HOUSE BILL NO. 1449

AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO INCLUDE DEFINITIONS FOR THE TERMS "OTHER CHARGES," "CONSUMER CREDIT" AND "CONSUMER"; TO AMEND SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR AND RECEIVING OTHER CHARGES IN CONNECTION WITH CONSUMER CREDIT THAT ARE UNLAWFUL FOR REASONS OTHER THAN ACTUAL FRAUD; TO PROVIDE THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED FOR UNDER THIS ACT ARE EXCLUSIVE EXCEPT IN CASES OF ACTUAL FRAUD; AND FOR RELATED PURPOSES.

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

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

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

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

(b) "Licensee" means and includes every person holding a valid license issued under the provisions of the Small Loan Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this state, except those specifically exempt by the provisions of this article, who, in addition to any other rights and powers he or it might otherwise possess, shall engage in the business of lending money either directly or indirectly, to be paid back in monthly installments or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires
security from the borrower as indemnity for the repayment of the loan.

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

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

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

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

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

(h) "Consumer credit" means any loan or extension of credit to a consumer primarily for personal, family or household purposes.

(i) "Consumer" means a natural person.

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

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

(2) If, in connection with consumer credit, any licensee or other person contracts for or receives, or participates in contracting for or receiving, other charges in violation of any applicable statutory or common law duty or that are otherwise unlawful for any reason, other than by means constituting actual fraud or fraudulent concealment, all those other charges shall be forfeited and any such amounts paid may be recovered, whether the contract is executed or executory. If the other charges subject to forfeiture under this section exceed Five Hundred Dollars ($500.00), all finance charges additionally shall be forfeited and any such amounts paid may be recovered. If the other charges subject to forfeiture under this section exceed One Thousand Five Hundred Dollars ($1,500.00), all principal additionally shall be forfeited and any such amounts paid may be recovered. If any penalty is recovered under this subsection, the consumer also may recover a reasonable attorney’s fee from the offending party.

(3) The penalties provided for in subsection (2) of this section shall not apply if it is proven by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, except that the
licensee may be required to correct the error by refund or credit to the consumer’s remaining obligation. The penalties provided for in subsection (2) of this section shall not apply if the licensee discovers the violation or is notified of the violation by the commissioner and within sixty (60) days after discovering the violation, and before the receipt of written notice of the violation from the consumer, the licensee notifies the affected consumer of the violation and either refunds or gives credit for the unlawful other charge.

(4) Except as provided in subsection (5) of this section, the remedies and penalties provided in this section shall be the exclusive remedies and penalties for all claims against a licensee or any other person for contracting for or receiving any finance charge in excess of that expressly permitted by Section 75-17-21, or for contracting for or receiving, or participating in contracting for or receiving, other charges in violation of any applicable statutory or common law duty or that are otherwise unlawful, other than by means constituting actual fraud or fraudulent concealment.

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

(6) Actual fraud or fraudulent concealment, as those terms are used in this section, shall not be found to have occurred if written disclosures were provided to the consumer disclosing the other charges in compliance with applicable federal and state disclosure statutes and regulations, including, but not limited to, the federal Consumer Credit Protection Act, as amended, and Regulation Z promulgated under that act.

SECTION 3. Section 75-17-25, Mississippi Code of 1972, is amended as follows:
The term "finance charge" as used in this section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; however, recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees permitted to be charged under the provisions of Section 79-7-7, service charges as provided in Section 81-19-31, and with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees incidental to the transaction shall not be included in the finance charge.

Subject to the other provisions of this section, Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and 75-67-217, the finance charge may be calculated on the assumption that the indebtedness will be discharged as it becomes due, and prepayment penalties and statutory default charges shall not be included in the finance charge. Nothing in Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount or otherwise, so long as the annual percentage rate does not exceed that permitted by law. If a greater finance charge
than that authorized by applicable law is stipulated for or received in any case, all interest and finance charge shall be forfeited, and may be recovered back, whether the contract is executed or executory. If a finance charge is contracted for or received that exceeds the maximum authorized by law by more than one hundred percent (100%), the principal and all finance charges shall be forfeited and any amount paid may be recovered by suit. The provisions of this section, Section 75-17-1 and Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not restrict the extension of credit under any other applicable law. A licensee under the Small Loan Regulatory Law (Sections 75-67-101 through 75-67-135), and the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-243), may contract for and receive finance charges as authorized by Section 75-17-21, and the late payment charge as authorized by Section 75-17-27, regardless of the purpose for which the loan or other extension of credit is made.

(3) If, in connection with consumer credit, any person contracts for or receives, or participates in contracting for or receiving, other charges in violation of any applicable statutory or common law duty or that are otherwise unlawful for any reason, other than by means constituting actual fraud or fraudulent concealment, all those other charges shall be forfeited and any such amounts paid may be recovered, whether the contract is executed or executory. If the other charges subject to forfeiture under this section exceed Five Hundred Dollars ($500.00), all finance charges additionally shall be forfeited and any such amounts paid may be recovered. If the other charges subject to forfeiture under this section exceed One Thousand Five Hundred Dollars ($1,500.00), all principal additionally shall be forfeited and any such amounts paid may be recovered. If any penalty is recovered under this subsection (3), the consumer also may recover a reasonable attorney's fee from the offending party.
(4) The penalties provided for in subsection (3) of this section shall not apply if it is proven by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, except that the lender may be required to correct the error by refund or credit to the consumer's remaining obligation. The penalties provided for in subsection (3) of this section shall not apply if the lender discovers the violation or is notified of the violation by the commissioner and within sixty (60) days after discovering the violation, and before the receipt of written notice of the violation from the consumer, the lender notifies the affected consumer of the violation and either refunds or gives credit for the unlawful other charge.

(5) Except as provided in this section, the remedies and penalties provided in this section shall be the exclusive remedies and penalties for contracting for or receiving any finance charge in excess of that permitted by applicable law or for contracting for or receiving, or participating in contracting for or receiving, other charges in connection with consumer credit in violation of any applicable statutory or common law duty, or that are otherwise unlawful.

(6) As used in this section, the following terms have the following meanings:

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

(b) "Consumer" means a natural person.

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

(7) Actual fraud or fraudulent concealment, as those terms are used in this section, shall not be found to have occurred if
written disclosures were provided to the consumer disclosing the
other charges in compliance with applicable federal and state
disclosure statutes and regulations, including, but not limited
to, the federal Consumer Protection Act, as amended, and
Regulation Z promulgated under that act.

SECTION 4. This act shall take effect and be in force from
and after July 1, 2003, and shall apply to all causes of action
not yet reduced to judgment.