

ALABAMA CONSUMER CREDIT ACT “MINI CODE”

(Act 1971-2052; Effective 1971)

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Section 5-19-1

Definitions.

For the purposes of this chapter, the following terms shall have the following meanings respectively ascribed to them by this section:

(1) **FINANCE CHARGE.** The sum of all charges, payable directly or indirectly by the person to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The amount of the finance charge in connection with any credit transaction (i) shall be determined, and shall include and exclude the fees and charges, as provided by Section 106 of the Federal Truth-in-Lending Act, 15 U.S.C. Section 1605 and the regulations of the Federal Reserve Board promulgated pursuant to the Federal Truth-in-Lending Act, 12 C.F.R. Part 226, and the Official Staff Commentary adopted by the Federal Reserve Board pursuant to that regulation, and without limiting or affecting the foregoing subparagraph (i), (ii) shall exclude, without limitation, late charges and other charges resulting from or arising out of late payment, delinquency, default, or other like occurrence. For the purpose of determining the permissible finance charge, any discount or point paid by the debtor in connection with a consumer credit transaction secured by a mortgage on real estate, even though paid at one time, shall be spread over the stated term of the consumer credit transaction. The administrator from time to time may promulgate regulations pursuant to Section 5-19-21 further establishing charges and fees which constitute a finance charge and the manner in which the finance charge is determined to assure consistency between the meaning of "finance charge" under this chapter and the meaning and application of "finance charge" under the above-referenced Federal Truth-in-Lending Act, regulations and Official Staff Commentary, as the same may be amended from time to time.

(2) **CONSUMER.** When used as an adjective with reference to a credit transaction, characterizes the credit transaction as one in which the party to whom credit is extended is a natural person and the money, property, or services which are the subject of the transaction are primarily for personal, family or household purposes.

(3) **CREDITOR.** A person who regularly extends or arranges for the extension of credit for which the payment of a finance charge is required, whether in connection with loans, sales of

property or services, or otherwise. The provisions of this chapter apply to any such creditor irrespective of the creditor's status as a natural person or any type of organization. A person is a creditor only if the person extended or arranged for the extension of credit more than 25 times in the preceding calendar year or more than five times in the preceding calendar year for credit transactions secured by a residential structure that contains one to four units.

(4) CREDIT SALE. Any sale with respect to which credit is extended or arranged by a seller who is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property or services involved and it is agreed that the bailee or lessee may become for no other or a nominal consideration the owner of the property upon full compliance with the bailee's or lessee's obligations under the contract. A rental-purchase agreement which is subject to the provisions of Chapter 25 of Title 8 is not a credit sale.

(5) OPEN-END CREDIT PLAN. A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be charged from time to time on an outstanding unpaid balance.

(6) ADMINISTRATOR. The Superintendent of Banks of the State Banking Department.

(7) SUPERVISOR OF THE BUREAU OF LOANS. The designated deputy administrator for the purpose of enforcing this chapter as to licensees.

(8) HOME SOLICITATION SALE. A consumer credit sale of goods or services, other than motor vehicles, in which the seller or a person acting for the seller engages in a personal solicitation of the sale at a place other than the seller's place of business and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit plan, a closed-end plan providing for a series of sales or a sale made pursuant to prior negotiations between the parties at the seller's place of business where goods or services are offered or exhibited for sale.

(9) CREDIT TRANSACTION. A loan or credit sale made by a creditor. For purposes only of Sections 5-19-1(1) and 5-19-3, "credit transaction" shall include nonconsumer loans and credit sales as well as consumer loans and consumer credit sales with an original amount financed of less than two thousand dollars (\$2,000). Otherwise, the term "credit transaction" refers only to consumer loans and consumer credit sales irrespective of whether the term is preceded by the word "consumer."

(10) AMOUNT FINANCED. The sum determined by adding the principal loan amount or the cash price in a credit sale, less any down payment, and any other amounts that are financed by the creditor.

Section 5-19-1.1

Legislative findings.

The Legislature finds as fact and determines that:

(1) The Alabama Consumer Credit Act, Title 5, Chapter 19, (commonly referred to as the "Mini-Code"), was enacted by the Legislature by Acts 1971, No. 2052, page 3290. All, or a portion, of the provisions of the Mini-Code apply to substantially all consumer credit transactions in Alabama involving billions of dollars annually.

(2) The availability of consumer credit and certainty of consumer credit transactions is essential to Alabama citizens and the economy of Alabama. Disputes have arisen involving the Mini-Code resulting in significant litigation.

Section 5-19-3

Maximum finance charges; contracting for minimum finance charge; alternate per month computed finance charge.

(a) Except under open-end credit plans, the maximum finance charge for any credit transaction where the original amount financed is less than two thousand dollars (\$2,000), may equal but may not exceed the total of the following:

(1) Fifteen dollars (\$15) per one hundred dollars (\$100) per year for the first seven hundred fifty dollars (\$750) of the original amount financed; and

(2) Ten dollars (\$10) per one hundred dollars (\$100) per year for that portion of the original amount financed exceeding seven hundred fifty dollars (\$750) and less than two thousand dollars (\$2,000).

The maximum finance charge under this subsection shall be determined by computing the maximum rates authorized by this subsection on the original amount financed for the full term of the contract without regard to scheduled payments and the maximum finance charge so determined, or any lesser amount, may be added to the original amount financed. The finance charge may be calculated and expressed as a simple interest charge or by any method which does not result in a finance charge yield greater than the yield permitted by this subsection.

