

# ALABAMA SMALL LOAN ACT

(Act 2017-373; Effective 2017)

- Section 5-18-1 Short title.
- Section 5-18-2 Legislative findings of fact and declaration of intent.
- Section 5-18-3 Definitions.
- Section 5-18-4 License - Required; exemptions; penalties for violation of section.
- Section 5-18-5 License - Application; fees; disposition of fees.
- Section 5-18-6 License — Investigation of application; issuance or denial of license.
- Section 5-18-7 License — Contents; posting; continuing effect.
- Section 5-18-8 License — Place of business of licensee.
- Section 5-18-9 License - Revocation, suspension, etc.; investigation of complaints.
- Section 5-18-10 Examinations of licensees; investigations; enforcement powers of supervisor.
- Section 5-18-11 Books, accounts and records of licensees; annual report.
- Section 5-18-12 Promulgation of rules, regulations and orders by supervisor; furnishing of certified copies of licenses, regulations or orders.
- Section 5-18-13 Advertising; schedule of charges.
- Section 5-18-14 Conduct of other business in office of licensee; loan business confined to licensed offices; acceptance of liens on real estate as security for loans.
- Section 5-18-15 Interest rates, charges, and fees.
- Section 5-18-15.1 Additional Late Payment Charge.
- Section 5-18-16 Duties of licensees as to making and payment of loans.
- Section 5-18-17 Insurance in connection with credit transaction.
- Section 5-18-18 Charges, rates, etc., as to certain loans.
- Section 5-18-19 Collection of loans made outside state.
- Section 5-18-20 Review of orders, etc., of supervisor.
- Section 5-18-21 Enforceability of provisions and agreements which violate chapter; liability of licensee for actual damage.
- Section 5-18-22 Modification, amendment or repeal of chapter.
- Section 5-18-23 Maintenance of listing of licensees doing business in state; public access to reports, etc.

## **Section 5-18-1**

### **Short title.**

This chapter shall be known and may be cited as the Alabama Small Loan Act.

## **Section 5-18-2**

### **Legislative findings of fact and declaration of intent.**

(a) The Legislature finds as facts and determines that:

(1) There exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces;

(2) The expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage earners, salaried employees and other persons of relatively low incomes, is necessarily high in relation to the amounts lent;

(3) Such loans cannot be made profitably under the limitations imposed by existing laws relating to interest and usury. These limitations have tended to exclude lawful enterprises from the small loan field. Since the demand for small loans cannot be legislated out of existence, many small borrowers have been left to the mercy of those willing to bear the opprobrium and risk the penalties of usury for a large profit;

(4) Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless even if he is aware of the usurious nature of the transaction and of his legal rights;

(5) As a result, borrowers of small sums are being exploited to the injury of the borrower, his dependents and the general public. Charges are generally exorbitant in relation to those necessary to the conduct of a legitimate small loan business, trickery and fraud are common and oppressive collection practices are prevalent; and

(6) These evils characterize and distinguish loans of \$749.00 or less. Legislation to control this class of loans is necessary to protect the public welfare.

(b) It is the intent of the Legislature in enacting this law to bring under public supervision those engaged in the business of making such loans, to eliminate practices that facilitate abuse of borrowers, to establish a system of regulation for the purpose of insuring honest and efficient small loan service and of stimulating competitive reductions in charges, to allow lenders who meet the conditions of this chapter a rate of charge sufficiently high to permit a business profit and to provide the administrative machinery necessary for effective enforcement.

### **Section 5-18-3**

#### **Definitions.**

The following terms, when used in this chapter, shall have the following meanings, unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall apply also to the plural.

(1) Person.

Such term shall include individuals, copartnerships, associations, trusts, corporations and any other legal entities.

(2) License.

A license, issued under the authority of this chapter, to make loans in accordance with the provisions of this chapter at a single place of business.

(3) Licensee.

A person to whom one or more licenses have been issued.

(4) Supervisor.

The Supervisor of the Bureau of Loans of the State Banking Department.

(5) Bureau.

The Bureau of Loans of the State Banking Department.

(6) Cash advance.

The amount of cash or its equivalent that the borrower actually receives or is paid at his direction or on his behalf.

