

By: Representatives Dickson, Fredericks

To: Banks and Banking

HOUSE BILL NO. 1448

1 AN ACT TO CREATE THE MISSISSIPPI PREDATORY LENDING ACT; TO  
2 DEFINE CERTAIN TERMS; TO PRESCRIBE CERTAIN PROCEDURES, LIMITATIONS  
3 AND RESTRICTIONS REGARDING HOME LOANS, CONSUMER HOME LOANS AND  
4 CONSUMER LOANS TO PROTECT BORROWERS; TO PROVIDE FOR ENFORCEMENT OF  
5 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** This act shall be known and may be cited as the  
8 Mississippi Predatory Lending Act.

9 **SECTION 2.** (1) Parties to a home loan may contract in  
10 writing as follows:

11 (a) Where the principal amount is Ten Thousand Dollars  
12 (\$10,000.00) or more, the parties may contract for the payment of  
13 interest as agreed upon by the parties;

14 (b) Where the principal amount is less than Ten  
15 Thousand Dollars (\$10,000.00), the parties may contract for the  
16 payment of interest as agreed upon by the parties, if the lender  
17 is either:

18 (i) Approved as a mortgagee by the United States  
19 Secretary of Housing and Urban Development, the Federal Housing  
20 Administration, the United States Department of Veterans Affairs,  
21 a national mortgage association or any federal agency; or

22 (ii) A local or foreign bank, savings and loan  
23 association or service corporation wholly owned by one or more  
24 savings and loan associations and permitted by law to make home  
25 loans, credit union or insurance company; or

26 (iii) A state or federal agency;

27 (c) Where the principal amount is less than Ten  
28 Thousand Dollars (\$10,000.00) and the lender is not a lender



29 described in paragraph (b) of this subsection, the parties may  
30 contract for the payment of interest not in excess of sixteen  
31 percent (16%) per annum.

32 On the fifteenth day of each month, the Commissioner of  
33 Banking and Consumer Finance shall announce and publish the  
34 maximum rate of interest permitted by this subsection. The rate  
35 shall be the latest published noncompetitive rate for U.S.  
36 Treasury bills with a six-month maturity as of the fifteenth day  
37 of the month plus six percent (6%), rounded upward or downward, as  
38 the case may be, to the nearest one-half of one percent (1/2 of  
39 1%) or fifteen percent (15%), whichever is greater. If there is  
40 no nearest one-half of one percent (1/2 of 1%), the commissioner  
41 shall round downward to the lower one-half of one percent (1/2 of  
42 1%). The rate so announced shall be the maximum rate permitted  
43 for the term of loans made under this section during the following  
44 calendar month when the parties to those loans have agreed that  
45 the rate of interest to be charged by the lender and paid by the  
46 borrower shall not vary or be adjusted during the term of the  
47 loan. The parties to a loan made under this section may agree to  
48 a rate of interest that will vary or be adjusted during the term  
49 of the loan in which case the maximum rate of interest permitted  
50 on those loans during a month during the term of the loan shall be  
51 the rate announced by the Commissioner of Banking and Consumer  
52 Finance in the preceding calendar month.

53 An affiliate operating in the same office or subsidiary  
54 operating in the same office of a licensee under the Mississippi  
55 banking laws or the Small Loan Regulatory Law may not make a home  
56 loan that provides for a balloon payment for a term in excess of  
57 six (6) months. For purposes of this paragraph, a balloon payment  
58 means any scheduled payment that is more than twice as large as  
59 the average of earlier scheduled payments.

60 (2) Subject to federal requirements, when a natural person  
61 applies for a home loan primarily for personal, family, or



62 household purposes, the lender shall comply with the provisions of  
63 this subsection.

64 (a) Not later than the date of the home loan closing or  
65 three (3) business days after the lender receives an application  
66 for a home loan, whichever is earlier, the lender shall deliver or  
67 mail to the applicant information and examples of amortization of  
68 home loans reflecting various terms in a form made available by  
69 the Commissioner of Banking and Consumer Finance. The  
70 commissioner shall develop and make available to home loan lenders  
71 materials necessary to satisfy the provisions of this subsection.