(b) A creditor, in connection with any credit sale other than a sale made under an open-end credit plan, may contract for and receive a minimum finance charge not in excess of the following amounts:

(1) Four dollars (\$4) on any credit sale in which the amount financed is twenty-five dollars (\$25) or less; and

(2) Six dollars (\$6) on any credit sale in which the amount financed is more than twenty-five dollars (\$25).

(c) In an open-end credit plan, if there is an unpaid balance on the date as of which the finance charge is applied, a creditor may contract for and receive a minimum finance charge in an amount not exceeding fifty cents (\$.50) per month.

(d) Other than under an open-end credit plan, in any credit transaction where the finance charge is computed on the unpaid balance of the amount financed outstanding from time to time, for the actual time outstanding:

(1) Each payment shall be applied first to accrued charges and the remainder of the payment applied to the unpaid balance of the amount financed, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the unpaid amount financed.

(2) Except for permissible prepaid finance charges, the finance charge shall not be payable in advance, or compounded; however, if part or all of the consideration for a new credit transaction contract is the unpaid amount financed and unpaid accrued charges of a prior credit transaction, then the amount financed under the new credit transaction contract may include any unpaid accrued charges. The resulting credit transaction contract shall be deemed a new and separate credit transaction for all purposes.

(3) Debtors may pay in advance the unpaid balance of the amount financed and all accrued finance charges without penalty.

(4) For purposes of computing finance charges for a fraction of a month, a day may be considered one-thirtieth of a month, at the option of the creditor.

(e) The provisions of this section shall not apply to any credit transaction with an original amount financed that is equal to or greater than two thousand dollars (\$2,000). The finance charge for any credit transaction with an original amount financed or original principal balance not less than two thousand dollars (\$2,000) and for any open-end credit plan with a credit limit not less than two thousand dollars (\$2,000) shall be subject to the provisions of Section 8-8-5, or Sections 5-20-2, et seq., as applicable. The maximum finance charge for any open-end credit plan with a credit limit of less than two thousand dollars (\$2,000) shall be determined by Section 8-8-14, or Sections 5-20-2, et seq., as applicable.

Section 5-19-4

Additional charges for default or deferral; prepayment; renewal or refinancing; and real property transactions.

(a) When a scheduled payment in a consumer credit transaction is in default 10 days or more, the creditor may charge and collect a late charge not exceeding the greater of eighteen dollars (\$18) or five percent of the amount of the scheduled payment in default, not to exceed one hundred dollars (\$100). The late charge may be collected only once on any scheduled payment, regardless of the period during which the scheduled payment remains in default.

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

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

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

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

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

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

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

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

(f) A creditor may charge and collect in a transaction secured by real property the following fees and charges if bona fide and reasonable in amount, and provided that, other than the appraisal

fees authorized by subdivision (4) and fees and charges authorized by regulations promulgated by the administrator, the fees are paid to parties unrelated to the creditor:

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

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

(3) Notary fees and credit report fees;

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

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

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

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

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

Section 5-19-5

Acceptance of negotiable instruments as evidence of consumer debt.

In a consumer credit sale, the seller may not take as evidence of the obligation of the buyer, a negotiable instrument other than (1) a check; or (2) a promise or order containing a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee. A holder is not a holder in due course if the holder takes a negotiable instrument with notice that

it is issued in violation of this section. A holder in due course is not subject to the liabilities prescribed in this chapter.

Section 5-19-6

Copies of instruments signed by debtors to be furnished to debtors; required statement in contracts, etc.; limitation on disclosure requirements; intent, applicability of limitation.

(a) Any creditor, when extending credit with respect to a consumer credit transaction, other than under an open-end credit plan, shall at that time furnish to the debtor a copy of each instrument executed by the debtor in connection with the consumer credit transaction. The consumer credit transaction contract or note shall contain the following statement in eight point or larger type immediately above the space for the borrower's signature.

"CAUTION — IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT."

(b) No disclosures are required by this chapter to be made by a creditor with respect to any transaction other than disclosures required by regulations made by the administrator pursuant to Section 5-19-21 and disclosures required by subsection (a) above and by Sections 5-19-12(a) and 5-19-20(e).

(c) Without limiting the generality of subsection (b), there is no obligation or duty under this chapter to disclose to a debtor any agreement to assign or otherwise transfer a consumer credit transaction contract at a discount or that the assignee of, or person who funded, the consumer credit transaction agreed or may agree to pay the creditor or other person who originated the consumer credit transaction all or a portion of the prepaid finance charges and other fees and/or a portion of the finance charge to be paid by the debtor over the term of the transaction and/or other compensation irrespective of how the compensation is determined or described.

(d) Except as modified hereby, the provisions of subsections (b) and (c) confirm, clarify and are declaratory of existing law. Except as modified hereby, the provisions of Alabama Act No. 94-115 remain applicable to consumer credit transactions entered into on, before, and after February 24, 1994.

Section 5-19-7

Right to refinance amount of certain scheduled payments.

With respect to a consumer credit transaction, if any scheduled payment is more than one and one-half times as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable than the terms of the original transaction. The provisions of this section do not apply if the debtor's payment schedule has been adjusted to conform with the seasonal or irregular income of the debtor, or if a consumer credit transaction is repayable in a single principal payment irrespective of the scheduled interest payments.

