

1 SB257
2 218084-1
3 By Senator Barfoot
4 RFD: Banking and Insurance
5 First Read: 23-FEB-22

SYNOPSIS: Under existing law, there is no provision for a closing fee payable to banks and financial institutions on small loans of less than one thousand five hundred dollars (\$1,500).

This bill would authorize banks and financial institutions to charge a closing fee in a limited amount on small loans, subject to partial refund upon prepayment of the loan.

A BILL
TO BE ENTITLED
AN ACT

Relating to banking and financial institutions; to authorize limited closing fees on certain small loans.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 5-18-15, Code of Alabama 1975, is amended to read as follows:

"§5-18-15.

1 "(a) Maximum rates of interest and charge. Every
2 licensee under this chapter may contract for and receive as
3 interest on any loan of money less than one thousand five
4 hundred dollars (\$1,500) an amount at a rate not exceeding
5 three percent a month on that part of the unpaid principal
6 balance not in excess of two hundred dollars (\$200), and two
7 percent a month on that part of the unpaid principal balance
8 in excess of two hundred dollars (\$200), but less than one
9 thousand five hundred dollars (\$1,500).

10 "(b) Account maintenance fee. In addition to the
11 maximum rate of interest and charges pursuant to subsection
12 (a), a licensee may enter into a contract of loan under this
13 chapter in which the borrower agrees to pay an account
14 maintenance fee of not more than three dollars (\$3) for each
15 month of the scheduled period of repayment of the loan
16 provided that the scheduled monthly payments are equal to or
17 greater than thirty dollars (\$30). Such account maintenance
18 fee shall be determined at the date of the loan, but may not
19 be prepaid. Such fee as so determined shall not bear interest
20 and shall constitute a part of the finance charge.

21 "(c) Method of computing charges.

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

1 "For the purpose of this section, one month shall be
2 that period of time from any date in a month to a
3 corresponding date in the next month and, if there is not a
4 corresponding date, then to the next day of the next month,
5 and a day shall be considered one thirtieth of a month when
6 computation is made for a fraction of a month.

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

20 "(d) Refunds.

21 "(1) When any loan contract is paid in full by cash,
22 a new loan, renewal, or otherwise one month or more before the
23 final installment date, the licensee shall refund or credit
24 the borrower with that portion of the total charges which
25 shall be due the borrower as determined by schedules prepared
26 under the rule of seventy-eighths or sum of the digits
27 principle as follows: The amount of the refund or credit shall

1 be as great a proportion of the total charges originally
2 contracted for as the sum of the periodic time balances of the
3 contract scheduled to follow the date of prepayment bears to
4 the sum of all the periodic time balances of the contract,
5 both sums to be determined according to the payment schedule
6 originally contracted for.

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

18 "(e) Default or extension charges. If the contract
19 so provides, when a scheduled payment is in default or
20 delinquent for 10 or more days, the licensee may charge and
21 collect an additional late charge not to exceed the greater of
22 ten dollars (\$10) or five percent of the amount of the
23 scheduled payment in default. Each of the late charges
24 permitted under this subsection may be collected only once on
25 any scheduled payment, regardless of the period during which
26 the payment remains in default or is delinquent. It is the
27 intent of this subsection that if the payment date of all

1 wholly unpaid installments is deferred or extended one or more
2 full months and the contract so provides, the licensee may
3 charge and collect a deferment or default charge only on the
4 installment which is delinquent at the date the contract is
5 extended or deferred.

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

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

19 "(h) Further charges; splitting of contracts. No
20 further or other charges shall be directly or indirectly
21 contracted for or received by any licensee, including
22 insurance premiums of any kind, except those specifically
23 authorized by this chapter or by Chapter 8 of Title 8. No
24 licensee shall divide into separate parts any contract made
25 for the purpose of or with the effect of obtaining charges in
26 excess of those authorized by this section. All balances due
27 to a licensee from any person as a borrower, or as an

1 endorser, guarantor, or surety for any borrower or otherwise,
2 shall be considered a part of any loan being made by a
3 licensee to the person for the purpose of computing charges.

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

15 "(j) Interest after due date of final installment.
16 Interest as provided in this section shall not accrue or be
17 recovered or charged on any loan made under this chapter for
18 any longer than six months after the due date of the final
19 installment of principal or interest. After the expiration of
20 the six-month period, interest may be charged at a rate not to
21 exceed eight percent per annum.