72 (b) Not later than three (3) business days after the  
73 home loan closing, the lender shall deliver or mail to the  
74 borrower an amortization schedule for the borrower's home loan.  
75 However, a lender shall not be required to provide an amortization  
76 schedule unless the loan is a fixed rate home loan that requires  
77 the borrower to make regularly scheduled periodic amortizing  
78 payments of principal and interest. In addition, with respect to  
79 a construction/permanent home loan, the amortization schedule must  
80 be provided only with respect to the permanent portion of the home  
81 loan during which amortization occurs.

82 (c) If the home loan transaction involves more than one  
83 natural person, the lender may deliver or mail the materials  
84 required by this subsection to any one or more of such persons.

85 (d) This subsection does not apply if the home loan  
86 applicant is not a natural person or if the home loan is for a  
87 purpose other than a personal, family, or household purpose.

88 (3) (a) Except as provided in paragraph (b) of this  
89 subsection, a lender and a borrower may agree on any terms as to  
90 the prepayment of a home loan.

91 (b) No prepayment fees or penalties shall be contracted  
92 by the borrower and lender with respect to any home loan in which:

93 (i) The principal amount borrowed is One Hundred  
94 Fifty Thousand Dollars (\$150,000.00) or less,



95 (ii) The borrower is a natural person,  
96 (iii) The debt is incurred by the borrower  
97 primarily for personal, family, or household purposes, and  
98 (iv) The loan is secured by a first mortgage or  
99 first deed of trust on real estate upon which there is located or  
100 there is to be located a structure or structures designed  
101 principally for occupancy of from one (1) to four (4) families  
102 that is or will be occupied by the borrower as the borrower's  
103 principal dwelling.

104 (c) The limitations on prepayment fees and penalties in  
105 paragraph (b) of this subsection shall not apply to the extent  
106 that state law limitations on prepayment fees and penalties are  
107 preempted by federal law or regulation.

108 (3) If the home loan is one described in subsection (1)(a)  
109 or (1)(b) of this section, the lender may charge the borrower the  
110 following fees and charges in addition to interest and other fees  
111 and charges as permitted in this section and late payment charges  
112 as permitted by applicable Mississippi law:

113 (a) At or before loan closing, the lender may charge  
114 such of the following fees and charges as may be agreed upon by  
115 the parties notwithstanding the provisions of any state law other  
116 than this act, limiting the amount of those fees or charges:

117 (i) Loan application, origination, commitment, and  
118 interest rate lock fees;

119 (ii) Fees to administer a construction loan or a  
120 construction/permanent loan, including inspection fees and loan  
121 conversion fees;

122 (iii) Discount points, but only to the extent that  
123 the discount points are paid for the purpose of reducing, and in  
124 fact result in a bona fide reduction of, the interest rate or  
125 time-price differential;

126 (iv) Assumption fees to the extent permitted by  
127 Mississippi law;

128 (v) Appraisal fees to the extent permitted by  
129 Mississippi law;

130 (vi) Additional fees and charges, however  
131 individually or collectively denominated, payable to the lender  
132 that, in the aggregate, do not exceed the greater of one quarter  
133 of one percent (1/4 of 1%) of the principal amount of the loan, or  
134 One Hundred Fifty Dollars (\$150.00).

135 (b) Except as provided in subsection (7) of this  
136 section with respect to the deferral of loan payments, upon  
137 modification, renewal, extension, or amendment of any of the terms  
138 of a home loan, the lender may charge such of the following fees  
139 and charges as may be agreed upon by the parties, notwithstanding  
140 the provisions of any state law other than this act, limiting the  
141 amount of those fees or charges:

142 (i) Discount points, but only to the extent that  
143 the discount points are paid for the purpose of reducing, and in  
144 fact result in a bona fide reduction of, the interest rate or  
145 time-price differential;

