

By: Representative Blackmon

To: Select Committee on  
Civil Justice Reform

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 14

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,  
2 TO REVISE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO  
3 INCLUDE DEFINITIONS FOR THE TERMS "OTHER CHARGES," "CONSUMER  
4 LOAN," AND "CONSUMER"; TO AMEND SECTIONS 75-67-119 AND 75-17-25,  
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMEDIES, PENALTIES AND  
6 DAMAGES FOR CONTRACTING FOR AND RECEIVING UNLAWFUL OTHER CHARGES  
7 IN CONNECTION WITH CONSUMER LOANS; TO PROVIDE FOR DOUBLE PENALTY  
8 AMOUNTS IF OTHER CHARGES ARE CONTRACTED FOR OR RECEIVED BY ACTUAL  
9 FRAUD; TO PROVIDE FOR THE RECOVERY OF ATTORNEY'S FEES IF PENALTIES  
10 ARE RECOVERED; TO PROVIDE THAT THE REMEDIES, PENALTIES AND DAMAGES  
11 PROVIDED FOR UNDER THIS ACT ARE EXCLUSIVE; TO PROVIDE FOR A  
12 ONE-YEAR STATUTE OF LIMITATIONS ON FILING ACTIONS FOR RECOVERY OF  
13 PENALTIES OR DAMAGES UNDER THIS ACT; TO PROVIDE THAT THE  
14 PROVISIONS OF THIS ACT SHALL STAND REPEALED ON JULY 1, 2004; AND  
15 FOR RELATED PURPOSES.

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

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

19 75-67-103. (1) The following words and phrases, when used  
20 in this article, shall, for the purposes of this article, have the  
21 meanings respectively ascribed to them in this section, except  
22 where the context clearly describes and indicates a different  
23 meaning:

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

27 (b) "Licensee" means and includes every person holding  
28 a valid license issued under the provisions of the Small Loan  
29 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this  
30 state, except those specifically exempt by the provisions of this  
31 article, who, in addition to any other rights and powers he or it  
32 might otherwise possess, shall engage in the business of lending  
33 money either directly or indirectly, to be paid back in monthly



34 installments or other regular installments for periods of more or  
35 less than one (1) month, and whether or not the lender requires  
36 security from the borrower as indemnity for the repayment of the  
37 loan.

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

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

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

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

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

54 (h) "Consumer loan" means any loan or extension of  
55 credit in the principal amount of Twenty Thousand Dollars  
56 (\$20,000.00) or less offered or extended primarily for personal,  
57 family or household purposes.

58 (i) "Consumer" means any natural person who is  
59 obligated on any consumer loan.

60 (2) Paragraphs (g) through (i) of subsection (1) of this  
61 section shall stand repealed on July 1, 2004; however, the  
62 provisions of paragraphs (g) through (i) of subsection (1) of this  
63 section shall remain in full force and effect with respect to any  
64 loan agreement that is entered into before July 1, 2004.

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



67           75-67-119. (1) If any finance charge in excess of that  
68 expressly permitted by Section 75-17-21 is contracted for or  
69 received, all finance charges and other charges shall be forfeited  
70 and may be recovered, whether the contract be executed or  
71 executory. If any finance charge is contracted for or received  
72 that exceeds the maximum finance charge authorized by law by more  
73 than one hundred percent (100%), the principal and all finance  
74 charges and other charges shall be forfeited and any amount paid  
75 may be recovered by suit; and, in addition, the licensee and the  
76 several members, officers, directors, agents, and employees  
77 thereof who shall have participated in such violation shall be  
78 guilty of a misdemeanor and, upon conviction thereof, shall be  
79 punished by a fine of not more than One Thousand Dollars  
80 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
81 the discretion of the court; and, further, the Commissioner of  
82 Banking and Consumer Finance shall forthwith cite such licensee to  
83 show cause why its license should not be revoked and proceedings  
84 thereon shall be as is specifically provided in the Small Loan  
85 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

