

1 SB234  
2 108172-4  
3 By Senators Denton, Little (Z), Bedford, Barron, Coleman,  
4 Figures, Benefield, Means, and Penn  
5 RFD: Banking and Insurance  
6 First Read: 03-FEB-09

1 SB234

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4 ENROLLED, An Act,

5 To amend Sections 5-18-5, 5-19-22 and 5-19-31, Code  
6 of Alabama 1975, relating to consumer credit transactions; to  
7 provide further for the date that annual license fees are due;  
8 to require a license be held at each location where activity  
9 is conducted; to require life insurance companies to be  
10 licensed; to allow the State Banking Department to require  
11 applicants for licensure obtain a surety bond, apply to the  
12 Nationwide Mortgage Licensing System and Registry, and submit  
13 to background checks; to make all fees nonrefundable; to  
14 exclude any credit for licensure fee; and to delete certain  
15 exemptions.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 5-18-5, 5-19-22 and 5-19-31,  
18 Code of Alabama 1975, are amended to read as follows:

19 "§5-18-5.

20 "Application for a license shall be in writing,  
21 under oath and in the form prescribed by the supervisor. The  
22 application shall give the approximate location where the  
23 business is to be conducted and shall contain such further  
24 relevant information as the supervisor may require, including  
25 the names and addresses of the partners, officers, directors,

1 or trustees and of such of the principal owners or members as  
2 will provide the basis for the investigations and findings  
3 contemplated by Section 5-18-6. At the time of making such  
4 application, the applicant shall pay to the supervisor the sum  
5 of one hundred dollars (\$100) as a fee for investigating the  
6 application. All licensees under this chapter shall pay an  
7 annual license fee of five hundred dollars (\$500) for each  
8 office, branch, or place of business of the licensee, which  
9 shall be due on January 1 of each year and shall be for a  
10 one-year period ending December 31 following and shall be  
11 delinquent on February 1 of each year, and there shall be a  
12 penalty of 10 percent for each month or portion thereof added  
13 to such license fee upon delinquency and collected by the  
14 bureau. Two hundred dollars (\$200) of each such license fee  
15 collected shall be paid into the special fund provided by  
16 Section 5-2A-20 and used in the supervision and examination of  
17 such licensees; provided further, that in fiscal year 1986,  
18 two hundred fifty dollars (\$250) of each such license fee  
19 collected shall be paid into the special fund provided in  
20 Section 5-2A-20 and used in the supervision and examination of  
21 such licensees; provided further, that in fiscal year 1987,  
22 three hundred dollars (\$300) of each such license fee  
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 such licensees; provided further, that in fiscal year 1988,

1 three hundred fifty dollars (\$350) of each such license fee  
2 collected shall be paid into the special fund provided in  
3 Section 5-2A-20 and used in the supervision and examination of  
4 such licensees; and provided further, that in fiscal year 1989  
5 and thereafter, all such license fees collected shall be paid  
6 into the special fund provided by Section 5-2A-20 and used in  
7 the supervision and examination of such licensees. If any  
8 applicant licensed under this chapter for the first time shall  
9 commence business after April 1 in any year, the amount of the  
10 license fee shall be one half the amount of a full year's  
11 license fee. The amount of the license fee and penalties, if  
12 any, shall be paid to the Supervisor of the Bureau of Loans,  
13 who shall remit the same to the Treasurer of the State of  
14 Alabama as provided by law. The license provided for in this  
15 chapter shall be in addition to all other licenses now or  
16 hereafter provided for by law and shall be in addition to the  
17 tax provided for by Chapter 16 of Title 40; and the amount of  
18 the license fee levied by this section shall not be credited  
19 upon or deducted from, in whole or in part, the tax levied by  
20 said Chapter 16 as to the current state tax year or as to any  
21 prior or subsequent state tax year. No refunds for the current  
22 or any prior or subsequent state tax year or any portion of  
23 the tax levied by said Chapter 16 shall be made on the ground  
24 that the license fee levied by this section was not credited  
25 upon or deducted from the tax levied by said Chapter 16, and

1 no civil action shall lie to enforce any claim for such  
2 refund.

3 "§5-19-22.

4 "(a) No creditor shall engage in any one or more of  
5 the following activities without first having obtained a  
6 license from the administrator:

7 "(1) Making consumer loans to Alabama residents,  
8 regardless of whether the creditor has a place of business in  
9 Alabama or an employee residing in Alabama.

10 "(2) Making consumer loans originated by an  
11 individual required to be licensed as a mortgage loan  
12 originator under the Alabama S.A.F.E. Mortgage Licensing Act.

13 "(3) Taking assignments of consumer credit  
14 contracts, either from a place of business in Alabama or  
15 through use of an employee residing in Alabama whose  
16 employment includes taking assignments of consumer credit  
17 contracts.

18 "Banks chartered by this state or any other state,  
19 banks chartered by the United States, trust companies, savings  
20 or building and loan associations, savings banks and other  
21 thrift institutions, bank holding companies, thrift holding  
22 companies, credit unions, and federally constituted agencies  
23 shall be exempt from licensing. A seller, with respect to  
24 consumer credit sale transactions and the financing of charges  
25 permitted by this chapter, is not required to be licensed

1 under this chapter. Any creditor required to be licensed under  
2 this chapter shall obtain a license for each location in  
3 Alabama from which these activities are conducted or, if the  
4 creditor has no location in Alabama, for the location where  
5 the creditor maintains its records regarding Alabama loans or  
6 Alabama consumer credit contracts; provided, however,  
7 insurance companies and their subsidiaries and affiliates who  
8 do not make loans or take assignments of consumer credit  
9 contracts secured by real property may obtain a license for  
10 the location where the records are maintained in lieu of  
11 obtaining a license for each location where the activity is  
12 conducted.

