

By: Representative Guice

To: Banks and Banking;
Judiciary A

HOUSE BILL NO. 1449

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

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

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

14 75-67-103. The following words and phrases, when used in
15 this article, shall, for the purposes of this article, have the
16 meanings respectively ascribed to them in this section, except
17 where the context clearly describes and indicates a different
18 meaning:

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

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



31 security from the borrower as indemnity for the repayment of the
32 loan.

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

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

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

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

46 (g) "Other charges" means any amounts contracted for or
47 received by any licensee or other person in connection with
48 consumer credit, other than finance charges as defined in Section
49 75-17-25.

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

53 (i) "Consumer" means a natural person.

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

56 75-67-119. (1) If any finance charge in excess of that
57 expressly permitted by Section 75-17-21 is contracted for or
58 received, all finance charges and other charges shall be forfeited
59 and may be recovered, whether the contract be executed or
60 executory. If any finance charge is contracted for or received
61 that exceeds the maximum finance charge authorized by law by more
62 than one hundred percent (100%), the principal and all finance
63 charges and other charges shall be forfeited and any amount paid



64 may be recovered by suit; and, in addition, the licensee and the
65 several members, officers, directors, agents, and employees
66 thereof who shall have participated in those violations shall be
67 guilty of a misdemeanor and, upon conviction thereof, shall be
68 punished by a fine of not more than One Thousand Dollars
69 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
70 the discretion of the court; and, further, the Commissioner of
71 Banking and Consumer Finance shall immediately cite the licensee
72 to show cause why its license should not be revoked, and
73 proceedings thereon shall be as is specifically provided in the
74 Small Loan Privilege Tax Law (Sections 75-67-201 through
75 75-67-243).

76 (2) If, in connection with consumer credit, any licensee or
77 other person contracts for or receives, or participates in
78 contracting for or receiving, other charges in violation of any
79 applicable statutory or common law duty or that are otherwise
80 unlawful for any reason, other than by means constituting actual
81 fraud or fraudulent concealment, all those other charges shall be
82 forfeited and any such amounts paid may be recovered, whether the
83 contract is executed or executory. If the other charges subject
84 to forfeiture under this section exceed Five Hundred Dollars
85 (\$500.00), all finance charges additionally shall be forfeited and
86 any such amounts paid may be recovered. If the other charges
87 subject to forfeiture under this section exceed One Thousand Five
88 Hundred Dollars (\$1,500.00), all principal additionally shall be
89 forfeited and any such amounts paid may be recovered. If any
90 penalty is recovered under this subsection, the consumer also may
91 recover a reasonable attorney's fee from the offending party.

92 (3) The penalties provided for in subsection (2) of this
93 section shall not apply if it is proven by a preponderance of the
94 evidence that the violation was not intentional and resulted from
95 a bona fide error notwithstanding the maintenance of procedures
96 reasonably adapted to avoid any such error, except that the



97 licensee may be required to correct the error by refund or credit
98 to the consumer's remaining obligation. The penalties provided
99 for in subsection (2) of this section shall not apply if the
100 licensee discovers the violation or is notified of the violation
101 by the commissioner and within sixty (60) days after discovering
102 the violation, and before the receipt of written notice of the
103 violation from the consumer, the licensee notifies the affected
104 consumer of the violation and either refunds or gives credit for
105 the unlawful other charge.

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

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

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

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



129 75-17-25. (1) The term "finance charge" as used in this
130 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
131 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
132 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
133 payable, directly or indirectly, by a debtor for receiving a loan
134 or incident to or as a condition of the extension of credit,
135 including, but not limited to, interest, brokerage fees, finance
136 charges, loan fees, discount, points, service charges, transaction
137 charges, activity charges, carrying charges, time price
138 differential, finders fees or any other cost or expense to the
139 debtor for services rendered or to be rendered to the debtor in
140 making, arranging or negotiating a loan of money or an extension
141 of credit and for the accounting, guaranteeing, endorsing,
142 collecting and other actual services rendered by the lender;
143 * * * however, * * * recording fees, motor vehicle title fees,
144 attorney's fees, insurance premiums, fees permitted to be charged
145 under the provisions of Section 79-7-7, service charges as
146 provided in Section 81-19-31, and with respect to a debt secured
147 by an interest in land, bona fide closing costs and appraisal fees
148 incidental to the transaction shall not be included in the finance
149 charge.

