claimed to be owed.

19 e. The original charge-off balance, or, if the
20 balance has not been charged off, an explanation of how the
21 balance was calculated.

22 f. An itemization of post charge-off interest,
23 charges, or fees, where applicable.

24 g. The date of last payment by the consumer.

25 h. A statement of the applicable limitations period
26 and the filing date of the case.

1 i. The amount of interest claimed and the
2 contractual or legal basis for the interest charged.

3 j. Sufficient information to indicate whether the
4 interest rate exceeded the maximum rate as established in
5 Chapter 8, Title 8, of the Code of Alabama 1975, at any point.

6 (b) If the plaintiff is a debt buyer, the plaintiff
7 shall file one or more affidavits authenticating the documents
8 listed in subsection (b) of Section 8, signed by a person
9 qualified to authenticate the documents.

10 (c) In a case involving consumer debt, if the
11 defendant debtor appears for trial on the scheduled trial
12 date, but the debt collector fails to appear or is not
13 prepared to proceed to trial and there is not good cause for a
14 continuance, judgment shall be entered for the debtor
15 dismissing the action with prejudice. The court may award the
16 costs of preparing for trial of the debtor, including lost
17 wages, transportation expenses, and attorney's fees to the
18 debtor.

19 (d) In any case involving collection of a consumer
20 debt, in addition to the grounds set forth in Rules 59 and 60
21 of the Alabama Rules of Civil Procedure, the defendant debtor
22 shall be permitted to move to set aside a default judgment
23 under Rule 55(c) of the Alabama Rules of Civil Procedure
24 within the following:

25 (1) One year after entry of default on grounds of
26 mistake, inadvertence, surprise, or excusable neglect.

1 (2) Two years after entry of default on grounds of
2 deception, fraud, or misrepresentation by a debt collector or
3 its attorney to a pro se consumer, including a false
4 representation that the case would be dismissed.

5 (3) At any time after a void judgment is granted, if
6 the motion is made within a reasonable time. For a default
7 judgment, this may be a reasonable time after the discovery of
8 the existence of the judgment or order. For purposes of this
9 subdivision, a void judgment in a case involving consumer debt
10 shall include a case in which the consumer is not the person
11 obligated to pay the debt or is the victim of mistaken
12 identity, identity theft, or fraud by another person who
13 incurred the debt.

14 (4) At any time for lack of personal jurisdiction,
15 if the debtor was not properly served with notice of the
16 action.

17 (5) If the provisions of Rule 55(c) of the Alabama
18 Rules of Civil Procedure provide for a time period to set
19 aside a default judgment on a particular basis that is
20 different than the time periods set forth in this section, the
21 longer time period shall apply.

22 Section 11. (a) In any proceeding to confirm an
23 arbitration award to collect a consumer debt, the party
24 seeking to confirm the award shall plead the following:

25 (1) The actual terms and conditions of the agreement
26 to arbitrate.

27 (2) Compliance with Sections 5 through 8.

1 (b) The party seeking to confirm the award shall
2 attach to its petition:

3 (1) The agreement to arbitrate.

4 (2) The demand for arbitration or notice of
5 intention to arbitrate, with proof of service.

6 (3) Written evidence of the arbitration award, with
7 proof of service.

8 (c) If the arbitration award does not contain a
9 statement of the claims submitted for arbitration, of the
10 claims ruled upon by the arbitrator, and of the calculation of
11 figures used by the arbitrator in arriving at the award, then
12 the petition shall contain a statement setting forth such
13 items.

14 (d) The court may not grant confirmation of an
15 arbitration award based on a consumer credit transaction
16 unless:

17 (1) The party seeking to confirm the award has
18 complied with this section.

19 (2) The party against whom an arbitration award is
20 sought to be confirmed, either:

21 a. Attended a hearing before the arbitrator.

22 b. Signed a writing after the submission to the
23 arbitrator of the claim that is the basis for the arbitration
24 award, agreeing to submit the claim to the arbitrator.

25 c. Was the subject of a court order compelling
26 arbitration.

1 (e) A party may seek to confirm an arbitration award
2 in the courts of this state within one year after the award is
3 made. A party against whom an arbitration award is made may
4 seek to vacate the award in the courts of this state within
5 one year after the award is made.

