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To: Business and Financial  
Institutions

SENATE BILL NO. 2778

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

55 75-67-119. (1) If any finance charge in excess of that  
56 expressly permitted by Section 75-17-21 is contracted for or  
57 received, all finance charges and other charges shall be forfeited  
58 and may be recovered, whether the contract be executed or  
59 executory. If any finance charge is contracted for or received  
60 that exceeds the maximum finance charge authorized by law by more  
61 than one hundred percent (100%), the principal and all finance  
62 charges and other charges shall be forfeited and any amount paid



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

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

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



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

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

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

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

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

126 75-17-25. (1) The term "finance charge" as used in this  
127 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
128 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,



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

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



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

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

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



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

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

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



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

