

*****Adopted*****

AMENDMENT No. 4 PROPOSED TO

Senate Bill NO. 2011

By Senator(s) Ross

1 **AMEND** by deleting Sections 15 and 16 on lines 526 through 656
2 and inserting in lieu thereof the following:

3 **SECTION 15.** Section 75-67-119, Mississippi Code of 1972, is
4 amended as follows:

5 75-67-119. (1) If any finance charge in excess of that
6 expressly permitted by Section 75-17-21 is contracted for or
7 received, all finance charges and other charges shall be forfeited
8 and may be recovered, whether the contract be executed or
9 executory. If any finance charge is contracted for or received
10 that exceeds the maximum finance charge authorized by law by more
11 than one hundred percent (100%), the principal and all finance
12 charges and other charges shall be forfeited and any amount paid
13 may be recovered by suit; and, in addition, the licensee and the
14 several members, officers, directors, agents, and employees
15 thereof who shall have participated in such violation shall be
16 guilty of a misdemeanor and, upon conviction thereof, shall be
17 punished by a fine of not more than One Thousand Dollars
18 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
19 the discretion of the court; and, further, the Commissioner of
20 Banking and Consumer Finance shall forthwith cite such licensee to
21 show cause why its license should not be revoked and proceedings
22 thereon shall be as is specifically provided in the Small Loan
23 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

24 (2) If any licensee or other person violates any provision
25 of this article or any rule or regulation promulgated pursuant to
26 this article or any provision of Title 75, Chapter 17, of the
27 Mississippi Code of 1972, or contracts for or receives, or
28 participates in contracting for or receiving, other charges in
29 violation of any applicable statutory or common law duty, or which
30 are otherwise unlawful for any reason, all such other charges
31 shall be forfeited and may be recovered, whether the contract be
32 executed or executory. If the other charges subject to forfeiture
33 under this section exceed Five Hundred Dollars (\$500.00), all
34 finance charges shall additionally be forfeited and may be
35 recovered. If the other charges subject to forfeiture under this
36 section exceed One Thousand Five Hundred Dollars (\$1,500.00), all
37 principal shall additionally be forfeited and may be recovered.

38 If the other charges subject to forfeiture under this section
39 are found by the trier of fact and the court to have been
40 contracted for or received as a result of fraud, then an award of
41 three (3) times the other charges subject to forfeiture or One
42 Thousand Dollars (\$1,000.00), whichever is greater, plus
43 reasonable attorney's fees may be made in addition to the
44 penalties provided in this subsection.

45 (3) The right to recover the penalties provided in this
46 subsection (3) shall accrue only after: (a) written notice of the
47 violation is given to the licensee by certified mail addressed to
48 the licensee's place of business as shown in the credit
49 transaction documents or such notice is given by certified mail to
50 the licensee's agent for service of process; and (b) thirty (30)
51 days have elapsed since receipt of such notice by the licensee and
52 the violation has not been corrected by refund or by credit to the
53 borrower's remaining obligation. In the case of multiple
54 violations involving a common violation affecting more than one
55 hundred (100) borrowers, the licensee must notify the commissioner
56 and correct the violation as to each affected borrower within
57 thirty (30) days after receipt of a borrower notice, but the
58 commissioner may extend the time for correction for good reason.

59 The penalties provided for in subsection (2) shall not apply if it
60 is proven by a preponderance of the evidence that the violation
61 was not intentional and resulted from a bona fide error
62 notwithstanding the maintenance of procedures reasonably adapted
63 to avoid any such error, except that the licensee may be required
64 to correct the error by refund or credit to the borrower's
65 remaining obligation. Failure to refund or give credit for an
66 unlawful other charge within thirty (30) days after receipt of a
67 borrower notice or, in the case of multiple violations, failure to
68 give the commissioner the required notice within the specified
69 time, shall give rise to a rebuttable presumption that the
70 violation was not the result of a bona fide error for purposes of
71 this subsection. The penalties provided for in subsection (2)
72 shall not apply if the licensee discovers the problem itself or is
73 notified of the problem by the commissioner and within sixty (60)
74 days after discovering the violation, and prior to the receipt of
75 written notice of the violation from the borrower as provided
76 herein, the licensee notifies the affected borrower of the
77 violation and either refunds or gives credit for the unlawful
78 other charge.

79 (4) Except as provided in subsection (5) of this section,
80 the remedies and penalties provided in this section shall be the
81 exclusive remedies and penalties for all claims against a licensee
82 or any other person for contracting for or receiving any finance
83 charge in excess of that expressly permitted by Section 75-17-21,
84 or for violation of any provision of this article or any rule or
85 regulation promulgated pursuant to this article or any provision
86 of Title 75, Chapter 17, of the Mississippi Code of 1972, or for
87 contracting for or receiving, or participating in contracting for
88 or receiving, other charges in violation of any applicable
89 statutory or common law duty, or which are otherwise unlawful.