6 Section 12. (a) If the plaintiff is the prevailing
7 party in any action to collect a consumer debt, the plaintiff
8 shall be entitled to interest on the judgment at a maximum
9 rate of interest equal to the weekly average one-year constant
10 maturity Treasury yield, as published by the Board of
11 Governors of the Federal Reserve System, for the calendar week
12 preceding the date of the judgment. No other rate of interest
13 on the judgment shall be permitted, including the rate
14 provided for in the contract.

15 (b) If the plaintiff is the prevailing party in any
16 action to collect a consumer debt, the plaintiff shall be
17 entitled to collect attorney's fees only if the contract or
18 other document evidencing the indebtedness sets forth an
19 obligation of the consumer to pay the attorney's fees, and
20 subject to the following provisions:

21 (1) If the contract or other document evidencing
22 indebtedness provides for attorney's fees in some specific
23 percentage, such provision and obligation shall be valid and
24 enforceable up to but not in excess of 15 percent of the
25 amount of the debt excluding attorney's fees and collection
26 costs.

1 (2) If a contract or other document evidencing
2 indebtedness provides for the payment of reasonable attorney's
3 fees by the debtor, without specifying any specific
4 percentage, the provision shall be construed to mean the
5 lesser of 15 percent of the amount of the debt, excluding
6 attorney's fees and collection costs, or the amount of
7 attorney's fees calculated by a reasonable rate for the cases
8 multiplied by the amount of time reasonably expended to obtain
9 the judgment.

10 (3) The documentation setting forth a party's
11 obligation to pay attorney's fees shall be provided to the
12 court before a court may enforce those provisions. The
13 documentation shall include all of the materials specified in
14 Section 8.

15 (c) If the debtor is the prevailing party in any
16 action to collect a consumer debt, the debtor shall be
17 entitled to an award of reasonable attorney's fees. The amount
18 of the debt that the creditor sought may not be a factor in
19 determining the reasonableness of the award. In the
20 alternative, at the debtor's election, a prevailing debtor
21 shall be awarded the amount of attorney's fees that the
22 plaintiff would have been entitled to collect if the plaintiff
23 had been the prevailing party.

24 Section 13. (a) Prior to a dispute arising, a
25 written agreement may not waive or have the practical effect
26 of waiving the rights of a party to that agreement to resolve
27 that dispute by obtaining:

1 (1) Injunctive, declaratory, or other equitable
2 relief.

3 (2) Relief on a classwide basis.

4 (3) Punitive damages.

5 (4) Multiple or minimum damages as specified by
6 statute.

7 (5) Attorney's fees and costs as specified by
8 statute or as available at common law.

9 (6) A hearing at which that party can present
10 evidence in person.

11 (b) Any provision in a written agreement violating
12 this section shall be void and unenforceable. A court may
13 refuse to enforce other provisions of the agreement as equity
14 may require.

15 (c) Any person who is a party to an agreement that
16 violates this section can bring an action in court to reform
17 such an agreement so that it complies with this act. The party
18 or parties responsible for drafting the offending provisions
19 shall be liable for the reasonable attorney's fees and costs
20 of the person or entity bringing the action if that action
21 prevails or where, after the action is commenced, the parties
22 reform the contract voluntarily.

23 Section 14. The exemptions of this act shall be
24 available to all residents of this state and shall apply
25 regardless of where the property is located. In the case of a
26 nonresident, the courts of the state shall apply the exempt

1 property laws of the state of most significant contacts of the
2 debtor.

3 Section 15. The following property of a debtor shall
4 be exempt:

5 (1) All household goods, including, but not limited
6 to, the debtor's and the debtor's dependents' eating and
7 cooking utensils, bedding, furniture, books, refrigerator,
8 stove, microwave oven, kitchen appliances, necessary
9 provisions, washing machine, clothes dryer, vacuum cleaner,
10 television, yard equipment, and household equipment and tools,
11 and all personal possessions, including, but not limited to,
12 clothing, pets, personal health aids, toys, recreational
13 items, medications, computers or similar electronic devices,
14 and telephones, unless that item is exempt under another
15 subsection. The debtor may exempt one piece of jewelry without
16 regard to value, and additional jewelry up to a value of three
17 thousand dollars (\$3,000).

