

**ALABAMA LEGISLATURE PASSES NEW LEGISLATION ON BEHALF OF
THE
DEPARTMENT OF BANKING, BUREAU OF LOANS**

Congress enacted the S.A.F.E. Mortgage Licensing Act of 2008 (SAFE) which was signed into law on July 30, 2008, establishes federal minimum standards of licensing or registration for individuals meeting the definition of “*loan originator or registered loan originator.*” The passage of S.A.F.E was made possible under the Housing and Economic Recovery Act of 2008 (HERA). SAFE and HERA together were designed to provide consumer protection while fostering recovery of the nation’s housing market.

In response to and to comply with the requirements of the S.A.F.E. Mortgage Licensing Act, state regulators have introduced legislation on a state by state basis to implement the provisions of the federal statutes. While the below referenced 2009 Alabama Acts, which were passed by the Alabama Legislature during the recent Regular Session, are primarily orientated toward compliance issues with real property mortgages, certain elements may affect both Alabama Small Loan Act and Alabama Consumer Credit Act lenders, especially consumer finance lenders who engage in making real property mortgages. These bills require close attention to determine if, and to what extent, they may apply to your company’s operations.

In the 2009 Regular Session of the Alabama Legislature just ended in May, 2009, four significant bills were enacted into law for increased regulatory oversight by the Department of Banking, Bureau of Loans relative to consumer and real property lending practices, and provided District Attorneys and the Attorney General with new authority to investigate residential mortgage fraud. Full copy of the text of the bills that became Alabama Acts may be found by accessing the Secretary of State’s Web site at: <http://www.sos.state.al.us/vb/inquiry/inquiry.aspx?area=Legislative%20Acts> , click on Act Number and enter the relative Act Number contained in the summary noted below.

ACT 2009-624

This Act amends certain Sections of the Mortgage Brokers Licensing Act to provide:

*Limitations for those excluded from the licensure requirement. Persons licensed under Section 5-19-22 of the Alabama Consumer Credit Act are excluded from the provisions of this Act.

*A requirement that certain applicants have experience in the mortgage industry;

*For the combination of the initial license fee and investigation fee;

*To allow the Bureau to require surety bonds and background checks;

*To exclude exemptions from licensing fees;

*To allow the licensee’s principal place of business to be outside the State of Alabama.

Effective Date: **November 21, 2009**

ACT 2009-625

This Act amends Section 5-18-5 of the Alabama Small Loan Act, Section 5-19-22 and Section 5-19-31 of the Alabama Consumer Credit Act as follows:

*Both ASLA and ACCA are amended to provide for licenses to be due on January 1 of each year for a one-year period ending on December 31 following and will become delinquent on February 1 of each year. A penalty of 10 percent for each month or portion of each month delinquent will be added to each license fee and collected by the Bureau;

This provision will change the current renewal license dates for current licensees from October 1 to January 1 of each year. This change will be covered by instructions to be issued by the Bureau which will include specific changes for ACCA lenders who engage in making real property loans in Alabama.

*The Act requires insurance companies to be licensed;

*The Act allows the State Banking Department, Bureau of Loans to require applicants to obtain a surety bond;

*The act requires certain licensees of ACCA who engage in real property lending to apply for licensing through the Nationwide Mortgage Licensing System and Registry (the Bureau of Loans will provide a procedure and facility to accommodate this requirement through the Department of Banking Web site and will be issuing procedural instructions to accomplish the task);

*The Act requires ACCA lenders engaged in making real property loans and who attain licensing through the Nationwide Mortgage Licensing System to submit to background checks which may include fingerprinting, investigation of civil or administrative records, credit history, or any other data bases deemed necessary by the Nationwide Mortgage Licensing System and Registry.

*The Act make all fees paid to the Bureau nonrefundable, excludes any credit for licensure fees, and provides for certain exemptions.

Effective Date: **August 22, 2009**

ACT 2009-627

ALABAMA SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009 OR ALABAMA S.A.F.E. MORTGAGE LICENSING ACT OF 2009

*This Act provides for the licensing and regulation of "*Mortgage Loan Originators*" and will require compliance by Alabama Consumer Credit Act lenders who engage in real property loans. The Act covers the activities of *Mortgage Loan Originators* that originate or offer financing for residential real property in the State of Alabama. The Act covers direct loans and purchase money mortgages on real property. The Act gives the Department of Banking and Bureau of Loans broad administrative authority;

*The term *Mortgage Loan Originator* includes an individual who for compensation or gain or in the expectation of compensation or gain:

*Takes a residential mortgage loan application; or

*Offers or negotiates terms of a residential mortgage loan

There are certain exceptions for the definition of a *Mortgage Loan Originator*

*The term "*Loss Mitigation Specialist*" means an individual employed by a lender or servicer who negotiates or renegotiates the terms of an existing loan, or assists in refinancing an existing loan when a borrower is in default, or in reasonably foreseeable likelihood of default.

