

1           HB335  
2           217118-1  
3           By Representative Blackshear  
4           RFD: Financial Services  
5           First Read: 10-FEB-22

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8 SYNOPSIS: Under existing law, there is no provision  
9 for a closing fee payable to banks and financial  
10 institutions on small loans of less than one  
11 thousand five hundred dollars (\$1,500).

12 This bill would authorize banks and  
13 financial institutions to charge a closing fee in a  
14 limited amount on small loans, subject to partial  
15 refund upon prepayment of the loan.

16  
17 A BILL

18 TO BE ENTITLED

19 AN ACT

20  
21 Relating to banking and financial institutions; to  
22 authorize limited closing fees on certain small loans.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 5-18-15, Code of Alabama 1975, is  
25 amended to read as follows:

26 "§5-18-15.

"(a) Maximum rates of interest and charge. Every licensee under this chapter may contract for and receive as interest on any loan of money less than one thousand five hundred dollars (\$1,500) an amount at a rate not exceeding three percent a month on that part of the unpaid principal balance not in excess of two hundred dollars (\$200), and two percent a month on that part of the unpaid principal balance in excess of two hundred dollars (\$200) but less than one thousand five hundred dollars (\$1,500).

"(b) Account maintenance fee. In addition to the maximum rate of interest and charges pursuant to subsection (a), a licensee may enter into a contract of loan under this chapter in which the borrower agrees to pay an account maintenance fee of not more than three dollars (\$3) for each month of the scheduled period of repayment of the loan provided that the scheduled monthly payments are equal to or greater than thirty dollars (\$30). Such account maintenance fee shall be determined at the date of the loan, but may not be prepaid. Such fee as so determined shall not bear interest and shall constitute a part of the finance charge.

"(c) Method of computing charges.

"(1) Interest or charges under this chapter shall not be paid, deducted, discounted, or received in advance or compounded, but the rate of charge authorized by subsections (a) and (b) may be precomputed as provided in subdivision (2) of this subsection.

"For the purpose of this section, one month shall be that period of time from any date in a month to a corresponding date in the next month and, if there is not a corresponding date, then to the next day of the next month, and a day shall be considered one thirtieth of a month when computation is made for a fraction of a month.

"(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges or interest combined, the charges or interest may be precomputed at the agreed monthly or periodic rate not in excess of that provided for in subsections (a) and (b) on scheduled unpaid principal balances according to the terms of the contract and added to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charge until the contract is fully paid. The acceptance or payment of charges on loans made under the provisions of this subsection shall not be deemed to constitute payment, deduction, or receipt thereof in advance nor compounding under subdivision (1) above.

" (d) Refunds.

"(1) When any loan contract is paid in full by cash, a new loan, renewal, or otherwise one month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of seventys-eighths or sum of the digits principle as follows: The amount of the refund or credit shall

1 be as great a proportion of the total charges originally  
2 contracted for as the sum of the periodic time balances of the  
3 contract scheduled to follow the date of prepayment bears to  
4 the sum of all the periodic time balances of the contract,  
5 both sums to be determined according to the payment schedule  
6 originally contracted for.

7 "(2) If the loan contract, with charges precomputed  
8 under subsections (a) and (b), is not prepaid in full but  
9 becomes partially prepaid in an amount equal to three or more  
10 installments, the licensee shall reduce the balance due by the  
11 amount that would be required to be refunded for prepayment in  
12 full on the date of the partial prepayment and compute charges  
13 as payments are made thereafter in the manner prescribed in  
14 subdivision (1) of subsection (c), or the licensee may with  
15 the consent of the borrower reschedule the remaining  
16 installments and precompute charges as prescribed in  
17 subdivision (2) of subsection (c).

18 "(e) Default or extension charges. If the contract  
19 so provides, when a scheduled payment is in default or  
20 delinquent for 10 or more days, the licensee may charge and  
21 collect an additional late charge not to exceed the greater of  
22 ten dollars (\$10) or five percent of the amount of the  
23 scheduled payment in default. Each of the late charges  
24 permitted under this subsection may be collected only once on  
25 any scheduled payment, regardless of the period during which  
26 the payment remains in default or is delinquent. It is the  
27 intent of this subsection that if the payment date of all

1       wholly unpaid installments is deferred or extended one or more  
2       full months and the contract so provides, the licensee may  
3       charge and collect a deferment or default charge only on the  
4       installment which is delinquent at the date the contract is  
5       extended or deferred.