Section 5-19-8

Assignee of seller subject to claims and defenses of buyer.

With respect to a consumer credit sale, an assignee of the rights of the seller is subject to all claims and defenses of the buyer against the seller arising out of the sale, notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can only be asserted as a matter of defense to or setoff against a claim by the assignee.

Section 5-19-9

Application of payments when buyer indebted to same seller for two or more consumer credit sales.

When the buyer is indebted to a particular seller for two or more consumer credit sales of goods and the goods which were the subject of two or more sales secure the buyer's total debt to the seller, the security shall be discharged by applying the buyer's payments as they are received by the seller or the seller's assignee to the portions of the debt in the order in which they were incurred. To the extent that debts are paid according to the preceding sentence, security interests in items of property terminate as the debt originally incurred with respect to each item is paid. Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made. If the debts consolidated arose from two or more consumer sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt. This section shall not apply to two or more consumer credit sales made by the same seller to the same buyer when the debts have been assigned to different and unrelated persons for value and the assignment was bona fide and not for the purpose of violating this section.

Section 5-19-10

Contract provisions for attorney's fees.

A contract for a consumer credit transaction with an original amount financed not exceeding three hundred dollars ($300) may not provide for payment by the debtor of attorney's fees after default by the debtor. A contract for a consumer credit transaction with an original amount financed exceeding three hundred dollars ($300) may provide for the payment by the debtor of reasonable attorney's fees not exceeding 15 percent of the unpaid debt after default and referral of the contract to an attorney who is not a salaried employee of the creditor. An open-end credit plan may not provide for attorney's fees when the unpaid balance does not exceed three hundred dollars ($300), but may provide for reasonable attorney's fees after default by the

debtor when the unpaid balance exceeds three hundred dollars ($300). In a consumer credit transaction contract where the original amount financed exceeds ten thousand dollars ($10,000) or the credit transaction is secured by real property, the creditor may require the payment by the debtor of attorney's fees prior to default by the debtor in connection with the closing of, amendment to, or modification of the credit transaction, provided that the attorney is not a salaried employee of the creditor.

Section 5-19-12

Buyer's right to cancel home solicitation sale.

(a) A buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution by the buyer of an agreement or offer to purchase, which notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The seller must deliver to the buyer and obtain the buyer's written signature to a written agreement or offer to purchase designating as the date of the transaction the date on which the buyer actually signs and containing the following under the conspicuous caption:

"BUYER'S RIGHT TO CANCEL"

"If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by delivering or mailing a notice to the seller. The notice must say that you are cancelling the agreement and must be delivered or mailed before midnight of the third business day after you sign this agreement. The notice must be delivered or mailed to:

_____."

(insert name and mailing address of seller)

Alternately, the seller may deliver to the buyer the notice required by the Federal Trade Commission Trade Regulation Rule concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, Title 16, Code of Federal Regulations, Part 429, as amended from time to time, which shall satisfy the notice requirement of this section. Until the seller has complied with this section the buyer may cancel the home solicitation sale within one year after the date of the sale by notifying the seller in any manner and by any means of the buyer's intention to cancel.

(b) The buyer has a duty to take reasonable care of the goods in the buyer's possession before cancellation and for a reasonable time thereafter, during which time the goods are otherwise at seller's risk. Within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made or goods traded in by the buyer, or the amount equal to the trade-in allowance stated in the agreement, and any note or other evidence of debt. Within a reasonable time thereafter the buyer, upon demand, must tender at the buyer's residence to the seller any goods delivered by the seller. If the seller fails to

demand such possession within 20 days after receipt of the notice, the goods become the property of the buyer without obligation to pay for them.

(c) The provisions of this section shall not apply if the buyer furnishes the seller with a separate dated and signed personal statement describing an emergency requiring immediate remedy and modifying or waiving his right to cancel. The use of printed forms for this purpose is prohibited.

Section 5-19-13

Repossession or acceptance of surrender of goods priced at one thousand dollars or less.

If any seller or assignee of the seller repossesses or voluntarily accepts surrender of goods sold in which the seller or assignee has a security interest and the original cash price of the goods repossessed or surrendered was one thousand dollars ($1,000) or less, the buyer is not personally liable to the seller or assignee for the unpaid balance of the debt arising from the sale and the seller or assignee is not obligated to sell the collateral.

Section 5-19-14

Rebates or discounts, etc., as inducement for aiding sale to another prohibited.

With respect to a consumer credit sale, the seller may not give or offer to give a rebate or discount, or otherwise pay or offer to pay value to the buyer, as an inducement for a sale in consideration of the buyer giving to the seller the names of prospective purchasers, or otherwise aiding the seller in making a sale to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer agrees to buy. If a buyer is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller and the buyer, at the buyer's option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them.

Section 5-19-15

Garnishment.

Prior to entry of judgment on a consumer credit transaction, the creditor may not attach unpaid earnings of the debtor by garnishment. Notwithstanding the garnishment procedure otherwise applicable after judgment, with respect to a consumer credit transaction, the amount of unpaid earnings of the debtor subject to garnishment shall not exceed the lesser of:

- (1) Twenty-five percent of the debtor's disposable earnings for that week; or
- (2) The amount by which the debtor's disposable earnings for that week exceed 30 times the federal minimum hourly wage in effect when payable.

"Disposable earnings" means that part of the earnings of a debtor remaining after deduction of amounts required by law to be withheld, and disposable earnings shall not include periodic payments pursuant to a pension, retirement, or disability program.