NOTE: For those ACCA lenders engaged in real property mortgage lending (1st or 2nd lien), a through reading of this Act is highly recommended and may require counsel with your attorney.

Effective Date: **June 1, 2009**, however, in order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the maximum effective date for licensure requirements of this Act is June 10, 2010. The Alabama Department of Banking, Bureau of Loans is currently working

on putting the final procedures in place for compliance, including renewal licensing for licensees under the new effective date of January 1 and will be issuing guideline requirements in the near future.

ACT 2009-752

THE ALABAMA RESIDENTIAL MORTGAGE FRAUD ACT

This Act:

- *Defines the offense of Residential Mortgage Fraud;
- *Gives the District Attorneys and the Attorney General the authority to investigate mortgage fraud

Effective Date: **August 22, 2009**

NATIONWIDE MORTGAGE LICENSING SYSTEM (“NMLS”)

While the Bureau of Loans will publish guidelines and procedures for required licensing by ACCA lenders engaged in real property loans through the Nationwide Mortgage Licensing System and Registry, these lenders may want to familiarize themselves with the system requirements and procedures. This system has been and is being developed. In order to protect their citizens and bring greater accountability and transparency to the mortgage industry, state mortgage regulators developed the Nationwide Mortgage Licensing System (“NMLS”). NMLS increases and centralizes information available to state regulators and the mortgage industry about the professionals and companies that originate home mortgages.

Minimum state requirements in Section 1508 a State loan originator supervisory authority must:

- *provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.
- *ensure that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.
- *regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.
- *have due process in place for regulatory actions that were taken by the State and submitted to the Nationwide Mortgage Licensing System and Registry.
- *establish a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.
- *establish a minimum net worth or surety bonding requirement that reflects the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

Check out NMLS at: <http://www.stateregulatoryregistry.org/NMLS//AM/Template.cfm?Section=Home3>

FEDERAL LEGISLATIVE UPDATE

June 17, 2009

Since taking office, the Obama administration has taken a dim view of the way consumer loans are made in the U.S. The crisis caused by the subprime real estate market, credit

card debt and delinquency, and auto loans turning upside down gives momentum to consumer advocacy groups and the dominate party in Congress to drive through legislation to regulate every aspect of consumer lending. Regardless of whether any of our consumer finance lenders in Alabama bears any responsibility for the problems, we are just “one of the bunch” when administration officials are bent on tackling the issues.

The following is an article that summarizes the White House plan for a new Consumer Financial Protection Agency that will consolidate all facets of our lending protection in an agency that will regulate lending on a national basis – big brother will cure all. Also, provided in this communication is an update on FEDERAL LEGISLATION currently in progress.

Obama to create new agency

By: Mike Allen and Eamon Javers

Blaming a “culture of irresponsibility” that swept from Wall Street to Washington, **President Barack Obama** on Wednesday proposed sweeping new regulations designed to prevent another meltdown in the financial markets like the one that tipped the nation’s economy into recession.

The centerpiece of Obama’s plan is giving the Federal Reserve new powers to oversee the entire financial system – something no agency was in a position to do ahead of the financial-market meltdown last fall. In addition, Obama is creating a Consumer Financial Protection Agency to safeguard against mortgage, credit card and other abuses that contributed to the current crisis.

Obama said his plans replaces regulations created in the 1930s to deal with the Great Depression, but said those rules had been “overwhelmed by the speed, scope and sophistication of a 21st century global economy.”

”Millions of Americans who have worked hard and behaved responsibly have seen their life dreams eroded by the irresponsibility of others and the failure of their government to provide adequate oversight. Our entire **economy** has been undermined by that failure,” Obama said at the White House.

But Obama stopped short of merging an alphabet soup of federal regulatory agency into one massive “super-regulator” – but instead will give many of those oversight duties to the Fed. But Obama stopped short of merging an alphabet soup of federal regulatory agency into one massive “super-regulator.”

The White House announced five key elements of his plan:

— Tougher oversight of the financial firms themselves, including beefed up capital requirements, and higher standards for regulators who are monitoring the safety and soundness of the firms. The White House also set out new requirements for large interconnected institutions – the so-called “systemically important” firms whose collapse could drag down the entire system – including new restrictions on executive pay.