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

94 **SECTION 16.** Section 75-17-25, Mississippi Code of 1972, is
95 amended as follows:

96 75-17-25. (1) The term "finance charge" as used in this
97 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
98 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
99 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
100 payable, directly or indirectly, by a debtor for receiving a loan
101 or incident to or as a condition of the extension of credit,
102 including, but not limited to, interest, brokerage fees, finance
103 charges, loan fees, discount, points, service charges, transaction
104 charges, activity charges, carrying charges, time price
105 differential, finders fees or any other cost or expense to the
106 debtor for services rendered or to be rendered to the debtor in
107 making, arranging or negotiating a loan of money or an extension
108 of credit and for the accounting, guaranteeing, endorsing,
109 collecting and other actual services rendered by the lender;
110 provided, however, that recording fees, motor vehicle title fees,
111 attorney's fees, insurance premiums, fees permitted to be charged
112 under the provisions of Section 79-7-7, service charges as
113 provided in Section 81-19-31, and with respect to a debt secured
114 by an interest in land, bona fide closing costs and appraisal fees
115 incidental to the transaction shall not be included in the finance
116 charge.

117 (2) Subject to the other provisions of this section,
118 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
119 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
120 75-67-127 and 75-67-217, the finance charge may be calculated on
121 the assumption that the indebtedness will be discharged as it
122 becomes due, and prepayment penalties and statutory default
123 charges shall not be included in the finance charge. Nothing in
124 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
125 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
126 of contracting for such finance charge, whether by way of add-on,
127 discount or otherwise, so long as the annual percentage rate does
128 not exceed that permitted by law. If a greater finance charge

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

146 (3) If in connection with a consumer loan any person
147 contracts for or receives, or participates in contracting for or
148 receiving, other charges in violation of any applicable statutory
149 or common law duty, or which are otherwise unlawful for any
150 reason, all such other charges shall be forfeited and may be
151 recovered, whether the contract be executed or executory. If the
152 other charges subject to forfeiture under this section exceed Five
153 Hundred Dollars (\$500.00), all finance charges shall additionally
154 be forfeited and may be recovered. If the other charges subject
155 to forfeiture under this section exceed One Thousand Five Hundred
156 Dollars (\$1,500.00), all principal shall additionally be forfeited
157 and may be recovered.

158 If the other charges subject to forfeiture under this section
159 are found by the trier of fact and the court to have been
160 contracted for or received as a result of fraud, then an award of
161 three (3) times the other charges subject to forfeiture or One
162 Thousand Dollars (\$1,000.00), whichever is greater, plus
163 reasonable attorney's fees may be made in addition to the

164 penalties provided in this subsection.

165 The right to recover the penalties provided in this
166 subsection (3) shall accrue only after: (a) written notice of the
167 violation is given to the lender by certified mail addressed to
168 the lender's place of business as shown in the credit transaction
169 documents or such notice is given by certified mail to the
170 lender's agent for service of process; and (b) thirty (30) days
171 have elapsed since receipt of such notice by the lender and the
172 violation has not been corrected by refund or by credit to the
173 consumer's remaining obligation. In the case of multiple
174 violations involving a common violation affecting more than one
175 hundred (100) consumers, the lender must notify the Commissioner
176 of Banking and Consumer Finance and correct the violation as to
177 each affected consumer within thirty (30) days after receipt of a
178 consumer notice, but the commissioner may extend the time for
179 correction for good reason. The penalties provided for in this
180 subsection shall not apply if it is proven by a preponderance of
181 the evidence that the violation was not intentional and resulted
182 from a bona fide error notwithstanding the maintenance of
183 procedures reasonably adapted to avoid any such error, except that
184 the licensee may be required to correct the error by refund or
185 credit to the consumer's remaining obligation. Failure to refund
186 or give credit for an unlawful other charge within thirty (30)
187 days after receipt of a consumer notice or, in the case of
188 multiple violations, failure to give the commissioner the required
189 notice within the specified time, shall give rise to a rebuttable
190 presumption that the violation was not the result of a bona fide
191 error for purposes of this subsection. The penalties provided for
192 in this subsection shall not apply if the lender discovers the
193 problem itself or is notified of the problem by the commissioner
194 and within sixty (60) days after discovering the violation, and
195 prior to the receipt of written notice of the violation from the
196 consumer as provided herein, the lender notifies the affected
197 consumer of the violation and either refunds or gives credit for
198 the unlawful other charge.

199 The remedies and penalties provided in this section shall be
200 the exclusive remedies and penalties for contracting for or
201 receiving any finance charge in excess of that permitted by
202 applicable law or for contracting for or receiving, or
203 participating in contracting for or receiving, other charges in
204 violation of any applicable statutory or common law duty, or which
205 are otherwise unlawful.

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