

1 HB314
2 182044-2
3 By Representatives Johnson (K), Collins, Martin, Shiver, Lee,
4 Moore (B), Brown, Rogers, Rowe, Hammon, Carns, Davis, Wood,
5 Greer, Nordgren, Black, Williams (JW), Clouse, Drake, Ellis,
6 Ford, Crawford, Butler, Blackshear, Scott, Patterson,
7 Wadsworth, Weaver and Wingo
8 RFD: Financial Services
9 First Read: 23-FEB-17

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8 SYNOPSIS: Under existing law, the Alabama Small Loan
9 Act authorizes licensed lenders to make loans up to
10 \$1,000 subject to interest rates and charges
11 provided by law.

12 This bill would authorize licensed lenders
13 under the act to make loans up to \$1500 and adjust
14 the interest rates for loans based on the lending
15 authority. This bill would also provide a minimum
16 three-month term on loans and a maximum term of 18
17 months.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to the Alabama Small Loan Act; to amend
24 Sections 5-18-4, 5-18-10, 5-18-13, and 5-18-15, Code of
25 Alabama 1975, to increase the lending authority and further
26 provide for the interest rates; and to provide further for the
27 minimum and maximum term of loans.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 5-18-4, 5-18-10, 5-18-13, and
3 5-18-15, Code of Alabama 1975, are amended to read as follows:

4 "§5-18-4.

5 "(a) License required. No person shall engage in the
6 business of lending in amounts of less than ~~one thousand~~
7 ~~dollars (\$1,000)~~ one thousand five hundred dollars (\$1500) and
8 contract for, exact or receive, directly or indirectly, on or
9 in connection with any such loan, any charges whether for
10 interest, insurance, compensation, consideration, or expense,
11 which in the aggregate are greater than the interest that the
12 lender would be permitted by law to charge for a loan of money
13 if he were not a licensee under this chapter, except as
14 provided in and authorized by this chapter and without first
15 having obtained a license from the supervisor. For the purpose
16 of this section, a loan shall be deemed to be in the amount of
17 less than ~~one thousand dollars (\$1,000)~~ one thousand five
18 hundred dollars (\$1500) if the net amount or value advanced to
19 or on behalf of the borrower, after deducting all payments for
20 interest, expenses, and charges of any nature taken
21 substantially contemporaneously with the making of the loan,
22 is less than ~~one thousand dollars (\$1,000)~~ one thousand five
23 hundred dollars (\$1500).

24 "(b) Exemptions. This chapter shall not apply to any
25 person doing business under the authority of, and as permitted
26 by, any law of this state or of the United States relating to
27 banks, trust companies, savings or building and loan

1 associations, credit unions as defined by law, nor to any
2 lawful, bona fide pawnbroking business, nor shall this chapter
3 apply to any person making loans to their tenants engaged in
4 agriculture, nor to loans by agricultural suppliers to persons
5 whose principal business is farming, nor shall it apply to
6 agricultural credit corporations or associations organized
7 under an act of the Congress of the United States, nor shall
8 it apply to the business of financing the purchase of motor
9 vehicles, refrigerators, or other personal property, nor shall
10 it apply to loans insured or guaranteed by the United States
11 or any of its agencies.

12 "(c) Evasions. The provisions of subsection (a) of
13 this section shall apply to any person who seeks to evade its
14 application by any device, subterfuge, or pretense whatsoever
15 including, but not thereby limiting the generality of the
16 foregoing: The loan, forbearance, use or sale of credit (as
17 guarantor, surety, endorser, comaker, or otherwise), money,
18 insurance, goods or things in action; the use of collateral or
19 related sales or purchases of goods or services or agreements
20 to sell or purchase, whether real or pretended; and, receiving
21 or charging compensation for goods or services, whether or not
22 sold, delivered, or provided and the real or pretended
23 negotiation, arrangement, or procurement of a loan through any
24 use of activity of a third person, whether real or fictitious.

25 "(d) Penalties. Whoever violates or participates in
26 the violation of any provision of this section shall be guilty
27 of a misdemeanor and, upon conviction thereof, shall be

1 punishable by a fine of not more than five hundred dollars
2 (\$500) nor less than one hundred dollars (\$100), or by
3 imprisonment for not more than six months, or by both such
4 fine and imprisonment in the discretion of the court. Any
5 contract of loan in the making or collection of which any act
6 shall have been done which violates this section shall be
7 void, and the lender shall have no right to collect, receive,
8 or retain any principal, interest, or charges whatsoever.