Section 5-19-16

Refusal by court to enforce unconscionable agreement.

With respect to a consumer credit transaction, if the court as a matter of law finds the contract or any provision of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.

Section 5-19-17

Inducing obligation on more than one contract in order to obtain higher finance charge prohibited; consolidation of existing precomputed consumer credit transaction contract and subsequent precomputed consumer credit transaction.

(a) No creditor shall induce or permit any person or any husband and wife, jointly or severally, to become obligated directly or contingently, or both, on more than one consumer credit transaction at the same time for the purpose of obtaining a higher finance charge than would otherwise be permitted by Section 5-19-3. This subsection shall not apply to the maintenance of two or more separate consumer credit transactions where the consumer credit transactions were created on different dates.

(b) It shall be unlawful for any seller to evade or attempt to evade this section by inducing a buyer to become obligated to another creditor in which the initial creditor has a pecuniary interest or with whom the initial creditor has an arrangement for exchange of customers.

(c) Subsection (a) does not obligate a creditor to allow any person to maintain two or more contracts or accounts. Effective June 19, 1996, an existing precomputed consumer credit transaction contract and a subsequent precomputed consumer credit transaction document may be consolidated provided that the consumer cannot be required to consolidate the contracts as a condition for the extension of credit nor can the creditor be required to extend credit; and provided further, that if such contracts are consolidated, the annual percentage rate resulting from the consolidation can be no greater than the annual percentage rate on the prior existing consumer credit transaction contract nor can the consumer be charged any duplicate fees or expenses that originated in the existing consumer credit transaction contract, provided, however, that finance charges and other charges and fees rebated in accordance with applicable law and those charges as permitted by Section 5-19-4(f) and UCC filing fees or nonfiling insurance premiums in lieu thereof are excluded from this provision. Nothing herein restricts a creditor from renewing or refinancing an existing consumer credit transaction contract.

Section 5-19-18

Installment payment of debt of one thousand dollars or less.

With respect to consumer credit transactions, where the debt is payable in installments, not made pursuant to an open-end credit plan and in which the original amount financed is one thousand dollars (\$1,000) or less, the debt shall be scheduled to be payable in substantially equal installments at equal periodic intervals, except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor or when the transaction is a single principal payment obligation irrespective of the scheduled interest payments, and:

(1) Over a period of not more than 36 months and 15 days if the original amount financed is more than three hundred dollars (\$300); or

(2) Over a period of not more than 24 months and 15 days if the original amount financed is three hundred dollars (\$300) or less.

Section 5-19-19

Liabilities of creditor making excess finance charge; failure to obtain license; damages for deliberate violation or reckless disregard; written notice of violations; oral statements not admissible; fiduciary duty not created.

(a)(1)(i) Any creditor charging a finance charge in excess of the amount authorized herein, except as specified in subdivision (2), shall forfeit debtor's actual economic damages not to exceed the finance charge, and shall refund to the debtor such amount of the actual economic damages, which may be done by reducing the amount of the debtor's obligation. If the debtor is entitled to a refund and the creditor refuses to refund within a reasonable time, not to exceed 60 days, after written demand, including the filing of a legal action, the debtor shall recover a penalty of five times the amount of the actual economic damages not to exceed the finance charge, but in any event not less than one hundred dollars (\$100). Provided, however, as to any legal action pending on May 20, 1996, the debtor shall make a new written demand under this subsection.

(ii) As to transactions occurring after May 20, 1996, any creditor charging a finance charge in excess of the amount authorized herein, except as specified in subdivision (2), shall forfeit to the debtor the amount of the actual economic damages not to exceed the finance charge, which may be done by reducing the amount of the debtor's obligation. If the debtor is entitled to a refund and the creditor refuses to refund within a reasonable time, not to exceed 60 days, after written demand, including the filing of a legal action, the debtor shall recover twice the actual economic damages not to exceed the finance charge, but in any event not less than one hundred dollars (\$100).

(2) If the creditor has made an excess finance charge in deliberate violation of or in reckless disregard for this chapter, the creditor shall forfeit the greater of the entire finance charge imposed or five times the amount of the actual economic damages, but not less than one hundred dollars (\$100). No action under this subsection may be brought more than one year after the due

date of the last scheduled payment of the agreement pursuant to which the charge was made or, in the case of an open-end credit plan, one year after the excess charge is made.

(3) Any creditor licensed under this chapter adjudged after May 20, 1996 by a court of competent jurisdiction in any civil action to be in deliberate violation of or in reckless disregard for this chapter shall within 10 days of such adjudication forward a copy of the judgment to the administrator. Within 10 days of such judgment becoming final and nonappealable, the creditor shall notify the administrator and the administrator shall, within 60 days of such notification, review the creditor's license in view of the matters on which the judgment was based and determine whether to conduct a license revocation hearing pursuant to Section 5-19-23. At any hearing conducted thereon by the administrator, such judgment shall be prima facie evidence in support of the revocation of the creditor's license.

