

By: Representative Guice

To: Banks and Banking;
Judiciary A

HOUSE BILL NO. 1451

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 A DEFINITION FOR THE TERM "OTHER CHARGES"; TO AMEND
4 SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE REMEDIES AND PENALTIES FOR CONTRACTING FOR AND RECEIVING
6 UNLAWFUL OTHER CHARGES; TO PROVIDE THAT THE REMEDIES AND PENALTIES
7 PROVIDED FOR UNDER THIS ACT ARE EXCLUSIVE; AND FOR RELATED
8 PURPOSES.

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

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

12 75-67-103. The following words and phrases, when used in
13 this article, shall, for the purposes of this article, have the
14 meanings respectively ascribed to them in this section, except
15 where the context clearly describes and indicates a different
16 meaning:

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

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



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

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

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

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

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

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

49 75-67-119. (1) If any finance charge in excess of that
50 expressly permitted by Section 75-17-21 is contracted for or
51 received, all finance charges and other charges shall be forfeited
52 and may be recovered, whether the contract be executed or
53 executory. If any finance charge is contracted for or received
54 that exceeds the maximum finance charge authorized by law by more
55 than one hundred percent (100%), the principal and all finance
56 charges and other charges shall be forfeited and any amount paid
57 may be recovered by suit; and, in addition, the licensee and the
58 several members, officers, directors, agents, and employees
59 thereof who shall have participated in such violation shall be
60 guilty of a misdemeanor and, upon conviction thereof, shall be
61 punished by a fine of not more than One Thousand Dollars
62 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
63 the discretion of the court; and, further, the Commissioner of



64 Banking and Consumer Finance shall forthwith cite such licensee to
65 show cause why its license should not be revoked and proceedings
66 thereon shall be as is specifically provided in the Small Loan
67 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

68 (2) (a) If any licensee or other person violates any
69 provision of this article or any rule or regulation promulgated
70 under this article or any provision of Title 75, Chapter 17 of the
71 Mississippi Code of 1972, or contracts for or receives, or
72 participates in contracting for or receiving, other charges in
73 violation of any applicable statutory or common law duty, or which
74 are otherwise unlawful for any reason:

75 (i) All those other charges plus interest accrued
76 on those charges at the rate of eight percent (8%) per annum shall
77 be forfeited and may be recovered, whether the contract is
78 executed or executory;

79 (ii) If the other charges subject to forfeiture
80 under this section exceed Five Hundred Dollars (\$500.00), all
81 finance charges additionally shall be forfeited and may be
82 recovered;

83 (iii) If the other charges subject to forfeiture
84 under this section exceed One Thousand Five Hundred Dollars
85 (\$1,500.00), all principal additionally shall be forfeited and may
86 be recovered.

87 (b) If the other charges subject to forfeiture under
88 this section are found by the trier of fact and the court to have
89 been contracted for or received as a result of fraud, then an
90 award of three (3) times the other charges subject to forfeiture
91 or One Thousand Dollars (\$1,000.00), whichever is greater, plus
92 reasonable attorney's fees may be made in addition to the
93 penalties provided in this subsection (2).

94 (3) The right to recover the penalties provided in
95 subsection (2)(a)(ii) and (iii) shall accrue only after:



96 (a) Written notice of the violation is given to the
97 licensee by certified mail addressed to the licensee's place of
98 business as shown in the credit transaction documents, or that
99 notice is given by certified mail to the licensee's agent for
100 service of process; and

101 (b) Thirty (30) days have elapsed since receipt of that
102 notice by the licensee and the violation has not been corrected by
103 refund or by credit to the borrower's remaining obligation in the
104 amount required by subsection (2)(a)(i).

105 In the case of multiple violations involving a common
106 violation affecting more than one hundred (100) borrowers, the
107 licensee must notify the commissioner and correct the violation as
108 to each affected borrower within thirty (30) days after receipt of
109 a borrower notice, but the commissioner may extend the time for
110 correction for good reason.