9 "§5-18-10.

10 "(a) Annual examinations of licensees. At least once
11 each year and at such other time as may be deemed necessary by
12 the Supervisor of the Bureau of Loans, an examination shall be
13 made of the place of business of each licensee and of the
14 loans, transactions, books, papers, and records of the
15 licensee so far as they pertain to the business licensed under
16 this chapter. As cost of examination, the licensee shall pay
17 to the Bureau of Loans the actual cost of each examination,
18 the amount of which shall be reasonably prescribed under rules
19 and regulations promulgated by the Superintendent of Banks;
20 provided, however, the cost for each day of examination by
21 each examiner shall not exceed eight times the average hourly
22 rate for auditing purposes as charged by three recognized
23 certified public accountancy firms in the City of Montgomery,
24 Alabama. In addition thereto, the licensee shall pay as per
25 diem the amount authorized by law for state employees
26 traveling inside the state in the service of the state. All
27 such fees shall be paid into the special fund set up by the

1 State Treasury pursuant to Section 5-2A-20, and used in the
2 supervision and examination of licensees.

3 "(b) Investigations. For the purpose of discovering
4 violations of this chapter or of securing information lawfully
5 required hereunder, the supervisor or his or her duly
6 authorized representatives may at any time investigate the
7 business and examine the books, accounts, papers, and records
8 used therein of (1) any licensee, (2) any other person engaged
9 in the business described in subsection (a) of Section 5-18-4
10 or participating in such business as principal, agent, broker,
11 or otherwise and (3) any person who the supervisor has
12 reasonable cause to believe is violating or is about to
13 violate any provisions of this chapter, whether or not the
14 person shall claim to be within the authority or beyond the
15 scope of this chapter. For purposes of this section, any
16 person who shall advertise for, solicit, or hold himself out
17 as willing to make loan transactions in the amount or of the
18 value of less than ~~one thousand dollars (\$1,000)~~ one thousand
19 five hundred dollars (\$1500) shall be presumed to be engaged
20 in the business described in subsection (a) of Section 5-18-4.

21 "(c) Access to records; witnesses. For the purposes
22 of this section, the supervisor or his or her duly authorized
23 representatives shall have and be given free access to the
24 offices and places of business, files, safes, and vaults of
25 all such persons and may require the attendance of any person
26 and to examine him or her under oath relative to the loans or

1 the business or to the subject matter of any examination,
2 investigation, or hearing.

3 "(d) Cease and desist orders; injunctions;
4 receivers. Whenever the supervisor has reasonable cause to
5 believe that any person is violating or is threatening to or
6 intends to violate any provision of this chapter, he or she
7 may in addition to all actions provided for in this chapter
8 and in addition to all other remedies that he or she may have
9 at law and without prejudice thereto enter an order requiring
10 such person to desist or to refrain from such violation, and
11 an action may be brought on the relation of the Attorney
12 General or the supervisor to enjoin the person from engaging
13 in or continuing the violation or from doing any act or acts
14 in furtherance thereof. In any action, an order or judgment
15 may be entered awarding the preliminary or final injunction as
16 may be deemed proper. In addition to all other means provided
17 by law for the enforcement of a restraining order or
18 injunction, the court in which the action is brought shall
19 have the power and jurisdiction to impound and to appoint a
20 receiver for the property and business of the defendant,
21 including books, papers, documents, and records pertaining
22 thereto or so much thereof as the court may deem reasonably
23 necessary to prevent violations of this chapter through or by
24 means of the use of the property and business. The receiver,
25 when appointed and qualified, shall have such powers and
26 duties as to custody, collection, administration, winding up,

1 and liquidation of the property and business as shall from
2 time to time be conferred upon him by the court.

3 "(e) Confidentiality of examinations and
4 investigations. Reports of examinations and investigations of
5 the supervisor, and the books and records of licensees are to
6 be held strictly confidential, and may not be produced,
7 reproduced, or otherwise made available by the State Banking
8 Department to any persons other than those within the State
9 Banking Department unless pursuant to a lawfully issued
10 subpoena. This subsection does not apply to disclosures in
11 proceedings brought by the supervisor pursuant to this
12 chapter.

13 "§5-18-13.