### **Section 5-18-4**

#### **License - Required; exemptions; penalties for violation of section.**

(a) License required. No person shall engage in the business of lending in amounts of less than one thousand five hundred dollars (\$1,500) and contract for, exact or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, insurance, compensation, consideration or expense, which in the aggregate are greater than the interest that the lender would be permitted by law to charge for a loan of money if he were not a licensee under this chapter, except as provided in and authorized by this chapter and without first having obtained a license from the supervisor. For the purpose of this section, a loan shall be deemed to be in the amount of less than one thousand five hundred dollars (\$1,500) if the net amount or value advanced to or on behalf of the borrower, after deducting all payments for interest, expenses and charges of any nature taken substantially contemporaneously with the making of the loan, is less than one thousand five hundred dollars (\$1,500).

(b) Exemptions. This chapter shall not apply to any person doing business under the authority of, and as permitted by, any law of this state or of the United States relating to banks, trust companies, savings or building and loan associations, credit unions as defined by law nor to any lawful, bona fide pawnbroking business, nor shall this chapter apply to any person making loans to their tenants engaged in agriculture, nor to loans by

agricultural suppliers to persons whose principal business is farming, nor shall it apply to agricultural credit corporations or associations organized under an act of the Congress of the United States, nor shall it apply to the business of financing the purchase of motor vehicles, refrigerators or other personal property, nor shall it apply to loans insured or guaranteed by the United States or any of its agencies.

(c) Evasions. The provisions of subsection (a) of this section shall apply to any person who seeks to evade its application by any device, subterfuge or pretense whatsoever including, but not thereby limiting the generality of the foregoing: The loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, insurance, goods or things in action; the use of collateral or related sales or purchases of goods or services or agreements to sell or purchase, whether real or pretended; and, receiving or charging compensation for goods or services, whether or not sold, delivered or provided and the real or pretended negotiation, arrangement or procurement of a loan through any use of activity of a third person, whether real or fictitious.

(d) Penalties. Whoever violates or participates in the violation of any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars (\$500) nor less than one hundred dollars (\$100), or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court. Any contract of loan in the making or collection of which any act shall have been done which violates this section shall be void, and the lender shall have no right to collect, receive or retain any principal, interest or charges whatsoever.

### **Section 5-18-5**

#### **License - Application; fees; disposition of fees.**

Application for a license shall be in writing, under oath and in the form prescribed by the supervisor. The application shall give the approximate location where the business is to be conducted and shall contain such further relevant information as the supervisor may require, including the names and addresses of the partners, officers, directors or trustees and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by Section 5-18-6. At the time of making such application, the applicant shall pay to the supervisor the sum of one hundred dollars (\$100) as a fee for investigating the application. All licensees under this chapter shall pay an annual license fee of five hundred dollars (\$500) for each office, branch or place of business of the licensee, which shall be due on October 1 of each year and shall be for a one-year period ending September 30 following and shall be delinquent on November 1 of each year, and there shall be a penalty of 10 percent for each month or portion thereof added to such license fee upon delinquency and collected by the bureau. Two hundred dollars (\$200) of each such license fee collected shall be paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of such licensees; provided further that in fiscal year 1986, two hundred fifty dollars (\$250) of each such license fee collected shall be paid into the special fund provided in Section 5-

2A-20 and used in the supervision and examination of such licensees; provided further that in fiscal year 1987, three hundred dollars (\$300) of each such license fee collected shall be paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of such licensees; provided further that in fiscal year 1988, three hundred fifty dollars (\$350) of each such license fee collected shall be paid into the special fund provided in Section 5-2A-20 and used in the supervision and examination of such licensees; and provided further that in fiscal year 1989 and thereafter, all such license fees collected shall be paid into the special fund provided by Section 5-2A-20 and used in the supervision and examination of such licensees. If any applicant licensed under this chapter for the first time shall commence business after April 1 in any year, the amount of the license fee shall be one half the amount of a full year's license fee. The amount of the license fee and penalties, if any, shall be paid to the Supervisor of the Bureau of Loans, who shall remit the same to the Treasurer of the State of Alabama as provided by law. The license provided for in this chapter shall be in addition to all other licenses now or hereafter provided for by law and shall be in addition to the tax provided for by Chapter 16 of Title 40; and the amount of the license fee levied by this section shall not be credited upon or deducted from, in whole or in part, the tax levied by said Chapter 16 as to the current state tax year or as to any prior or subsequent state tax year. No refunds for the current or any prior or subsequent state tax year or any portion of the tax levied by said Chapter 16 shall be made on the ground that the license fee levied by this section was not credited upon or deducted from the tax levied by said Chapter 16, and no civil action shall lie to enforce any claim for such refund.

