

1 HB3
2 126193-4
3 By Representative Ford
4 RFD: Financial Services
5 First Read: 01-MAR-11
6 PFD: 02/22/2011

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ENROLLED, An Act,

To amend Section 5-19-4, Code of Alabama 1975, relating to late charges under the Alabama Consumer Credit Act, commonly referred to as the Mini-Code, to provide further for a maximum late charge, based on Section 5-18-15.1, Code of Alabama 1975, of the Alabama Small Loan Act, that certain lenders may charge if the late charge is stipulated in the contract.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 5-19-4, Code of Alabama 1975, is amended to read as follows:

"§5-19-4.

"(a) When a scheduled payment in a consumer credit transaction is in default 10 days or more, the creditor may charge and collect a late charge not ~~exceeding the greater of ten dollars (\$10) or five percent of the amount of the scheduled payment in default, not to exceed one hundred dollars (\$100) to exceed the amount authorized in the Alabama Small Loan Act and stipulated in Section 5-18-15.1. The late~~ dollars \$100) exceeding the greater of eighteen dollars (\$18) or five percent of the amount of the scheduled payment in default, not to exceed one hundred dollars (\$100). Should the minimum \$18 late charge permissible under the Alabama Small Loan Act, Section 5-18-15.1, be increased by a future

1 ~~amendment to the Alabama Small Loan Act, then the minimum \$18~~
2 ~~late charge permitted under this subsection automatically~~
3 ~~shall increase in the same amount without the necessity for an~~
4 ~~amendment to this section. The late charge may be collected~~
5 default, not to exceed one hundred dollars (\$100). The late
6 charge may be collected only once on any scheduled payment,
7 regardless of the period during which the scheduled payment
8 remains in default.

9 "(b) With respect to the deferral of one or more
10 wholly unpaid scheduled payments in a consumer credit
11 transaction, in which the finance charge was determined by the
12 precomputed method, the creditor may collect, by agreement
13 with the debtor either before or after default, an additional
14 charge for each full month that any wholly unpaid scheduled
15 payments are outstanding after the due date of each scheduled
16 payment equal to that proportion of the finance charge which
17 the amount of the deferred monthly scheduled payment bears to
18 the sum of all monthly balances originally scheduled.

19 "(c) Except as otherwise provided by law, when any
20 debt is paid in full before the final scheduled payment date,
21 the debtor may do so without penalty, and the creditor shall
22 refund or credit the debtor with not less than that portion of
23 the finance charge which shall be due the debtor as follows:

24 "(1)a. In the case of a consumer credit transaction
25 with an original term of more than 61 months according to any

1 generally accepted actuarial method of computation established
 2 or otherwise approved by the administrator; and

3 "b. In all other consumer credit transactions
 4 according to the rule of 78ths or sum of the digits method,
 5 meaning the amount of the refund or credit shall be as great a
 6 proportion of the finance charge originally contracted for as
 7 the sum of the periodic time balances of the debt scheduled to
 8 follow the date of prepayment bears to the sum of all the
 9 periodic time balances of the debt, both sums to be determined
 10 according to the scheduled payments originally contracted for.

11 "(2) No refund of less than one dollar (\$1) need be
 12 made.

13 "(3) If the prepayment is made by the debtor other
 14 than on a scheduled payment date, the nearest scheduled
 15 payment date shall be used in the computation.

16 "(d) Except as otherwise provided by law, when any
 17 debt is renewed or refinanced by any creditor or creditor's
 18 affiliate within a period of 90 days from the date the debt is
 19 made or incurred, the debtor shall be entitled to a pro rata
 20 refund or credit of any unearned portion of the original
 21 finance charge computed as of the date of such refinancing or
 22 renewal. When the renewal or refinancing occurs after 90 days,
 23 any refund or credit shall be calculated as provided in
 24 subsection (c) above. On and after January 1, 1997, except as
 25 otherwise provided by law, when any debt is renewed or

1 refinanced by any creditor or creditor's affiliate within a
 2 period of 120 days from the date the debt is made or incurred,
 3 the debtor shall be entitled to a pro rata refund or credit of
 4 any unearned portion of the original finance charge computed
 5 as of the date of such refinancing or renewal. When the
 6 renewal or refinancing occurs after 120 days, any refund or
 7 credit shall be calculated as provided in subsection (c)
 8 above.

9 "(e) When any consumer debt is renewed or refinanced
 10 by the creditor or an affiliate of the creditor, any minimum
 11 finance charge for a credit sale shall be reduced to the
 12 finance charge which is otherwise permitted by Section 5-19-3.

13 "(f) A creditor may charge and collect in a
 14 transaction secured by real property the following fees and
 15 charges if bona fide and reasonable in amount, and provided
 16 that, other than the appraisal fees authorized by subdivision
 17 (4) and fees and charges authorized by regulations promulgated
 18 by the administrator, the fees are paid to parties unrelated
 19 to the creditor:

20 "(1) Fees for title examination, abstract of title,
 21 title insurance, property survey, pest inspection, flood
 22 inspection, and similar purposes;

23 "(2) Fees for preparing deeds, mortgages, and
 24 reconveyance, settlement, and similar documents;

25 "(3) Notary fees and credit report fees;

1 "(4) Appraisal fees paid to persons licensed under
2 the provisions of the Alabama Real Estate Appraisers Act,
3 whether or not the appraiser is employed by or otherwise
4 related to the creditor; and

5 "(5) Fees and charges prescribed by law which are or
6 will be paid to public officials or agencies for recording or
7 releasing a lien on property which secured the loan, provided,
8 however, that a releasing fee may only be charged and
9 collected at or after the time the lien is released.

10 "(6) The administrator may by regulation promulgated
11 pursuant to Section 5-19-21 authorize other fees and charges.

12 "(g) A creditor may, pursuant to a consumer credit
13 transaction contract secured by an interest in real property,
14 charge and collect points in an amount not to exceed five
15 percent of the original principal balance in the case of a
16 closed-end consumer credit transaction, or five percent of the
17 total line of credit in the case of an open-end credit plan.
18 Points may be paid in cash at the time of the consumer credit
19 transaction, or may be deducted from the proceeds and included
20 in the original amount financed for the purposes of Section
21 5-19-3 or financed under the open-end credit plan. Points
22 shall be in addition to all other charges, are fully earned on
23 the date of the consumer credit transaction, and may be
24 excluded from the finance charge for the purpose of computing
25 any finance charge credit or refund.

1 "(h) Subsections (b), (c), (d), and (e) of this
2 section shall not apply to open-end credit plans. The
3 requirements of a refund or credit of any unearned finance
4 charge under subsections (c) and (d) of this section apply
5 only if and to the extent the consumer credit transaction
6 includes a precomputed or prepaid finance charge."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 14-APR-11, as amended.

Greg Pappas
Clerk

Senate	02-JUN-11	Amended and Passed
House	02-JUN-11	Concurred in Senate Amendment