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

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

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

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

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

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

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

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

(iii) A state or federal agency;

(c) Where the principal amount is less than Ten Thousand Dollars ($10,000.00) and the lender is not a lender...
described in paragraph (b) of this subsection, the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

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

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

(2) Subject to federal requirements, when a natural person applies for a home loan primarily for personal, family, or
household purposes, the lender shall comply with the provisions of this subsection.

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

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

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

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

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

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

(i) The principal amount borrowed is One Hundred Fifty Thousand Dollars ($150,000.00) or less,
(ii) The borrower is a natural person,

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

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

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

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

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

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

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

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

(iv) Assumption fees to the extent permitted by Mississippi law;
(v) Appraisal fees to the extent permitted by Mississippi law;

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

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

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

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

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

(iv) Appraisal fees to the extent permitted by Mississippi law;
(v) Fees and charges to the extent permitted by Mississippi law; and

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

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

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

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

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

(5) As used in this section, the term "home loan" means a loan, other than an open-end credit plan, where the principal amount is less than Three Hundred Thousand Dollars ($300,000.00) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.
(6) Any home loan obligation existing before July 1, 2003, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made, and this act shall only apply to home loans or loan commitments made on or after July 1, 2003.

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

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

(i) The borrower is a natural person;

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

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

(c) Deferral fees for home loans identified in paragraph (b) of this subsection shall be subject to the following limitations:
(i) Deferral fees may be charged only under an agreement that states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; however, if the agreement relates to an installment that is then past due for fifteen (15) days or more, the agreement must be in writing and signed by at least one (1) of the borrowers. For purposes of this paragraph, an agreement will be considered a signed writing if the lender receives from at least one (1) of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.

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

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

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

(v) A lender may charge a deferral fee under this subsection for deferring the payment of all or part of one or more regularly scheduled payments, regardless of whether the deferral results in an extension of the loan maturity date or the date a balloon payment is due. A modification or extension of the loan
maturity date or the date a balloon payment is due that is not incident to the deferral of a regularly scheduled payment shall be considered a modification or extension subject to the provisions of subsection (3)(b) of this section.

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

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

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

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

(b) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the...
provisions of the federal Truth in Lending Act (15 USCS Section 1601, et seq.), and the regulations promulgated under that act by the Federal Reserve Board (as that act and regulations are amended from time to time).

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

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

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

(ii) The borrower is a natural person;

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

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

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

(e) "Points and fees" means:
(i) All items required to be disclosed under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

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

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

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

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

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(f) "Thresholds" means:

(i) Without regard to whether the loan transaction is or may be a "residential mortgage transaction" (as the term "residential mortgage transaction" is defined in Section 226.2 (a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under Section 152 of the Home Ownership and Equity Protection Act of 1994 (Public Law 103-25, [15 USCS Section 1602 (aa)]), as the same may be amended from time to time, and regulations adopted under that act by the Federal Reserve Board, including Section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

(ii) The total points and fees payable by the borrower at or before the loan closing exceed five percent (5%) of the total loan amount if the total loan amount is Twenty Thousand Dollars ($20,000.00) or more, or the lesser of eight percent (8%) of the total loan amount or One Thousand Dollars ($1,000.00), if the total loan amount is less than Twenty Thousand Dollars ($20,000.00); however, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two (2) bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than one (1) percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one (1) bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s
interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

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

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

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

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

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

(b) No balloon payment. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
(c) **No negative amortization.** No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

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

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

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

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

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

(b) **No lending without due regard to repayment ability.** As used in this paragraph, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to pay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligators, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current
and expected income, current obligations, employment status, and other financial resources (other than the borrower’s equity in the dwelling that secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligator’s total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor’s monthly gross income as verified by the credit application, the obligor’s financial statements, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; however, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor’s total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor’s monthly gross income.

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

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

(ii) Any points and fees; or

(iii) Any other charges payable to third parties.

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

(e) **Restrictions on home improvement contracts.** A lender may not pay a contractor under a home improvement contract...
from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor before the disbursement.

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

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

(5) **Corrections and unintentional violations.** A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (2) or (3) of this section, will not be deemed to have violated this section if the lender established that either:
(a) Within thirty (30) days of the loan closing and before the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (2) and (3) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

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

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

(a) "Consumer home loan" means a loan in which:

(i) The borrower is a natural person;

(ii) The debt is incurred by the borrower primarily for personal, family, or household purposes; and
(iii) The loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one (1) to four (4) families that is or will be occupied by the borrower as the borrower’s principal dwelling.

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

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

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

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

(5) The making of a consumer home loan or consumer loan that violates the provisions of this section is declared usurious in violation of the provisions of this act and unlawful as an unfair
or deceptive act or practice in or affecting commerce in violation of the provisions of the Mississippi usury laws. The Attorney General, the Commissioner of Banking and Consumer Finance, or any party to a consumer home loan may enforce the provisions of this section.

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

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

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

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