### **Section 5-18-6**

#### **License — Investigation of application; issuance or denial of license.**

(a) Investigation of application. —Upon the filing of such application and the payment of such fees, the supervisor shall investigate the facts concerning the application and the requirements provided for in subsection (b) of this section. The supervisor shall grant or deny such application for a license within 90 days from the filing thereof with the required information and fees unless the period is extended by written agreement between the applicant and the supervisor.

(b) Issuance of license. —If the supervisor shall find that the liquid assets, financial responsibility, experience, character and the general fitness of the applicant are such as to warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently, within the purposes of this chapter, and that allowing such applicant to engage in the business would promote the convenience and advantage of the community in which the business of the applicant is to be conducted, he shall thereupon enter an order granting such application and file his findings with the bureau and forthwith issue and deliver a license to the applicant.

(c) Denial of license. —If the supervisor shall not so find, he shall notify the applicant in writing who may request a hearing on the application. The request for a hearing must be within 30 days of the rejection, with the hearing to be held within 30 days of the date of

the request. After such hearing or if no hearing is demanded, the supervisor may deny such application by written order accompanied by his findings of fact and shall deliver a copy of such order and findings to the applicant. The investigation fee shall be retained by the supervisor while the license fee shall be returned to the applicant.

### **Section 5-18-7**

#### **License — Contents; posting; continuing effect.**

(a) Contents of license; posting. —Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee and, if the licensee is a copartnership or association, the names of the members thereof and, if a corporation, the date and place of its incorporation. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable.

(b) Continuing effect of license. —Each license shall remain in full force and effect until surrendered, revoked or suspended as provided in this chapter.

### **Section 5-18-8**

#### **License — Place of business of licensee.**

(a) Separate license for each place of business. —Not more than one place of business shall be maintained under the same license, but the supervisor may issue additional licenses to the same licensee upon his compliance with all the provisions of this chapter governing the issuance of the first or original license.

(b) Removal. —No change in the place of business of a licensee to a location outside of the original municipality shall be permitted under the same license. When a licensee wishes to change his place of business within the same municipality, he shall give written notice thereof to the supervisor who shall investigate the facts and, if he shall find the proposed location is reasonably accessible to borrowers under existing loan contracts, shall enter an order permitting the change and shall amend the license accordingly. If the supervisor shall not so find, he shall enter an order denying the licensee such permission in the manner specified in and subject to the provisions of subsection (c) of Section 5-18-6.

(c) Residence of borrower. —Nothing in this chapter shall be construed to restrict the loans of any licensee to residents of the community in which the licensed place of business is situated.

## **Section 5-18-9**

### **License — Revocation, suspension, etc.; investigation of complaints.**

(a) Revocation of license. —The supervisor shall, upon 10 days' written notice to the licensee stating the contemplated action and in general the grounds therefor and upon reasonable opportunity to be heard, revoke any license issued under this chapter if he finds that:

- (1) The licensee has failed to pay the annual license fee;
- (2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provisions of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter;
- (3) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the supervisor in refusing originally to issue such license; except, that the license shall not be revoked because of convenience and advantage; or
- (4) The licensee is guilty of using unreasonable collection tactics.

(b) Suspension of license. —If the supervisor finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, he may, upon three days' written notice and a hearing, enter an order suspending such license for a period not exceeding 30 days.

(c) Records and notice. —Whenever the supervisor shall revoke or suspend a license issued pursuant to this chapter, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of such an order he shall file with the bureau his findings and a summary of the evidence supporting them, and he shall forthwith deliver a copy thereof to the licensee.

(d) Surrender of license. —Any licensee may surrender any license by delivering it to the supervisor with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(e) Preexisting contracts. —No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting contract between the licensee and any borrower.