(b) A creditor required to obtain a license who fails to obtain such license may not maintain a proceeding in any court in this state on a consumer credit transaction for which a license was required until the creditor obtains the license required by Section 5-19-22. If a court determines that an unlicensed creditor should have obtained a license, the action may be stayed until the creditor obtains the required license and satisfies the requirements of the next sentence of this subsection. The creditor shall pay to the administrator a civil penalty equal to three times the amount of the investigation fee and the annual license fee for each year or portion thereof, the creditor, in violation of Section 5-19-22, has engaged in the business of making consumer loans or taking assignments of consumer credit contracts without first having obtained a license, but in no event shall a civil penalty exceed one hundred thousand dollars (\$100,000). All civil penalties shall be paid into the special fund set up by the State Treasurer pursuant to Section 5-2A-20 and used in the supervision and examination of licensees. After obtaining the required license, and paying the civil penalty prescribed by this subsection, the creditor may bring and maintain proceedings in the courts of this state on consumer credit transaction contracts, and the enforceability of the contracts shall not be impaired by the prior failure to obtain a license, irrespective of whether the consumer credit transaction contracts were made before or after the license was obtained. No private cause of action exists against a creditor for failing to obtain a license required by Section 5-19-22.

(c) Except for the specific remedies and obligations provided in subsection (a) with respect to excess finance charges, or subsection (b) with respect to licensing, in which event the remedy and obligations set forth in subsection (a) or (b), as applicable, shall apply, any provision of a consumer credit transaction which violates this chapter shall be unenforceable by the creditor to the extent, but only to the extent, of the violation, and the other remaining provisions and agreements shall be enforceable and shall not be void and shall not be affected by the violation. Except as provided in subsection (a), any creditor who fails to comply with any requirement imposed under this chapter with respect to any person is liable to the person only for the actual economic damages sustained by the person as the result of the failure. Except as set forth in subsection (a), no action may be brought by the debtor under this section based upon a violation of any provision of this chapter more than two years after the date the violation occurred; provided, however, this limitation shall not bar a debtor from asserting a violation of this chapter in an action brought by the creditor, as a matter of defense by recoupment or setoff in such action, if otherwise allowed by law.

(d) A creditor or assignee has no liability to the debtor for any violation of this chapter if, prior to receipt of written notice from the debtor of a violation, the creditor or assignee notifies the debtor of the violation and makes whatever adjustments in the appropriate account, or payments to the debtor, as are necessary to assure that the debtor will not be required to pay an amount in excess of the charges permitted by this chapter.

(e) An oral statement shall not be admissible to contradict the provisions of a credit transaction document, unless the debtor establishes by clear and convincing evidence that the oral statement was made and that it constituted a misrepresentation of a material fact relating to the character or essential terms of the transaction that was made principally to induce the debtor to sign the document and upon which the debtor reasonably relied in signing the document or entering into the transaction. This subsection shall not apply to credit transaction documents in effect on May 20, 1996, nor to causes of action that arise therefrom; nor shall this subsection apply to any credit transaction documents not covered by this chapter.

(f) A consumer credit transaction does not create or give rise to a fiduciary duty on the part of the creditor.

Section 5-19-20

Insurance.

(a) With respect to any consumer credit transaction, the creditor shall not require any insurance other than insurance against loss of or damage to any property in which the creditor is given a security interest and insurance insuring the lien of the creditor on the property which is collateral for the transaction.

(b) (1) Credit life and disability and involuntary unemployment insurance may be offered and, if accepted, may be provided by the creditor. The charge to the debtor for the insurance shall not exceed the premium permitted for the coverages. Insurance with respect to any credit transaction shall not exceed the approximate amount and term of the credit.

(2) This subdivision (2) applies to all consumer credit transactions entered into on or after June 19, 1996. If the consumer credit transaction is scheduled to be repaid in substantially equal installments which include a portion of the amount financed, the amount of credit life insurance at any time shall not exceed the greater of the approximate unpaid balance of the debt, excluding unearned finance charges, if any, or the approximate unpaid scheduled balance of the debt, excluding unearned finance charges, if any, plus the amount of one scheduled payment. The amount of credit life insurance on single payment consumer credit transactions and the amount of accident and health insurance and involuntary unemployment insurance shall not exceed the approximate amount of the total of payments. The amount of credit life insurance under an open-end credit plan shall not exceed the approximate unpaid balance of the debt from time to time. The debtor's estate or a named beneficiary shall be entitled to any excess credit life insurance benefit.

(c) If the debtor fails to provide any required property insurance, the creditor may, but is not required to, purchase insurance insuring its interest only, or with the debtor's written consent, insuring both the creditor's interest and the debtor's interest, and the premium for the property insurance together with interest on the premium at the contract rate or other rate agreed to in writing may be charged by the creditor to the debtor. The premium charged to the debtor for any insurance shall not exceed the premium approved by the administrator or the rates filed by the insurer with the Alabama Department of Insurance for the insurance, as applicable. If the insurance insures only the creditor's interest in the property, the term of the insurance provided pursuant to this subsection shall not exceed the approximate remaining term of the credit, and the amount of insurance shall not exceed the approximate amount of the unpaid balance of the debt excluding unearned finance charges, if any. The administrator may promulgate regulations pursuant to Section 5-19-21 to provide further for the term and maximum permissible amount of insurance which covers the creditor's interest in the property.

(d) The premium for nonfiling insurance, insuring the lien of the creditor on any property which is collateral for the consumer credit transaction, may not exceed the cost of filing of a lien on the property and any document necessary to continue the lien and is nonrefundable. The insurance may be required in both purchase money and nonpurchase money secured transactions. A creditor may not charge a debtor the cost of filing the lien and a premium for nonfiling insurance in a consumer credit transaction.

