

1 SB261
2 182498-1
3 By Senators Whatley, Marsh, Reed, Albritton, Scofield, Ward,
4 Allen, Livingston, Williams, Smitherman, Chambliss and
5 Waggoner
6 RFD: Judiciary
7 First Read: 28-FEB-17

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8 SYNOPSIS: This bill would provide for the regulation
9 of consumer lawsuit lenders and consumer lawsuit
10 lending agreements. This bill would define a
11 consumer lawsuit lender as a person who provides
12 money or extends credit to a consumer based on the
13 consumer's potential recovery of money in a legal
14 dispute and in which the consumer may use the money
15 or credit for a purpose other than prosecuting the
16 legal dispute on which the extension money or
17 credit is conditioned and in which the consumer
18 lawsuit lender's recourse against the consumer is
19 limited primarily to the amount recovered.

20 This bill would require consumer lawsuit
21 lenders to obtain a license from the State Banking
22 Department to make consumer lawsuit loans and
23 extensions of credit and would make consumer
24 lawsuit lenders and consumer lawsuit lending
25 agreements subject to certain provisions of the
26 Mini Code. This bill would require a consumer
27 lawsuit lender to obtain the license regardless of

1 the number of loans or extensions of credit the
2 consumer lawsuit lender made in the preceding
3 calendar year.

4 This bill would establish the maximum
5 finance charge a consumer lawsuit lender could
6 charge on a loan or an extension or credit made
7 pursuant to a consumer lawsuit lending agreement.
8 This bill would specify that the maximum finance
9 charge would apply regardless of the amount of the
10 loan or extension of credit provided.

11 This bill would allow the Superintendent of
12 Banks to adopt rules and would allow the rules to
13 provide for the superintendent or a designee of the
14 State Banking Department to issue interpretations
15 of the rules and the act.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to consumer lawsuit lenders and consumer
22 lawsuit lending agreements; to define consumer lawsuit
23 lending; to require a person engaging in consumer lawsuit
24 lending to obtain a license to make consumer lawsuit loans and
25 extensions of credit from the State Banking Department; to
26 specify requirements for consumer lawsuit lending agreements
27 and loans or extensions of credit made in conjunction with the

1 agreement; to establish the maximum finance charge for a
2 consumer lawsuit loan or extension of credit made pursuant to
3 a consumer lawsuit lending agreement; to specify that certain
4 provisions of Chapter 19 of Title 5 of the Code of Alabama
5 1975, apply to consumer lawsuit lenders and consumer lawsuit
6 lending agreements; and to allow the Superintendent of Banks
7 to promulgate rules and allow the superintendent or a designee
8 of the State Banking Department to issue interpretations.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known as the "Alabama
11 Consumer Lawsuit Lending Act."

12 Section 2. For the purposes of this act, the
13 following terms shall have the meanings ascribed to them by
14 this section:

15 (1) CONSUMER. Any natural person who is, or who is
16 contemplating being or becoming, a plaintiff or claimant in
17 any legal dispute.

18 (2) CONSUMER LAWSUIT LENDER. A person that engages
19 in consumer lawsuit lending.

20 (3) CONSUMER LAWSUIT LENDING. The act of loaning
21 money or extending credit to a consumer who is a resident of
22 this state or from a place of business in this state or
23 through an employee in this state, pursuant to an agreement or
24 arrangement with the consumer under which the consumer may use
25 the money or credit for a purpose other than prosecuting a
26 legal dispute, and in which repayment of the money or credit
27 is conditioned upon the consumer's recovery of money in a

1 dispute pursuant to a judgment, award, or settlement, and in
2 which recourse against the consumer by the lawsuit lender is
3 limited exclusively or primarily to all or part of the amount
4 recovered by the consumer in the legal dispute. The term also
5 means a credit transaction that is a loan, whether the
6 transaction under which the money or credit is provided is
7 structured as a loan to the consumer, an investment, a
8 purchase from or other assignment by the consumer of all or
9 part of the consumer's contingent right to a recovery in a
10 dispute, or otherwise. The principal loan amount of the loan
11 shall be the full amount of money actually provided to and
12 obtained by the consumer.

13 (4) CONSUMER LAWSUIT LENDING AGREEMENT. A contract
14 or other arrangement that governs and sets out the terms of a
15 consumer lawsuit lending transaction.

16 (5) DISPUTE. Any civil action, alternative dispute
17 resolution proceeding, or administrative proceeding before any
18 agency or instrumentality of a state or the United States.

19 (6) FINANCE CHARGE. As defined in subdivision (1) of
20 Section 5-19-1 of the Code of Alabama 1975, provided that any
21 amount paid or payable to the consumer lawsuit lender in a
22 consumer lawsuit lending transaction in excess of the amount
23 of money actually provided to the consumer by the consumer
24 lawsuit lender shall be a finance charge, regardless of the
25 manner in which the amount paid or payable is designated or
26 the consumer lawsuit lending transaction is structured. The
27 finance charge shall not be determined or expressed, in whole

1 or in part, as a percentage or other share of any recovery in
2 a dispute.

3 Section 3. After December 31, 2017, before loaning
4 money or extending credit as part of a consumer lawsuit
5 lending transaction, a person shall obtain a license pursuant
6 to Section 5-19-22 of the Code of Alabama 1975. A consumer
7 lawsuit lender is a creditor pursuant to Chapter 19 of Title 5
8 of the Code of Alabama 1975, regardless of the number of
9 extensions of credit the person made or arranged during the
10 preceding calendar year, and the person must obtain a license
11 unless otherwise exempt under Section 5-19-22, Code of Alabama
12 1975.

13 Section 4. The finance charge under a consumer
14 lawsuit lending agreement shall not exceed the rate of ten
15 dollars (\$10) upon one hundred dollars (\$100) of the principal
16 loan amount for one year and at that rate for a greater or
17 lesser sum and for a longer or shorter time. The foregoing
18 limitation shall apply notwithstanding any other provision of
19 law, including, without limitation, Sections 8-8-1 through
20 8-8-5, Section 8-8-14, and Section 5-20-5 of the Code of
21 Alabama 1975.

22 Section 5. Sections 5-19-16, 5-19-19, 5-19-23 to
23 5-19-25, inclusive, and 5-19-29 of the Code of Alabama 1975,
24 relating to licensing and duties of persons licensed to engage
25 in business of making consumer loans or taking assignments of
26 consumer credit contracts, shall be applicable to consumer
27 lawsuit lenders and consumer lawsuit lending agreements.

1 Section 6. The Superintendent of Banks of the State
2 Banking Department may promulgate rules and issue official
3 interpretations as may be necessary or appropriate for the
4 execution and enforcement of this act. The Superintendent of
5 Banks or, if authorized by the rules, the superintendent's
6 designee, or both, may also issue written interpretations of
7 this act and the rules promulgated pursuant to this act. The
8 procedure for adopting, amending, repealing, or contesting any
9 rules shall be as provided in subsection (b) of Section
10 5-19-21 of the Code of Alabama 1975.

11 Section 7. Nothing in this act shall supersede or
12 preempt the Alabama Securities Act, Article 1 of Chapter 6 of
13 Title 8 of the Code of Alabama 1975.

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