Alabama's Poverty Industry
By
Thomas J. Methvin

Poverty is a way of life for many Alabama residents. Unfortunately, the growth of those living in poverty is nurtured by an industry that continually develops new ways to tighten its hold on these Alabamians. Alabama's poverty industry is comprised of several different industries - consumer finance companies, pawn shops, check cashing outlets, rent-to-own centers and debit insurance companies. Alabama provides a safe haven for this industry due to our lack of regulation and our neglect of public education.

In Alabama, one in six adults are functionally illiterate.[1] One in every three adults do not have a high school education or G.E.D. certificate.[2] During the 1993-94 school year, other states spent an average of $5,767 per student on education.[3] Alabama, however, spent only $4,037 per student. Alabama ranks 46th out of 50 states in dollars spent per child on education.[4]

In addition to our high illiteracy rate, Alabama has some of the weakest consumer protection laws in the entire country, especially in the area of consumer finance. For example, most states have a limit on the interest rate that can be charged on consumer loans. In Alabama, on loans over $2,000.00, there is no numerical limit on the interest rate charged. Likewise, there is very little regulation on pawn shops, rent-to-own centers, and check-cashing outlets, since their transactions are not considered loans. Pawn shops are allowed to charge an annual interest rate of 300% on their transactions. The effective interest rate on a typical rent-to-own transaction can be as high as 600 to 700%.

Further, most states have a strong deceptive trade practices act. These acts often prohibit unfair practices of the poverty industry. In Alabama, many finance companies and all insurance companies are exempt from our Deceptive Trade Practices Act. Our only regulations dealing with consumer finance are found in the Mini-Code. The Mini-Code is called "Mini-Code", because it started out as a very stringent set of regulations and was gradually watered down by the finance and banking lobby. Thus, the result was a "Mini-Code". The Mini-Code is really mini-regulation.

As stated above, Alabama's uneducated population coupled with its lack of regulation make it a natural choice for the poverty industry. Below is a discussion of various ways the Alabama poverty industry wreaks havoc on its victims.

I. CONSUMER FINANCE INDUSTRY

Many finance companies target Alabamians who are unable to receive a loan from traditional lending sources. The finance companies make loans to these consumers at much higher interest rates than traditional banks. Many times there are needless and useless charges placed on the loans. Most consumers are not aware of these charges. Other times, consumers names are forged to loan documents.[5] One consumer alleged her name was forged to a mortgage and her home was foreclosed on and sold.[6] These predatory lending practices cannot be justified. Apparently, some finance companies attempt to justify some of these practices by arguing that they are willing to make loans to people who normally could not receive credit. However, the higher interest rate more than compensates for any extra risk. The extra risk should not be reflected in add on fees that are useless to consumers.

A. INSURANCE PACKING

There are various types of insurance that protect finance companies from loss: credit life, credit disability, involuntary unemployment insurance, collateral protection insurance, non-filing insurance and force-placed insurance. All of these insurance products provide major benefits to the finance company, but very little benefit to the consumer. The premiums for this insurance are financed at the point of sale. Of course, the consumer pays the premium plus interest to the finance company.

Finance companies have a motive to place insurance on all loans. The actual loan is nothing more than a loss leader for ancillary insurance products.[7] The insurance premium charged increases the amount financed, which increases the interest and profit to the company. Also, the finance company or its employees receive a commission from the sale of some of these insurance products. Most of the time, the sale of the insurance product is through one of the finance company's subsidiaries or sister corporations, which adds to the profit. Alabama law allows the finance companies to sell insurance through their subsidiaries, if the relationship between the companies is disclosed somewhere in the document (usually the fine print). Alabama allows some of the lowest loss ratios in the country on these products. This means that the insurance companies are paying out very little in claims and are keeping most of the premium dollar as profit.

Credit life insurance is one form of credit insurance. It is designed to pay off the loan balance in the event of the consumer's death. Alabama allows nearly the highest credit insurance rates in the entire country. Credit life insurance is the most costly life insurance sold in Alabama. The premium on this insurance is pure profit.[8] Many consumers are told by finance companies that they are required to purchase credit life insurance in order to receive the loan.[9] An ex-employee of one finance company doing business in Alabama states that the company trains its employees to require credit life insurance as a condition to making the loan.[10] An ex-employee of another finance company doing business in Alabama states that the company has a credit life penetration rate of 90%. This means 90% of its loans have credit life insurance on them.[11] However, it claims it does not require credit life insurance.