18 (2) The interest of a debtor in a motor vehicle up
19 to ten thousand dollars (\$10,000) in value, or twenty thousand
20 dollars (\$20,000) in value in the case of a motor vehicle that
21 has been adapted for special use because of the disability of
22 the debtor or a dependent of the debtor. A levy may be ordered
23 on the motor vehicle of the debtor if the creditor establishes
24 with probative evidence to the satisfaction of the court that
25 the debtor's interest in the motor vehicle significantly
26 exceeds ten thousand dollars (\$10,000) in value, or twenty

1 thousand dollars (\$20,000) in value in the case of a debtor,
2 or a dependent of the debtor, with impaired mobility.

3 (3) Tools, books, instruments, motor vehicles, and
4 machines which are or may be used by the debtor in the course
5 of an occupation or in search for employment, except that levy
6 may be ordered if the creditor establishes with probative
7 evidence that the value of the tools of the trade of the
8 debtor exceed fifty thousand dollars (\$50,000) in the case of
9 farm tools, equipment, crops, and animals, or thirty thousand
10 dollars (\$30,000) in the case of other tools of the trade. The
11 debtor may designate which tools of the trade of less than the
12 applicable amount are exempt.

13 (4) A burial plot for the debtor or his or her
14 family.

15 (5) Child support payments paid or payable to or on
16 behalf of the debtor.

17 (6) All public assistance benefits, unemployment
18 compensation benefits, amounts paid pursuant to the federal
19 earned income tax credit and similar state programs,
20 disability benefits, and workers' compensation paid or
21 payable.

22 (7) All health insurance, disability insurance, and
23 long-term care insurance policies and medical expense
24 accounts, and payments or benefits therefrom.

25 (8) Insurance proceeds, a judgment, or a settlement,
26 or other rights accruing as a result of bodily injury of the
27 individual or of the wrongful death or bodily injury of

1 another individual of whom the individual was a dependent or
2 spouse paid or payable to a beneficiary, spouse, or dependent.

3 (9) Amounts in educational expense accounts and
4 similar types of educational savings accounts not to exceed
5 two hundred forty thousand dollars (\$240,000) per beneficiary
6 whether paid or payable.

7 (10) Exempt benefits and funds, including the exempt
8 portion of wages, which are deposited into an account, without
9 a dollar limitation.

10 (11) In addition to the funds exempt under
11 subdivision (10) of this section, ten thousand dollars
12 (\$10,000) in cash, in a bank account, in accrued interest, in
13 dividends, or in the loan or redemption value of a life
14 insurance policy, or other account of the debtor. In the case
15 of a joint account only the amount contributed by the debtor
16 to the account in excess of this ten thousand dollars
17 (\$10,000) shall be available to a creditor.

18 (12) Proceeds from a student loan are exempt unless
19 the creditor provided educational services to the student.
20 Proceeds from a small business loan are exempt from
21 preexisting debts unless the loan was intended to pay that
22 debt.

23 (13) Up to ten thousand dollars (\$10,000) in other
24 funds or property of any sort designated by the debtor,
25 including additional interests in property already exempted in
26 part under other provisions of this act or other law.

1 (14) Only the interest of the debtor in property may
2 be subjected to garnishment, attachment, disablement, freeze,
3 seizure, or other creditor's remedy. A person other than the
4 debtor may establish that he or she owns or has an interest in
5 property regardless of the person in whose name it is titled
6 or maintained. The interest of the debtor in a joint bank or
7 similar account shall be based on his or her contributions to
8 the account, as determined by the tracing rules in Section 20
9 in order to protect the interest of a non-debtor in the
10 account. Each person with an interest in property has his or
11 her own right to the full exemption amount applicable to that
12 type of property.

13 Section 16. (a) The disposable earnings of a debtor
14 for any week that are less than 80 times the greater of the
15 federal minimum hourly wage prescribed by § 206(a)(1) of Title
16 29 of the United States Code. This exemption shall be adjusted
17 pro rata for any pay period other than weekly.

18 (b) If the disposable earnings of the debtor exceed
19 the amount provided by the preceding subsection, no more than
20 10 percent of disposable income in excess of the amount exempt
21 under the preceding subsection shall be subject to garnishment
22 unless the weekly disposable earnings of the debtor exceed one
23 thousand dollars (\$1,000), in which case no more than 15
24 percent of disposable income is subject to garnishment. The
25 amount not subject to garnishment is exempt.

1 (c) The amount of the disposable income of the
2 debtor that can be garnished for the support of a person is
3 governed by other law.

