

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 1646

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

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

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

10 75-67-103. The following words and phrases, when used in
11 this article, shall, for the purposes of this article, have the
12 meanings respectively ascribed to them in this section, except
13 where the context clearly describes and indicates a different
14 meaning:

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

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



29 (c) "Occasional lender" means a person making not more
30 than one (1) loan in any month or not more than twelve (12) loans
31 in any twelve-month period.

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

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

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

42 (g) "Other charges" means any amounts contracted for or
43 received by any licensee or other person in connection with a
44 loan, other than finance charges as defined in Section 75-17-25.

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

47 75-67-119. (1) If any finance charge in excess of that
48 expressly permitted by Section 75-17-21 is contracted for or
49 received, all finance charges and other charges shall be forfeited
50 and may be recovered, whether the contract be executed or
51 executory. If any finance charge is contracted for or received
52 that exceeds the maximum finance charge authorized by law by more
53 than one hundred percent (100%), the principal and all finance
54 charges and other charges shall be forfeited and any amount paid
55 may be recovered by suit; and, in addition, the licensee and the
56 several members, officers, directors, agents, and employees
57 thereof who shall have participated in such violation shall be
58 guilty of a misdemeanor and, upon conviction thereof, shall be
59 punished by a fine of not more than One Thousand Dollars
60 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
61 the discretion of the court; and, further, the Commissioner of



62 Banking and Consumer Finance shall forthwith cite such licensee to
63 show cause why its license should not be revoked and proceedings
64 thereon shall be as is specifically provided in the Small Loan
65 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

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

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

93 (4) The remedies and penalties provided in this section are
94 supplemental to the defense provided in Section 75-67-127(3) and



95 to the enforcement powers conferred upon the Commissioner of
96 Banking and Consumer Finance.

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

99 75-17-25. (1) The term "finance charge" as used in this
100 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
101 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
102 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
103 payable, directly or indirectly, by a debtor for receiving a loan
104 or incident to or as a condition of the extension of credit,
105 including, but not limited to, interest, brokerage fees, finance
106 charges, loan fees, discount, points, service charges, transaction
107 charges, activity charges, carrying charges, time price
108 differential, finders fees or any other cost or expense to the
109 debtor for services rendered or to be rendered to the debtor in
110 making, arranging or negotiating a loan of money or an extension
111 of credit and for the accounting, guaranteeing, endorsing,
112 collecting and other actual services rendered by the lender;
113 provided, however, that recording fees, motor vehicle title fees,
114 attorney's fees, insurance premiums, fees permitted to be charged
115 under the provisions of Section 79-7-7, service charges as
116 provided in Section 81-19-31, and with respect to a debt secured
117 by an interest in land, bona fide closing costs and appraisal fees
118 incidental to the transaction shall not be included in the finance
119 charge.

120 (2) Subject to the other provisions of this section,
121 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
122 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
123 75-67-127 and 75-67-217, the finance charge may be calculated on
124 the assumption that the indebtedness will be discharged as it
125 becomes due, and prepayment penalties and statutory default
126 charges shall not be included in the finance charge. Nothing in
127 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,



128 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
129 of contracting for such finance charge, whether by way of add-on,
130 discount or otherwise, so long as the annual percentage rate does
131 not exceed that permitted by law. If a greater finance charge
132 than that authorized by applicable law shall be stipulated for or
133 received in any case, all interest and finance charge shall be
134 forfeited, and may be recovered back, whether the contract be
135 executed or executory. If a finance charge be contracted for or
136 received that exceeds the maximum authorized by law by more than
137 one hundred percent (100%), the principal and all finance charges
138 shall be forfeited and any amount paid may be recovered by suit.
139 The provisions of this section, Section 75-17-1 and Sections
140 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
141 shall not restrict the extension of credit pursuant to any other
142 applicable law. A licensee under the Small Loan Regulatory Law
143 (Sections 75-67-101 through 75-67-135), and the Small Loan
144 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
145 contract for and receive finance charges as authorized by Section
146 75-17-21, and the late payment charge as authorized by Section
147 75-17-27, regardless of the purpose for which the loan or other
148 extension of credit is made.

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



160 Dollars (\$1,500.00), all principal shall additionally be forfeited
161 and may be recovered.

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

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

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