Of course, it is illegal to require credit life insurance as a condition to making the loan.[12] In *Lambert v. Bill Heard Chevrolet Co.*,[13] the plaintiffs alleged that the car salesman told them that in order to obtain financing through Mercury Finance, credit life and credit disability insurance must be purchased. The trial court granted summary judgment for the defendant based on the statute of limitations, stating that the documents the plaintiffs signed, clearly contradicts what they were told. The Alabama Court of Civil Appeals reversed and remanded based on *Hicks v. Globe Life & Accident Ins. Co.,*[14] holding that the plaintiffs have a right to trust who they deal with and are not required to investigate the truthfulness of every statement made to them. In *Hicks*, Justice Shores stated in her concurring opinion, "It is unrealistic to conclude that a layman, even one with a college education, such as Mrs. Hicks, could understand an insurance policy if she read it."[15] Many people who deal with the finance companies, are unable to comprehend the documents they sign.[16] Therefore, their trust in the people they deal with leaves them wide open for abuse.

The amount of credit life placed on loans in Alabama has been shown to be excessive. In *McCullar v. Universal Underwriters Life Insurance Co.*,[17] the plaintiff brought a fraud action based on the sale of an excessive amount of credit life insurance associated with an automobile purchase. The premium for the credit life sold to the plaintiff was based on the total amount of the plaintiff's payments over time. Plaintiff alleged fraud based on the credit life insurance premiums being calculated on the total of the payments, $20,742.00, instead of calculating it based on the amount financed, $15,108.54. Plaintiff argued that the most the insurer would ever pay on a claim, was less than the total of the payments. The Alabama Supreme Court stated that charging for credit life insurance based on the total of the payments was wrong.[18] This practice of inflating the amount of coverage and thereby, the premium, increases the profit for the finance and insurance company, while causing the consumer to be deeper in debt.

Most of the time, there are health questions that are required to be answered before the credit life insurance policy can be issued. Some finance companies realize that if the questions are answered in a fashion showing the consumer is in bad health, the insurance will not issue.

Therefore, some don't ask the health questions so that the policy will issue. This practice is known as "clean sheeting". Later, when a claim is made, the insurance company can use the bad health of the consumer as grounds to deny the claim.[19]

In *Miller v. Dobbs Mobile Bay, Inc.*,[20] credit life insurance was sold to the insured during the sale and financing of a used car. The car salesman told the insured that without the insurance, he would be unable to get the loan. During the negotiations, the insured informed the salesman that he did not want the insurance and that he was very ill. The salesman indicated that the insurance would be valid anyway and did not answer the health questions properly. Four months later, Miller died of lung cancer. A claim against the credit life policy, was denied due to Miller's poor health condition when he purchased the policy.[21] The Alabama Supreme Court held that the fraud claim died with the insured, and that breach of contract and bad faith claims were a jury question.[22]

In *Union Sec. Life Ins. Co. v. Crocker*,[23] the plaintiff brought a fraud action, based on the defendant's failure to disclose material information. She complained that the defendant knew of her husband's heart condition and that the insurance he was selling, would not pay any benefits as a result. The Alabama Supreme Court held that whether an insurance agent has a duty to disclose the conditions of payment for the credit life policy was a question for the jury.

Another form of credit insurance, which has been required as a condition to making a loan, is credit disability or credit accident insurance. This insurance is designed to make the payments of the consumer, if he becomes disabled or is in an accident. Many consumers don't even know they have this insurance. Others have made claims on such insurance that have never been paid.[24] A former employee of one finance company doing business in Alabama stated that she was trained not to remind consumers they had this insurance when they came into the office to make a payment and looked disabled.[25]

The most common basis used to deny claims is that the consumer was disabled at the time he took out the policy. However, many times, no questions are asked regarding whether or not the consumer is disabled at the time the loan is made. This again is clean sheeting.