86           (2) If, in connection with a consumer loan, any licensee or  
87 other person contracts for or receives, or participates in  
88 contracting for or receiving, other charges in violation of any  
89 applicable statutory or common law duty, or which are otherwise  
90 unlawful, then all those unlawful other charges, all finance  
91 charges and all principal shall be forfeited and may be recovered  
92 by the consumer, by suit or other proceeding, whether the contract  
93 is executed or executory. However, no person who contracts for or  
94 receives other charges in violation of any applicable statutory or  
95 common law duty, or otherwise unlawfully, shall be subject to  
96 forfeiture of principal if the person shows by a preponderance of  
97 the evidence that those other charges were contracted for or  
98 received unintentionally and as a result of a bona fide error  
99 notwithstanding the maintenance of procedures reasonably adapted



100 to avoid any such violation. Examples of bona fide errors  
101 include, but are not limited to, clerical, calculation, computer  
102 malfunction and programming, and printing errors, except that an  
103 error of legal judgment with respect to applicable statutory or  
104 common law duty is not a bona fide error.

105 (3) If the other charges subject to forfeiture under this  
106 section are found to have been contracted for or received by  
107 actual fraud, any penalty recovered under subsection (2) of this  
108 section shall be doubled.

109 (4) If a consumer recovers any penalty provided for under  
110 subsection (2) of this section, the consumer also may recover  
111 damages, to the extent proven by competent evidence, subject to  
112 the following limitations:

113 (a) If the amount of the unlawful other charges is One  
114 Hundred Dollars (\$100.00) or less, the maximum amount of damages  
115 that may be recovered by the consumer as to each individual loan  
116 is Three Thousand Dollars (\$3,000.00).

117 (b) If the amount of the unlawful other charges is more  
118 than One Hundred Dollars (\$100.00) but less than One Thousand  
119 Dollars (\$1,000.00), the maximum amount of damages that may be  
120 recovered by the consumer as to each individual loan is Fifteen  
121 Thousand Dollars (\$15,000.00).

122 (c) If the amount of the unlawful other charges is not  
123 less than One Thousand Dollars (\$1,000.00) but less than Two  
124 Thousand Dollars (\$2,000.00), the maximum amount of damages that  
125 may be recovered by the consumer as to each individual loan is  
126 Thirty Thousand Dollars (\$30,000.00).

127 (d) If the amount of the unlawful other charges is not  
128 less than Two Thousand Dollars (\$2,000.00) but less than Five  
129 Thousand Dollars (\$5,000.00), the maximum amount of damages that  
130 may be recovered by the consumer as to each individual loan is  
131 Forty-five Thousand Dollars (\$45,000.00).



132           (e) If the amount of the unlawful other charges is not  
133 less than Five Thousand Dollars (\$5,000.00), the maximum amount of  
134 damages that may be recovered by the consumer as to each  
135 individual loan is Sixty Thousand Dollars (\$60,000.00).

136           (5) If any penalty is recovered under subsection (2) of this  
137 section, a reasonable attorney's fee also shall be recovered from  
138 the offending party by the consumer.

139           (6) Except as provided in subsection (7) of this section,  
140 the remedies, penalties and damages provided for in this section  
141 shall be the exclusive remedies, penalties and damages for  
142 contracting for or receiving any finance charge in excess of that  
143 expressly permitted by Section 75-17-21, or for contracting for or  
144 receiving, or participating in contracting for or receiving, other  
145 charges in violation of any applicable statutory or common law  
146 duty, or which are otherwise unlawful.

147           (7) The remedies, penalties and damages provided for in this  
148 section are supplemental to the defense provided in Section  
149 75-67-127(3) and to the enforcement powers conferred upon the  
150 Commissioner of Banking and Consumer Finance.