— A renewed focus on regulated financial products that previously largely escaped regulation, such as over-the-counter derivatives. The White House rules also take aim at abuses in the subprime mortgage market, where mortgage originators bundled loans into securities and sold them off to investors, washing their hands of any risky loans in the bunch.

— Strengthening consumer protection, largely through the creation of the new agency.

— Giving the government – in the form of the Federal Reserve – new tools to manage another crisis, including the ability to break up firms that are deemed dangerous to the overall economy. Each firm will be

required to keep on hand a “credible plan to resolve the firm” in the case of an emergency.

— Improve coordination with governments around the world that oversee global financial institutions, something European nations sought from Obama when he attended the G-20 in London earlier this year.

The new independent agency will look after consumers on matters like credit cards, with an eye toward keeping in check products are deemed abusive or misleading by consumers. The new agency also would ensure that mortgage-holders receive a “single, simple, integrated federal mortgage disclosure” instead of the sometime confusing forms provided now.

The consumer agency was one of the proposals in a Treasury Department “white paper” of 85-plus pages that outlines what the White House calls a “comprehensive plan for new rules of the road for the financial industry.”

The plan does not ban specific financial products, and officials decided to “harmonize rules” among existing regulators rather than orchestrates a widespread elimination or consolidation of agencies, as they had considered at the outset. The plan eliminates the Office of Thrift Supervision, the weakest of the regulators.

Many of the plans require congressional approval, but some can be accomplished by the administration through executive authority. The administration says it thinks Congress can pass the legislative piece of the plan this year, and promised to send a bill to the hill soon after Wednesday’s announcement.

Some in the White House worry that the urgency for the overhaul has dissipated as the economy has begun showing signs of recovery, and now that Capitol Hill is bogged down with health care and energy legislation. But top officials say it would have been a mistake to rush a shoddy plan up to Congress.

Administration officials are optimistic that the House Financial Services Committee, chaired by Rep. Barney Frank (D-Mass.) will embrace as many as 90 percent of the ideas. The Senate will be tougher, and Sen. Chris Dodd (D-Conn.), chairman of the Banking Committee, is overloaded because of reelection worries back home and his role as fill-in chairman of the health committee while Sen. Ted Kennedy (D-Mass.) is away for health reasons.

But administration officials think that once the House moves the legislation, Dodd might be persuaded to follow. And Dodd might realize that because of his political vulnerability, he has an incentive to push the bill.

ALABAMA CONSUMER FINANCE ASSOCIATION
FEDERAL LEGISLATIVE UPDATE
111TH U.S. CONGRESS

June 17, 2009

S255 – Empowering State’ Right to Protect Consumers Act of 2009 – [Sen. Sheldon Whitehouse \[D-RI\]](#)

A bill to empower States’ Right to Protect Consumers Act of 2009 – Amends the Truth In Lending Act to limit the annual percentage rate (APR) applicable to any consumer credit

transaction (other than a residential mortgage transaction), including any associated fees, to the maximum rate permitted by the laws of the state in which the consumer resides.

Status: *Introduced January 15, 2009
*Read twice and assigned to the Senate Committee on Banking, Housing, and Urban Affairs
*Pending before the Committee – 06-17-09

<http://www.govtrack.us/congress/bill.xpd?bill=111-255>

S257 – Consumer Credit Fairness Act – [Sen. Sheldon Whitehouse \[D-RI\]](#)

A bill to amend federal bankruptcy law to require the bankruptcy court to disallow any claim arising from a high cost consumer credit transaction. Defines "high cost consumer credit transaction" as an extension of credit by a creditor resulting in a consumer debt with an applicable annual percentage rate (APR), including related costs and fees, that exceeds, at any time while the credit is outstanding, the lesser of: (1) the sum of 15% and the yield on U.S. Treasury securities having a 30-year period of maturity; or (2) 36%. Excludes the petition for relief of a debtor with any debts arising from a high cost consumer credit transaction from mandatory consideration for dismissal, or conversion to a case under chapter 11 or 13, based upon a finding of substantial abuse.