146 (ii) Fees that do not exceed one quarter of one  
147 percent (1/4 of 1%) of the principal amount of the loan if the  
148 principal amount of the loan is less than One Hundred Fifty  
149 Thousand Dollars (\$150,000.00), or one percent (1%) of the  
150 principal amount of the loan if the principal amount of the loan  
151 is One Hundred Fifty Thousand Dollars (\$150,000.00) or more, for  
152 the conversion of a variable interest rate loan to a fixed  
153 interest rate loan, of a fixed interest rate loan to a variable  
154 interest rate loan, of a closed-end loan to an open-end loan, or  
155 of an open-ended loan to a closed-end loan;

156 (iii) Assumption fees to the extent permitted by  
157 Mississippi law;

158 (iv) Appraisal fees to the extent permitted by  
159 Mississippi law;



160 (v) Fees and charges to the extent permitted by  
161 Mississippi law; and

162 (vi) If no fees are charged under subparagraph  
163 (iii) of this paragraph, additional fees and charges, however  
164 individually or collectively denominated, payable to the lender  
165 that, in the aggregate, do not exceed the greater of one quarter  
166 of one percent (1/4 of 1%) of the balance outstanding at the time  
167 of the modification, renewal, extension, or amendment of terms, or  
168 One Hundred Fifty Dollars (\$150.00). The fees and charges  
169 permitted by this subparagraph may be charged only under a written  
170 agreement that states the amount of the fee or charge and is made  
171 at the time of the specific modification, renewal, extension, or  
172 amendment, or at the time the specific modification, renewal,  
173 extension, or amendment is requested.

174 (4) No lender on home loans under subsection (1)(c) of this  
175 section may charge or receive any interest, fees, charges, or  
176 discount points other than:

177 (a) To the extent permitted by Mississippi law, sums  
178 for the payment of bona fide loan-related goods, products, and  
179 services provided or to be provided by third parties, and sums for  
180 the payment of taxes, filing fees, recording fees, and other  
181 charges and fees, paid or to be paid to public officials;

182 (b) Interest as permitted in subsection (1)(c) of this  
183 section; and

184 (c) Late payment charges to the extent permitted by  
185 Mississippi law.

186 (5) As used in this section, the term "home loan" means a  
187 loan, other than an open-end credit plan, where the principal  
188 amount is less than Three Hundred Thousand Dollars (\$300,000.00)  
189 secured by a first mortgage or first deed of trust on real estate  
190 upon which there is located or there is to be located one or more  
191 single-family dwellings or dwelling units.



192           (6) Any home loan obligation existing before July 1, 2003,  
193 shall be construed with regard to the law existing at the time the  
194 home loan or commitment to lend was made, and this act shall only  
195 apply to home loans or loan commitments made on or after July 1,  
196 2003.

197           (7) (a) The parties to a home loan governed by subsection  
198 (1)(a) or (b) of this section may contract to defer the payment of  
199 all or part of one or more unpaid installments and for payment of  
200 interest on deferred interest as agreed upon by the parties. The  
201 parties may agree that deferred interest may be added to the  
202 principal balance of the loan. This subsection shall not be  
203 construed to limit payment of interest upon interest in connection  
204 with other types of loans. Except as restricted by this act, the  
205 lender may charge deferral fees as may be agreed upon by the  
206 parties to defer the payment of one or more unpaid installments.  
207 If the home loan is of a type described in paragraph (b) of this  
208 subsection, the deferral fees shall be subject to the limitations  
209 set forth in paragraph (c) of this subsection.

210           (b) A home loan will be subject to the deferral fee  
211 limitations set forth in paragraph (c) of this subsection if:

212                   (i) The borrower is a natural person;

213                   (ii) The debt is incurred by the borrower  
214 primarily for personal, family, or household purposes; and

215                   (iii) The loan is secured by a first mortgage or  
216 first deed of trust on real estate upon which there is located or  
217 there is to be located a structure or structures designed  
218 principally for occupancy of from one (1) to four (4) families  
219 that is or will be occupied by the borrower as the borrower's  
220 principal dwelling.