151           (8) No action for recovery of any penalty or damages  
152 provided for under this section may be brought unless it is filed  
153 within one (1) year after the date of the act or event that  
154 created the cause of action. However, if the act or event that  
155 created the cause of action occurred before the effective date of  
156 House Bill No. 14, Third Extraordinary Session 2002, no action for  
157 recovery of any penalty or damages provided for under this section  
158 based on that cause of action may be brought unless it is filed  
159 within one (1) year after the effective date of House Bill No. 14,  
160 Third Extraordinary Session 2002.

161           (9) Subsections (2) through (8) of this section shall stand  
162 repealed on July 1, 2004; however, the provisions of subsections  
163 (2) through (8) of this section shall remain in full force and



164 effect with respect to any loan agreement that is entered into  
165 before July 1, 2004.

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

168 75-17-25. (1) The term "finance charge" as used in this  
169 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
170 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,  
171 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or  
172 payable, directly or indirectly, by a debtor for receiving a loan  
173 or incident to or as a condition of the extension of credit,  
174 including, but not limited to, interest, brokerage fees, finance  
175 charges, loan fees, discount, points, service charges, transaction  
176 charges, activity charges, carrying charges, time price  
177 differential, finders fees or any other cost or expense to the  
178 debtor for services rendered or to be rendered to the debtor in  
179 making, arranging or negotiating a loan of money or an extension  
180 of credit and for the accounting, guaranteeing, endorsing,  
181 collecting and other actual services rendered by the lender;  
182 provided, however, that recording fees, motor vehicle title fees,  
183 attorney's fees, insurance premiums, fees permitted to be charged  
184 under the provisions of Section 79-7-7, service charges as  
185 provided in Section 81-19-31, and with respect to a debt secured  
186 by an interest in land, bona fide closing costs and appraisal fees  
187 incidental to the transaction shall not be included in the finance  
188 charge.

189 (2) Subject to the other provisions of this section,  
190 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,  
191 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,  
192 75-67-127 and 75-67-217, the finance charge may be calculated on  
193 the assumption that the indebtedness will be discharged as it  
194 becomes due, and prepayment penalties and statutory default  
195 charges shall not be included in the finance charge. Nothing in  
196 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,



197 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner  
198 of contracting for such finance charge, whether by way of add-on,  
199 discount or otherwise, so long as the annual percentage rate does  
200 not exceed that permitted by law. If a greater finance charge  
201 than that authorized by applicable law shall be stipulated for or  
202 received in any case, all interest and finance charge shall be  
203 forfeited, and may be recovered back, whether the contract be  
204 executed or executory. If a finance charge be contracted for or  
205 received that exceeds the maximum authorized by law by more than  
206 one hundred percent (100%), the principal and all finance charges  
207 shall be forfeited and any amount paid may be recovered by suit.  
208 The provisions of this section, Section 75-17-1 and Sections  
209 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33  
210 shall not restrict the extension of credit pursuant to any other  
211 applicable law. A licensee under the Small Loan Regulatory Law  
212 (Sections 75-67-101 through 75-67-135), and the Small Loan  
213 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may  
214 contract for and receive finance charges as authorized by Section  
215 75-17-21, and the late payment charge as authorized by Section  
216 75-17-27, regardless of the purpose for which the loan or other  
217 extension of credit is made.

218 (3) If, in connection with a consumer loan, any person  
219 contracts for or receives, or participates in contracting for or  
220 receiving, other charges in violation of any applicable statutory  
221 or common law duty, or which are otherwise unlawful, then all  
222 those unlawful other charges, all finance charges and all  
223 principal shall be forfeited and may be recovered by the consumer,  
224 by suit or other proceeding, whether the contract is executed or  
225 executory. However, no person who contracts for or receives other  
226 charges in violation of any applicable statutory or common law  
227 duty, or otherwise unlawfully, shall be subject to forfeiture of  
228 principal if the person shows by a preponderance of the evidence  
229 that those other charges were contracted for or received



230 unintentionally and as a result of a bona fide error  
231 notwithstanding the maintenance of procedures reasonably adapted  
232 to avoid any such violation. Examples of bona fide errors  
233 include, but are not limited to, clerical, calculation, computer  
234 malfunction and programming, and printing errors, except that an  
235 error of legal judgment with respect to applicable statutory or  
236 common law duty is not a bona fide error.