In *Wiley v. General Motors Acceptance Corp.*,[26] Daisy Wiley financed a car and credit disability insurance through the defendant. The credit disability insurance was to make her payments, if she became disabled. After suffering a stroke, Ms. Wiley missed two payments, and the third was made by the insurer, before the defendant repossessed and sold the car. The Alabama Supreme Court found substantial evidence that "GMAC [had] made . . .an implied promise not to repossess the car if it knew that she had purchased credit disability insurance and that she had . . .complied with the terms of the policy . . . ."[27]

Another type of credit insurance is involuntary unemployment insurance. This insurance is designed to make the payments of the consumer if he loses his job involuntarily. In the fine print of many of these insurance policies, there is a provision that the consumer must be employed for twelve consecutive months before taking out the insurance. Again, many times, no questions are asked regarding the length of the consumer's employment at the time he takes out the insurance. However, often the consumer's lack of employment for the specified period is used by the insurance company as grounds to deny coverage. If the consumer knew of these requirements or was able to read and comprehend the operative language, he would not waste his money on such useless coverage.

Another area of insurance packing in the consumer finance industry deals with collateral protection insurance. Many finance companies require that collateral protection insurance be sold through the finance company. Of course, it is perfectly permissible to require insurance on the collateral. It is illegal, however, to require the consumer to purchase collateral protection insurance through the finance company.[28] On many occasions, consumers are told they must buy the collateral protection insurance through the finance company in order to obtain the loan.[29] The value of the collateral often is overstated, which causes the premium on the insurance to be higher than the premium the consumer would pay elsewhere. As stated above, there is a motive for the finance company to charge as high a premium as possible. The finance company receives interest on the total amount financed; it also receives commissions. Often, the insurance is sold through a related corporation which allows extra profit for the companies.

The Federal Trade Commission has enacted strict regulations regarding household goods being used as collateral in consumer loans. Generally, most household goods cannot be used as collateral.[30] However, many finance companies take a security interest in these goods solely to charge collateral protection insurance on it. Some finance companies have taken a security interest in such things as fishing poles, clock radios, blankets, televisions, and other similar items. Since the finance company has no intention of repossessing such items, it is not real collateral, and it is improper to charge insurance on it. This is simply another way the creative poverty industry extracts money from its victims.

Non-filing insurance is a type of insurance wherein the finance company charges a fee to the customer in lieu of filing a UCC financing statement. The finance company charges a premium and supposedly gives the premium to an insurance company to cover the finance company in case it attempts to repossess the collateral and is unable to do so, solely because it failed to perfect it's security interest by filing a UCC financing statement. Theoretically, the finance company can then look to the insurance company for payment of the value of the collateral.

There are many abuses with non-filing insurance. Often, consumer are charged premiums and there is no insurance at all. The finance company simply keeps the money. Other times, the money is paid to an insurance company and 100% of the premium is returned to the finance company. On other occasions, the non-filing insurance is charged on collateral that the debtor finances at the point of purchase. Non-filing insurance on this transaction is generally useless because UCC financing statements are not required to perfect the security interest in such goods. Therefore, non-filing insurance is not necessary in most cases. The motive for this is to increase the amount financed.

The final type of collateral protection insurance is force-placed insurance. At the time of the loan, many consumers take out their own collateral protection insurance from a separate company. However, if the consumer does not keep the collateral protection insurance, the finance company has the right to purchase collateral protection insurance on the collateral. It is permissible for the finance company to buy insurance similar to the insurance that the consumer allowed to lapse. However, many finance companies have abused this privilege by purchasing insurance that gives them more protection than the consumer originally had with his own insurance. For example, there are some policies force-placed that protect the finance company against the consumer's default. In other words, if the borrower doesn't make his payments to the finance company, the insurance policy will cover the payments. Other provisions provide that the policy only pays on claims if the collateral is repossessed. The premiums on these policies are the highest allowed by law and to make matters worse, the finance companies are allowed to charge interest on the premium. Therefore, the finance company has a motive to find the most expensive policy available. This results in higher charges to the consumer.