221           (c) Deferral fees for home loans identified in  
222 paragraph (b) of this subsection shall be subject to the following  
223 limitations:



224 (i) Deferral fees may be charged only under an  
225 agreement that states the amount of the fee and is made at the  
226 time of the specific deferral or at the time the specific deferral  
227 is requested; however, if the agreement relates to an installment  
228 that is then past due for fifteen (15) days or more, the agreement  
229 must be in writing and signed by at least one (1) of the  
230 borrowers. For purposes of this paragraph, an agreement will be  
231 considered a signed writing if the lender receives from at least  
232 one (1) of the borrowers a facsimile or computer-generated message  
233 confirming or otherwise accepting the agreement.

234 (ii) Deferral fees may not exceed the greater of  
235 five percent (5%) of each installment deferred or Fifty Dollars  
236 (\$50.00), multiplied by the number of complete months in the  
237 deferral period. A month shall be measured from the date an  
238 installment is due. The deferral period is that period during  
239 which no payment is required or made as measured from the date on  
240 which the deferred installment would otherwise have been due to  
241 the date the next installment is due under the terms of the note  
242 or the deferral agreement.

243 (iii) If a deferral fee has once been imposed with  
244 respect to a particular installment, no deferral fee may be  
245 imposed with respect to any future payment that would have been  
246 timely and sufficient but for the previous deferral.

247 (iv) If a deferral fee is charged under a deferral  
248 agreement, a late charge may be imposed with respect to the  
249 deferred payment only if the amount deferred is not paid when due  
250 under the terms of the deferral agreement and no new deferral  
251 agreement is entered into with respect to that installment.

252 (v) A lender may charge a deferral fee under this  
253 subsection for deferring the payment of all or part of one or more  
254 regularly scheduled payments, regardless of whether the deferral  
255 results in an extension of the loan maturity date or the date a  
256 balloon payment is due. A modification or extension of the loan



257 maturity date or the date a balloon payment is due that is not  
258 incident to the deferral of a regularly scheduled payment shall be  
259 considered a modification or extension subject to the provisions  
260 of subsection (3) (b) of this section.

261 (8) The parties to a home loan governed by subsection  
262 (1) (a) or (1) (b) of this section may agree in writing to a  
263 mortgage or deed of trust that provides that periodic payments may  
264 be graduated during parts of or over the entire term of the loan.  
265 The parties to such a loan may also agree in writing to a mortgage  
266 or deed of trust that provides that periodic disbursements of part  
267 of the loan proceeds may be made by the lender over a period of  
268 time agreed upon by the parties, or over a period of time agreed  
269 upon by the parties ending with the death of the borrower(s).  
270 Those mortgages or deeds of trust may include provisions for  
271 adding deferred interest to principal or otherwise providing for  
272 charging of interest on deferred interest as agreed upon by the  
273 parties. This subsection shall not be construed to limit other  
274 types of mortgages or deeds of trust or methods or plans of  
275 disbursement or repayment of loans that may be agreed upon by the  
276 parties.

277 (9) Nothing in this section shall be construed to authorize  
278 or prohibit a lender, a borrower, or any other party to pay  
279 compensation to a mortgage broker or a mortgage banker for  
280 services provided by the mortgage broker or the mortgage banker in  
281 connection with a home loan.

282 **SECTION 3.** (1) **Definitions.** The following definitions  
283 apply for the purposes of this section:

284 (a) "Affiliate" means any company that controls, is  
285 controlled by, or is under common control with another company, as  
286 set forth in the Bank Holding Company Act of 1956 (12 USCS Section  
287 1841 et seq.), as amended from time to time.

288 (b) "Annual percentage rate" means the annual  
289 percentage rate for the loan calculated according to the



290 provisions of the federal Truth in Lending Act (15 USCS Section  
291 1601, et seq.), and the regulations promulgated under that act by  
292 the Federal Reserve Board (as that act and regulations are amended  
293 from time to time).

294 (c) "Bona fide loan discount points" means loan  
295 discount points knowingly paid by the borrower for the purpose of  
296 reducing, and which in fact result in a bona fide reduction of,  
297 the interest rate or time-price differential applicable to the  
298 loan, provided the amount of the interest rate reduction purchased  
299 by the discount points is reasonably consistent with established  
300 industry norms and practices for secondary mortgage market  
301 transactions.