150 (2) Subject to the other provisions of this section,
151 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
152 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
153 75-67-127 and 75-67-217, the finance charge may be calculated on
154 the assumption that the indebtedness will be discharged as it
155 becomes due, and prepayment penalties and statutory default
156 charges shall not be included in the finance charge. Nothing in
157 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
158 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
159 of contracting for the finance charge, whether by way of add-on,
160 discount or otherwise, so long as the annual percentage rate does
161 not exceed that permitted by law. If a greater finance charge



162 than that authorized by applicable law is stipulated for or
163 received in any case, all interest and finance charge shall be
164 forfeited, and may be recovered back, whether the contract is
165 executed or executory. If a finance charge is contracted for or
166 received that exceeds the maximum authorized by law by more than
167 one hundred percent (100%), the principal and all finance charges
168 shall be forfeited and any amount paid may be recovered by suit.
169 The provisions of this section, Section 75-17-1 and Sections
170 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
171 shall not restrict the extension of credit under any other
172 applicable law. A licensee under the Small Loan Regulatory Law
173 (Sections 75-67-101 through 75-67-135), and the Small Loan
174 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
175 contract for and receive finance charges as authorized by Section
176 75-17-21, and the late payment charge as authorized by Section
177 75-17-27, regardless of the purpose for which the loan or other
178 extension of credit is made.

179 (3) If, in connection with consumer credit, any person
180 contracts for or receives, or participates in contracting for or
181 receiving, other charges in violation of any applicable statutory
182 or common law duty or that are otherwise unlawful for any reason,
183 other than by means constituting actual fraud or fraudulent
184 concealment, all those other charges shall be forfeited and any
185 such amounts paid may be recovered, whether the contract is
186 executed or executory. If the other charges subject to forfeiture
187 under this section exceed Five Hundred Dollars (\$500.00), all
188 finance charges additionally shall be forfeited and any such
189 amounts paid may be recovered. If the other charges subject to
190 forfeiture under this section exceed One Thousand Five Hundred
191 Dollars (\$1,500.00), all principal additionally shall be forfeited
192 and any such amounts paid may be recovered. If any penalty is
193 recovered under this subsection (3), the consumer also may recover
194 a reasonable attorney's fee from the offending party.



195 (4) The penalties provided for in subsection (3) of this
196 section shall not apply if it is proven by a preponderance of the
197 evidence that the violation was not intentional and resulted from
198 a bona fide error notwithstanding the maintenance of procedures
199 reasonably adapted to avoid any such error, except that the lender
200 may be required to correct the error by refund or credit to the
201 consumer's remaining obligation. The penalties provided for in
202 subsection (3) of this section shall not apply if the lender
203 discovers the violation or is notified of the violation by the
204 commissioner and within sixty (60) days after discovering the
205 violation, and before the receipt of written notice of the
206 violation from the consumer, the lender notifies the affected
207 consumer of the violation and either refunds or gives credit for
208 the unlawful other charge.

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

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

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

222 (b) "Consumer" means a natural person.

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

226 (7) Actual fraud or fraudulent concealment, as those terms
227 are used in this section, shall not be found to have occurred if



228 written disclosures were provided to the consumer disclosing the
229 other charges in compliance with applicable federal and state
230 disclosure statutes and regulations, including, but not limited
231 to, the federal Consumer Protection Act, as amended, and
232 Regulation Z promulgated under that act.

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