The area with the most abuse involves method of calculating the premium. On many occasions, the insurance premium is based on the gross balance of the loan, but in the event of a total loss of the collateral, the insurance will only pay the actual cash value, or depreciated value of the collateral. Many times, the collateral is worth less than the gross balance of the loan; i.e., cars, mobile homes, and other assets that depreciate. While the consumer pays a higher premium based on the total amount owed plus interest, the most the insurance will ever pay is a lesser amount, i.e., the depreciated value of the collateral. This practice violates the Alabama Department of Insurance guidelines.[31]

Each of these insurance products provide very little benefit to consumers. Finance companies reap the real benefits of these products at the expense of consumers who can least afford to pay the price.

B. "RENEWING" LOANS OR FLIPPING

Consumer finance companies not only profit from the amount of insurance sold, but their profit is also driven by repeat business. Unfortunately, repeat customers are not always made aware of the options available to them.

When customers borrow money from some finance companies, those companies begin the process of maintaining that customer's indebtedness. After several payments are made, the consumer typically receives a letter from the company that explains that they are entitled to additional money if they will come down and sign for it. Usually, this is a very small amount of money. However, in order to get the additional money, the previous loan is "renewed", with all the accompanying fees and charges of a new loan. This includes additional premiums for all the insurance products that are being "re-packed" as part of a second loan. Further, the operation of the Rule of 78's in the early payment of interest and insurance charges results in a heavy penalty for those who refinance.

In *Emery v. American General Finance, Inc.*,[32] the plaintiff brought an action under 18 U.S.C. §§1961 *et seq*., because she received a letter informing her that additional money had been set aside especially for her. Furthermore, she presented evidence that the defendant had purposefully concealed her option to receive another loan and intentionally "flipped" her current loan, thereby, increasing her indebtedness at a much higher cost. In her complaint, she alleged that the practice of "loan flipping" was a "'racketeering activity' within the meaning of

RICO §1962(c)."[33] The court recognized that "she has not been selected to receive the letter because she is a good customer, but because she belongs to a class of probably gullible customers for credit; the purpose of offering her more money is not to thank her for her business but to rip her off . . ."[34] The court further held that flipping is a sleazy sales practice.[35] While the court held there was no RICO violation, it certainly agreed that flipping is egregious.

Flipping is wrong. Although Alabama Appellate courts have never ruled on this practice, it is easy to see that such a pattern of intentionally cheating unsophisticated consumers would present a cause of action for fraudulent suppression or an outright intentional misrepresentation.

C. HIGH PRICED CAR LOANS

Many consumer financial transactions take place through dealers, i.e., sellers of goods such as cars, mobile homes, televisions, stereos, and washing machines. Most of us have seen advertisements discussing dealer financing for such a sale.

Most of the time this dealer-arranged financing is handled in the following manner. The finance company gives the dealer all of the necessary documents for the consumer to consummate the loan, i.e., a retail installment contract, mortgage or UCC financing statements, Truth-in-Lending documents, etc. After selling the product, the dealer gets the consumer to sign all of the finance papers. In actuality, this is a loan from the finance company to the consumer, with the consumer making all payments to the finance company not the dealer. On paper, however, the dealer is shown to be the lender.

This paper trail is created so the finance company can claim that it is purchasing the loan from the dealer and not making a direct loan to the consumer. Since the finance company is purchasing the loan, it can assert that it can purchase the loan for less than face value of the loan or at a discount. The discount is usually agreed to prior to the underlying loan being consummated.

In reality, the finance company simply keeps a portion of the amount financed in each deal. In other words, when the finance company "buys the loan", the finance company will keep for example, $500.00 of the amount financed and never pay it to the dealer. The amount retained by the finance company that never leaves the hands of the finance company, yet the consumer is obligated to pay it back and is charged interest on it.

Practically, the act of buying the loan at a pre-approved discount or keeping part of the amount financed requires the dealer to raise his price by $500.00 (as in the example above) to make the same profit he would make if the money had not been kept by the finance company. It has been argued that the $500.00 that the finance company keeps is a finance charge, as defined in the Mini-Code.[36] If it is a finance charge, it should be disclosed to the buyer.