302 (d) A "high-cost home loan" means a loan other than an  
303 open-end credit plan or a reverse mortgage transaction in which:

304 (i) The principal amount of the loan does not  
305 exceed the lesser of the conforming loan size limit for a  
306 single-family dwelling as established from time to time by Fannie  
307 Mae, or Three Hundred Thousand Dollars (\$300,000.00);

308 (ii) The borrower is a natural person;

309 (iii) The debt is incurred by the borrower  
310 primarily for personal, family, or household purposes;

311 (iv) The loan is secured by either a security  
312 interest in a manufactured home as defined under Mississippi law  
313 that is or will be occupied by the borrower as the borrower's  
314 principal dwelling, or a mortgage or deed of trust on real estate  
315 upon which there is located or there is to be located a structure  
316 or structures designed principally for occupancy of from one (1)  
317 to four (4) families that is or will be occupied by the borrower  
318 as the borrower's principal dwelling; and

319 (v) The terms of the loan exceed one or more of  
320 the thresholds as defined in paragraph (f) of this section.

321 (e) "Points and fees" means:



322 (i) All items required to be disclosed under  
323 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
324 Regulations, as amended from time to time, except interest or the  
325 time-price differential;

326 (ii) All charges for items listed under Section  
327 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as  
328 amended from time to time, but only if the lender receives direct  
329 or indirect compensation in connection with the charge or the  
330 charge is paid to an affiliate of the lender; otherwise, the  
331 charges are not included within the meaning of the phrase "points  
332 and fees";

333 (iii) All compensation paid directly by the  
334 borrower to a mortgage broker not otherwise included in  
335 subparagraph (i) or (ii) of this paragraph;

336 (iv) The maximum prepayment fees and penalties  
337 that may be charged or collected under the terms of the loan  
338 documents; and

339 (v) "Points and fees" does not include taxes,  
340 filing fees, recording and other charges and fees paid or to be  
341 paid to public officials for determining the existence of or for  
342 perfecting, releasing, or satisfying a security interest; and  
343 fees paid to a person other than a lender or an affiliate of the  
344 lender or to the mortgage broker or an affiliate of the mortgage  
345 broker for the following: fees for tax payment services; fees for  
346 flood certification; fees for past infestation and flood  
347 determinations; appraisal fees; fees for inspections performed  
348 prior to closing; credit reports; surveys; attorney's fees (if the  
349 borrower has the right to select the attorney from an approved  
350 list or otherwise); notary fees; escrow charges, so long as not  
351 otherwise included under subparagraph (i) of this paragraph (e);  
352 title insurance premiums; and fire insurance and flood insurance  
353 premiums, provided that the conditions in Section 226.4(d)(2) of  
354 Title 12 of the Code of Federal Regulations are met.



355 (f) "Thresholds" means:

356 (i) Without regard to whether the loan transaction

357 is or may be a "residential mortgage transaction" (as the term

358 "residential mortgage transaction" is defined in Section 226.2

359 (a)(24) of Title 12 of the Code of Federal Regulations, as amended

360 from time to time), the annual percentage rate of the loan at the

361 time the loan is consummated is such that the loan is considered a

362 "mortgage" under Section 152 of the Home Ownership and Equity

363 Protection Act of 1994 (Public Law 103-25, [15 USCS Section 1602

364 (aa)]), as the same may be amended from time to time, and

365 regulations adopted under that act by the Federal Reserve Board,

366 including Section 226.32 of Title 12 of the Code of Federal

367 Regulations, as the same may be amended from time to time;

368 (ii) The total points and fees payable by the

369 borrower at or before the loan closing exceed five percent (5%) of

370 the total loan amount if the total loan amount is Twenty Thousand

371 Dollars (\$20,000.00) or more, or the lesser of eight percent (8%)

372 of the total loan amount or One Thousand Dollars (\$1,000.00), if

373 the total loan amount is less than Twenty Thousand Dollars

374 (\$20,000.00); however, the following discount points and

375 prepayment fees and penalties shall be excluded from the

376 calculation of the total points and fees payable by the borrower:

377 1. Up to and including two (2) bona fide loan

378 discount points payable by the borrower in connection with the

379 loan transaction, but only if the interest rate from which the

380 loan's interest rate will be discounted does not exceed by more

381 than one (1) percentage point the required net yield for a

382 ninety-day standard mandatory delivery commitment for a reasonably

383 comparable loan from either Fannie Mae or the Federal Home Loan

384 Mortgage Corporation, whichever is greater;

385 2. Up to and including one (1) bona fide loan

386 discount point payable by the borrower in connection with the loan

387 transaction, but only if the interest rate from which the loan's



388 interest rate will be discounted does not exceed by more than two  
389 (2) percentage points the required net yield for a ninety-day  
390 standard mandatory delivery commitment for a reasonably comparable  
391 loan from either Fannie Mae or the Federal Home Loan Mortgage  
392 Corporation, whichever is greater;

393           3. Prepayment fees and penalties that may be  
394 charged or collected under the terms of the loan documents that do  
395 not exceed one percent (1%) of the amount prepaid, provided the  
396 loan documents do not permit the lender to charge or collect any  
397 prepayment fees or penalties more than thirty (30) months after  
398 the loan closing; or

399           (iii) The loan documents permit the lender to  
400 charge or collect prepayment fees or penalties more than thirty  
401 (30) months after the loan closing or that exceed, in the  
402 aggregate, more than two percent (2%) of the amount prepaid.

403           (g) "Total loan amount" means the same as the term  
404 "total loan amount" as used in Section 226.32 of Title 12 of the  
405 Code of Federal Regulations, and the same shall be calculated in  
406 accordance with the Federal Reserve Board's Official Staff  
407 Commentary thereto.

408           (2) **Limitations.** A high-cost home loan shall be subject to  
409 the following limitations:

410           (a) **No call provision.** No high-cost home loan may  
411 contain a provision that permits the lender, in its sole  
412 discretion, to accelerate the indebtedness. This provision does  
413 not apply when repayment of the loan has been accelerated by  
414 default, under a due-on-sale provision, or under some other  
415 provision of the loan documents unrelated to the payment schedule.

416           (b) **No balloon payment.** No high-cost home loan may  
417 contain a scheduled payment that is more than twice as large as  
418 the average of earlier scheduled payments. This provision does  
419 not apply when the payment schedule is adjusted to the seasonal or  
420 irregular income of the borrower.



421           (c) **No negative amortization.** No high-cost home loan  
422 may contain a payment schedule with regular periodic payments that  
423 cause the principal balance to increase.

424           (d) **No increased interest rate.** No high-cost home loan  
425 may contain a provision that increases the interest rate after  
426 default. This provision does not apply to interest rate changes  
427 in a variable rate loan otherwise consistent with the provisions  
428 of the loan documents, provided the change in the interest rate is  
429 not triggered by the event of default or the acceleration of the  
430 indebtedness.

431           (e) **No advance payments.** No high-cost home loan may  
432 include terms under which more than two (2) periodic payments  
433 required under the loan are consolidated and paid in advance from  
434 the loan proceeds provided to the borrower.

435           (f) **No modification or deferral fees.** A lender may not  
436 charge a borrower any fees to modify, renew, extend, or amend a  
437 high-cost home loan or to defer any payment due under the terms of  
438 the high-cost home loan.

439           (3) **Prohibited acts and practices.** The following acts and  
440 practices are prohibited in the making of a high-cost home loan:

441           (a) **No lending without home-ownership counseling.** A  
442 lender may not make a high-cost home loan without first receiving  
443 certification from an approved counselor that the borrower has  
444 received counseling on the advisability of the loan transaction  
445 and the appropriate loan for the borrower.