14 "(a) Advertising, etc. No licensee or other person
15 subject to this chapter shall advertise, display, distribute,
16 or broadcast or cause to permit to be advertised, displayed,
17 distributed, or broadcast in any manner whatsoever any false,
18 misleading, or deceptive statement or representation with
19 regard to the rates, terms, or conditions for loans in the
20 amount or of the value of less than ~~one thousand dollars~~
21 ~~(\$1,000)~~ one thousand five hundred dollars (\$1500). The
22 supervisor may require that charges or rates of charge, if
23 stated by a licensee, be stated fully and clearly in such
24 manner as he or she may deem necessary to prevent
25 misunderstanding thereof by prospective borrowers. The
26 supervisor may permit or require licensees to refer in their
27 advertising to the fact that their business is under state

1 supervision, subject to conditions imposed by him or her to
2 prevent an erroneous impression as to the scope or degree of
3 protections provided by this chapter.

4 "(b) Schedule of charges. Each licensee shall
5 conspicuously display in each licensed place of business a
6 full and accurate schedule of the rates of charge upon all
7 classes of loans currently to be made by him or her.

8 "§5-18-15.

9 "(a) Maximum rates of interest and charge. Every
10 licensee under this chapter may contract for and receive as
11 interest on any loan of money less than ~~one thousand dollars~~
12 ~~(\$1,000)~~ one thousand five hundred dollars (\$1,500) an amount
13 at a rate not exceeding three percent a month on that part of
14 the unpaid principal balance not in excess of two hundred
15 dollars (\$200), and two percent a month on that part of the
16 unpaid principal balance in excess of two hundred dollars
17 (\$200) but less than ~~one thousand dollars (\$1,000)~~ one
18 thousand five hundred dollars (\$1,500).

19 "(b) Account maintenance fee. In addition to the
20 maximum rate of interest and charges pursuant to subsection
21 (a), a licensee may enter into a contract of loan under this
22 chapter in which the borrower agrees to pay an account
23 maintenance fee of not more than three dollars (\$3) for each
24 month of the scheduled period of repayment of the loan
25 provided that the scheduled monthly payments are equal to or
26 greater than thirty dollars (\$30). Such account maintenance
27 fee shall be determined at the date of the loan, but may not

1 be prepaid. Such fee as so determined shall not bear interest
2 and shall constitute a part of the finance charge.

3 "(c) Method of computing charges.

4 "(1) Interest or charges under this chapter shall
5 not be paid, deducted, discounted, or received in advance or
6 compounded, but the rate of charge authorized by subsections
7 (a) and (b) may be precomputed as provided in subdivision (2)
8 of this subsection.

9 "For the purpose of this section, one month shall be
10 that period of time from any date in a month to a
11 corresponding date in the next month and, if there is not a
12 corresponding date, then to the next day of the next month,
13 and a day shall be considered one thirtieth of a month when
14 computation is made for a fraction of a month.

15 "(2) When the loan contract requires repayment in
16 substantially equal and consecutive monthly installments of
17 principal and charges or interest combined, the charges or
18 interest may be precomputed at the agreed monthly or periodic
19 rate not in excess of that provided for in subsections (a) and
20 (b) on scheduled unpaid principal balances according to the
21 terms of the contract and added to the principal of the loan.
22 Every payment may be applied to the combined total of
23 principal and precomputed charge until the contract is fully
24 paid. The acceptance or payment of charges on loans made under
25 the provisions of this subsection shall not be deemed to
26 constitute payment, deduction, or receipt thereof in advance
27 nor compounding under subdivision (1) above.

1 "(d) Refunds.

2 "(1) When any loan contract is paid in full by cash,
3 a new loan, renewal, or otherwise one month or more before the
4 final installment date, the licensee shall refund or credit
5 the borrower with that portion of the total charges which
6 shall be due the borrower as determined by schedules prepared
7 under the rule of seventy-eighths or sum of the digits
8 principle as follows: The amount of the refund or credit shall
9 be as great a proportion of the total charges originally
10 contracted for as the sum of the periodic time balances of the
11 contract scheduled to follow the date of prepayment bears to
12 the sum of all the periodic time balances of the contract,
13 both sums to be determined according to the payment schedule
14 originally contracted for.