(f) Reinstatement of license. —The supervisor may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the supervisor in refusing originally to issue such license under this chapter.

(g) Complaints of violation investigated. —The supervisor shall, upon sworn complaint of any borrower, investigate or cause to be investigated any alleged violation of this chapter.

## **Section 5-18-10**

### **Examinations of licensees; investigations; enforcement powers of supervisor.**

(a) Annual examinations of licensees. At least once each year and at such other time as may be deemed necessary by the Supervisor of the Bureau of Loans, an examination shall be made of the place of business of each licensee and of the loans, transactions, books, papers, and records of the licensee so far as they pertain to the business licensed under this chapter. As cost of examination, the licensee shall pay to the Bureau of Loans the actual cost of each examination, the amount of which shall be reasonably prescribed under rules and regulations promulgated by the Superintendent of Banks; provided, however, the cost for each day of examination by each examiner shall not exceed eight times the average hourly rate for auditing purposes as charged by three recognized certified public accountancy firms in the City of Montgomery, Alabama. In addition thereto, the licensee shall pay as per diem the amount authorized by law for state employees traveling inside the state in the service of the state. All such fees shall be paid into the special fund set up by the State Treasury pursuant to Section 5-2A-20, and used in the supervision and examination of licensees.

(b) Investigations. For the purpose of discovering violations of this chapter or of securing information lawfully required hereunder, the supervisor or his or her duly authorized representatives may at any time investigate the business and examine the books, accounts, papers, and records used therein of (1) any licensee, (2) any other person engaged in the business described in subsection (a) of Section 5-18-4 or participating in such business as principal, agent, broker, or otherwise and (3) any person who the supervisor has reasonable cause to believe is violating or is about to violate any provisions of this chapter, whether or not the person shall claim to be within the authority or beyond the scope of this chapter. For purposes of this section, any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value of less than one thousand five hundred dollars (\$1,500) shall be presumed to be engaged in the business described in subsection (a) of Section 5-18-4.

(c) Access to records; witnesses. For the purposes of this section, the supervisor or his or her duly authorized representatives shall have and be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and to examine him or her under oath relative to the loans or the business or to the subject matter of any examination, investigation, or hearing.

(d) Cease and desist orders; injunctions; receivers. Whenever the supervisor has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, he or she may in addition to all actions provided for in this chapter and in addition to all other remedies that he or she may have at law and without prejudice thereto enter an order requiring such person to desist or to refrain from such violation, and an action may be brought on the relation of the Attorney General or the supervisor to enjoin the person from engaging in or continuing the violation or from doing any act or acts in furtherance thereof. In any action, an order or judgment may be



entered awarding the preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as shall from time to time be conferred upon him by the court.

(e) Confidentiality of examinations and investigations. Reports of examinations and investigations of the supervisor, 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 unless pursuant to a lawfully issued subpoena. This subsection does not apply to disclosures in proceedings brought by the supervisor pursuant to this chapter.

### **Section 5-18-11**

#### **Books, accounts and records of licensees; annual report.**

(a) Books and records. -Each licensee shall keep and use in his business such books, accounts and records as will enable the supervisor to determine whether such licensee is complying with the provisions of this chapter and with the orders and regulations lawfully made by the supervisor hereunder. Each licensee shall preserve such books, accounts and records for at least two years after making the final entry on any loan recorded therein.

(b) Annual report.

(1) Each licensee shall annually, on or before May 1, file a report with the supervisor as to each licensed place of business under this chapter, covering the preceding calendar year.

(2) Such report shall be made under oath and shall be in the form prescribed by the supervisor who shall make and publish annually an analysis and recapitulation of such reports.

### **Section 5-18-12**

#### **Promulgation of rules, regulations and orders by supervisor; furnishing of certified copies of licenses, regulations or orders.**

(a) Rules, regulations, and orders. —The supervisor shall have authority to make reasonable rules, regulations, and orders for the administration and enforcement of this

chapter, in addition hereto and not inconsistent herewith. The regulation or order shall be referenced to the section or sections of the chapter which set forth the legislative standard which it interprets or to which it applies. Every regulation shall be promulgated by an order, and any ruling, demand, requirement or similar administrative act may be promulgated by an order. Every order shall be in writing, shall state its effective date and the date of its promulgation and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every other order containing a requirement of general application shall be mailed to each licensee at least 10 days before the effective date thereof. The failure of a licensee to receive a copy of the regulations shall not exempt him from the duty of compliance with the valid regulations lawfully issued.

