

By: Representative Guice

To: Banking and Financial
Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 786

1 AN ACT TO AMEND SECTION 63-19-27, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE AMOUNT THAT THE COMMISSIONER OF BANKING AND
3 CONSUMER FINANCE MAY CHARGE LICENSEES UNDER THE MOTOR VEHICLE
4 SALES FINANCE LAW FOR EXPENSES OF EXAMINATIONS; TO AMEND SECTION
5 63-19-55, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER
6 TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM VIOLATING
7 PROVISIONS OF THE MOTOR VEHICLE SALES FINANCE LAW; TO AMEND
8 SECTION 63-19-56, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
9 COMMISSIONER TO EXAMINE PERSONS SUSPECTED OF CONDUCTING BUSINESS
10 THAT REQUIRES A LICENSE UNDER THE MOTOR VEHICLE SALES FINANCE LAW
11 WITHOUT FIRST HAVING TO RECEIVE A WRITTEN COMPLAINT; TO AMEND
12 SECTION 75-15-31, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
13 COMMISSIONER TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM
14 VIOLATING PROVISIONS OF THE SALE OF CHECKS LAW; TO AMEND SECTION
15 81-21-3, MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT THAT THE
16 COMMISSIONER MAY CHARGE LICENSEES UNDER THE INSURANCE PREMIUM
17 FINANCE COMPANY LAW FOR EXPENSES OF EXAMINATIONS; TO AMEND SECTION
18 81-21-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER
19 TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM VIOLATING
20 PROVISIONS OF THE INSURANCE PREMIUM FINANCE COMPANY LAW; TO AMEND
21 SECTION 81-21-13, MISSISSIPPI CODE OF 1972, TO REVISE THE CONTENTS
22 OF A PREMIUM FINANCE AGREEMENT; TO AMEND SECTION 81-21-15,
23 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN INSURED SHALL RECEIVE
24 A REFUND OF THE UNEARNED FINANCE CHARGE UPON CANCELLATION OF THE
25 CONTRACT; TO AMEND SECTION 81-21-21, MISSISSIPPI CODE OF 1972, TO
26 PROVIDE THAT THE PREMIUM FINANCE COMPANY SHALL RETURN UNEARNED
27 PREMIUMS TO THE ACCOUNT OF THE INSURED WHENEVER A FINANCED
28 INSURANCE CONTRACT IS CANCELLED; AND FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 63-19-27, Mississippi Code of 1972, is
31 amended as follows:

32 63-19-27. The commissioner may charge the licensee an
33 examination fee in an amount not less than Three Hundred Dollars
34 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
35 office or location within the State of Mississippi, plus any
36 actual expenses incurred while examining the licensee's records or
37 books that are located outside the State of Mississippi. However,
38 in no event shall a licensee be examined more than once in a
39 two-year period unless for cause shown based upon consumer

40 complaint and/or other exigent reasons as determined by the
41 commissioner.

42 All expense fees paid to the commissioner shall be deposited
43 by the commissioner in the State Treasury in a special and
44 separate fund to be known as the "Consumer Finance Fund."

45 **SECTION 2.** Section 63-19-55, Mississippi Code of 1972, is
46 amended as follows:

47 63-19-55. (1) Any person who * * * willfully and
48 intentionally violates any provision of this chapter or engages in
49 the business of a sales finance company in this state without a
50 license therefor as provided in this chapter shall be guilty of a
51 misdemeanor and, upon conviction, shall be punished by a fine not
52 exceeding Five Hundred Dollars (\$500.00). However, any licensee
53 who is exempt from liability for an act or omission under Section
54 63-19-57 shall not be guilty of a misdemeanor under this section
55 for the same act or omission.

56 (2) If any person engages in business as provided for in
57 this chapter without paying the license fee provided for in this
58 chapter before commencing business or before the expiration of the
59 person's current license, as the case may be, then the person
60 shall be liable for the full amount of the license fee, plus a
61 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
62 for each day that the person has engaged in the business without a
63 license or after the expiration of a license.

64 (3) The commissioner may, after notice and hearing, impose a
65 civil penalty against any licensee if the licensee or employee is
66 adjudged by the commissioner to be in violation of the provisions
67 of this chapter. The civil penalty shall not exceed Five Hundred
68 Dollars (\$500.00) per violation and shall be deposited into the
69 Consumer Finance Fund of the Department of Banking and Consumer
70 Finance.

71 (4) Any person willfully violating Sections 63-19-31 through
72 63-19-45, shall be barred from recovery of any finance charge,
73 delinquency or collection charge on the contract.

74 (5) However, any such contract purchased in good faith for
75 value by any bank, trust company, private bank, industrial bank or
76 investment company authorized to do business in this state shall
77 be held and construed to be valid and enforceable in the hands of
78 the purchaser for value, except that such purchaser shall not be
79 permitted to recover on such contract from the buyer anything in
80 excess of the principal balance due thereon, plus the amount of
81 the finance and collection charges permitted under the terms and
82 provisions of this chapter.

83 (6) When the commissioner has reasonable cause to believe
84 that a person is violating any provision of this chapter, the
85 commissioner, in addition to and without prejudice to the
86 authority provided elsewhere in this chapter, may enter an order
87 requiring the person to stop or to refrain from the violation.
88 The commissioner may sue in any circuit court of the state having
89 jurisdiction and venue to enjoin the person from engaging in or
90 continuing the violation or from doing any act in furtherance of
91 the violation. In such an action, the court may enter an order or
92 judgment awarding a preliminary or permanent injunction.

