S. B. No. 2713

AN ACT TO BRING FORWARD SECTION 75-17-25, MISSISSIPPI CODE OF 1972, WHICH DEFINES THE TERM "FINANCE CHARGE" AS IT RELATES TO THE USURY STATUTES; TO BRING FORWARD SECTION 75-67-127, MISSISSIPPI CODE OF 1972, WHICH PROVIDES CIVIL IMMUNITY TO LICENSEES UNDER THE SMALL LOAN REGULATORY LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 75-17-25, Mississippi Code of 1972, is brought forward as follows:

75-17-25. 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.

Subject to the other provisions of this section, Sections 75-17-1, 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, 75-17-27, 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.

SECTION 2. Section 75-67-137, Mississippi Code of 1972, is brought forward as follows:
75-67-137. (1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SECTION 3. This act shall take effect and be in force from and after July 1, 2002.