4 (d) If more than one garnishment is served on a
5 garnishee with respect to the same debtor, the garnishment
6 served earliest shall take priority, except that a garnishment
7 for support of a person shall take priority over any other
8 garnishment regardless of the date of service. If a
9 garnishment with greater priority consumes the disposable
10 income that is available for garnishment under the preceding
11 subsections, then no part of the disposable earnings of the
12 debtor shall be garnished pursuant to the garnishment with
13 lower priority.

14 (e) Notwithstanding Section 14, the protections for
15 earnings set forth in this section apply to all debtors whose
16 physical place of employment is in this state, notwithstanding
17 that the employer of the debtor may have corporate offices or
18 other places of business located outside this state.

19 (f) A person seeking an order of garnishment of
20 earnings, after obtaining a judgment, shall make the following
21 demand in writing at least 15 days and not more than 45 days
22 before the order is sought by delivering it to the judgment
23 debtor by personal service by the court, by sending it to the
24 judgment debtor by certified mail, return receipt requested,
25 or by sending it to the judgment debtor by regular mail
26 evidenced by a properly completed and stamped certificate of
27 mailing by regular mail, addressed to the judgment debtor's

1 last known place of residence. If the judgment debtor
2 completes, signs, and returns the Payment to Avoid Garnishment
3 form, along with any payment shown as due on the form, within
4 15 days of the date of mailing of the demand, the person
5 seeking garnishment may not proceed with the garnishment. If
6 the debtor sends the wrong amount, the creditor shall notify
7 the debtor of the correct amount, and shall allow the debtor
8 another 10 days to pay the correct amount. The demand shall be
9 in substantially the following form:

10 NOTICE OF COURT PROCEEDING TO COLLECT DEBT

11 Date of mailing or date of service by the court

12 _____

13 To: _____

14 (Name of Judgment Debtor) _____

15 (Last Known Residence Address of Judgment Debtor)

16 You owe the undersigned _____ (Name of Judgment
17 Creditor) \$_____, (1) including interest and court costs, for
18 which a judgment was obtained against you or certified in the
19 _____ court on _____, payment of which is hereby demanded.

20 If you do not do one of the things listed below
21 within 15 days of the date of the mailing of this notice or of
22 its service by the court, we will go to court, unless we are
23 otherwise precluded by law from doing so, and ask that your
24 employer be ordered to withhold money from your earnings to
25 pay the judgment. This is called wage garnishment.

26 YOU CAN AVOID THE WAGE GARNISHMENT BY DOING ONE OF
27 THESE THINGS WITHIN THE 15-DAY PERIOD:

1 (1) Pay to us the amount due; or
2 (2) Complete the attached form entitled "Payment to
3 Avoid Garnishment" and return it to us with the payment, if
4 any, shown due on it.

5 _____
6 (Name of Judgment Creditor)

7 _____
8 (Signature of Judgment Creditor
9 or Judgment Creditor's Attorney)

10 _____
11 _____
12 _____
13 (Address of Judgment Creditor)

14 PAYMENT TO AVOID GARNISHMENT

15 To: _____
16 (Name of Judgment Creditor)

17 _____
18 _____
19 (Address of Judgment Creditor)

20 To avoid the garnishment of personal earnings of
21 which you have given me notice, I enclose \$ _____
22 which is the amount on line (6) to apply toward my
23 indebtedness to you. The amount of the payment was computed as
24 follows:

25 1. Total amount of indebtedness demanded: (1)
26 \$ _____

1 2. Enter the amount of your personal earnings, after
2 deductions required by law and deducting up to 15 percent of
3 the remainder for contributions for health insurance, a
4 medical expense account, a pension, or a retirement account,
5 earned by you during the current pay period, that is, the pay
6 period in which this demand is received by you: (2)

7 \$ _____

8 3. (A) Enter your pay period, weekly, biweekly,
9 semimonthly, monthly: \$ _____

10 4. (B) Enter the date when your present pay period
11 ends: \$ _____

12 5. If the amount on line 2 is less than one thousand
13 dollars (\$1,000) for weekly pay, two thousand four hundred
14 dollars (\$2,400) for biweekly pay, two thousand five hundred
15 twenty-eight dollars (\$2,528) for semimonthly pay, or five
16 thousand one hundred sixty dollars (\$5,160) for monthly pay,
17 enter an amount equal to 10 percent of the amount on line (2);
18 otherwise enter an amount equal to 15 percent of the amount on
19 line 2. (4) \$ _____

20 6. (A) The higher of the current federal or state
21 minimum hourly wage is _____ (to be filled in by Judgment
22 Creditor) (You should use the above figure to complete this
23 portion of the form.) If you are paid weekly, enter 80 times
24 the current federal minimum hourly wage; if paid biweekly,
25 enter 160 times the current federal minimum hourly wage; if
26 paid semimonthly, enter 172 times the current federal minimum

1 hourly wage; if paid monthly, enter 344 times the current
2 federal minimum hourly wage:

3 7. (B) Enter the amount by which the amount on line
4 (2) exceeds the amount on line 5(B).