(e) If a creditor requires any insurance against loss of or damage to any property in which the creditor is given a security interest, the debtor shall have and be given written notice of the option of obtaining the insurance through a person of the debtor's choice. If the debtor does not exercise the option of providing the insurance through an existing policy or a policy independently obtained and paid for by the debtor, the creditor may purchase the insurance on the property and charge the premium for the insurance to the debtor. The premium or premiums charged for such required insurance shall not exceed the premium approved by the administrator or the rates filed by the insurer with the Alabama Department of Insurance, as applicable. The creditor may, for reasonable cause, decline the insurance provided by the debtor.

(f) When property insurance, as permitted herein, is required by the creditor, is not furnished by the debtor, and is purchased by the creditor, then upon renewal, refinancing, or payment of the debt before the final maturity date, the creditor shall refund or credit the debtor with that portion of the premium refunded by the insurance carrier upon the termination of the insurance.

(g) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property or against liability for property damage or personal injuries unless the original amount financed exclusive of the charges for insurance is three hundred dollars (\$300) or more and the value of the property is three hundred dollars (\$300) or more.

(h) In no event shall the creditor have any responsibility or liability for the failure to purchase any insurance permitted by this section unless the creditor has affirmatively undertaken in writing to purchase the insurance.

(i) A creditor may offer and finance any other insurance in connection with any consumer credit transaction upon such terms as are authorized by regulation of the administrator.

Section 5-19-21

Administrator authorized to make rules and regulations; filing notice of intended action with Legislative Reference Service; transactions entered into after May 20, 1996.

(a) The administrator is authorized and empowered to promulgate rules and regulations and official interpretations (collectively "regulations") as may be necessary or appropriate for the execution and enforcement of this chapter. The administrator or, if authorized by regulation, the administrator's designee, or both, may also issue written interpretations of consumer finance statutes and regulations and this chapter.

(b)(1) Prior to the adoption, amendment, or repeal of any regulation, the administrator shall give at least 35 days' notice of its intended action by filing notice of intended action with the Legislative Reference Service for publication in the Alabama Administrative Monthly. The date of publication in the Alabama Administrative Monthly shall constitute the date of notice. The notice shall include a statement of either the terms or substance of the intended action or a description of the subject and issues involved, shall specify a notice period ending not less than 35 days or more than 90 days from the date of the notice, during which period interested persons may present their views thereon, and shall specify the place where, and the manner in which interested persons may present their views thereon.

(2) All interested persons shall have a reasonable opportunity to submit data, views, or arguments, orally or in writing. The administrator shall consider all written and oral submissions respecting the proposed regulation. Upon adoption of a regulation, the administrator, if conflicting views are submitted on the proposed regulation and if requested in writing to do so by an interested person prior to adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling any considerations urged against its adoption.

(3) Notwithstanding any other provision of this chapter to the contrary, if the administrator finds that an immediate danger to the public health, safety, or welfare requires adoption of a regulation upon fewer than 35 days' notice or that action is required by or to comply with a federal statute or regulation which requires adoption of a regulation upon fewer than 35 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation shall become effective immediately, unless otherwise stated therein. The regulation may be effective for a period of not longer than 120 days unless within such time the administrator complies with the procedures set forth in subsections (b)(1) and (b)(2). The adoption of the same or a substantially similar regulation following the procedures set forth in subsections (b)(1) and (b)(2) at any time is not limited by the adoption of a regulation following the emergency regulation procedure set forth in this subsection.

(4) A person who has exhausted all administrative remedies available within the State Banking Department, other than rehearing, and who is aggrieved by a final decision of the administrator with respect to a regulation, is entitled to judicial review under this chapter. All proceedings for review shall be instituted by filing of notice of appeal or review and a cost bond with the administrator to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the administrator or the court on a showing of substantial hardship. The notice of appeal and cost bond must be filed within 42 days after the date the administrator issued its final regulation. The appeal shall be filed in the Circuit Court of Montgomery County. The regulation will be in effect pending the outcome of any appeal unless the administrator stays the effective date of the regulation.

(c) As to transactions entered into after May 20, 1996, a creditor shall have no liability under this chapter for any act or practice done or omitted in conformity with any (i) regulation of the administrator, or (ii) any rule, regulation, interpretation, or approval of any applicable Alabama or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred, the regulation, rule, interpretation, opinion, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason; provided, however, that any interpretation or opinion issued after May 20, 1996, shall not have any effect on any litigation pending on May 20, 1996, nor shall any interpretation or opinion issued after May 20, 1996, have any effect on litigation if issued subsequent to filing of the litigation. The enactment of Act 96-576 shall have no effect on interpretations or opinions issued prior to May 20, 1996.

(d) A creditor, acting in conformity with a written interpretation or approval by the administrator or the administrator's designee, or by the official in charge of any applicable Alabama agency or department, or by an official of any federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

(e) Interpretations, opinions, and approvals shall protect, to the extent provided in subsections (c) and (d), as applicable, both the creditor at whose request they were issued and any other creditor in a materially like circumstance.

Section 5-19-22

License to engage in business of making consumer loans or taking assignments of consumer credit contracts - Required; exceptions; application; investigation of applicant; investigation fee; standards for issuance; hearing on qualifications of applicant; effect of holding license under Small Loan Act; form; posting; nontransferable; license fee; penalty for late payment of license fee; disposition of license fee.