Status: *Introduced January 15, 2009
*Assigned to the Senate Committee on the Judiciary
*June 11, 2009 – Date of scheduled consideration . SD-226 – 10:00 am

<http://www.govtrack.us/congress/bill.xpd?bill=111-257>

S500 - Protecting Consumers from Unreasonable Credit Rates Act – [Sen. Richard Durbin \[D-IL\]](#)

A bill to amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

The bill as introduced by Senator Durbin would:

- *Establish a new Fee and Interest Rate (called FAIR) that would incorporate all interest, fees, finance charges, insurance, and related costs of credit into a single APR;
- *Institute a federal maximum annualized FAIR limit equal to 36% and apply this cap to all open-end and closed-end consumer credit transactions, including mortgages, car loans, credit cards, overdraft loans, car title loans, refund anticipation loans, and payday loans made by ALL lenders;
- *Encourage the creation of alternatives to small dollar lending by providing tolerances for initial

application fees and for ongoing lender costs such as insufficient funds fees and late fees;

*Ensure that this federal law does not preempt stricter state laws;

*Create specific penalties for violations of the new cap and support enforcement in civil courts and by State Attorneys General.

Status: *Introduced February 26, 2009

*Assigned to the Senate Committee on Banking, Housing, and Urban Affairs

*Pending action before the Committee. It is believed that this proposed legislation is to be considered with a broader program of consumer protection legislation

proposed by the Obama Administration.

*04-21-09- *No Change*

*06-17-09

<http://www.govtrack.us/congress/bill.xpd?bill=s111-500>

H.R. 1214 - Payday Loan Reform Act of 2009 – Representative - [Rep. Luis Gutiérrez \[D-IL\]](#)

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and other protections for consumers, and for other purposes. H.R. 1214, the Payday Loan Reform Act of 2009, creates significant protections from abusive payday practices by mandating a cost-free 90 day repayment plan. The bill lowers the effective APR of a payday loan to 48 percent, or 15 cents for every dollar loaned.

Status: Introduced February 26, 2009

*Assigned to the House Financial Services Committee

*Hearing on April 2, 2009

*Pending additional action of the committee and Report by Committee

*04-21-09 – *No Change*

*06-17-09 – *No Change*

<http://www.govtrack.us/congress/bill.xpd?bill=h111-1214>

H.R. 1608 – Protecting Consumers from Unreasonable Credit Rates Act of 2009 - [Rep. Jackie Speier \[D-CA\]](#) - See S500 above. Identical Bills

Status: *Introduced March 19, 2009

*Assigned to the House Financial Services Committee

*Pending action before the Committee

*04-21-09 – *No Change*

*06-17-09 – *No Change*

<http://www.govtrack.us/congress/bill.xpd?bill=h111-1608>

H. R. 1640 – Interest Rate Reduction Act - [Rep. Maurice Hinchey \[D-NY\]](#)

To amend the Truth in Lending Act to protect consumers from usury, and for other purposes. This bill would establish a National Consumer Usury Rate where the annual percentage rate applicable to any extension of credit may not exceed **15percent** on unpaid balances, **inclusive** of ALL finance charges. Any fees that are not considered finance charges under Section 106(a) may not be used to evade this rule, and the total sum of such fees may not exceed the total amount of finance charges assessed. The bill does not pertain to Credit Unions and provides for penalties for charging higher rates and refund of interest Amounts.

Status: *Introduced March 19, 2009
 *Assigned to the House Financial Services Committee
 *Pending action before the Committee
 *04-21-09 – *No Change*
 *06-17-09 – *No Change*

<http://www.govtrack.us/congress/bill.xpd?bill=h111-1640>

ALABAMA LEGISLATIVE UPDATE
2009 REGULAR SESSION OF THE ALABAMA LEGISLATURE

June 17, 2009

HB23 – Alabama Arbitration Act Revised **DIED IN COMMITTEE**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Judiciary

04-21-09 – No Change

Under existing law, agreements to submit future controversies to arbitration are unenforceable in certain circumstances. This bill would allow agreements to arbitrate future controversies to be enforced under certain circumstances.

This bill would adopt a modification of the revised uniform arbitration act to allow parties the ability to voluntarily choose arbitration as an alternative to resolving their disputes in court, would regulate that process, and would provide procedural safeguards to the structure and fairness of the arbitration process in Alabama.

Confidential Opinion of ACFA General Counsel – Paul Compton – BABC LLP

HB23 is sponsored by Representative Joseph Mitchell, a Democrat representing the 103rd District in Mobile County. Dr. Mitchell, who received a Ph.D from Texas A&M University, states on his official House website that he “represents one of the most culturally diverse districts distinguished by its inclusion of two of the oldest African-American residential communities in the area.”