(b) Certified copies of official documents. —On application of any person and payment of the costs thereof, the supervisor shall furnish, under his or her seal and signed by him or her or his or her deputy a certified copy of any license, regulation or order. In any court or proceeding, the copy shall be prima facie evidence of the fact of the issuance of the license, regulation or order.

(c) Standards for judicial review of rules and regulations. —As set forth in Section 5-19-21, the supervisor may promulgate reasonable rules and regulations, consistent with the laws of this state, as may be necessary to carry out the provisions of this chapter, and issue written interpretations of consumer finance laws and regulations. The courts of this state shall apply each regulation that becomes effective and each written interpretation that is issued under this subsection, unless the regulation or interpretation is found to be arbitrary and capricious, outside the supervisor's statutory authority, or violative of the Constitution of Alabama of 1901. Any licensee whose practices are consistent with any regulation or written interpretation shall not be liable for any violation of this chapter, even though the rule, or interpretation thereof, is ruled invalid for any reason by a court of competent jurisdiction.

### **Section 5-18-13**

#### **Advertising; schedule of charges.**

(a) Advertising, etc. No licensee or other person subject to this chapter shall advertise, display, distribute or broadcast or cause to permit to be advertised, displayed, distributed or broadcast in any manner whatsoever any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans in the amount or of the value of less than one thousand five hundred dollars (\$1,500). The supervisor may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he or she may deem necessary to prevent misunderstanding thereof by prospective borrowers. The supervisor may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by him or her to prevent an erroneous impression as to the scope or degree of protections provided by this chapter.

(b) Schedule of charges. Each licensee shall conspicuously display in each licensed place of business a full and accurate schedule of the rates of charge upon all classes of loans currently to be made by him or her.

#### **Section 5-18-14**

##### **Conduct of other business in office of licensee; loan business confined to licensed offices; acceptance of liens on real estate as security for loans.**

(a) Other business in same office. —No licensee shall conduct the business of making loans under this chapter within any office, suite, room or place of business in which any other business is solicited or engaged in or in association or conjunction with any other business until three days' written notice of an intention so to do has been given the supervisor. Upon receipt of written notification, the supervisor may investigate the facts and, if he finds that the character of the licensee and the nature of the other business warrant belief that such conduct of business would conceal violation or evasion of this chapter or of regulations lawfully made hereunder, he shall enter an order directing the licensee to discontinue said other business. The order shall be entered in the manner specified in and subject to the provisions of subsection (c) of Section 5-18-6.

(b) Business confined to licensed office. —No licensee shall conduct the business of making loans provided for by this chapter under any name or at any place of business within this state other than that stated in the license. Nothing in this section shall prevent the making of loans by mail nor prohibit accommodations to individual borrowers when necessitated by sickness or other emergency situations.

(c) Liens on real estate. —No licensee shall take a lien upon real estate as security for any loan made under this chapter, except such lien as is created by law through the entry or recording of a judgment.

#### **Section 5-18-15**

##### **Interest rates, charges, and fees.**

(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 seventy-eighths or sum of the digits principle as follows: The amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the periodic time balances of the contract scheduled to follow the date of prepayment bears to the sum of all the periodic time balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

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

(e) Default or extension charges. If the contract so provides, when a scheduled payment is in default or delinquent for 10 or more days, the licensee may charge and collect an additional late charge not to exceed the greater of ten dollars (\$10) or five percent of the amount of the scheduled payment in default. Each of the late charges permitted under this subsection may be collected only once on any scheduled payment, regardless of the period during which the payment remains in default or is delinquent. It is the intent of this subsection that if the payment date of all wholly unpaid installments is deferred or extended one or more full months and the contract so provides, the licensee may charge and collect a deferment or default charge only on the installment which is delinquent at the date the contract is extended or deferred.