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

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

(2) Making consumer loans originated by an individual required to be licensed as a mortgage loan originator under the Alabama Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

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

Banks chartered by this state or any other state, banks chartered by the United States, trust companies, savings or building and loan associations, savings banks and other thrift institutions, bank holding companies, thrift holding companies, credit unions, and federally constituted agencies shall be exempt from licensing. A seller, with respect to consumer credit sale transactions and the financing of charges permitted by this chapter, is not required to be licensed under this chapter. Any creditor required to be licensed under this chapter shall obtain a license for each location in Alabama from which these activities are conducted or, if the creditor has no location in Alabama, for the location where the creditor maintains its records regarding Alabama loans or Alabama consumer credit contracts; provided, however, insurance companies and their subsidiaries and affiliates who do not make loans or take assignments of consumer credit contracts secured by real property may obtain a license for the location where the records are maintained in lieu of obtaining a license for each location where the activity is conducted.

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

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

(d) No license shall be issued unless the administrator determines that the financial responsibility, character, and fitness of the applicant, and of the members thereof if the applicant is a partnership or association, officers and directors thereof if the applicant is a corporation are such as to warrant belief that the business will be operated honestly and fairly within the purpose of this chapter and finds that the applicant has assets available for the operation of business under this chapter of at least twenty-five thousand dollars (\$25,000). The State Banking Department may require the applicant or licensee engaging in extensions of credit secured by real estate to obtain a surety bond in lieu of the net asset requirement in order to fulfill the requirements of the Alabama Secure and Fair Enforcement for Mortgage Licensing Act. The amount of the surety bond will be determined by the department. The surety bond will be in favor of the State of Alabama for the use, benefit, and indemnity of any person who suffers damage or loss as a result of the company's breach of contract or of any obligation arising therefrom or any violation of the law.

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

- (1) The administrator has notified the applicant in writing that the application has been denied; or
- (2) The administrator has not issued a license within 60 days after the application for the license was filed.

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

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

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

(h) The annual license fee shall be five hundred dollars (\$500) for each office, branch, or place of business of the licensee, which shall be due on January 1 of each year, and shall be for a one-year period ending December 31, and shall be delinquent on February 1 of each year, and there shall be a penalty of 10 percent for each month or part thereof that the licensee is delinquent in the payment of such license fee. All license fees and investigation fees collected shall be nonrefundable and paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of licensees.

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

(1) Background checks for the following purposes:

- a. Criminal history through fingerprint or other databases.
- b. Civil or administrative records.
- c. Credit history.
- d. Any other information deemed necessary by the Nationwide Mortgage Licensing System and Registry.

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

(Acts 1971, No. 2052, p. 3920, §18; Acts 1983, No. 83-747, p. 1244, §1; Acts 1996, No. 96-576, p. 887, §2; Act 2009-625, §1.)

Section 5-19-23

License to engage in business of making consumer loans or taking assignments of consumer credit contracts - Revocation or suspension.

(a) The administrator may issue to a person licensed under this chapter an order to show cause why his license should not be revoked or suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is not less than 10 days from the date of the order. At such hearing, the licensee shall be entitled to counsel.

(b) After the hearing, the administrator:

(1) Shall revoke the license if he finds that:

a. The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made pursuant to this chapter; or

b. Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had such facts or conditions been known to exist at the time the application of the license was made.

(2) May suspend the license if he finds that the licensee has violated this chapter or any rule or order lawfully made pursuant to this chapter.

Section 5-19-24

Examinations and investigations of licensees by administrator.

(a) For the purpose of determining compliance with this chapter, the administrator may, at any reasonable time, cause an examination to be made at the licensee's place of business of the records and transactions of such licensee. As cost of examination, the licensee shall pay the administrator an examination fee as provided by Section 5-2A-24 which shall be collected and paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of licensees. Each licensee shall preserve all relevant records for a period of at least two years after making the last entry on any transaction, and the administrator shall have free access thereto at the licensee's place of business at all reasonable times. If the administrator has probable cause to believe that a person has engaged in an activity which violates the provisions of this chapter, the administrator may compel the production of such books and records of the person as he or she has probable cause to believe are relevant to the alleged violation.

(b) If the person's records are located outside this state, the person may either make them available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or a representative of the administrator to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(c) Reports of examinations and investigations, all working papers related thereto and the books and records of licensees, are to be held strictly confidential, and may not be produced, reproduced, or otherwise made available by the State Banking Department to any persons other than those within the State Banking Department and the licensee, and their respective counsel. This subsection does not apply to disclosures in proceedings brought by the administrator pursuant to this chapter.

(d) A licensee's books and records may be maintained, produced, and reproduced for examination by photostatic, photographic, microphotographic, optical imaging, or by any other generally recognized process for data storage and reproduction.

(e) Nothing contained herein shall prohibit discovery of these materials by and through a lawfully issued subpoena from a court of competent jurisdiction.

Section 5-19-25

Cease and desist orders by administrator; penalties for violation of this chapter; right to counsel at hearing; judicial review.

After notice and hearing, the administrator may order a licensee under this chapter or a person acting on behalf of the licensee to cease and desist from engaging in violations of this chapter. A creditor who is found by the administrator, after notice and hearing, to have violated this chapter may be ordered by the administrator to pay a civil penalty in an amount determined by the administrator of not more than ten thousand dollars ($10,000) in the aggregate for all violations of a similar nature or, where violations are knowing violations, of not more than fifty thousand dollars ($50,000), in addition to any other penalties provided by law, including, but not limited to, license revocation. Violations shall be of a similar nature if the violations consist of the same or substantially the same course of action or practice irrespective of the number of times the course of action or practice occurred. All civil penalties collected shall be paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of licensees. At the hearing, the licensee shall be entitled to be represented by counsel. A licensee aggrieved by an order of the administrator under this section may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of its order in the circuit court. The proceedings shall be governed by the provisions of Section 5-19-26.