Another form of dealer discount works as follows. The dealer will call the finance company and ask at what interest rate the finance company is willing to make a loan to a particular consumer. The finance company agrees to make the loan at 10%, for example. The dealer will then add 2% on top and make the loan at 12%. The dealer and finance company will split the 2%. The consumer is never told that the finance company was willing to loan the money at 10%. This is sometimes referred to as the yield spread premium.[37] Many times, the consumer would have never entered into the loan if he had known that he could have gone directly to the finance company and gotten the financing cheaper.

In *Smith v. First Family Financial Services*,[38] the plaintiff brought a fraud action based on the defendant's failure to disclose a yield spread premium. The Alabama Supreme Court held that the yield spread premium "is a cost of borrowing money . . . It is a material fact that the borrower is entitled to know before completing the loan closing. It is a material fact that a mortgage broker has an obligation to disclose to a borrower."[39]

In *Bramlett v. Adamson Ford and Ford Motor Credit Co.*[40] the plaintiff brought a claim for fraudulent suppression based on non-disclosure of a yield spread premium. Bramlett purchased a car from Adamson Ford and obtained financing for that purchase through Ford Motor Credit Company (FMCC). Adamson disclosed to the plaintiff that the interest rate would be 15.49%. After being told that he would receive "the best financing available,"[41] Bramlett inquired as to why the interest rate was so high. Adamson Ford told him that it "was because [he] was a poor credit risk."[42] The Alabama Court of Civil Appeals held that a duty to disclose the agreement between Adamson and FMCC to split part of the interest charge arose when Bramlett inquired about the finance charge.[43] Obviously, this arrangement promotes higher finance charges and should be disclosed.

Since the *Smith* opinion, the financing lobby supported and secured passage of an amendment to the Mini-Code, which states that there is no duty to disclose the above mentioned yield spread premium.[44] The amendment dealt with the Mini-Code only. It did not affect whether there was a common law duty to disclose.

It is clear that the split in interest charges, yield spread premiums, and discounted car loans, drive the prices up for Alabama consumers. Many times the hike in price has a direct relation to the creditworthiness of the customer. This amounts to a "poverty tax" which adversely affects many Alabamians. These charges should be disclosed, so that consumers can make meaningful decisions.

II. PAWN SHOPS

Alabama residents with poor credit histories or who are inexperienced with traditional lending institutions are forced to use alternative sources for loans. Pawn shops and "pawn your title" businesses have become one of the most widely used forms of financing in this State.

Alabama allows pawn shops to charge exorbitant interest rates with "secured" transactions. By statute, a pawn shop is allowed to charge up to 25% of the original transaction amount, **per month**.[45] With regard to small loans, Alabama allows interest rates of 2-3% per month depending on the outstanding balance.[46] Pawns are exempted from the Alabama Small Loan Act.[47] Therefore, as compared to conventional interest charges, a pawnbroker is allowed to charge much higher rates. In fact a pawn broker can charge an annual interest rate of up to 300% on one transaction. This makes a pawn transaction one of the most profitable poverty industries in the State.

Also, there is tremendous growth in the "pawn your title" industry. Most "pawn your title" operations loan money on the title of a car. Many times the amount of money loaned is very small in relation to the value of the vehicle being pawned. The consumer provides personal identification, an extra set of car keys, and their signed car title for a nominal loan.[48] The finance company charges on the "loan" can be as much as 25% interest per month. At the end of each month, the loan is renewed. If the customer becomes delinquent in his payments, the extra set of keys makes repossession easy. Since the consumer signed the title over to the pawn shop, he no longer owns his car. When customers are desperate for money, they will pay almost anything to get it. This includes handing over their car which many times is their only transportation to and from work. Obviously, there is much room for abuse in this area.

In *Floyd v. Title Exchange and Pawn of Anniston,*[49] the Alabama Supreme Court determined that this questionable pawn transaction is permissible under Alabama law. Controversy arose over whether the car title was "tangible property", as defined in The Pawn Shop Act.[50] The Court remained skeptical as to whether a title is tangible property which could be pawned under the Alabama Code, but determined that a car title is not a "chose in action" which is expressly excluded.[51] Therefore, "pawn your title" operations are allowed to make loans at exorbitant interest rates on collateral that is often valued at several times the loan amount. When the consumer does not repay, he loses his vehicle or other valuable collateral.