As you know, under Alabama law, except to the extent superseded, as it is in many cases, by the Federal Arbitration Bill, agreements to arbitrate generally cannot be specifically enforced. This bill would

adopt a version of the Uniform Arbitration Bill to permit, under state law, certain agreements to arbitrate to be enforceable, but would also establish significant procedural requirements therefor. A portion of the preamble of the bill is instructive. It states, "although arbitration should not replace formal court litigation in all aspects and should not be forced upon Alabama citizens as an exclusive choice to oust or defeat jurisdiction of all courts in all contractual matters, . . ." Thus, it is safe to assume that the aim of this bill is generally to attack arbitration. It seeks to use provisions of federal law which permit states to establish procedural requirements where federal law otherwise mandates the enforceability of arbitration.

Several points should be especially noted:

1. The bill would seek to make unenforceable arbitration agreements that do not comply with it. This is effectively a procedural attack and an attempt to circumvent the otherwise applicable Federal Arbitration Bill.
2. The statute requires certain steps in order to establish a presumption that a party "freely and knowingly" entered into the arbitration agreement, including it being set forth on a separate page of the contract, possibly requires the party to be represented by an attorney, and requires certain typeface conventions.
3. The bill establishes a general rule that the court shall decide whether an agreement to arbitrate exists.
4. Specific steps are required to commence arbitration; otherwise, the court may refuse to confirm an arbitration award.
5. Courts may determine that the manner in which an arbitrator is selected is based "on an unequal bargaining position" and thereafter the court may appoint the arbitrator.
6. The bill establishes procedural requirements for the arbitration proceeding, such as entitling parties to present evidence and to cross-examine witnesses.
7. Section 24 of the bill establishes bases on which a court may vacate an arbitration award including following up on the initial objection that no arbitration agreement existed or that there was "evident partiality" by the arbitrator.

I think it is sufficient to say that this bill is not in the interest of your members and should be opposed by them.

HB80 – Discretion of Insurer to Interpret the Terms of an Insurance Policy Prohibited **DIED IN COMMITTEE**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance

04-21-09 – No Change

Under existing law, a policy or certificate of insurance offered or issued in this state may contain a clause reserving discretion to the insurer to interpret the terms and to provide standards of interpretation of the policy or certificate.

This bill would provide that a clause in a policy or certificate of insurance offered or issued in this state which reserves discretion to the insurer to interpret the terms and/or to provide standards of interpretation of the policy or certificate shall be void and unenforceable.

HB304 – Amendment to ACCA – “Mini-Code” – licensing including life insurance companies – surety bond requirement – deletion of provision in ASLA – Small Loan Act **DIED IN COMMITTEE**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance B&I
02/24/2009 Read for the second time and placed on the calendar with 1 substitute and
Pending third reading on day 8 Favorable from Banking and Insurance with 1 substitute
Banking and Insurance first Substitute Offered

04-21-09 – No Change

This bill is sponsored by the Department of Banking, Bureau of Loans

Chapter 19 of Title 5 of the Code of Alabama 1975, commonly known as the “Mini-Code,” relates to consumer credit transactions. Under existing law, a creditor is defined as an individual who in the previous calendar year extended or arranged for credit extensions more than 25 times, or more than five times, had credit transactions secured by a residential structure. This bill would amend the definition of creditor to include a person who, more than one time, had a credit transaction secured by a residential structure.

This bill would require that a creditor shall maintain a license for each location where activity is conducted.

Under existing law, life insurance companies are exempt from licensure requirements. This bill would not exempt life insurance companies from licensure requirements.

This bill would allow the State Banking Department to require applicants for licensure to obtain a surety bond, apply to the Nationwide Mortgage Licensing System and Registry, and submit to background checks.

Under existing law, a licensee under the Alabama Small Loan Act may use payment of licensure and examination in lieu of the fees required by the Alabama Small Loan Act. This bill would delete that provision.

This bill would make all fees collected nonrefundable.

Existing law provides that certain provisions do not apply to consumer transactions or to transactions involving real property. This bill would delete those exemptions.