5 8. Enter the smallest of the amounts on line (1),
6 (4), or 5(B). Send this amount to the judgment creditor along
7 with this form after you have signed it. If the smallest of
8 the amounts shown on line (1), (4), or 5(B) is zero, sign and
9 return this form but do not enclose payment.

10 (6) \$ _____

11 I certify that the statements contained above are
12 true to the best of my knowledge and belief

13 (Signature of Judgment Debtor)

14 _____
15 _____
16 _____

17 Print Name and Residence Address of Judgment Debtor

18 Section 17. The exemptions provided in Sections 14
19 and 15 may not be waived in an executory contract or
20 prospectively. Security interests, other than for the purchase
21 price, repair, or improvement of the property, or as a bona
22 fide pawn transaction in which the pawnbroker takes physical
23 possession of the pawned item, may not be taken in exempt
24 property. A purported waiver or grant of a security interest
25 in violation of this section is void and unenforceable.

1 Section 18. (a) A debtor is entitled to a homestead
2 exemption in his or her residence at the time the residence is
3 acquired.

4 (b) The homestead exemption may be waived by clear
5 language only in a mortgage or deed of trust agreed to by all
6 the owners of the residence and by the debtor's spouse whether
7 or not the spouse has an ownership interest in the home. It
8 may not be waived in any other transaction. A waiver not
9 permitted by this act is void and unenforceable.

10 (c) The amount of the homestead exemption is the
11 interest of the debtor in the residence up to the value of the
12 median house price in the metropolitan, urban, or rural area
13 where the residence is situated. The debtor may assert an
14 additional homestead exemption for 50 percent of that amount
15 for the spouse of the debtor and each dependent of the debtor
16 who resides in the homestead, whether or not such spouse or
17 dependent has an ownership interest in the homestead.

18 (d) The homestead shall attach to a residence,
19 without declaration or recordation, upon its acquisition,
20 whether by purchase, gift, devise, inheritance, or other
21 means. If a debtor has more than one residence, the homestead
22 exemption shall attach to the first one acquired, unless the
23 debtor designates a different residence as his or her
24 homestead, in which case the homestead exemption transfers to
25 the designated residence upon designation.

26 Section 19. (a) A transferee of property obtained by
27 fraud or theft may not assert that the property is exempt

1 against the transferor or the heirs, devisees, and assigns of
2 the transferor.

3 (b) The restrictions of this act do not apply in the
4 case of any order for the support of any child or dependent of
5 the debtor or any decree regarding the division of property
6 between spouses or former spouses issued by a court of
7 competent jurisdiction in accordance with an administrative or
8 civil procedure, which is established by state or federal law,
9 which affords substantial due process, and which is subject to
10 judicial review.

11 Section 20. (a) Money received from the sale or
12 transfer of property that is exempt under this act or other
13 law shall remain exempt for a period of 18 months while in the
14 debtor's possession, in a bank or similar account, in a
15 savings account, in a certificate of deposit with a term that
16 does not extend past the 18-month period, or otherwise held in
17 a manner whereby the money is regularly available to the
18 debtor and is traceable and may be converted into another type
19 of exempt property.

20 (b) If property, or a part thereof, that could have
21 been claimed as exempt has been sold or taken by condemnation,
22 or has been lost, damaged, or destroyed and the owner has been
23 indemnified therefor, the traceable proceeds of that property
24 are exempt for 18 months after the proceeds are received, and
25 may be converted into another type of exempt property.

1 (c) Money or other property and proceeds that are
2 exempt under this act or other law are traceable under this
3 section by application of the first-in first-out rule.

4 Section 21. (a) The dollar amounts in this act
5 change, as provided in this section, according to and to the
6 extent of changes in the Consumer Price Index for Urban Wage
7 Earners and Clerical Workers: U.S. City Average, All Items,
8 compiled by the Bureau of Labor Statistics, United States
9 Department of Labor, and hereafter referred to as the Index.
10 The Index for December of the year preceding the year in which
11 this act becomes effective is the Reference Base Index.