III. CHECK CASHING OUTLETS

Another type of business that is growing in Alabama is the check cashing industry. This growth is attributable to the number of Americans that do not use banks or other depository institutions. In 1977, 9% of Americans did not use banking services, but by 1996, that figure had risen to 14%.[52].

Typically, check cashing outlets charge a percentage of the check for their service of cashing the check. The percentage depends on the type of check. "Only seven states limit fees charged by check-cashing stores, and even these regulations aren't always honored."[53] Many times the charges are as high as 10% of the value of the check.

As more Alabama residents use alternative systems for banking and loans, check cashing outlets will continue to prosper while Alabamians pay exorbitant fees and few regulations protect their interests.

IV. RENT-TO-OWN CENTERS

In the rent-to-own industry, "just a few bucks a week" entices the poor into tremendous debt and obligation. For the poor, the chance to own a household appliance, such as a washer and dryer, is enough to contract their savings potential away. Rent-to-own customers routinely pay much more for products than what they pay for the same item at most retailers.[54] A typical effective annual interest rate for many of these transactions is 600 to 700%. These consumers are unable to obtain traditional credit due to their low incomes, employment, or spotty credit history. Therefore, the rent-to-own centers are many times their only place to turn.

Up to 70% of the customers of some stores receive government assistance[55]. In the typical transaction, the consumer makes weekly payments. As long as the consumer completely conforms to the rental agreement, he can keep the merchandise at the end of the agreement. However, if one payment is late or missed, the customer forfeits all of the previous rental payments and must begin the rental process over in order to keep the merchandise.

In Alabama, these transactions are not considered loans.[56] Therefore, the industry is not required to follow the Alabama Mini-Code. The sales practices of some rent-to-own companies can be characterized as "hard sell". Most salespeople in this industry are trained to quote payments in the weekly format. This makes the payment seem affordable. Some companies include warranty charges and insurance charges in the payments. These charges provide very little benefit to the consumers; however, they pay the price for this on top of the already outrageous interest rates.

V. THE DEBIT INSURANCE INDUSTRY

Some companies in the debit insurance industry have been major players in the Alabama poverty industry for many years. Insurance companies are relatively unregulated in Alabama. The Alabama Department of Insurance is underfunded and understaffed. With a staff of 80, the Insurance Department has only two investigators charged with the responsibility of investigating all consumer complaints against Alabama insurance companies. By contrast, the Florida Insurance Department has 72 people to investigate consumer complaints, while Georgia has seven.[57] Alabama is prime hunting ground for debit insurance companies that want to profit from the poor.

Debit insurance is distinguished from other types of insurance because of the agent's involvement and the smaller value of the policies. The debit agent goes to the policyholder's home once a month (or more often) and collects a small amount of premium, usually in cash, for the policies. Typical policies are $500 burial insurance policies, small life insurance policies, accident expense policies, hospital expense policies, disability policies, cancer policies, and Medicare supplement policies. When the policyholder gives the agent money, the agent is trusted to take the money back to the company and credit it to the policyholder's account. Normally, the agent is required to give the policyholder a receipt showing he has received the money or to put a check mark in the policyholder's payment book showing that the money has been received.

Many of the policyholders are low income, illiterate and unsophisticated in dealing with insurance. On many occasions, these policyholders have their policies canceled and the cash value stolen by the agent, or the agent never credits their policy with the premium payment they made. Policyholders have loans taken out on their policy without their knowledge, and they are talked into canceling their old policies with cash value and taking out new policies. On other occasions, policyholders have their signatures forged to important documents, and they are sold useless and duplicative policies.