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

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

(h) Further charges; splitting of contracts. No further or other charges shall be directly or indirectly contracted for or received by any licensee, including insurance premiums of any kind, except those specifically authorized by this chapter or by Chapter 8 of Title 8. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this section. All balances due to a licensee from any person as a borrower, or as an endorser, guarantor or surety for any borrower or otherwise, shall be considered a part of any loan being made by a licensee to the person for the purpose of computing charges.

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

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

(k) Inducing borrower to become obligated under more than one contract. No licensee shall induce or permit any person or any husband and wife, jointly or severally, to become obligated directly or contingently or both under more than one contract of loan at the same time for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this section. It shall be unlawful for any licensee to evade or attempt to evade this section by inducing a customer to borrow from another loan company in which he or she has a pecuniary interest or with whom he or she has an arrangement for exchange of customers.

(l) Liabilities of licensees making excess charges. Any licensee making any charge in excess of the amount authorized herein, except as the result of a deliberate violation of or reckless disregard for this chapter, shall refund to the borrower the total amount of the actual economic damages which at the licensee's option may be done by payment to the borrower, or by reducing the amount of the borrower's principal obligation. If the borrower is entitled to a refund and the licensee refuses to refund within 60 days after written demand, including the filing of a legal action, the licensee shall forfeit, in addition to the actual economic damages his or her right to any finance charge. If the licensee has made an excess charge in deliberate violation of or in reckless disregard for this chapter, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in a deliberate violation of or reckless disregard for this chapter, shall be guilty of a misdemeanor which, upon conviction, shall be punishable by a fine of not more than five hundred dollars (\$500) and not less than one hundred dollars (\$100) or by imprisonment of not more than six months, or by both fine and imprisonment in the direction of the court. The remedies provided herein shall be the remedy of the borrower under this chapter as the result of this violation. No action under this section may be brought more than 18 months after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(m) Alternative rates of charge.

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

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

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

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

d. Twenty dollars (\$20) per month on any loan of an amount in excess of five hundred dollars (\$500), but not more 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 (\$1250), but not equal to or exceeding one thousand five hundred dollars (\$1500).

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

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

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

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

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

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

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

### **Section 5-18-15.1**

**Additional late payment charge.**

Notwithstanding the provisions of subsection (e) of Section 5-18-15, for contracts entered into after June 7, 2007, the additional late charge a licensee licensed under this chapter, the Alabama Small Loan Act, may charge when a scheduled payment is in default or delinquent for 10 or more days, is hereby increased from a charge not to exceed the greater of ten dollars (\$10) or five percent of the scheduled payment in default to a charge not to exceed the greater of eighteen dollars (\$18) or five percent of the scheduled payment in default. (*Act 2007-281, §1.*)



## **Section 5-18-16**

### **Duties of licensees as to making and payment of loans.**

(a) Copy of contract or statement; receipts; payment in advance; release of obligation and security. - Every licensee shall:

(1) At the time a loan is made deliver to the borrower or, if there are two or more borrowers, to one of them a copy of the loan contract, executed by the borrower, in the English language showing in clear and distinct terms:

- a. The name and address of the lender and one of the primary obligors on the loan.
- b. The date of the loan contract.
- c. Schedule of installments or description thereof.
- d. The cash advance.
- e. The face amount of the note evidencing the loan.
- f. The amount collected or paid for insurance, if any.
- g. The amount collected or paid for filing or other fees allowed by this chapter.
- h. The collateral or security for the loan.

(2) Give to the person making any cash payment on account of any loan a receipt at the time the payment is made which receipt need only show the total amount of the cash payment. No receipt shall be required in the case of payments made by the borrower's check or money order, and the use of a coupon book system shall be deemed in compliance with this section.

(3) Permit the payment to be made in advance in any amount on any contract of loan at any time during a licensee's regular business hours.

(4) Upon repayment of the loan in full, mark plainly every obligation and security signed by any obligor with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, and cancel and return any note and any assignment given to the licensee.

(b) Confessions of judgment; incomplete instruments. -No licensee shall:

(1) Take any confession of judgment or any power of attorney running to himself or herself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor

(2) Take any note or promise to pay that does not disclose the total amount to be repaid, a schedule of payments or a description thereof and the agreed rate or aggregate amount of charge, nor any instrument in which blanks are left to be filled in after execution.