HB305 – Amendment to the Mortgage Brokers Licensing Act **DIED IN COMMITTEE – HOWEVER, SENATE BILL WAS ENACTED – SEE LENDERS LINE NEWSLETTER**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance B&I
02/24/2009 Read for the second time and placed on the calendar with 1 substitute and
Pending third reading on day 8 Favorable from Banking and Insurance with 1 substitute
Banking and Insurance first Substitute Offered

04-21-09 – No Change

This bill is sponsored by the Department of Banking, Bureau of Loans

The Mortgage Brokers Licensing Act establishes procedures, provides for exceptions,

prohibits certain conduct, and provides for penalties regarding licensure of mortgage brokers. Under existing law, insurance companies and those affiliated with insurance holding companies along with certain mortgagees, certain mortgage brokers, and certain securities brokers are excluded from licensure. This bill would no longer allow certain exclusions from the licensure requirements. This bill would require mortgage loan originators to be licensed or registered in accordance with the Alabama Secure and Fair Enforcement for Mortgage Licensing Act. Under existing law, officers of mortgage companies have to complete certain continuing education hours for licensure. This bill would require at least one principal to have at least two years of experience in the mortgage industry in order to qualify for licensure. This bill would combine the initial license fee and investigation fee. This bill would allow the Banking Department to require applicants maintain a surety bond. This bill would allow applicants to undergo background checks. Under existing law, a licensee may claim an exemption from the annual licensing fee. This bill would not allow a licensee to claim an exemption from the licensing fee. Under existing law, a licensee's principal place of business has to be in Alabama. This bill would not require a licensee's principal place of business to be in Alabama.

HB307 – Alabama Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or Alabama S.A.F.E. Mortgage Licensing Act of 2009 **DIED IN COMMITTEE – HOWEVER, THE SENATE BILL WAS ENACTED - SEE LENDERS LINE NEWSLETTER**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance B&I

02/24/2009 Read for the second time and placed on the calendar with 1 substitute and
Pending third reading on day 8 Favorable from Banking and Insurance with 1 substitute
Banking and Insurance first Substitute Offered

04-21-09 – No Change

This bill is sponsored by the Department of Banking, Bureau of Loans

Under existing law, there are no requirements for licensure of mortgage loan originators. This bill would establish the Alabama Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or Alabama S.A.F.E. Mortgage Licensing Act of 2009.

This bill would authorize the Supervisor of the Bureau of Loans of the State Banking Department to promulgate rules pertaining to the examination and licensing of mortgage loan originators. This bill would exempt certain persons from licensure requirements.

This bill would require applicants for licensure to pay a fee, provide background information, complete educational requirements, pass a written test, and be licensed and registered through the Nationwide Mortgage Licensing System and Registry.

This bill would allow the supervisor to conduct background checks and investigations on applicants; suspend, revoke, or decline to renew a license; impose a civil penalty for violation or noncompliance; and require mortgage loan originators to be covered by a surety bond.

HB336 – Election of the Commissioner of Insurance Rather Than Appointed **DIED IN COMMITTEE**

02/03/2009 Read for the first time and referred to the House of Representatives committee on Constitution and Elections

04-21-09 – No Change

Under existing law, the Commissioner of Insurance is appointed by the Governor.

This bill would propose an amendment to the Constitution of Alabama of 1901, to provide for the commissioner to be elected statewide like other constitutional officers, beginning with the 2010 General Election, for a term of six years and with compensation tied to the annual salary of a district judge.

HB343 – Deceptive Trade Practices Act DIED IN COMMITTEE

02/03/2009 Read for the first time and referred to the House of Representatives committee on Judiciary JUDY

04-21-09 – No Change

Under the existing Deceptive Trade Practices Act, there is not a measure of damages in private actions. This bill would define how damages are to be measured. Currently, the causation requirement is not specifically defined. This bill would clearly define the scope of the causation requirement.

Confidential Opinion of ACFA General Counsel – Paul Compton – BABC LLP

HB343 is sponsored by Representative Marcel Black. Representative Black is a Democrat representing a portion of Colbert County and is a practicing lawyer. It is not easy to come to a quick conclusion regarding the import of the changes proposed by the statute. First, the bill would expand Alabama's Deceptive Trade Practices Act (the "Act") to permit a jury, and not merely a judge, to impose treble damages. Currently, under the Act, any person or activity which is subject to the provisions of the insurance code, any bank or affiliate of a bank, healthcare service plans, utilities, and railroads are exempt from the provisions of the Act, as is any allegation of a violation of the Federal Consumer Credit Protection Act. This possibly excludes some, but not all, of your members from application of the Act. Moreover, only the State Attorney General may bring a class action under it although it appears that individual litigants are presently authorized to bring suits and counterclaims under it.

Conceivably, the added provisions in 8-19-10(b) could restrict the applicability of the Act. First, it states that causes may only be brought by natural persons "who purchase or lease goods, services or real estate for personal, family or household purposes." This clearly excludes entities from bringing an action. Moreover, individuals could not bring an action in connection with a business-related matter. It is possible that this language does not include claims relating to the lending or borrowing of money since that may not be encompassed within the "purchase or lease of goods, services or real estate", although a credit sale or purchase money mortgage might be included. Second, the proposed revisions would limit damages by requiring the plaintiff to show an actual out-of-pocket loss. Generally this is a favorable provision for defendants.