111 The penalties provided for in subsection (2)(a)(ii) and (iii)
112 shall not apply if it is proven by a preponderance of the evidence
113 that the violation was not intentional and resulted from a bona
114 fide error notwithstanding the maintenance of procedures
115 reasonably adapted to avoid any such error, except that the
116 licensee may be required to correct the error by refund or credit
117 to the borrower's remaining obligation in the amount required by
118 subsection (2)(a)(i). Failure to refund or give credit for an
119 unlawful other charge within thirty (30) days after receipt of a
120 borrower notice or, in the case of multiple violations, failure to
121 give the commissioner the required notice within the specified
122 time, shall give rise to a rebuttable presumption that the
123 violation was not the result of a bona fide error for purposes of
124 subsection (2).

125 The penalties provided for in subsection (2)(a)(ii) and (iii)
126 shall not apply if the licensee discovers the problem itself or is
127 notified of the problem by the commissioner and within sixty (60)
128 days after discovering the violation, and before the receipt of



129 written notice of the violation from the borrower as provided in
130 this subsection, the licensee notifies the affected borrower of
131 the violation and either refunds or gives credit in the amount
132 required by subsection (2)(a)(i).

133 (4) Except as provided in subsection (5) of this section,
134 the remedies and penalties provided in this section shall be the
135 exclusive remedies and penalties for all claims against a licensee
136 or any other person for contracting for or receiving any finance
137 charge in excess of that expressly permitted by Section 75-17-21,
138 or for violation of any provision of this article or any rule or
139 regulation promulgated under this article or any provision of
140 Title 75, Chapter 17 of the Mississippi Code of 1972, or for
141 contracting for or receiving, or participating in contracting for
142 or receiving, other charges in violation of any applicable
143 statutory or common law duty, or which are otherwise unlawful.

144 (5) The remedies and penalties provided in this section are
145 supplemental to the defense provided in Section 75-67-127(3) and
146 to the enforcement powers conferred upon the commissioner.

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

149 75-17-25. (1) The term "finance charge" as used in this
150 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
151 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
152 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
153 payable, directly or indirectly, by a debtor for receiving a loan
154 or incident to or as a condition of the extension of credit,
155 including, but not limited to, interest, brokerage fees, finance
156 charges, loan fees, discount, points, service charges, transaction
157 charges, activity charges, carrying charges, time price
158 differential, finders fees or any other cost or expense to the
159 debtor for services rendered or to be rendered to the debtor in
160 making, arranging or negotiating a loan of money or an extension
161 of credit and for the accounting, guaranteeing, endorsing,



162 collecting and other actual services rendered by the lender;
163 provided, however, that recording fees, motor vehicle title fees,
164 attorney's fees, insurance premiums, fees permitted to be charged
165 under the provisions of Section 79-7-7, service charges as
166 provided in Section 81-19-31, and with respect to a debt secured
167 by an interest in land, bona fide closing costs and appraisal fees
168 incidental to the transaction shall not be included in the finance
169 charge.

170 (2) Subject to the other provisions of this section,
171 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
172 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
173 75-67-127 and 75-67-217, the finance charge may be calculated on
174 the assumption that the indebtedness will be discharged as it
175 becomes due, and prepayment penalties and statutory default
176 charges shall not be included in the finance charge. Nothing in
177 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
178 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
179 of contracting for such finance charge, whether by way of add-on,
180 discount or otherwise, so long as the annual percentage rate does
181 not exceed that permitted by law. If a greater finance charge
182 than that authorized by applicable law shall be stipulated for or
183 received in any case, all interest and finance charge shall be
184 forfeited, and may be recovered back, whether the contract be
185 executed or executory. If a finance charge be contracted for or
186 received that exceeds the maximum authorized by law by more than
187 one hundred percent (100%), the principal and all finance charges
188 shall be forfeited and any amount paid may be recovered by suit.
189 The provisions of this section, Section 75-17-1 and Sections
190 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
191 shall not restrict the extension of credit pursuant to any other
192 applicable law. A licensee under the Small Loan Regulatory Law
193 (Sections 75-67-101 through 75-67-135), and the Small Loan
194 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may



195 contract for and receive finance charges as authorized by Section
196 75-17-21, and the late payment charge as authorized by Section
197 75-17-27, regardless of the purpose for which the loan or other
198 extension of credit is made.