15 "(2) If the loan contract, with charges precomputed
16 under subsections (a) and (b), is not prepaid in full but
17 becomes partially prepaid in an amount equal to three or more
18 installments, the licensee shall reduce the balance due by the
19 amount that would be required to be refunded for prepayment in
20 full on the date of the partial prepayment and compute charges
21 as payments are made thereafter in the manner prescribed in
22 subdivision (1) of subsection (c), or the licensee may with
23 the consent of the borrower reschedule the remaining
24 installments and precompute charges as prescribed in
25 subdivision (2) of subsection (c).

26 "(e) Default or extension charges. If the contract
27 so provides, when a scheduled payment is in default or

1 delinquent for 10 or more days, the licensee may charge and
2 collect an additional late charge not to exceed the greater of
3 ten dollars (\$10) or five percent of the amount of the
4 scheduled payment in default. Each of the late charges
5 permitted under this subsection may be collected only once on
6 any scheduled payment, regardless of the period during which
7 the payment remains in default or is delinquent. It is the
8 intent of this subsection that if the payment date of all
9 wholly unpaid installments is deferred or extended one or more
10 full months and the contract so provides, the licensee may
11 charge and collect a deferment or default charge only on the
12 installment which is delinquent at the date the contract is
13 extended or deferred.

14 "(f) Rules and regulations. In addition to the
15 general authority granted to him or her by subsection (a) of
16 Section 5-18-12, the supervisor may make such rules and
17 regulations as he or she may deem necessary or advisable to
18 insure that rebates, default charges, and deferment charges
19 are so computed, paid to or collected from borrowers that the
20 total charges collected by licensees under this section are
21 substantially equivalent to charges authorized to be collected
22 by licensees under this section.

23 "(g) Recording fees. The licensee may collect from
24 the borrower the actual fees paid a public official or agency
25 of the state for filing, recording, or releasing any
26 instrument securing the loan.

1 "(h) Further charges; splitting of contracts. No
2 further or other charges shall be directly or indirectly
3 contracted for or received by any licensee, including
4 insurance premiums of any kind, except those specifically
5 authorized by this chapter or by Chapter 8 of Title 8. No
6 licensee shall divide into separate parts any contract made
7 for the purpose of or with the effect of obtaining charges in
8 excess of those authorized by this section. All balances due
9 to a licensee from any person as a borrower, or as an
10 endorser, guarantor, or surety for any borrower or otherwise,
11 shall be considered a part of any loan being made by a
12 licensee to the person for the purpose of computing charges.

13 "(i) Installment payments; contract period. No
14 licensee shall enter into any contract of loan under this
15 chapter in which the borrower agrees to make any scheduled
16 repayment of the cash advance more than 25 calendar months
17 from the date of making the contract of loan. Every loan
18 contract shall require payment of the cash advance and charges
19 in installments which shall be payable at approximately equal
20 periodic intervals; except, that payment dates may be omitted
21 to accommodate borrowers with seasonal incomes. No installment
22 contracted for shall be substantially larger than any
23 preceding installment.

24 "(j) Interest after due date of final installment.
25 Interest as provided in this section shall not accrue or be
26 recovered or charged on any loan made under this chapter for
27 any longer than six months after the due date of the final

1 installment of principal or interest. After the expiration of
2 said six-month period, interest may be charged at a rate not
3 to exceed eight percent per annum.

4 "(k) Inducing borrower to become obligated under
5 more than one contract. No licensee shall induce or permit any
6 person or any husband and wife, jointly or severally, to
7 become obligated directly or contingently or both under more
8 than one contract of loan at the same time for the purpose of
9 obtaining a higher rate of charge than would otherwise be
10 permitted by this section. It shall be unlawful for any
11 licensee to evade or attempt to evade this section by inducing
12 a customer to borrow from another loan company in which he or
13 she has a pecuniary interest or with whom he or she has an
14 arrangement for exchange of customers.

15 "(l) Liabilities of licensees making excess charges.
16 Any licensee making any charge in excess of the amount
17 authorized herein, except as the result of a deliberate
18 violation of or reckless disregard for this chapter, shall
19 refund to the borrower the total amount of the actual economic
20 damages which at the licensee's option may be done by payment
21 to the borrower, or by reducing the amount of the borrower's
22 principal obligation. If the borrower is entitled to a refund
23 and the licensee refuses to refund within 60 days after
24 written demand, including the filing of a legal action, the
25 licensee shall forfeit, in addition to the actual economic
26 damages his or her right to any finance charge. If the
27 licensee has made an excess charge in deliberate violation of

1 or in reckless disregard for this chapter, the licensee and
2 the several members, officers, directors, agents, and
3 employees thereof who shall have participated in a deliberate
4 violation of or reckless disregard for this chapter, shall be
5 guilty of a misdemeanor which, upon conviction, shall be
6 punishable by a fine of not more than five hundred dollars
7 (\$500) and not less than one hundred dollars (\$100) or by
8 imprisonment of not more than six months, or by both fine and
9 imprisonment in the direction of the court. The remedies
10 provided herein shall be the remedy of the borrower under this
11 chapter as the result of this violation. No action under this
12 section may be brought more than 18 months after the due date
13 of the last scheduled payment of the agreement pursuant to
14 which the charge was made.

