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To: Business and Financial Institutions

SENATE BILL NO. 2778  
(As Passed the Senate)

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; TO AMEND SECTION  
10 11-1-60, MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON  
11 NONECONOMIC DAMAGES IN CIVIL ACTIONS; AND FOR RELATED PURPOSES.

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

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

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

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

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



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

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

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

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

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

47 (g) "Other charges" means any amounts contracted for or  
48 received by any licensee or other person in connection with  
49 consumer credit, other than finance charges as defined in Section  
50 75-17-25.

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

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

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

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



65 may be recovered by suit; and, in addition, the licensee and the  
66 several members, officers, directors, agents, and employees  
67 thereof who shall have participated in such violation shall be  
68 guilty of a misdemeanor and, upon conviction thereof, shall be  
69 punished by a fine of not more than One Thousand Dollars  
70 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
71 the discretion of the court; and, further, the Commissioner of  
72 Banking and Consumer Finance shall forthwith cite such licensee to  
73 show cause why its license should not be revoked and proceedings  
74 thereon shall be as is specifically provided in the Small Loan  
75 Privilege Tax Law (Sections 75-67-201 to 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 which are otherwise  
80 unlawful for any reason, other than by means constituting actual  
81 fraud or fraudulent concealment, all such other charges shall be  
82 forfeited and any such amounts paid may be recovered, whether the  
83 contract be executed or executory. If the other charges subject  
84 to forfeiture under this section exceed Five Hundred Dollars  
85 (\$500.00), all finance charges shall additionally 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 shall additionally be  
89 forfeited and any such amounts paid may be recovered. If any  
90 penalty is recovered under this subsection, the consumer may also  
91 recover a reasonable attorney's fee from the offending party.

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



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

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

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

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

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

128 75-17-25. (1) The term "finance charge" as used in this  
129 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
130 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,



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

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



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

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

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



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

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

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

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



230           SECTION 4. Section 11-1-60, Mississippi Code of 1972, is  
231 amended as follows:

232           11-1-60. (1) For the purposes of this section, the  
233 following words and phrases shall have the meanings ascribed  
234 herein unless the context clearly requires otherwise:

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

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

252           \* \* \*

253           (2) (a) In any civil action for injury \* \* \* if the trier  
254 of fact finds the defendant liable, \* \* \* the plaintiff shall not  
255 be awarded \* \* \* more than Two Hundred Fifty Thousand Dollars  
256 (\$250,000.00) for noneconomic damages \* \* \* for claims for causes  
257 of action filed on or after July 1, 2003 \* \* \*.

258           \* \* \*

259           (b) The jury shall not be advised of the limitations  
260 imposed by this subsection (2) and the judge shall appropriately  
261 reduce any award of noneconomic damages that exceeds the  
262 applicable limitation.



263 \* \* \*

264 (3) Nothing in this section shall be construed to impose a  
265 limitation on \* \* \* or actual economic damages.

266 **SECTION 5.** Sections 1 through 3 of this act shall take  
267 effect and be in force from and after July 1, 2003, and shall  
268 apply to all causes of action not yet reduced to judgment.  
269 Section 4 of this act shall take effect and be in force from and  
270 after July 1, 2003, and shall apply to all causes of action filed  
271 on or after July 1, 2003.

