

1 SB68  
2 156945-2  
3 By Senator Ward  
4 RFD: Banking and Insurance  
5 First Read: 03-MAR-15

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8 SYNOPSIS: This bill would regulate the providing of  
9 money or credit to a consumer pursuant to an  
10 agreement under which the consumer is not  
11 prohibited from using the money or credit for a  
12 purpose other than prosecuting a dispute, and under  
13 which repayment of the money or credit is  
14 conditioned upon the consumer's recovery of money  
15 in a dispute or where recourse against the consumer  
16 by the person providing the money or credit is  
17 limited exclusively or primarily to the amount  
18 recovered by the consumer in a dispute.

19 This bill would define provider of money or  
20 credit as a consumer lawsuit lender.

21 This bill would provide that each provision  
22 of money or credit would be deemed to be a consumer  
23 loan and the maximum finance charge on the loan  
24 would be as provided in this bill, regardless of  
25 the amount of the loan or credit provided.

1                   This bill would require each consumer  
2 lawsuit lender to obtain a license under Section  
3 5-19-22 of the Code of Alabama 1975.

4                   This bill would provide that the lender  
5 would be subject to Sections 5-19-16, 5-19-19,  
6 5-19-23, 5-19-24, 5-19-25, and 5-19-26, Code of  
7 Alabama 1975.

8                   This bill would allow the Superintendent of  
9 Banks of the State Banking Department to issue  
10 regulations and interpretations under the act.

11                   This bill would provide that criminal  
12 penalties be provided for willful violation of the  
13 maximum finance charge provision or the requirement  
14 that the consumer lawsuit lender must obtain a  
15 license.

16                   Amendment 621 of the Constitution of Alabama  
17 of 1901, now appearing as Section 111.05 of the  
18 Official Recompilation of the Constitution of  
19 Alabama of 1901, as amended, prohibits a general  
20 law whose purpose or effect would be to require a  
21 new or increased expenditure of local funds from  
22 becoming effective with regard to a local  
23 governmental entity without enactment by a 2/3 vote  
24 unless: it comes within one of a number of  
25 specified exceptions; it is approved by the  
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

3 The purpose or effect of this bill would be  
4 to require a new or increased expenditure of local  
5 funds within the meaning of the amendment. However,  
6 the bill does not require approval of a local  
7 governmental entity or enactment by a 2/3 vote to  
8 become effective because it comes within one of the  
9 specified exceptions contained in the amendment.

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 Relating to the extension of money or credit  
16 consumers for a purpose other than the prosecution of a  
17 dispute where repayment of the money or credit is conditioned  
18 upon the consumer's recovery of money in a dispute or where  
19 recourse against the consumer by the person providing the  
20 money or credit is limited exclusively or primarily to the  
21 amount recovered by the consumer in a dispute; to define the  
22 terms amount financed, consumer, consumer lawsuit lender,  
23 consumer lawsuit lending, consumer lawsuit lending agreement,  
24 dispute, and finance charge; to provide for the maximum  
25 finance charge under a consumer lawsuit lending agreement  
26 without regard to the amount financed or the manner in which  
27 the transaction is structured; to provide that a consumer

1 lawsuit lender is required to be licensed under Section  
2 5-19-22 of the Code of Alabama 1975, to engage in consumer  
3 lawsuit lending transactions without regard to the number of  
4 extensions of credit the consumer lawsuit lender made or  
5 arranged in the preceding calendar year; to provide that a  
6 consumer lawsuit lender is subject to the provisions of  
7 Sections 5-19-16, 5-19-19, 5-19-23, 5-19-24, 5-19-25, and  
8 5-19-26, Code of Alabama 1975; to provide that the  
9 Superintendent of Banks of the State Banking Department is  
10 authorized to issue regulations and interpretations of this  
11 act; to provide remedies for violations of this act by a  
12 consumer lawsuit lender; to provide criminal penalties for a  
13 consumer lawsuit lender that intentionally charges a finance  
14 charge under a consumer lawsuit lending agreement in excess of  
15 the maximum finance charge permitted under this act or fails  
16 to obtain the license required by this act; and in connection  
17 therewith would have as its purpose or effect the requirement  
18 of a new or increased expenditure of local funds within the  
19 meaning of Amendment 621 of the Constitution of Alabama of  
20 1901, now appearing as Section 111.05 of the Official  
21 Recompilation of the Constitution of Alabama of 1901, as  
22 amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

4           (1) CONSUMER. Any natural person who is, or who is  
5 contemplating being or becoming, a plaintiff or claimant in  
6 any dispute.

7           (2) CONSUMER LAWSUIT LENDER. A person that engages  
8 in consumer lawsuit lending.