6                 "(f) Rules and regulations. In addition to the  
7       general authority granted to him or her by subsection (a) of  
8       Section 5-18-12, the supervisor may make such rules and  
9       regulations as he or she may deem necessary or advisable to  
10      insure that rebates, default charges, and deferment charges  
11      are so computed, paid to or collected from borrowers that the  
12      total charges collected by licensees under this section are  
13      substantially equivalent to charges authorized to be collected  
14      by licensees under this section.

15                 "(g) Recording fees. The licensee may collect from  
16      the borrower the actual fees paid a public official or agency  
17      of the state for filing, recording, or releasing any  
18      instrument securing the loan.

19                 "(h) Further charges; splitting of contracts. No  
20      further or other charges shall be directly or indirectly  
21      contracted for or received by any licensee, including  
22      insurance premiums of any kind, except those specifically  
23      authorized by this chapter or by Chapter 8 of Title 8. No  
24      licensee shall divide into separate parts any contract made  
25      for the purpose of or with the effect of obtaining charges in  
26      excess of those authorized by this section. All balances due  
27      to a licensee from any person as a borrower, or as an

1 endorser, guarantor, or surety for any borrower or otherwise,  
2 shall be considered a part of any loan being made by a  
3 licensee to the person for the purpose of computing charges.

4 "(i) Installment payments; contract period. No  
5 licensee shall enter into any contract of loan under this  
6 chapter in which the borrower agrees to make any scheduled  
7 repayment of the cash advance more than 25 calendar months  
8 from the date of making the contract of loan. Every loan  
9 contract shall require payment of the cash advance and charges  
10 in installments which shall be payable at approximately equal  
11 periodic intervals; except, that payment dates may be omitted  
12 to accommodate borrowers with seasonal incomes. No installment  
13 contracted for shall be substantially larger than any  
14 preceding installment.

15 "(j) Interest after due date of final installment.  
16 Interest as provided in this section shall not accrue or be  
17 recovered or charged on any loan made under this chapter for  
18 any longer than six months after the due date of the final  
19 installment of principal or interest. After the expiration of  
20 the six-month period, interest may be charged at a rate not to  
21 exceed eight percent per annum.

22 "(k) Inducing borrower to become obligated under  
23 more than one contract. No licensee shall induce or permit any  
24 person or any husband and wife, jointly or severally, to  
25 become obligated directly or contingently or both under more  
26 than one contract of loan at the same time for the purpose of  
27 obtaining a higher rate of charge than would otherwise be

1                   permitted by this section. It shall be unlawful for any  
2                   licensee to evade or attempt to evade this section by inducing  
3                   a customer to borrow from another loan company in which he or  
4                   she has a pecuniary interest or with whom he or she has an  
5                   arrangement for exchange of customers.

6                   "(1) Liabilities of licensees making excess charges.  
7                   Any licensee making any charge in excess of the amount  
8                   authorized herein, except as the result of a deliberate  
9                   violation of or reckless disregard for this chapter, shall  
10                  refund to the borrower the total amount of the actual economic  
11                  damages which at the licensee's option may be done by payment  
12                  to the borrower, or by reducing the amount of the borrower's  
13                  principal obligation. If the borrower is entitled to a refund  
14                  and the licensee refuses to refund within 60 days after  
15                  written demand, including the filing of a legal action, the  
16                  licensee shall forfeit, in addition to the actual economic  
17                  damages his or her right to any finance charge. If the  
18                  licensee has made an excess charge in deliberate violation of  
19                  or in reckless disregard for this chapter, the licensee and  
20                  the several members, officers, directors, agents, and  
21                  employees thereof who shall have participated in a deliberate  
22                  violation of or reckless disregard for this chapter, shall be  
23                  guilty of a misdemeanor which, upon conviction, shall be  
24                  punishable by a fine of not more than five hundred dollars  
25                  (\$500) and not less than one hundred dollars (\$100) or by  
26                  imprisonment of not more than six months, or by both fine and  
27                  imprisonment in the direction of the court. The remedies

1 provided herein shall be the remedy of the borrower under this  
2 chapter as the result of this violation. No action under this  
3 section may be brought more than 18 months after the due date  
4 of the last scheduled payment of the agreement pursuant to  
5 which the charge was made.