12 (b) The dollar amounts change on July 1 of each
13 even-numbered year if the percentage of change, calculated to
14 the nearest whole percentage point, between the Index for
15 December of the preceding year and the Reference Base Index,
16 is 10 percent or more, however:

17 (1) The portion of the percentage change in the
18 Index in excess of a multiple of 10 percent shall be
19 disregarded and the dollar amounts change only in multiples of
20 10 percent of the amounts appearing in this act on the date of
21 enactment.

22 (2) The dollar amounts may not change if the amounts
23 required by this section are those currently in effect as a
24 result of earlier application of this section.

25 (3) Changes in dollar amounts are to be rounded to
26 the nearest whole dollar.

1 (c) If the Index is revised, the percentage of
2 change is calculated on the basis of the revised Index. If a
3 revision of the Index changes the Reference Base Index, a
4 revised Reference Base Index is determined by multiplying the
5 Reference Base Index applicable by the rebasing factor
6 furnished by the Bureau of Labor Statistics. If the Index is
7 superseded, the Index referred to in this section is the one
8 represented by the Bureau of Labor Statistics as reflecting
9 most accurately changes in the purchasing power of the dollar
10 for consumers.

11 (d) The Alabama Department of Labor shall adopt a
12 rule to provide the following:

13 (1) On or before April 30 of each year in which
14 dollar amounts are to change, the changes in dollar amounts
15 required by subsection (b).

16 (2) Promptly after the changes occur, changes in the
17 Index required by subsection (c) including, if applicable, the
18 numerical equivalent of the Reference Base Index under a
19 revised Reference Base Index and the designation or title of
20 any index superseding the Index.

21 Section 22. (a) A levy, garnishment, attachment,
22 disablement, freeze, or seizure of property that may be exempt
23 may not be made by a creditor, custodian, court officer,
24 sheriff, or similar officer without a court order reasonably
25 identifying the property and the manner of levy.

26 (b) (1) Upon entry of a judgment for damages, the
27 clerk shall mail a notice to the last known address of each

1 judgment debtor stating that the judgment debtor is
2 responsible for paying the judgment but that the court will
3 not require it to be paid with exempt income, assets, or
4 property. The address to which the notice is mailed shall be
5 noted in the record. If the notice is returned undelivered,
6 that fact shall also be noted in the record.

7 (2) At the time the creditor obtains an execution
8 the circuit clerk shall give a notice to the judgment debtor
9 who is the subject of the remedy, to any person in possession
10 of the property involved, and to any person known to the
11 creditor after reasonable inquiry to have an ownership claim
12 to the property involved. The notice shall state the person's
13 right to a hearing to claim exemptions that are not
14 self-executing, to contest the seizure of exempt or necessary
15 property, or to seek to set aside the judgment, and the steps
16 the person may take to assert these rights. If documents are
17 served upon the person in connection with the execution, this
18 notice shall be included with those documents, but otherwise
19 it shall be given by first class mail.

20 (3) At the time a creditor notifies a person of a
21 debtor's examination, supplementary process, or deposition on
22 the financial affairs of the debtor, the creditor shall also
23 provide a notice that the debtor is responsible for paying the
24 judgment, that the court may not require it to be paid with
25 exempt income, assets, or property, and that the person has
26 the right to a hearing to claim exemptions, to contest the

1 seizure of exempt or necessary property, or to seek to set
2 aside the judgment.

3 (4) The notices required by this section shall list
4 the most common federal and state exemptions, give examples of
5 income, assets, and property that are commonly exempt, and
6 list sources of additional related information, such as the
7 state's law libraries or the court's website. The notice shall
8 also state that the judgment debtor may file a motion to set
9 aside the judgment and shall list the most common grounds for
10 such a motion, including improper service or active duty
11 military service at the time of the suit.