13 "(b) The license application shall be in writing,  
14 under oath, in the form prescribed by the administrator, and  
15 be accompanied by an investigation fee of one hundred dollars  
16 (\$100).

17 "(c) Upon receipt of the application and  
18 investigation fee, the administrator shall investigate the  
19 applicant and determine whether the license should be issued  
20 or denied.

21 "(d) No license shall be issued unless the  
22 administrator determines that the financial responsibility,  
23 character, and fitness of the applicant, and of the members  
24 thereof if the applicant is a partnership or association,  
25 officers and directors thereof if the applicant is a

1 corporation are such as to warrant belief that the business  
2 will be operated honestly and fairly within the purpose of  
3 this chapter and finds that the applicant has assets available  
4 for the operation of business under this chapter of at least  
5 twenty-five thousand dollars (\$25,000). The State Banking  
6 Department may require the applicant or licensee engaging in  
7 extensions of credit secured by real estate to obtain a surety  
8 bond in lieu of the net asset requirement in order to fulfill  
9 the requirements of the Alabama Secure and Fair Enforcement  
10 for Mortgage Licensing Act. The amount of the surety bond will  
11 be determined by the department. The surety bond will be in  
12 favor of the State of Alabama for the use, benefit, and  
13 indemnity of any person who suffers damage or loss as a result  
14 of the company's breach of contract or of any obligation  
15 arising therefrom or any violation of the law.

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

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

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

24 "A request for a hearing may not be made more than  
25 15 days after the administrator has mailed by certified mail a

1 writing to the applicant notifying him that the application  
2 has been denied stating in substance the administrator's  
3 findings supporting denial of the application.

4 "(f) Any person licensed under the Alabama Small  
5 Loan Act may engage in business under the Alabama Small Loan  
6 Act, but shall not make loans in excess of one thousand  
7 dollars (\$1,000) unless such person is also licensed under  
8 this chapter. The payment of the license and examination fees  
9 required by this chapter shall be in lieu of the license and  
10 examination fees required by the Alabama Small Loan Act when  
11 the licensee is also licensed under the Alabama Small Loan  
12 Act.

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

18 "(g) The annual license fee shall be five hundred  
19 dollars (\$500) for each office, branch, or place of business  
20 of the licensee, which shall be due on January 1 of each year,  
21 and shall be for a one-year period ending December 31, and  
22 shall be delinquent on February 1 of each year, and there  
23 shall be a penalty of 10 percent for each month or part  
24 thereof that the licensee is delinquent in the payment of such  
25 license fee. All license fees and investigation fees

1 collected shall be nonrefundable and paid into the special  
2 fund provided by Section 5-2A-20 and used in the supervision  
3 and examination of licensees.

4 "(h) With respect to any license applicants that  
5 will make Residential Mortgage Loans, as defined in the  
6 Alabama S.A.F.E. Act, the State Banking Department may require  
7 applicants to apply through the Nationwide Mortgage Licensing  
8 System and Registry. In order to carry out this requirement,  
9 the supervisor is authorized to participate in the Nationwide  
10 Mortgage Licensing System and Registry. For this purpose, the  
11 supervisor may establish by rule or order requirements as  
12 necessary, including, but not limited to, the following:

13 "(1) Background checks for the following purposes:

14 "a. Criminal history through fingerprint or other  
15 databases.

16 "b. Civil or administrative records.

17 "c. Credit history.

18 "d. Any other information deemed necessary by the  
19 Nationwide Mortgage Licensing System and Registry.

20 "(2) The payment of fees to apply for or renew  
21 licenses through the Nationwide Mortgage Licensing System and  
22 Registry.

23 "§5-19-31.

24 "(a) The provisions of this chapter, except the  
25 provisions of subdivision (1) of Section 5-19-1 and Section

1 5-19-3, shall not apply (i) to any consumer credit transaction  
2 or other transaction involving an interest in real property or  
3 the sale, lease, or mortgage of an interest in real property  
4 where the creditor is exempt from licensing under this  
5 chapter, (ii) where the credit transaction is not a consumer  
6 transaction, (iii) where the credit transaction is by a trust  
7 institution as defined in Section 5-12A-1(1), in its capacity  
8 as a fiduciary under any plan or agreement qualified under 26  
9 USC 401(a) or defined by 5 USC 8437, 26 USC 403(b), or 26 USC  
10 457, or a trust exempt under 26 USC 501, or (iv) to any  
11 municipal pension system created under the laws of the State  
12 of Alabama. The provisions of this chapter shall not apply  
13 where the credit transaction is a policy loan made by a life  
14 insurance company licensed by this state or any other state.

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

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

22 "(d) This chapter shall not apply to any insurance  
23 agent or agency licensed in Alabama that elects to charge a  
24 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 Section 2. This act shall become effective six  
4 months following its passage and approval by the Governor, or  
5 its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB234

Senate 02-APR-09

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 14-MAY-09

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By: Senator Denton