9           (3) CONSUMER LAWSUIT LENDING. Providing money or  
10 credit to a consumer who is a resident of this state, or from  
11 a place of business in this state or through an employee in  
12 this state, pursuant to an agreement or arrangement with the  
13 consumer under which the consumer is not prohibited from using  
14 the money or credit for a purpose other than prosecuting a  
15 dispute, and repayment of the money or credit is conditioned  
16 upon the consumer's recovery of money in a dispute pursuant to  
17 a judgment, award, settlement, or otherwise or recourse  
18 against the consumer by the person providing the money or  
19 credit is limited exclusively or primarily to all or part of  
20 the amount recovered by the consumer in a dispute. Each such  
21 provision of money or credit to a consumer shall be deemed to  
22 be a credit transaction that is a loan, whether the  
23 transaction under which the money or credit is provided is  
24 structured as a loan to the consumer, an investment, a  
25 purchase from or other assignment by the consumer of all or  
26 part of the consumer's contingent right to a recovery in a  
27 dispute, or otherwise. The principal loan amount of the loan

1 shall be the full amount of money actually provided to and  
2 obtained by the consumer.

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

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

9 (6) FINANCE CHARGE. As defined in Section 5-19-1(1)  
10 of the Code of Alabama 1975, provided that any amount paid or  
11 payable to the consumer lawsuit lender in a consumer lawsuit  
12 lending transaction in excess of the amount of money actually  
13 provided to the consumer by the consumer lawsuit lender shall  
14 be a finance charge, regardless of the manner in which the  
15 amount paid or payable is designated or the consumer lawsuit  
16 lending transaction is structured. The finance charge shall  
17 not be determined or expressed, in whole or in part, as a  
18 percentage or other share of any recovery in a dispute.

19 Section 3. The finance charge under a consumer  
20 lawsuit lending agreement shall not exceed the rate of ten  
21 dollars (\$10) upon one hundred dollars (\$100) of the principal  
22 loan amount for one year and at that rate for a greater or  
23 lesser sum and for a longer or shorter time. The foregoing  
24 limitation shall apply notwithstanding any other provision of  
25 law, including, without limitation, Sections 8-8-1 through  
26 8-8-5, Section 8-8-14, and Section 5-20-5 of the Code of  
27 Alabama 1975.

1           Section 4. (a) A consumer lawsuit lending agreement  
2 shall be subject to the provisions of Section 5-19-16 of the  
3 Code of Alabama 1975.

4           (b) The provisions of Section 5-19-19 of the Code of  
5 Alabama 1975, that apply to a creditor that is a lender of  
6 money or a licensee under Section 5-19-22 of the Code of  
7 Alabama 1975, shall be applicable to a consumer lawsuit lender  
8 in a consumer lawsuit lending transaction.

9           (c) Before engaging in a consumer lawsuit lending  
10 transaction, a person shall obtain a license under Section  
11 5-19-22 of the Code of Alabama 1975, without regard to the  
12 number of extensions of credit the person made or arranged  
13 during the preceding calendar year, unless the person is  
14 exempted from licensing under that section.

15           (d) Sections 5-19-23 through 5-19-25 of the Code of  
16 Alabama 1975, shall be applicable to a consumer lawsuit lender  
17 that is licensed under Sections 5-19-22 and 5-19-26 of the  
18 Code of Alabama 1975, shall apply to a lender that is licensed  
19 or has applied for a license under Section 5-19-22 of the Code  
20 of Alabama 1975.

21           (e) Section 5-19-29 of the Code of Alabama 1975,  
22 shall be applicable to a consumer lawsuit lender.

23           Section 5. The Superintendent of Banks of the State  
24 Banking Department is authorized and empowered to promulgate  
25 regulations and official interpretations as may be necessary  
26 or appropriate for the execution and enforcement of this act.  
27 The Superintendent of Banks or, if authorized by the



1 regulations, the superintendent's designee, or both, may also  
2 issue written interpretations of this act and the regulations.  
3 The procedure for adopting, amending, repealing, or contesting  
4 any regulation shall be as set forth in Section 5-19-21(b) of  
5 the Code of Alabama 1975.

6 Section 6. A consumer lawsuit lender that willfully  
7 makes charges in excess of those permitted by Section 3 or  
8 willfully enters into a consumer lawsuit lending transaction  
9 prior to obtaining a license in violation of Section 4(c), or  
10 both, is guilty of a misdemeanor and, upon conviction, shall  
11 be sentenced to pay a fine not exceeding five hundred dollars  
12 (\$500) or to imprisonment not exceeding one year, or both.

13 Section 7. If any provision or provisions of this  
14 act shall be held to be invalid, unenforceable, or in conflict  
15 with the Constitution of this state or of the United States,  
16 the validity, legality, and enforceability of the remaining  
17 provisions shall not be affected or impaired thereby.

18 Section 8. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

26 Section 9. This act shall become effective on the  
27 first day of the third month following its passage and

1 approval by the Governor, or its otherwise becoming law;  
2 provided, that any consumer lawsuit lender that is first  
3 required to be licensed under Section 5-19-22 of the Code of  
4 Alabama 1975, upon the effective date of this act shall obtain  
5 such license not later than September 30, 2014, and the  
6 license fee for such license for the period ending December  
7 31, 2014, shall be a prorated fee of one hundred twenty-five  
8 dollars (\$125) for each office, branch, or place of business  
9 of the licensee.