Alabama's Supreme Court has reviewed many suits involving debit insurance companies.[58] Any family member that is misled and injured by such actions may have a cause of action. In *National States Insurance v. Jones*,[59] the Alabama Supreme Court held that a niece had standing to bring an action regarding her aunt's policy, although she was not the applicant, the insured, the beneficiary, or the owner of the policy. In *Old Southern Life Insurance v. Woodall*,[60] the Alabama Supreme Court held that a husband could bring a fraud claim regarding an insurance policy covering his wife, because the husband had paid the policy premiums, was the exclusive party with whom the insurance company had dealt, and had suffered direct injury. In *Lowe v. American Medical Intern*,[61] the Alabama Supreme Court held that a plaintiff may bring a misrepresentation claim if she can show she has been injured. As stated above, an action may be brought by anyone who is misled and has injuries that result from the misrepresentation or suppression.

One of the primary defenses used by this industry is the statute of limitations. Many times, the policyholder does not even know he has been defrauded. Often the wrongful act took place more than two years prior to the policyholder filing a lawsuit. For instance, if the agent cashed in the consumer's policy or did not credit money to the policy account several years prior, the policyholder may not have been aware of it. In *Howard v. Mutual Savings*,[62] the Alabama Supreme Court held that the statute of limitations began to run when the lawyer told the client that she had a case. *Howard* is also the first case to use the justifiable reliance standard instead of a reasonable reliance standard when determining when a fraud should have been discovered. As a result, the statute of limitations is almost always a jury question.

As long as Alabama's Insurance Department is under-funded and understaffed, some debit insurance companies will be able to wreak havoc upon Alabama consumers. This lack of supervision, coupled with our uneducated population, makes stopping the unscrupulous practices of some debit insurance companies impossible.

VIII. SUGGESTIONS FOR REFORM

The number one area that needs improvement in Alabama is education. We have failed pitifully in this regard. Our population is disproportionately illiterate compared to the rest of the country. If our population were to become more literate, they might be able to fight off the sleazy sales practices of some members of the poverty industry. As the Alabama Legislature debates tort reform, many Alabama residents are being injured by fraudulent consumer practices.

If some tort reform is passed, there are many other areas of the law that Alabama should also reform. For example, we should elect, instead of appoint, the Commissioner of

Insurance. This would help that office be more directly accountable to consumers. Also, proper staffing and funding of the Department of Insurance would better protect consumers.

We should require pawn brokers and rent-to-own centers to charge commercially reasonable rates of interest. Finally, we should enact a strong criminal fraud law to motivate Alabama's poverty industry to clean up any corrupt practices.

Lastly, Alabama should hold the insurance and finance industry accountable under the Deceptive Trade Practices Act. This would then allow the Attorney General to bring suit directly against such offenders and alleviate the need for so many private civil lawsuits.

IX. CONCLUSION

Alabama's poverty industry is alive and thriving. As long as our population is uneducated and there is very little money appropriated to regulate this industry, it will continue to thrive in Alabama. In order to stop Alabama's poverty industry, reform is needed. A more educated population, coupled with more regulation of this industry, should put us on the right track.

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[1] Melissa Montealegre, *Illiteracy Rates Could be Thorn in State's Side*, MONTGOMERY ADVERTISER, Feb. 16, 1997, at A1.
[2] *Id.*
[3] National Center For Education Statistics, *Digest of Education Statistics* 164 (1996).
[4] *Id.*
[5] MICHAEL HUDSON, MERCHANTS OF MISERY 46 (1996).
[6] Deposition of Gracie Pringle, *Pringle v. Associates Fin. Servs.*, No. CV-91-44 (Circuit Court of Lowndes County, Ala.).
[7] HUDSON, supra note 5, at 35 (quoting Kathleen Keest, staff attorney, National Consumer Law Center, Boston, MA).
[8] Hudson, *supra* note 5, at 47.
[9] *Id.* at 36.
[10] *Id.* at 47.
[11] Letter from Lonza Ed Griffin, Supervisor, *American General Finance,* to Jim Phillips, Commissioner, *Ala. Dept. of Ins.,* (Feb. 19, 1992) (On file with author).
[12] ALA. CODE § 5-19-20 (1996).
[13] *Lambert v. Bill Heard Chevrolet Co,. No. 2951091,* 1996 WL 650276. (Ala.Civ.App. Dec. 13,1996)
[14] *Hicks v. Globe Life & Acc. Ins. Co.,* 584 So. 2d 458 (Ala. 1991).
[15] *Id.* at 465.
[16] HUDSON, *supra* at 5, 45.