22 "(k) Inducing borrower to become obligated under
23 more than one contract. No licensee shall induce or permit any
24 person or any husband and wife, jointly or severally, to
25 become obligated directly or contingently or both under more
26 than one contract of loan at the same time for the purpose of
27 obtaining a higher rate of charge than would otherwise be

1 permitted by this section. It shall be unlawful for any
2 licensee to evade or attempt to evade this section by inducing
3 a customer to borrow from another loan company in which he or
4 she has a pecuniary interest or with whom he or she has an
5 arrangement for exchange of customers.

6 "(1) Liabilities of licensees making excess charges.
7 Any licensee making any charge in excess of the amount
8 authorized herein, except as the result of a deliberate
9 violation of or reckless disregard for this chapter, shall
10 refund to the borrower the total amount of the actual economic
11 damages which at the licensee's option may be done by payment
12 to the borrower, or by reducing the amount of the borrower's
13 principal obligation. If the borrower is entitled to a refund
14 and the licensee refuses to refund within 60 days after
15 written demand, including the filing of a legal action, the
16 licensee shall forfeit, in addition to the actual economic
17 damages his or her right to any finance charge. If the
18 licensee has made an excess charge in deliberate violation of
19 or in reckless disregard for this chapter, the licensee and
20 the several members, officers, directors, agents, and
21 employees thereof who shall have participated in a deliberate
22 violation of or reckless disregard for this chapter, shall be
23 guilty of a misdemeanor which, upon conviction, shall be
24 punishable by a fine of not more than five hundred dollars
25 (\$500) and not less than one hundred dollars (\$100) or by
26 imprisonment of not more than six months, or by both fine and
27 imprisonment in the direction of the court. The remedies

1 provided herein shall be the remedy of the borrower under this
2 chapter as the result of this violation. No action under this
3 section may be brought more than 18 months after the due date
4 of the last scheduled payment of the agreement pursuant to
5 which the charge was made.

6 "(m) Alternative rates of charge.

7 "(1) As an alternative to the interest rates and
8 charges permitted to be charged by a licensee pursuant to
9 subsections (a) and (b) on loans of less than one thousand
10 five hundred dollars (\$1,500), a licensee may charge an
11 acquisition charge for making the loan in an amount not in
12 excess of 10 percent of the amount of the principal and an
13 installment account handling charge in an amount no greater
14 than the following:

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

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

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

24 "d. Twenty dollars (\$20) per month on any loan of an
25 amount in excess of five hundred dollars (\$500), but not more
26 than one thousand dollars (\$1,000).

1 "e. Twenty-three dollars (\$23) per month on any loan
2 of an amount in excess of one thousand dollars (\$1,000), but
3 not more than one thousand two hundred fifty dollars (\$1,250).

4 "f. Twenty-six dollars (\$26) per month on any loan
5 of an amount in excess of one thousand two hundred fifty
6 dollars (\$1,250), but not equal to or exceeding one thousand
7 five hundred dollars (\$1,500.)

8 "Provided, however, that the scheduled payments are
9 in amounts equal to or greater than forty dollars (\$40) per
10 month, inclusive of the installment account handling charge.
11 The acquisition charge and the installment account handling
12 charge may be calculated for the term of the contract and
13 added to the amount of the principal. The acceptance or
14 payment of charges on loans made under this subsection shall
15 not be deemed to constitute payment, deduction, or receipt
16 thereof in advance nor compounding under this subsection.

17 "(2) The minimum term for repayment of a loan under
18 this subsection is three months and the maximum term of any
19 loan made under this subsection is 18 months.

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

24 "(4) No insurance charge under Section 5-18-17, no
25 interest surcharge under Section 8-8-14, nor any other charge
26 of any nature whatsoever, is permitted for loans made pursuant
27 to the rate structure of this subsection, except for

1 acquisition charges and installment account handling charges
2 as provided under this subsection, default charges under
3 subsection (e), recording fees under subsection (g), bad check
4 charges under Section 8-8-15, and assessed court costs.

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

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

13 "(7) In addition to the acquisition charge provided
14 under subdivision (m) (1), the licensee may collect a closing
15 fee in an amount not to exceed the lesser of four percent of
16 the loan amount or fifty dollars (\$50). The closing fee may be
17 paid from the proceeds of the loan amount and financed by the
18 licensee.

19 "(8) Upon the prepayment in full of any loan under
20 this subsection, any closing fee collected shall be subject to
21 subsection (d), as it relates to refunds, provided, however,
22 that the licensee may retain up to twenty-five dollars (\$25)
23 of the closing fee.

24 "(n) (1) Act 2017-373 shall apply to loan contracts
25 entered into after May 25, 2017.

26 "(2) Act 2017-373 shall not affect loan contracts
27 entered into prior to May 25, 2017."

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