446           (b) **No lending without due regard to repayment ability.**  
447 As used in this paragraph, the term "obligor" refers to each  
448 borrower, co-borrower, cosigner, or guarantor obligated to pay a  
449 loan. A lender may not make a high-cost home loan unless the  
450 lender reasonably believes at the time the loan is consummated  
451 that one or more of the obligators, when considered individually  
452 or collectively, will be able to make the scheduled payments to  
453 repay the obligation based upon a consideration of their current



454 and expected income, current obligations, employment status, and  
455 other financial resources (other than the borrower's equity in the  
456 dwelling that secures repayment of the loan). An obligor shall be  
457 presumed to be able to make the scheduled payments to repay the  
458 obligation if, at the time the loan is consummated, the  
459 obligator's total monthly debts, including amounts owed under the  
460 loan, do not exceed fifty percent (50%) of the obligor's monthly  
461 gross income as verified by the credit application, the obligor's  
462 financial statements, a credit report, financial information  
463 provided to the lender by or on behalf of the obligor, or any  
464 other reasonable means; however, no presumption of inability to  
465 make the scheduled payments to repay the obligation shall arise  
466 solely from the fact that, at the time the loan is consummated,  
467 the obligor's total monthly debts (including amounts owed under  
468 the loan) exceed fifty percent (50%) of the obligor's monthly  
469 gross income.

470 (c) **No financing of fees or charges.** In making a  
471 high-cost home loan, a lender may not directly or indirectly  
472 finance:

473 (i) Any prepayment fees or penalties payable by  
474 the borrower in a refinancing transaction if the lender or an  
475 affiliate of the lender is the noteholder of the note being  
476 refinanced;

477 (ii) Any points and fees; or

478 (iii) Any other charges payable to third parties.

479 (d) **No benefit from refinancing existing high-cost**  
480 **home loan with new high-cost home loan.** A lender may not charge a  
481 borrower points and fees in connection with a high-cost home loan  
482 if the proceeds of the high-cost home loan are used to refinance  
483 an existing high-cost home loan held by the same lender as  
484 noteholder.

485 (e) **Restrictions on home improvement contracts.** A  
486 lender may not pay a contractor under a home improvement contract



487 from the proceeds of a high-cost home loan other than (i) by an  
488 instrument payable to the borrower or jointly to the borrower and  
489 the contractor, or (ii) at the election of the borrower, through a  
490 third-party escrow agent in accordance with terms established in a  
491 written agreement signed by the borrower, the lender, and the  
492 contractor before the disbursement.

493 (f) **No shifting of liability.** A lender is prohibited  
494 from shifting any loss, liability, or claim of any kind to the  
495 closing agent or closing attorney for any violation of this  
496 section.

497 (4) **Unfair and deceptive acts or practices.** Except as  
498 provided in subsection (5) of this section, the making of a  
499 high-cost home loan that violates any provisions of subsection (2)  
500 or (3) of this section is declared usurious in violation of the  
501 provisions of this act and unlawful as an unfair or deceptive act  
502 or practice in or affecting commerce in violation of the  
503 provisions of applicable Mississippi law. The provisions of this  
504 section shall apply to any person who in bad faith attempts to  
505 avoid the application of this section by (i) the structuring of a  
506 loan transaction as an open-end credit plan for the purpose and  
507 with the intent of evading the provisions of this section when the  
508 loan would have been a high-cost home loan if the loan had been  
509 structured as a closed-end loan, or (ii) dividing any loan  
510 transaction into separate parts for the purpose and with the  
511 intent of evading the provisions of this section, or (iii) any  
512 other such subterfuge. The Attorney General, the Commissioner of  
513 Banking and Consumer Finance, or any party to a high-cost home  
514 loan may enforce the provisions of this section.

515 (5) **Corrections and unintentional violations.** A lender in a  
516 high-cost home loan who, when acting in good faith, fails to  
517 comply with subsections (2) or (3) of this section, will not be  
518 deemed to have violated this section if the lender established  
519 that either:



520           (a) Within thirty (30) days of the loan closing and  
521 before the institution of any action under this section, the  
522 borrower is notified of the compliance failure, appropriate  
523 restitution is made, and whatever adjustments are necessary are  
524 made to the loan to either, at the choice of the borrower, (i)  
525 make the high-cost home loan satisfy the requirements of  
526 subsections (2) and (3) of this section, or (ii) change the terms  
527 of the loan in a manner beneficial to the borrower so that the  
528 loan will no longer be considered a high-cost home loan subject to  
529 the provisions of this section; or