15 "(m) Alternative rates of charge.

16 "(1) As an alternative to the interest rates and
17 charges permitted to be charged by a licensee pursuant to
18 subsections (a) and (b) on loans of less than ~~one thousand~~
19 ~~dollars (\$1,000)~~ one thousand five hundred dollars (\$1500), a
20 licensee may charge an acquisition charge for making the loan
21 in an amount not in excess of 10 percent of the amount of the
22 principal and an installment account handling charge in an
23 amount no greater than the following:

24 "a. Twelve dollars (\$12) per month on any loan of an
25 amount of one hundred dollars (\$100) or more, up to and
26 including the amount of three hundred dollars (\$300).

1 "b. Fourteen dollars (\$14) per month on any loan of
2 an amount in excess of three hundred dollars (\$300), but not
3 more than four hundred dollars (\$400).

4 "c. Sixteen dollars (\$16) per month on any loan of
5 an amount in excess of four hundred dollars (\$400), but not
6 more than five hundred dollars (\$500).

7 ~~"d. Seventeen dollars (\$17) per month on any loan of
8 an amount in excess of five hundred dollars (\$500), but not
9 more than eight hundred dollars (\$800).~~

10 ~~"e. d.~~ Twenty dollars (\$20) per month on any loan of
11 an amount in excess of ~~eight hundred dollars (\$800)~~ five
12 hundred dollars (\$500), but ~~less~~ not more than one thousand
13 dollars (\$1,000).

14 "e. Twenty-three dollars (\$23) per month on any loan
15 of an amount in excess of one thousand dollars (\$1000), but
16 not more than one thousand two hundred fifty dollars (\$1250).

17 "f. Twenty-six dollars (\$26) per month on any loan
18 of an amount in excess of one thousand two hundred fifty
19 dollars (\$1250), but not equal to or exceeding one thousand
20 five hundred dollars (\$1500.)

21 "Provided, however, that the scheduled payments are
22 in amounts equal to or greater than forty dollars (\$40) per
23 month, inclusive of the installment account handling charge.
24 The acquisition charge and the installment account handling
25 charge may be calculated for the term of the contract and
26 added to the amount of the principal. The acceptance or
27 payment of charges on loans made under this subsection shall

1 not be deemed to constitute payment, deduction, or receipt
2 thereof in advance nor compounding under this subsection.

3 "(2) The minimum term for repayment of a loan under
4 this subsection is three months and the maximum term of any
5 loan made under this subsection is ~~12~~ 18 months.

6 "(3) Upon the prepayment in full of any loan under
7 this subsection, the installment account handling charge is
8 subject to subsection (d), as it relates to refunds. The
9 acquisition charge shall not be subject to refund.

10 "(4) No insurance charge under Section 5-18-17, no
11 interest surcharge under Section 8-8-14, nor any other charge
12 of any nature whatsoever, is permitted for loans made pursuant
13 to the rate structure of this subsection, except for
14 acquisition charges and installment account handling charges
15 as provided under this subsection, default charges under
16 subsection (e), recording fees under subsection (g), bad check
17 charges under Section 8-8-15, and assessed court costs.

18 "(5) The loan charges allowed under this subsection
19 may not be imposed on a loan to a borrower who has more than
20 one loan outstanding with the licensee and upon which loan
21 charges were imposed under this subsection.

22 "(6) No licensee shall file a claim against a
23 decedent borrower's estate for any unpaid indebtedness for a
24 loan whose charges include an acquisition charge or an
25 installment account handling charge under this subsection."

26 Section 2. (a) This act shall apply to loan
27 contracts entered into after the effective date of this act.

1 (b) This act shall not affect loan contracts entered
2 into prior to the effective date of this act.

3 Section 3. All laws or parts of laws which conflict
4 with this act are repealed.

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