

1 HB642
2 96748-1
3 By Representative Hill
4 RFD: Banking and Insurance
5 First Read: 06-MAR-08

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8 SYNOPSIS: This bill would alter the provisions of the
9 Alabama Consumer Credit Act, the Mini Code. This
10 bill would remove mortgage lending from the act and
11 alter the licensing provisions.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To amend Sections 5-19-22 and 5-19-31, Code of
18 Alabama 1975, relating to the Alabama Consumer Credit Act, the
19 Mini Code, to remove mortgage lending from the act and alter
20 the licensing provisions.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 5-19-22 and 5-19-31, Code of
23 Alabama 1975, are amended to read as follows:

24 "§5-19-22.

25 "(a) No creditor ~~having a place of business in~~
26 ~~Alabama, or having a resident employee in Alabama whose~~
27 ~~employment includes~~ making consumer loans or taking

1 assignments of consumer credit contracts in Alabama shall
2 engage in the business of making consumer loans or taking
3 assignments of consumer credit contracts without first having
4 obtained a license for each location in ~~Alabama from the~~
5 ~~administrator; provided, however, that a creditor having no~~
6 ~~place of business in Alabama but having a resident employee in~~
7 ~~Alabama whose employment includes making consumer loans or~~
8 ~~taking assignments of consumer credit contracts shall obtain a~~
9 ~~license for the location where the creditor maintains its~~
10 ~~records regarding Alabama loans or Alabama consumer credit~~
11 ~~contracts; and provided further, that, banks where such~~
12 activity is conducted. Banks chartered by this state or any
13 other state, banks chartered by the United States, trust
14 companies, savings or building and loan associations, savings
15 banks and other thrift institutions, credit unions, life
16 insurance companies, and federally constituted agencies shall
17 be exempt from licensing. A seller, with respect to consumer
18 credit sale transactions and the financing of charges
19 permitted by this chapter, is not required to be licensed
20 under this chapter. Consumer loans and consumer credit
21 contracts executed via the Internet shall be deemed to be made
22 in Alabama if the borrower is an Alabama resident.

23 (b) The license application shall be in writing,
24 under oath, in the form prescribed by the administrator, and
25 be accompanied by an investigation fee of one hundred dollars
26 (\$100).

1 "(c) Upon receipt of the application and
2 investigation fee, the administrator shall investigate the
3 applicant and determine whether the license should be issued
4 or denied.

5 "(d) No license shall be issued unless the
6 administrator determines that the financial responsibility,
7 character, and fitness of the applicant, and of the members
8 thereof if the applicant is a partnership or association,
9 officers and directors thereof if the applicant is a
10 corporation are such as to warrant belief that the business
11 will be operated honestly and fairly within the purpose of
12 this chapter and finds that the applicant has assets available
13 for the operation of business under this chapter of at least
14 twenty-five thousand dollars (\$25,000).

15 "(e) Upon written request, the applicant is entitled
16 to a hearing on the question of his qualifications for a
17 license if:

18 "(1) The administrator has notified the applicant in
19 writing that the application has been denied; or

20 "(2) The administrator has not issued a license
21 within 60 days after the application for the license was
22 filed.

23 "A request for a hearing may not be made more than
24 15 days after the administrator has mailed by certified mail a
25 writing to the applicant notifying him that the application
26 has been denied stating in substance the administrator's
27 findings supporting denial of the application.

1 "~~(f)~~ Any person licensed under the Alabama Small
2 Loan Act may engage in business under the Alabama Small Loan
3 Act, but shall not make loans in excess of seven hundred
4 forty-nine dollars (\$749) unless such person is also licensed
5 under this chapter. The payment of the license and examination
6 fees required by this chapter shall be in lieu of the license
7 and examination fees required by the Alabama Small Loan Act
8 when the licensee is also licensed under the Alabama Small
9 Loan Act.

10 "~~(g)~~(f) The license shall be in the form prescribed
11 by the administrator, posted conspicuously in the place of
12 business of the licensee, and shall not be assignable or
13 transferable or removed to another location without permission
14 of the administrator.

15 "~~(h)~~(g) The annual license fee shall be five hundred
16 dollars (\$500) for each office, branch, or place of business
17 of the licensee, which shall be due on October 1 of each year,
18 and shall be for a one-year period ending September 30
19 following, and shall be delinquent on November 1 of each year,
20 and there shall be a penalty of 10 percent for each month or
21 part thereof that the licensee is delinquent in the payment of
22 such license fee. All license fees and investigation fees
23 collected shall be paid into the special fund provided by
24 Section 5-2A-20 and used in the supervision and examination of
25 licensees.

26 "§5-19-31.

1 "(a) The provisions of this chapter, except the
2 provisions of subdivision (1) of Section 5-19-1 and Section
3 5-19-3, shall not apply ~~(i) to any consumer credit transaction~~
4 ~~or other transaction involving an interest in real property or~~
5 ~~the sale, lease, or mortgage of an interest in real property~~
6 ~~where the creditor is an approved mortgagee under the~~
7 ~~provisions of the National Housing Act irrespective of whether~~
8 ~~the consumer credit transaction or other transaction is made~~
9 ~~under the provisions of the National Housing Act, or where the~~
10 ~~creditor is exempt from licensing under this chapter, (ii)~~
11 where the credit transaction is not a consumer transaction,
12 ~~(iii)~~ where the credit transaction is by a trust institution
13 as defined in Section 5-12A-1(1), in its capacity as a
14 fiduciary under any plan or agreement qualified under 26 USC
15 401(a) or defined by 5 USC 8437, 26 USC 403(b), or 26 USC 457,
16 or a trust exempt under 26 USC 501, or ~~(iv)~~ to any municipal
17 pension system created under the laws of the State of Alabama.

18 "(b) This chapter shall not be construed to amend or
19 repeal, without limitation, Sections 5-18-1 through 5-18-24,
20 inclusive, Section 8-8-6, Section 8-8-4, Section 8-8-5,
21 Sections 8-8-1.1, 8-8-14, 8-8-15, or Sections 5-20-2 through
22 5-20-10, inclusive.

23 "(c) This chapter shall not apply to any lawful,
24 bona fide pawnbroking business.

25 "(d) This chapter shall not apply to any insurance
26 agent or agency licensed in Alabama that elects to charge a
27 collection fee on unpaid balances for insurance premiums under

1 Section 27-12-17. An election shall be made by stating such on
2 the premium finance contract.

3 "(e) This section is intended to confirm and clarify
4 existing law that none of the provisions of this chapter,
5 other than the provisions of subdivision (1) of Section 5-19-1
6 and Section 5-19-3, apply to any transaction that is not a
7 consumer transaction, or, where provided in subsection (a) to
8 any transaction involving an interest in real property,
9 whether or not a consumer transaction, to any transaction of a
10 trust institution described in subsection (a), or to any
11 municipal pension system created under the laws of the State
12 of Alabama described in subsection (a)."

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.