530           (b) The compliance failure was not intentional and  
531 resulted from a bona fide error notwithstanding the maintenance of  
532 procedures reasonably adapted to avoid those errors, and within  
533 sixty (60) days after the discovery of the compliance failure and  
534 before the institution of any action under this section or the  
535 receipt of written notice of the compliance failure, the borrower  
536 is notified of the compliance failure, appropriate restitution is  
537 made, and whatever adjustments are necessary are made to the loan  
538 to either, at the choice of the borrower, (i) make the high-cost  
539 home loan satisfy the requirements of subsections (2) and (3) of  
540 this section, or (ii) change the terms of the loan in a manner  
541 beneficial to the borrower so that the loan will no longer be  
542 considered a high-cost home loan subject to the provisions of this  
543 section. Examples of a bona fide error include clerical,  
544 calculation, computer malfunction and programming, and printing  
545 errors. An error of legal judgment with respect to a person's  
546 obligations under this section is not a bona fide error.

547           **SECTION 4.** (1) For purposes of this section:

548           (a) "Consumer home loan" means a loan in which:  
549               (i) The borrower is a natural person;  
550               (ii) The debt is incurred by the borrower  
551 primarily for personal, family, or household purposes; and



552 (iii) The loan is secured by a mortgage or deed of  
553 trust upon real estate upon which there is located or there is to  
554 be located a structure or structures designed principally for  
555 occupancy of from one (1) to four (4) families that is or will be  
556 occupied by the borrower as the borrower's principal dwelling.

557 (b) "Consumer loan" means any loan or extension of  
558 credit offered or extended primarily for personal, family or  
559 household purposes.

560 (2) It shall be unlawful for any lender in a consumer home  
561 loan or consumer loan to finance, directly or indirectly, any  
562 credit life, disability, or unemployment insurance, or any other  
563 life or health insurance premiums; however, insurance premiums  
564 calculated and paid on a monthly basis shall not be considered  
565 financed by the lender.

566 (3) No lender may knowingly or intentionally engage in the  
567 unfair act or practice of "flipping" a consumer home loan.  
568 "Flipping" a consumer loan is the making of a consumer home loan  
569 to a borrower that refinances an existing consumer home loan when  
570 the new loan does not have reasonable, tangible net benefit to the  
571 borrower considering all of the circumstances, including the terms  
572 of both the new and refinanced loans, the cost of the new loan,  
573 and the borrower's circumstances. This provision shall apply  
574 regardless of whether the interest rate, points, fees, and charges  
575 paid or payable by the borrower in connection with the refinancing  
576 exceed those thresholds specified in Section 3(1)(f)(i) through  
577 (iii).

578 (4) No lender shall recommend or encourage default on an  
579 existing loan or other debt before and in connection with the  
580 closing or planned closing of a consumer home loan that refinances  
581 all or any portion of that existing loan or debt.

582 (5) The making of a consumer home loan or consumer loan that  
583 violates the provisions of this section is declared usurious in  
584 violation of the provisions of this act and unlawful as an unfair



585 or deceptive act or practice in or affecting commerce in violation  
586 of the provisions of the Mississippi usury laws. The Attorney  
587 General, the Commissioner of Banking and Consumer Finance, or any  
588 party to a consumer home loan may enforce the provisions of this  
589 section.

590 (6) In any suit instituted by a borrower who alleges that  
591 the defendant violated this section, the presiding judge shall  
592 allow reasonable attorney's fees to the attorney representing the  
593 borrower, the attorney's fees to be taxed as a part of the court  
594 costs and payable by the lender upon a finding by the presiding  
595 judge that the party charged with the violation has willfully  
596 engaged in the act or practice, and there was unwarranted refusal  
597 by that party to fully resolve the matter that constitutes the  
598 basis of the suit.

599 (7) This section establishes specific consumer protections  
600 in consumer home loans and consumer loans in addition to other  
601 consumer protections that may be otherwise available by law.

602 **SECTION 5.** Nothing in this act shall be construed to bar any  
603 common law remedies.

604 **SECTION 6.** This act shall take effect and be in force from  
605 and after July 1, 2003.