199 (3) (a) If in connection with a consumer loan any person
200 contracts for or receives, or participates in contracting for or
201 receiving, other charges in violation of any applicable statutory
202 or common law duty, or which are otherwise unlawful for any
203 reason:

204 (i) All those other charges plus interest accrued
205 on those charges at the rate of eight percent (8%) per annum shall
206 be forfeited and may be recovered, whether the contract is
207 executed or executory;

208 (ii) If the other charges subject to forfeiture
209 under this section exceed Five Hundred Dollars (\$500.00), all
210 finance charges additionally shall be forfeited and may be
211 recovered;

212 (iii) If the other charges subject to forfeiture
213 under this section exceed One Thousand Five Hundred Dollars
214 (\$1,500.00), all principal additionally shall be forfeited and may
215 be recovered.

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

223 (c) The right to recover the penalties provided in
224 paragraph (a)(ii) and (iii) of this subsection shall accrue only
225 after:

226 (i) Written notice of the violation is given to
227 the lender by certified mail addressed to the lender's place of



228 business as shown in the credit transaction documents, or that
229 notice is given by certified mail to the lender's agent for
230 service of process; and

231 (ii) Thirty (30) days have elapsed since receipt
232 of that notice by the lender and the violation has not been
233 corrected by refund or by credit to the consumer's remaining
234 obligation of the amount required by paragraph (a) (i) of this
235 subsection.

236 In the case of multiple violations involving a common
237 violation affecting more than one hundred (100) consumers, the
238 lender must notify the Commissioner of Banking and Consumer
239 Finance and correct the violation as to each affected consumer
240 within thirty (30) days after receipt of a consumer notice, but
241 the commissioner may extend the time for correction for good
242 reason.

243 The penalties provided for in paragraph (a) (ii) and (iii) of
244 this subsection shall not apply if it is proven by a preponderance
245 of the evidence that the violation was not intentional and
246 resulted from a bona fide error notwithstanding the maintenance of
247 procedures reasonably adapted to avoid any such error, except that
248 the lender may be required to correct the error by refund or
249 credit to the consumer's remaining obligation in the amount
250 required by paragraph (a) (i) of this subsection. Failure to
251 refund or give credit for an unlawful other charge within thirty
252 (30) days after receipt of a consumer notice or, in the case of
253 multiple violations, failure to give the commissioner the required
254 notice within the specified time, shall give rise to a rebuttable
255 presumption that the violation was not the result of a bona fide
256 error for purposes of this subsection (3).

257 The penalties provided for in paragraph (a) (ii) and (iii) of
258 this subsection shall not apply if the lender discovers the
259 problem itself or is notified of the problem by the commissioner
260 and within sixty (60) days after discovering the violation, and



261 before the receipt of written notice of the violation from the
262 consumer as provided in this subsection, the lender notifies the
263 affected consumer of the violation and either refunds or gives
264 credit in the amount required by paragraph (a) (i) of this
265 subsection.

266 (d) As used in this subsection (3):

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

270 (ii) "Other charges" means any amounts contracted
271 for or received by any person in connection with a consumer loan,
272 other than finance charges as defined in this section.

273 (4) The remedies and penalties provided in this section
274 shall be the exclusive remedies and penalties for contracting for
275 or receiving any finance charge in excess of that permitted by
276 applicable law or for contracting for or receiving, or
277 participating in contracting for or receiving, other charges in
278 violation of any applicable statutory or common law duty, or which
279 are otherwise unlawful.

280 **SECTION 4.** This act shall take effect and be in force from
281 and after its passage.

