

1 SB70
2 126229-1
3 By Senator Dial
4 RFD: Banking and Insurance
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing provisions of the Alabama
9 Consumer Credit Act, there are limits to the amount
10 of late charges that lenders may impose on the
11 amount of the scheduled payment in default 10 days
12 or more.

13 This bill would provide further for a
14 maximum late charge, based on Section 5-18-15.1,
15 Code of Alabama 1975, of the Alabama Small Loan
16 Act, that certain lenders may charge if the late
17 charge is stipulated in the contract.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 5-19-4, Code of Alabama 1975,
24 relating to late charges under the Alabama Consumer Credit
25 Act, commonly referred to as the Mini-Code, to provide further
26 for a maximum late charge, based on Section 5-18-15.1, Code of
27 Alabama 1975, of the Alabama Small Loan Act, that certain

1 lenders may charge if the late charge is stipulated in the
2 contract.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§5-19-4.

7 "(a) When a scheduled payment in a consumer credit
8 transaction is in default 10 days or more, the creditor may
9 charge and collect a late charge not ~~exceeding the greater of~~
10 ~~ten dollars (\$10) or five percent of the amount of the~~
11 ~~scheduled payment in default, not to exceed one hundred~~
12 ~~dollars (\$100)~~ to exceed the amount authorized in the Alabama
13 Small Loan Act and stipulated in Section 5-18-15.1. The late
14 charge may be collected only once on any scheduled payment,
15 regardless of the period during which the scheduled payment
16 remains in default.

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

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

6 "(1)a. In the case of a consumer credit transaction
7 with an original term of more than 61 months according to any
8 generally accepted actuarial method of computation established
9 or otherwise approved by the administrator; and

10 "b. In all other consumer credit transactions
11 according to the rule of 78ths or sum of the digits method,
12 meaning the amount of the refund or credit shall be as great a
13 proportion of the finance charge originally contracted for as
14 the sum of the periodic time balances of the debt scheduled to
15 follow the date of prepayment bears to the sum of all the
16 periodic time balances of the debt, both sums to be determined
17 according to the scheduled payments originally contracted for.

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

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

23 "(d) Except as otherwise provided by law, when any
24 debt is renewed or refinanced by any creditor or creditor's
25 affiliate within a period of 90 days from the date the debt is
26 made or incurred, the debtor shall be entitled to a pro rata
27 refund or credit of any unearned portion of the original

1 finance charge computed as of the date of such refinancing or
2 renewal. When the renewal or refinancing occurs after 90 days,
3 any refund or credit shall be calculated as provided in
4 subsection (c) above. On and after January 1, 1997, except as
5 otherwise provided by law, when any debt is renewed or
6 refinanced by any creditor or creditor's affiliate within a
7 period of 120 days from the date the debt is made or incurred,
8 the debtor shall be entitled to a pro rata refund or credit of
9 any unearned portion of the original finance charge computed
10 as of the date of such refinancing or renewal. When the
11 renewal or refinancing occurs after 120 days, any refund or
12 credit shall be calculated as provided in subsection (c)
13 above.

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

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

25 "(1) Fees for title examination, abstract of title,
26 title insurance, property survey, pest inspection, flood
27 inspection, and similar purposes;

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

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

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

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

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

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

1 excluded from the finance charge for the purpose of computing
2 any finance charge credit or refund.

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

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