AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "OTHER CHARGES," "CONSUMER CREDIT" AND "CONSUMER" AS THEY RELATE TO THE SMALL LOAN REGULATORY LAW; TO AMEND SECTION 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 WHICH ARE UNLAWFUL FOR REASONS OTHER THAN ACTUAL FRAUD; TO PROVIDE THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED UNDER THIS ACT ARE EXCLUSIVE EXCEPT IN CASES OF ACTUAL FRAUD; TO PROVIDE 11-1-60, MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON NONECONOMIC DAMAGES IN CIVIL ACTIONS; 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 such violation 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 forthwith cite such 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 to 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 which are otherwise
unlawful for any reason, other than by means constituting actual
fraud or fraudulent concealment, all such other charges shall be
forfeited and any such amounts paid may be recovered, whether the
contract be executed or executory. If the other charges subject
to forfeiture under this section exceed Five Hundred Dollars
($500.00), all finance charges shall additionally 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 shall additionally be
forfeited and any such amounts paid may be recovered. If any
penalty is recovered under this subsection, the consumer may also
recover a reasonable attorney's fee from the offending party.

(3) The penalties provided for in subsection (2) 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) 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 prior to 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 which 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 in

the event 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 thereunder.

SECTION 3. Section 75-17-25, Mississippi Code of 1972, is

amended as follows:

75-17-25. (1) 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; provided, however, that 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.

(2) 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 such 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 shall be stipulated for or received in any case, all interest and finance charge shall be forfeited, and may be recovered back, whether the contract be
executed or executory. If a finance charge be 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 pursuant to 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 which are otherwise unlawful for any reason, other than by means constituting actual fraud or fraudulent concealment, all such other charges shall be forfeited and any such amounts paid may be recovered, whether the contract be executed or executory. If the other charges subject to forfeiture under this section exceed Five Hundred Dollars ($500.00), all finance charges shall additionally 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 shall additionally be forfeited and any such amounts paid may be recovered. If any penalty is recovered under this subsection (3), the consumer may also recover a reasonable attorney's fee from the offending party.

(4) The penalties provided for in subsection (3) 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) 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 prior to 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 herein, 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 which are
otherwise unlawful, other than by means constituting actual fraud
or fraudulent concealment.

(6) As used in this section, the term "consumer credit"
shall mean any loan or extension of credit offered or extended
primarily for personal, family or household purposes; the term
"consumer" shall mean a natural person; and the term "other
charges" shall mean 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 in
the event 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 thereunder.
SECTION 4. Section 11-1-60, Mississippi Code of 1972, is amended as follows:

11-1-60. (1) For the purposes of this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Noneconomic damages" means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, * * * other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term "noneconomic damages" shall not include * * * punitive or exemplary damages.

(b) "Actual economic damages" means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, disabilities, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.

(2) (a) In any civil action for injury * * * if the trier of fact finds the defendant liable, * * * the plaintiff shall not be awarded * * * more than Two Hundred Fifty Thousand Dollars ($250,000.00) for noneconomic damages * * * for claims for causes of action filed on or after July 1, 2003 * * *.

(b) The jury shall not be advised of the limitations imposed by this subsection (2) and the judge shall appropriately reduce any award of noneconomic damages that exceeds the applicable limitation.
Nothing in this section shall be construed to impose a limitation on * * * or actual economic damages.

SECTION 5. Sections 1 through 3 of 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.

Section 4 of this act shall take effect and be in force from and after July 1, 2003, and shall apply to all causes of action filed on or after July 1, 2003.