(c) Installments. - Every loan contract shall provide for repayment of principal and charges at approximately equal periodic intervals of time, which shall be so arranged that no installment is substantially greater in amount than any preceding installment.

(d) Confidential relationship or fiduciary duty not created by loan transaction. - Absent other factors, a loan transaction does not create a confidential relationship between the borrower and the licensee nor does it give rise to or create a fiduciary duty on the part of the licensee.

### **Section 5-18-17**

#### **Insurance in connection with credit transaction.**

(a) With respect to any insurance written in connection with any credit transaction under this chapter, the creditor shall be subject to the same restrictions, prohibitions, powers, and allowances as any creditor bank, retail establishment, sales finance company, licensee, or any other creditor under Section 5-19-20, and shall be subject to the same rates and regulations promulgated pursuant to that section.

(b) Insurance sold by a licensee or its agents shall be regulated by the Supervisor of the Bureau of Loans. All insurance shall be written by a company authorized to conduct business in the State of Alabama.

### **Section 5-18-18**

#### **Charges, rates, etc., as to certain loans.**

Licenses may charge to a borrower the rates permitted by this chapter only on principal loan balances less than one thousand dollars (\$1,000). No licensee shall induce or permit any person, jointly or severally, to become obligated directly or contingently, or both, on more than one loan made pursuant to this chapter at the same time for the purpose of obtaining a higher finance charge than would otherwise be permitted by Section 5-18-15. If a licensee makes a loan of one thousand dollars (\$1,000) or more, the charges authorized by this chapter shall not apply to any part of the loan. The rates on the entire amount of a loan of one thousand dollars (\$1,000) or more shall be governed by the applicable provisions of Chapter 8 of Title 8 or Chapter 19 of this title. The supervisor may suspend or revoke the license of any licensee who violates this section in the manner prescribed by Section 5-18-9, and the penalties provided for in subsection (1) of Section 5-18-15 shall apply to any person, firm or corporation violating this section.

### **Section 5-18-19**

**Collection of loans made outside state.**

Any loans made outside this state in accordance with the law applicable to such loan in the state in which the loan was made may be collected in this state.

### **Section 5-18-20**

#### **Review of orders, etc., of supervisor.**

In addition to any other remedy he may have, any licensee and any person considering himself aggrieved by any act or order of the supervisor under this chapter may, within 30 days from the entry of the order complained of, or within 60 days of the act complained of if there is no order, petition the Circuit Court of Montgomery County for review of such act or order; provided, that such petition shall be docketed, heard and tried in the same manner as other extraordinary writs issued by the court and a copy of the petition and order setting the same for hearing shall be served on the supervisor, giving him such notice of the time and place of the hearing as may be directed by the court.

### **Section 5-18-21**

#### **Enforceability of provisions and agreements which violate chapter; liability of licensee for actual damage.**

Except where other specific remedies are provided in this chapter for violations, in which event those remedies shall apply, any provision of a loan contract which violates this chapter shall be unenforceable by the licensee 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 set forth in subsection (l) of Section 5-18-15, any licensee who fails to comply with any requirement imposed under this chapter with respect to any person is liable to the person for the actual damage sustained by the person as the result of the failure.

### **Section 5-18-22**

#### **Modification, amendment or repeal of chapter.**

This chapter or any part thereof may be modified, amended or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder; provided, that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any borrower.

### **Section 5-18-23**

#### **Maintenance of listing of licensees doing business in state; public access to reports, etc.**

(a) The supervisor shall cause to be kept on file in the Bureau of Loans, open to public inspection during business hours, an alphabetical listing of all licensees doing business in Alabama, and such list shall reveal the true ownership of the licensee companies. If the company is a corporation, the list shall indicate the name of the corporation, the address of the home office and the names and addresses of its officers and directors.

(b) Except as provided in subsection (a) of this section, all applications, reports and other papers and documents submitted by licensees to the supervisor or to the bureau shall be open to public inspection only upon approval of the supervisor, but the supervisor shall not deny any person access to such records when the disclosure thereof to such person is in the public interest.