Section 5-19-26

Appeals to circuit court from order of administrator; appeals from decision of circuit court.

(a) Any interested party or intervener may appeal an order of the administrator to the Circuit Court of Montgomery County or to the circuit court of the county in which such party has its principal place of business in Alabama by filing notice of appeal with the administrator and with the register or clerk of the circuit court within 30 days from the date of said final order. The administrator's findings shall be prima facie correct, but the circuit court may hear such appeal according to its own rules and procedure, including the taking of additional testimony and staying the order. In the circuit court, the trial shall be de novo. The court may, if it decides that the administrator has erred to the prejudice of appellant's substantial rights in its application of the law or that the order was based upon findings of fact contrary to the substantial weight of the evidence, remand the proceeding to the administrator for further action in conformity with the direction of the court or may enter such order as the court deems appropriate.

(b) Either party may appeal from the circuit court to the Supreme Court within 42 days from the date of entry of the order of the circuit court.

Section 5-19-29

Injunctions.

(a) The administrator may bring an action to restrain a creditor or a person acting in his behalf from engaging in any business subject to licensing under subsection (a) of Section 5-19-22 without first obtaining a license therefor as provided in Section 5-19-22 and a licensee or any person acting in his behalf from engaging in violations of this chapter or engaging in a course of fraudulent or unconscionable conduct in inducing debtors to enter credit transactions or in the collection of debts.

(b) With respect to an action brought to enjoin violations of the chapter or fraudulent or unconscionable conduct, the administrator may apply to the court for appropriate temporary relief against a defendant, pending final determination of the proceedings. If the court finds, after a hearing held upon notice to the defendant, that there is reasonable cause to believe that the defendant is engaging in or is likely to engage in conduct which violates this chapter or which is fraudulent or unconscionable, it may grant any temporary relief or restraining order it deems appropriate.

Section 5-19-30

Penalty for violations.

A creditor who willfully makes charges in excess of those permitted by Section 5-19-3 or a creditor who willfully engages in the business of making loans in violation of subsection (a) of Section 5-19-22, or both, is guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding five hundred dollars ($500) or to imprisonment not exceeding one year, or both.

Section 5-19-31

Nonapplicability of chapter to certain transactions; certain laws not repealed or amended; intent of section.

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

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

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

(d) This chapter shall not apply to any insurance agent or agency licensed in Alabama that elects to charge a collection fee on unpaid balances for insurance premiums under Section 27-12-17. An election shall be made by stating such on the premium finance contract.

(Acts 1971, No. 2052, p. 3290, §25; Acts 1989, No. 89-541, p. 1132, §1; Acts 1994, No. 94-118, p. 146, §1; Acts 1996, No. 96-576, p. 887, §2; Act 2002-307, p. 873, §1; Act 2009-625, §1.)

Section 5-19-32

Service contracts.

Any creditor who extends credit with respect to a consumer credit sale, may sell or finance, or both, a service contract covering tangible goods which are the subject of the consumer credit sale. Any other person who was not the creditor with regard to the initial sale of the tangible goods also may sell or finance, or both, a service contract covering the tangible goods. A "service contract" as used in this section is an agreement, for a separately stated consideration, of the service contract offeror to correct, repair, or replace, or to pay for the correction, repair, maintenance, or replacement of tangible goods during the period covered by the service contract, with or without additional provisions for payment of or indemnity under limited circumstances for related expenses including, without limitation, for towing, rental, and emergency road service, whether called a service contract, extended warranty or otherwise. The service contract offeror need not be the seller or creditor. The service contract may be offered, sold, and financed at the time of the credit sale or at any time thereafter, including, without limitation, at or about the time of the expiration of any original warranty or the expiration of the period covered by the service contract. The service contract may, but is not required to, be renewable from time to time

as set forth in the service contract. A service contract does not constitute insurance for any purpose, other than for the purpose of a service contract holder's claim against a service contract provider for failure to comply with the provisions of the service contract if so provided by other law.

Section 5-19-33

Account maintenance fee.

(a) In addition to other lawful charges permitted under various state or federal laws, except under open-end credit plans, a creditor may, if provided in the contract, charge an account maintenance fee of not more than three dollars (\$3) for each month of the scheduled period of repayment of the credit transaction. The account maintenance fee shall be determined at the date of the credit transaction and may be charged in full at that time. The account maintenance fee as so determined shall not bear interest and shall constitute a part of the finance charge. In the event of the renewal, refinance, or payment in full of the credit transaction, the debtor shall be entitled to a refund or credit of any unearned portion of the account maintenance fee under subsection (c) of Section 5-19-4, as of the date of such renewal, refinancing, or payment in full.

(b) This section shall not repeal, amend, modify, or diminish any right or power to charge and collect charges, fees, interest, or an interest surcharge existing under any other applicable state or federal statute, nor repeal, amend, or modify Public Law 96-221, enacted by the United States Congress and approved March 31, 1980, nor Section 5-2A-24.

(Act 2006-238, §§1, 2.)