237 (4) If the other charges subject to forfeiture under this  
238 section are found to have been contracted for or received by  
239 actual fraud, any penalty recovered under subsection (3) of this  
240 section shall be doubled.

241 (5) If a consumer recovers any penalty provided for under  
242 subsection (3) of this section, the consumer also may recover  
243 damages, to the extent proven by competent evidence, subject to  
244 the following limitations:

245 (a) If the amount of the unlawful other charges is One  
246 Hundred Dollars (\$100.00) or less, the maximum amount of damages  
247 that may be recovered by the consumer as to each individual loan  
248 is Three Thousand Dollars (\$3,000.00).

249 (b) If the amount of the unlawful other charges is more  
250 than One Hundred Dollars (\$100.00) but less than One Thousand  
251 Dollars (\$1,000.00), the maximum amount of damages that may be  
252 recovered by the consumer as to each individual loan is Fifteen  
253 Thousand Dollars (\$15,000.00).

254 (c) If the amount of the unlawful other charges is not  
255 less than One Thousand Dollars (\$1,000.00) but less than Two  
256 Thousand Dollars (\$2,000.00), the maximum amount of damages that  
257 may be recovered by the consumer as to each individual loan is  
258 Thirty Thousand Dollars (\$30,000.00).

259 (d) If the amount of the unlawful other charges is not  
260 less than Two Thousand Dollars (\$2,000.00) but less than Five  
261 Thousand Dollars (\$5,000.00), the maximum amount of damages that





262 may be recovered by the consumer as to each individual loan is  
263 Forty-five Thousand Dollars (\$45,000.00).

264 (e) If the amount of the unlawful other charges is not  
265 less than Five Thousand Dollars (\$5,000.00), the maximum amount of  
266 damages that may be recovered by the consumer as to each  
267 individual loan is Sixty Thousand Dollars (\$60,000.00).

268 (6) If any penalty is recovered under subsection (3) of this  
269 section, a reasonable attorney's fee also shall be recovered from  
270 the offending party by the consumer.

271 (7) The remedies, penalties and damages provided for in this  
272 section shall be the exclusive remedies, penalties and damages for  
273 contracting for or receiving any finance charge in excess of that  
274 permitted by applicable law, or for contracting for or receiving,  
275 or participating in contracting for or receiving, other charges in  
276 violation of any applicable statutory or common law duty, or which  
277 are otherwise unlawful.

278 (8) As used in this section:

279 (a) "Consumer loan" means any loan or extension of  
280 credit offered or extended in the principal amount of Twenty  
281 Thousand Dollars (\$20,000.00) or less primarily for personal,  
282 family or household purposes.

283 (b) "Consumer" means any natural person obligated on  
284 any consumer loan.

285 (c) "Other charges" means any amounts contracted for or  
286 received by any person in connection with a consumer loan, other  
287 than finance charges as defined in this section.

288 (9) No action for recovery of any penalty or damages  
289 provided for under this section may be brought unless it is filed  
290 within one (1) year after the date of the act or event that  
291 created the cause of action. However, if the act or event that  
292 created the cause of action occurred before the effective date of  
293 House Bill No. 14, Third Extraordinary Session 2002, no action for  
294 recovery of any penalty or damages provided for under this section



295 based on that cause of action may be brought unless it is filed  
296 within one (1) year after the effective date of House Bill No. 14,  
297 Third Extraordinary Session 2002.

298 (10) Subsections (3) through (9) of this section shall stand  
299 repealed on July 1, 2004; however, the provisions of subsections  
300 (3) through (9) of this section shall remain in full force and  
301 effect with respect to any loan agreement that is entered into  
302 before July 1, 2004.

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

