HOUSE BILL NO. 1646

AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO INCLUDE A DEFINITION OF THE TERM "OTHER CHARGES"; TO AMEND SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THE REMEDY FOR CONTRACTING FOR AND RECEIVING UNLAWFUL OTHER CHARGES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 75-67-103, Mississippi Code of 1972, is amended as follows:

75-67-103. The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

(a) "Person" means and includes every natural person, firm, corporation, copartnership, joint-stock or other association or organization, and any other legal entity whatsoever.

(b) "Licensee" means and includes every person holding a valid license issued under the provisions of the Small Loan Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this state, except those specifically exempt by the provisions of this article, who, in addition to any other rights and powers he or it might otherwise possess, shall engage in the business of lending money either directly or indirectly, to be paid back in monthly installments or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires security from the borrower as indemnity for the repayment of the loan.
(c) "Occasional lender" means a person making not more than one (1) loan in any month or not more than twelve (12) loans in any twelve-month period.

(d) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(e) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(f) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(g) "Other charges" means any amounts contracted for or received by any licensee or other person in connection with a loan, other than finance charges as defined in Section 75-17-21.

SECTION 2. Section 75-67-119, Mississippi Code of 1972, is amended as follows:

75-67-119. (1) If any finance charge in excess of that expressly permitted by Section 75-17-21 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) and not less than One Hundred Dollars ($100.00), in the discretion of the court; and, further, the Commissioner of
Banking and Consumer Finance shall forthwith cite such licensee to show cause why its license should not be revoked and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Sections 75-67-201 to 75-67-243).

(2) If any licensee or other person violates any provision of this article or any rule or regulation promulgated pursuant to this article or any provision of Title 75, Chapter 17, of the Mississippi Code of 1972, or contracts for or receives, or participates in contracting for or receiving, other charges by false, misleading, deceptive or fraudulent means, or in violation of any applicable statutory or common law duty, or which are otherwise unlawful, all such unlawful other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If the other charges subject to forfeiture under this section exceed Five Hundred Dollars ($500.00), all finance charges shall additionally be forfeited and may be recovered. If the other charges subject to forfeiture under this section exceed One Thousand Five Hundred Dollars ($1,500.00), all principal shall additionally be forfeited and may be recovered.

(3) Except as provided in subsection (4) of this section, the remedies and penalties provided in this section shall be the exclusive remedies and penalties for all claims against a licensee or any other person for contracting for or receiving any finance charge in excess of that expressly permitted by Section 75-17-21, or for violation of any provision of this article or any rule or regulation promulgated pursuant to this article or any provision of Title 75, Chapter 17, of the Mississippi Code of 1972, or for contracting for or receiving, or participating in contracting for or receiving, other charges by false, misleading, deceptive or fraudulent means, or in violation of any applicable statutory or common law duty, or which are otherwise unlawful.

(4) The remedies and penalties provided in this section are supplemental to the defense provided in Section 75-67-127(3) and
to the enforcement powers conferred upon the Commissioner of Banking and Consumer Finance.

SECTION 3. Section 75-17-25, Mississippi Code of 1972, is amended as follows:

75-17-25. (1) The term "finance charge" as used in this section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; provided, however, that recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees permitted to be charged under the provisions of Section 79-7-7, service charges as provided in Section 81-19-31, and with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees incidental to the transaction shall not be included in the finance charge.

(2) Subject to the other provisions of this section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217, the finance charge may be calculated on the assumption that the indebtedness will be discharged as it becomes due, and prepayment penalties and statutory default charges shall not be included in the finance charge. Nothing in Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23, 75-17-25, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; provided, however, that recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees permitted to be charged under the provisions of Section 79-7-7, service charges as provided in Section 81-19-31, and with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees incidental to the transaction shall not be included in the finance charge.

(2) Subject to the other provisions of this section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217, the finance charge may be calculated on the assumption that the indebtedness will be discharged as it becomes due, and prepayment penalties and statutory default charges shall not be included in the finance charge. Nothing in Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23, 75-17-25, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; provided, however, that recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees permitted to be charged under the provisions of Section 79-7-7, service charges as provided in Section 81-19-31, and with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees incidental to the transaction shall not be included in the finance charge.
75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner of contracting for such finance charge, whether by way of add-on, discount or otherwise, so long as the annual percentage rate does not exceed that permitted by law. If a greater finance charge than that authorized by applicable law shall be stipulated for or received in any case, all interest and finance charge shall be forfeited, and may be recovered back, whether the contract be executed or executory. If a finance charge be contracted for or received that exceeds the maximum authorized by law by more than one hundred percent (100%), the principal and all finance charges shall be forfeited and any amount paid may be recovered by suit.

The provisions of this section, Section 75-17-1 and Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not restrict the extension of credit pursuant to any other applicable law. A licensee under the Small Loan Regulatory Law (Sections 75-67-101 through 75-67-135), and the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-243), may contract for and receive finance charges as authorized by Section 75-17-21, and the late payment charge as authorized by Section 75-17-27, regardless of the purpose for which the loan or other extension of credit is made.

(3) If in connection with a consumer loan any person contracts for or receives, or participates in contracting for or receiving, other charges by false, misleading, deceptive or fraudulent means, or in violation of any applicable statutory or common law duty, or which are otherwise unlawful, all such unlawful other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If the other charges subject to forfeiture under this section exceed Five Hundred Dollars ($500.00), all finance charges shall additionally be forfeited and may be recovered. If the other charges subject to forfeiture under this section exceed One Thousand Five Hundred
Dollars ($1,500.00), all principal shall additionally be forfeited
and may be recovered.

The remedies and penalties provided in this section shall be
the exclusive remedies and penalties for contracting for or
receiving any finance charge in excess of that permitted by
applicable law or for contracting for or receiving, or
participating in contracting for or receiving, other charges by
false, misleading, deceptive or fraudulent means, or in violation
of any applicable statutory or common law duty, or which are
otherwise unlawful.

As used in this subsection (3), the term "consumer loan"
shall mean any loan or extension of credit offered or extended
primarily for personal, family or household purposes; and the term
"other charges" shall mean any amounts contracted for or received
by any person in connection with a consumer loan, other than
finance charges as defined in this section.

SECTION 4. This act shall take effect and be in force from
and after its passage.