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To: Business and Financial Institutions

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2778

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE THE TERMS "OTHER CHARGES," "CONSUMER CREDIT" AND  
3 "CONSUMER" AS THEY RELATE TO THE SMALL LOAN REGULATORY LAW; TO  
4 AMEND SECTION 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO  
5 PROVIDE FOR REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR  
6 AND RECEIVING OTHER CHARGES IN CONNECTION WITH CONSUMER CREDIT  
7 WHICH ARE UNLAWFUL FOR REASONS OTHER THAN ACTUAL FRAUD; TO PROVIDE  
8 THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED UNDER THIS ACT  
9 ARE EXCLUSIVE EXCEPT IN CASES OF ACTUAL FRAUD; AND FOR RELATED  
10 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 such violation 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 forthwith cite such licensee to  
72 show cause why its license should not be revoked and proceedings  
73 thereon shall be as is specifically provided in the Small Loan  
74 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

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

91 (3) The penalties provided for in subsection (2) shall not  
92 apply if it is proven by a preponderance of the evidence that the  
93 violation was not intentional and resulted from a bona fide error  
94 notwithstanding the maintenance of procedures reasonably adapted  
95 to avoid any such error, except that the licensee may be required  
96 to correct the error by refund or credit to the consumer's



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

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

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

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

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

127 75-17-25. (1) The term "finance charge" as used in this  
128 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
129 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,



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

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



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

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

193 (4) The penalties provided for in subsection (3) shall not  
194 apply if it is proven by a preponderance of the evidence that the  
195 violation was not intentional and resulted from a bona fide error



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

206 (5) Except as provided herein, the remedies and penalties  
207 provided in this section shall be the exclusive remedies and  
208 penalties for contracting for or receiving any finance charge in  
209 excess of that permitted by applicable law or for contracting for  
210 or receiving, or participating in contracting for or receiving,  
211 other charges in connection with consumer credit in violation of  
212 any applicable statutory or common law duty, or which are  
213 otherwise unlawful, other than by means constituting actual fraud  
214 or fraudulent concealment.

215 (6) As used in this section, the term "consumer credit"  
216 shall mean any loan or extension of credit offered or extended  
217 primarily for personal, family or household purposes; the term  
218 "consumer" shall mean a natural person; and the term "other  
219 charges" shall mean any amounts contracted for or received by any  
220 person in connection with consumer credit, other than finance  
221 charges as defined in this section.

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



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