HB496 – Security Freeze on Credit Reports DIED IN COMMITTEE

02/12/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance

04-21-09 – No Change

Existing law provides no mechanism through which a consumer may place a security freeze on his or her consumer credit report.

This bill would create a procedure for consumers to follow in placing a security freeze on a consumer credit report. The bill would require consumer credit reporting agencies that do business in Alabama to place a security freeze on a consumer's credit report upon request by the consumer along with payment of a fee to the consumer credit reporting agency.

This bill would authorize the Attorney General to initiate a cause of action on behalf of a consumer for damages incurred as a result of a consumer credit reporting agency's failure to place a security freeze on a consumer's credit report. This bill would also provide for exceptions.

HB654 – Insurance Fraud Regulation DIED IN COMMITTEE

03/03/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance

SEE SB 530 Below – Identical Bill - DIED IN COMMITTEE

04-21-09 – No Change

This bill is supported by the Department of Insurance.

Under existing law, material or fraudulent misrepresentations, omissions, concealment of facts, and incorrect statements in insurance transactions are prohibited and an insurance producer who violates these prohibitions may have his or her license revoked.

This bill would specifically define insurance fraud by a person, an insurer, a reinsurer, a broker, or their respective agents. This bill would authorize the Department of Insurance to investigate suspected insurance fraud and would also require the reporting to certain public officers of suspected insurance fraud. This bill would also offer civil immunity for certain persons reporting and investigating suspected insurance fraud and would require confidentiality of information and files. This bill would create the Insurance Fraud Unit within the office of the Department of Insurance to investigate suspected insurance fraud and would provide powers and remedies in enforcing this bill.

The bill would provide for assessments on insurers to fund the unit, for the establishment of the Insurance Fraud Unit Fund, and would make appropriations from the fund for the fiscal years ending September 30, 2009, and September 30, 2010. This bill would provide civil penalties up to \$1,000 per violation or suspension of license or certificate of authority. This bill would also provide for civil and criminal penalties in addition to restitution to the aggrieved party and would limit the filing of a cause of action to six years.

The bill would also authorize the Commissioner of Insurance to promulgate rules to administer this act and to require licensees of the department to include three hours of continuing education on insurance producer ethics or business practices.

The bill would also specify that health maintenance organizations would be subject to rules of the commissioner adopted pursuant to Sections 27-7-43 and 27-7-44, Code of Alabama 1975, relating to licensing and privacy.

26 Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

SB530 – Insurance Fraud Regulation - DIED IN COMMITTEE

03/26/2009 Read for the first time and referred to the Senate committee JUDY on Judiciary

See HB654 Above – Identical Bill - DIED IN COMMITTEE

04-29-09 – No Change

Under existing law, material or fraudulent misrepresentations, omissions, concealment of facts, and incorrect statements in insurance transactions are prohibited and an insurance producer who violates these prohibitions may have his or her license revoked. This bill would specifically define insurance fraud by a person, an insurer, a reinsurer, a broker, or their respective agents. This bill would authorize the Department of Insurance to investigate suspected insurance fraud and would also require the reporting to certain public officers of suspected insurance fraud. This bill would also offer civil immunity for certain persons reporting and investigating suspected insurance fraud and would require confidentiality of information and files. This bill would create the Insurance Fraud Unit within the office of the Department of Insurance to investigate suspected insurance fraud and would provide powers and remedies in enforcing this bill. The bill would provide for assessments on insurers to fund the unit, for the establishment of the Insurance Fraud Unit Fund, and would make appropriations from the fund for the fiscal years ending September 30, 2009, and September 30, 2010. This bill would provide civil penalties up to \$1,000 per violation or suspension of license or certificate of authority. This bill would also provide for civil and criminal penalties in addition to restitution to the aggrieved party and would limit the filing of a cause of action to six years. The bill would also authorize the Commissioner of Insurance to promulgate rules to administer this act and to require licensees of the department to include three hours of continuing education on insurance producer ethics or business practices. The bill would also specify that health maintenance organizations would be subject to rules of the commissioner adopted pursuant to Sections 27-7-43 and 27-7-44, Code of Alabama 1975, relating to licensing and privacy.