12 (c) If an item of property falls into a category
13 that is fully exempt or for which the exemption depends on its
14 value, or an exemption depends on the judgment debtor's
15 designation of the property to which the exemption will apply
16 but the exemption appears to the executing officer to be
17 sufficient to exempt all of the property of the judgment
18 debtor, the executing officer shall so report to the court and
19 the judgment creditor, and may not execute upon it. The
20 property is presumed to be fully exempt unless the creditor
21 requests and obtains a hearing and establishes that the
22 property does not fall into a fully exempt category or
23 includes significant value in excess of the amount exempt, or
24 that the exemption is not sufficient to exempt all of the
25 judgment debtor's property. The creditor must request the
26 hearing within seven days after the report of the executing
27 officer. Notice of the hearing shall be mailed to the debtor

1 and shall describe the steps the debtor may take to contest
2 the creditor's claim as to the value of the property. The
3 debtor may contest the creditor's claim either by appearing in
4 person or through a representative at the hearing, or by
5 filing a written response stating the belief of the debtor of
6 the amount that the property is worth and certifying the
7 existence and amount of any liens or security interests
8 against it, and the court shall consider such a statement as
9 evidence.

10 (d) If an exemption depends on the judgment
11 designation of the property of debtor to which the exemption
12 will apply, and the exemption does not appear to the executing
13 officer to be sufficient to exempt all of the property of the
14 debtor, the executing officer shall provide the judgment
15 debtor a form and written instructions for designating the
16 property to which the exemption will apply. If the debtor
17 fails to file the designation with the court within seven
18 days, the executing officer shall designate the items that
19 will be exempt. If the debtor files a designation, the clerk
20 shall notify the judgment creditor. The items designated by
21 the judgment debtor are presumed to be exempt unless the
22 creditor requests a hearing within seven days after the
23 clerk's notice and establishes at the hearing that the value
24 of the property exceeds the exemption. The hearing shall be
25 conducted as set forth in subsection (c).

26 (e) The Alabama Supreme Court shall prescribe
27 notices to garnishees that describe the exemptions applicable

1 to particular types of garnishment. The forms shall instruct
2 the garnishee not to turn over funds or other property that
3 the garnishee can reasonably identify as exempt, but instead
4 to report back that the funds or property are exempt.

5 (f) If a creditor obtains an execution against a
6 person, the person is entitled to a prompt hearing to claim
7 exemptions, to contest the seizure of exempt property, or seek
8 to set aside the judgment.

9 (g) If a creditor obtains an execution against
10 property of a person, the person is entitled to a prompt
11 hearing to claim that property levied upon, while not exempt,
12 is of such value to the financial rehabilitation or future
13 support of the debtor or the dependents of the debtor that it
14 should be declared exempt by the court. The court may also
15 order a greater exemption if other exceptional circumstances
16 such as illness, injury, unemployment, death of a family
17 member, disability, or make a greater exemption equitable.

18 (h) A judgment creditor may serve a subpoena duces
19 tecum or invoke other discovery procedures provided in the
20 Alabama Rules of Civil Procedure upon a person believed to be
21 holding income, assets, or property of the debtor to determine
22 the nature, value, and the availability or exemption of the
23 income, assets, or property for satisfaction of the judgment.
24 Upon a showing of reasonable grounds to believe that the
25 residence of the debtor contains nonexempt items of
26 significant value, the court may order the debtor to make the
27 residence available to the sheriff to levy upon such nonexempt

1 items or to an appraiser to conduct an appraisal of the
2 property.

3 (i) Costs incurred in making, or proposing to make,
4 a levy on property shall be paid out of the proceeds of a sale
5 of the property if a sale occurs. If the proceeds of a sale of
6 the property are insufficient to cover the costs incurred in
7 the levy, garnishment, or attachment, the creditor shall pay
8 the costs and may not recover them from the debtor or the
9 garnishee, notwithstanding any agreement of the parties to the
10 contrary.

11 Section 23. An employee may not be discharged or
12 disciplined because of any garnishment.

13 Section 24. (a) In the case of seizure of property
14 made exempt from seizure by this act, the debtor and his or
15 her dependents may recover the following:

16 (1) Actual damages, including emotional distress
17 damages.

18 (2) Statutory damages up to two thousand dollars
19 (\$2,000) per exempt item.

20 (3) A reasonable attorney's fee in connection with
21 the establishing of the exemption and the damages of the
22 debtor.

23 (b) It shall be a defense to liability under this
24 section if the person shows that the violation was not
25 intentional and resulted from a bona fide error of fact
26 notwithstanding the maintenance of procedures reasonably
27 adapted to avoid the error.

1 Section 25. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration may not affect the part
4 which remains.

5 Section 26. All laws or parts of laws which conflict
6 with this act are repealed.

7 Section 27. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.