6 "(m) Alternative rates of charge.

7 "(1) As an alternative to the interest rates and  
8 charges permitted to be charged by a licensee pursuant to  
9 subsections (a) and (b) on loans of less than one thousand  
10 five hundred dollars (\$1,500), a licensee may charge an  
11 acquisition charge for making the loan in an amount not in  
12 excess of 10 percent of the amount of the principal and an  
13 installment account handling charge in an amount no greater  
14 than the following:

15 "a. Twelve dollars (\$12) per month on any loan of an  
16 amount of one hundred dollars (\$100) or more, up to and  
17 including the amount of three hundred dollars (\$300).

18 "b. Fourteen dollars (\$14) per month on any loan of  
19 an amount in excess of three hundred dollars (\$300), but not  
20 more than four hundred dollars (\$400).

21 "c. Sixteen dollars (\$16) per month on any loan of  
22 an amount in excess of four hundred dollars (\$400), but not  
23 more than five hundred dollars (\$500).

24 "d. Twenty dollars (\$20) per month on any loan of an  
25 amount in excess of five hundred dollars (\$500), but not more  
26 than one thousand dollars (\$1,000).

"e. Twenty-three dollars (\$23) per month on any loan of an amount in excess of one thousand dollars (\$1,000), but not more than one thousand two hundred fifty dollars (\$1,250).

"f. Twenty-six dollars (\$26) per month on any loan of an amount in excess of one thousand two hundred fifty dollars (\$1,250), but not equal to or exceeding one thousand five hundred dollars (\$1,500.)

"Provided, however, that the scheduled payments are in amounts equal to or greater than forty dollars (\$40) per month, inclusive of the installment account handling charge. The acquisition charge and the installment account handling charge may be calculated for the term of the contract and added to the amount of the principal. The acceptance or payment of charges on loans made under this subsection shall not be deemed to constitute payment, deduction, or receipt thereof in advance nor compounding under this subsection.

"(2) The minimum term for repayment of a loan under this subsection is three months and the maximum term of any loan made under this subsection is 18 months.

"(3) Upon the prepayment in full of any loan under this subsection, the installment account handling charge is subject to subsection (d), as it relates to refunds. The acquisition charge shall not be subject to refund.

"(4) No insurance charge under Section 5-18-17, no interest surcharge under Section 8-8-14, nor any other charge of any nature whatsoever, is permitted for loans made pursuant to the rate structure of this subsection, except for

1 acquisition charges and installment account handling charges  
2 as provided under this subsection, default charges under  
3 subsection (e), recording fees under subsection (g), bad check  
4 charges under Section 8-8-15, and assessed court costs.

5 "(5) The loan charges allowed under this subsection  
6 may not be imposed on a loan to a borrower who has more than  
7 one loan outstanding with the licensee and upon which loan  
8 charges were imposed under this subsection.

9 "(6) No licensee shall file a claim against a  
10 decedent borrower's estate for any unpaid indebtedness for a  
11 loan whose charges include an acquisition charge or an  
12 installment account handling charge under this subsection.

13 "(7) In addition to the acquisition charge provided  
14 under subdivision (m) (1), the licensee may collect a closing  
15 fee in an amount not to exceed the lesser of four percent of  
16 the loan amount or fifty dollars (\$50). The closing fee may be  
17 paid from the proceeds of the loan amount and financed by the  
18 licensee.

19 "(8) Upon the prepayment in full of any loan under  
20 this subsection, any closing fee collected shall be subject to  
21 subsection (d), as it relates to refunds, provided, however,  
22 that the licensee may retain up to twenty-five dollars (\$25)  
23 of the closing fee.

24 "(n) (1) Act 2017-373 shall apply to loan contracts  
25 entered into after May 25, 2017.

26 "(2) Act 2017-373 shall not affect loan contracts  
27 entered into prior to May 25, 2017."

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