HB675 – Establishes the Office of Consumer Advocate in the Department of Insurance SEE SB497 BELOW – IDENTICAL BILL - BOTH DIED IN COMMITTEE

03/05/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance

04-21-09 – No Change

The Department of Insurance has stated this bill was not on their Legislative Agenda, however the Department does not oppose the bill.

This bill would establish within the Department of Insurance an advocate office for consumers.

This bill would allow the Commissioner of Insurance to conduct hearings at the request of an aggrieved consumer.

This bill would allow the commissioner to establish nonbinding alternative dispute resolution procedures for claims relating to personal and commercial insurance lines.

This bill would grant immunity from civil liability to any person who provided information concerning the condition of an insurer. This bill would require the advocate office to prepare an annual legislative report.

SB497 – Establishes the Office of Consumer Advocate in the Department of Insurance SEE HB675 ABOVE – IDENTICAL BILL - BOTH DIED IN COMMITTEE

The Department of Insurance has stated this bill was not on their Legislative Agenda, however, they do not oppose the bill.

03/12/2009 Read for the first time and referred to the Senate committee JUDY on Judiciary

04-21-09 – No Change

This bill would establish within the Department of Insurance an advocate office for consumers.

This bill would allow the Commissioner of Insurance to conduct hearings at the request of an aggrieved consumer.

This bill would allow the commissioner to establish nonbinding alternative dispute resolution procedures for claims relating to personal and commercial insurance lines.

This bill would grant immunity from civil liability to any person who provided information concerning the condition of an insurer. This bill would require the advocate office to prepare an annual legislative report.

HB863 – Required Notice by Probate Judge on Foreclosures – *DIED IN COMMITTEE*

04/09/2009 Read for the first time and referred to the House of Representatives committee on Banking and Insurance B&I

04-21-09 – No Change

This bill would require the judge of probate to provide a copy of a notice of foreclosure to recorded mortgagees and other lienholders.

Senate Bills

SB185 – Required Payoff on Mortgages – *DIED IN COMMITTEE*

02/03/2009 Read for the first time and referred to the Senate committee on Banking and Insurance

04-21-09 – No Change

This bill would require that upon demand for a payoff, the mortgage company or servicer would provide a payoff in writing within 21 days and would provide for civil sanction for failure to do so.

SB210 – Alabama Taxpayer Protection and Assistance Act – *DIED IN COMMITTEE*

02/03/2009 Read for the first time and referred to the Senate committee on Governmental Affairs GA

02/24/2009 Read for the second time and placed on the calendar 1 amendment 070

Pending third reading on day 8 Favorable from Governmental Affairs with 1 amendment
Governmental Affairs first Amendment Offered

04-21-09 – No Change

This bill has cleared the Senate and is now in the House Banking and Insurance Committee

SEE HB412 BELOW – *DIED IN COMMITTEE*

This bill would create a Board of Individual Tax Preparers to register and regulate individual tax preparation services.

This bill would establish qualifications for registration and provide for exemptions. This bill would authorize the board to collect fees, to promulgate rules pertaining to the examination and registration of the tax preparers, and would provide for disciplinary action for certain acts.

This bill would allow registered tax preparers to facilitate refund anticipation loans or refund anticipation checks.

This bill would require registered tax preparers to maintain a surety bond and disclose certain information to a consumer and display certain fees for refund anticipation loans or checks.

This bill would prohibit unregistered persons from conducting tax preparation services, and would provide penalties for violations. Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

HB412 - Alabama Taxpayer Protection and Assistance Act DIED IN COMMITTEE

02/05/2009 Read for the first time and referred to the House of Representatives committee on Boards and Commissions B&C

SEE SB210 ABOVE – DIED IN COMMITTEE

04-21-09 – No Change

This bill would create a Board of Individual Tax Preparers to register and regulate individual tax preparation services. This bill would establish qualifications for registration and provide for exemptions. This bill would authorize the board to collect fees, to promulgate rules pertaining to the examination and registration of the tax preparers, and would provide for disciplinary action for certain acts. This bill would allow registered tax preparers to facilitate refund anticipation loans or refund anticipation checks. This bill would require registered tax preparers to maintain a surety bond and disclose certain information to a consumer and display certain fees for refund anticipation loans or checks. This bill would prohibit unregistered persons from conducting tax preparation services, and would provide penalties for violations.

This communication is intended as informational to the member companies of the Alabama Consumer Finance Association and interested parties on General Distribution. Any views or opinions presented in this communication are solely those of the author and do not necessarily represent those of any other individual or the Association, nor are they to be considered legal advice.
