

1 HB160
2 156945-2
3 By Representatives Pringle, McMillan, Sessions, Gaston and
4 Williams (JW)
5 RFD: Financial Services
6 First Read: 05-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.