[17] *McCullar v. Universal Underwriters Life Ins. Co.*, No. 1930246, 1996 WL 675519 (Ala. Nov. 22, 1996).
[18] *Id.* at 8.
[19] *Union Sec. Life Ins. Co. v. Crocker*, 667 So. 2d 688, 691 (Ala. 1995).
[20] *Miller v. Dobbs Mobile Bay, Inc.*, 661 So. 2d 203 (Ala. 1995).
[21] *Id.* at 205.
[22] *Id.*
[23] *Union Sec. Life Ins. Co.,* 667 So. 2d at 691.
[24] *Pate v. Rollison Logging Equip., Inc.*, 628 So. 2d 337 (Ala. 1993).
[25] Dep. of Mary Robinson, *Shirley Smith v. American Gen. Fin.*, No. CV-95-096 (Circuit Court of Barbour County, Ala.).
[26] *Wiley v. General Motors Acceptance Corp.*, 624 So. 2d 518 (Ala. 1993).
[27] *Id.* at 521.
[28] ALA. CODE § 5-19-20(b) (1996).
[29] HUDSON, *supra* note 5 at 36.
[30] 16 C.F.R § 444.2(a)(4) (1996).
[31] Bulletin of February 22, 1994, Ala. Dept. Ins. (AB-133).
[32] *Emery v. American Gen. Fin., Inc.*, 71 F.3d 1343 (7th Cir. 1995).
[33] *Id.* at 1345.
[34] *Id.* at 1347.
[35] *Id.* at 1348.
[36] ALA. CODE § 5-19-1 (1996).
[37] See *Smith v. First Family Fin. Servs.*, 626 So. 2d 1266 (Ala. 1993).
[38] *Id.*.
[39] Id. at 1271.
[40] *Bramlett v. Adamson Ford,, No.2950526,* 1996 WL 730853 (Ala. Civ. App. Dec. 20, 1996).
[41] *Id.*
[42] *Id.*
[43] *Bramlett,* No. 2950526, 1996 WL 730853, at*3.
[44] ALA. CODE § 5-19-6(c) (1996).
[45] ALA. CODE § 5-19A-7 (1996).
[46] See *Blackmon v. Downey*, 624 So. 2d 1374, 1376 (Ala. 1993).
[47] ALA. CODE § 5-18-4(b) (1996).
[48] See *Floyd v. Title Exchange & Pawn of Anniston*, 620 So. 2d 576 (Ala. 1993).
[49] Id.
[50] ALA. CODE § 5-19A-2(6) (1996).
[51] *Floyd*, 620 So. 2d at 578.
[52] HUDSON, *supra* note 5 at 52.
[53] *Id.* at 55.
[54] *Id.* at 145.
[55] *Id at 156.*
[56] ALA. CODE § 8-25-1(5)(a) (1996).
[57] NAIC, INSURANCE DEPARTMENT RESOURCES REPORT 6 (1995).
[58] See *Ex Parte Mary L. Gauntt*, 677 So. 2d 204 (Ala. 1996); *Ex Parte Bloodsaw*, 648 So. 2d 553 (Ala. 1994); *Boswell v. Liberty Nat. Life Ins. Co.*, 643 So. 2d 580 (Ala. 1994); *Willingham v. United Ins. Co. of Am.*, 642 So. 2d 428 (Ala. 1994); *Gray v. Liberty Nat. Life Ins. Co.*, 623 So. 2d 665 (Ala. 1993); *Grimes v. Liberty Nat. Life Ins. Co.*, 551 So. 2d 329 (Ala. 1989); *Liberty Nat. Life Ins. Co. v. Sherrill*, 551 So. 2d (Ala. 1989).
[59] *National States Ins. Co. v. Jones*, 393 So. 2d 1361 (Ala. 1980).
[60] *Old Southern Life Ins. v. Woodall*, 326 So. 2d 726 (Ala. 1976).
[61] *Lowe v. American Medical Intern*, 494 So. 2d 413 (Ala. 1986).
[62] *Howard v. Mutual Savings*, 608 So. 2d 379 (Ala. 1992).