93 **SECTION 3.** Section 63-19-56, Mississippi Code of 1972, is
94 amended as follows:

95 63-19-56. The commissioner, or his duly authorized
96 representative, * * * for the purpose of discovering violations of
97 this chapter and for the purpose of determining whether persons
98 are subject to the provisions of this chapter, may examine persons
99 licensed under this chapter and persons reasonably suspected by
100 the commissioner of conducting business that requires a license
101 under this chapter, including all relevant books, records and
102 papers employed by those persons in the transaction of their
103 business, and may summon witnesses and examine them under oath

104 concerning matters relating to the business of those persons, or
105 such other matters as may be relevant to the discovery of
106 violations of this chapter, including without limitation the
107 conduct of business without a license as required by this chapter.

108 **SECTION 4.** Section 75-15-31, Mississippi Code of 1972, is
109 amended as follows:

110 75-15-31. (1) If any person to whom or which this chapter
111 applies or any agent, subagent or representative of that person
112 violates any of the provisions of this chapter or attempts to
113 transact the business of selling or issuing or delivering checks
114 as a service or for a fee or other consideration, without having
115 first obtained license from the commissioner under the provisions
116 of this chapter, that person and each such agent, subagent or
117 representative shall be deemed guilty of a misdemeanor and, upon
118 conviction, shall be fined not less than One Hundred Dollars
119 (\$100.00) nor more than Five Hundred Dollars (\$500.00), and * * *
120 may also be confined to the county jail or sentenced to hard labor
121 for the county, for not more than twelve (12) months. Each
122 violation shall constitute a separate offense.

123 (2) If any person engages in business as provided for in
124 this chapter without paying the license fee provided for in this
125 chapter before commencing business or before the expiration of the
126 person's current license, as the case may be, then the person
127 shall be liable for the full amount of the license fee plus a
128 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
129 for each day that the person has engaged in the business without a
130 license or after the expiration of a license.

131 (3) The commissioner may, after notice and hearing, impose a
132 civil penalty against any licensee if the licensee or employee is
133 adjudged by the commissioner to be in violation of the provisions
134 of this chapter. The civil penalty shall not exceed Five Hundred
135 Dollars (\$500.00) per violation and shall be deposited into the

136 Consumer Finance Fund of the Department of Banking and Consumer
137 Finance.

138 (4) When the commissioner has reasonable cause to believe
139 that a person is violating any provision of this chapter, the
140 commissioner, in addition to and without prejudice to the
141 authority provided elsewhere in this chapter, may enter an order
142 requiring the person to stop and refrain from the violation. The
143 commissioner may sue in any circuit court of the state having
144 jurisdiction and venue to enjoin the person from engaging in or
145 continuing the violation or from doing any act in furtherance of
146 the violation. In such an action, the court may enter an order or
147 judgment awarding a preliminary or permanent injunction.

148 **SECTION 5.** Section 81-21-3, Mississippi Code of 1972, is
149 amended as follows:

150 81-21-3. (1) No person shall engage in the business of a
151 premium finance company in this state without first having
152 obtained a license as a premium finance company from the
153 commissioner.

154 (2) With each initial application for a license, the
155 applicant shall pay to the commissioner at the time of making the
156 application a license fee of Seven Hundred Fifty Dollars
157 (\$750.00), and for renewal applications, an annual renewal fee of
158 Four Hundred Seventy-five Dollars (\$475.00) payable as of the
159 first day of July of each year to the commissioner for deposit
160 into the special fund in the State Treasury designated as the
161 "Consumer Finance Fund." The commissioner may employ persons as
162 necessary to administer this chapter and to examine or investigate
163 and make reports on violations of this chapter.

164 (3) The commissioner may charge the licensee an examination
165 fee in an amount not less than Three Hundred Dollars (\$300.00) nor
166 more than Six Hundred Dollars (\$600.00) for each office or
167 location within the State of Mississippi, plus any actual expenses
168 incurred while examining the licensee's records or books that are

169 located outside the State of Mississippi. However, in no event
170 shall a licensee be examined more than once in a two-year period
171 unless for cause shown based upon consumer complaint and/or other
172 exigent reasons as determined by the commissioner. Those fees
173 shall be payable in addition to other fees and taxes now required
174 by law and shall be expendable receipts for the use of the
175 commissioner in defraying the cost of the administration of this
176 chapter.

177 All fees, license tax and penalties provided for in this
178 chapter that are payable to the commissioner shall, when collected
179 by him or his designated representative, be deposited in the
180 special fund in the State Treasury known as the "Consumer Finance
181 Fund" and shall be expended by the commissioner solely and
182 exclusively for the purpose of administering and enforcing the
183 provisions of this chapter.

184 (4) Application for licensing shall be made on forms
185 prepared by the commissioner and shall contain the following
186 information:

187 (a) Name, business address and telephone number of the
188 premium finance company;

189 (b) Name and business address of corporate officers and
190 directors or principals or partners; and

191 (c) A sworn statement by an appropriate officer,
192 principal or partner of the premium finance company that:

193 (i) The premium finance company is financially
194 capable to engage in the business of insurance premium financing;

195 (ii) If a corporation, that the corporation is
196 authorized to transact business in this state; and

197 (iii) If any material change occurs in the
198 information contained in the registration form, a revised
199 statement shall be submitted to the commissioner.

200 (5) The commissioner is authorized to promulgate rules and
201 regulations to effectuate the purposes of this chapter. All such

202 rules and regulations shall be promulgated in accordance with the
203 provisions of the Mississippi Administrative Procedures Law.

204 **SECTION 6.** Section 81-21-9, Mississippi Code of 1972, is
205 amended as follows:

206 81-21-9. (1) In lieu of revoking or suspending the license
207 for any of the causes enumerated in this chapter, after a hearing
208 as provided in Section 81-21-7, the commissioner may subject the
209 company to a penalty not to exceed Five Hundred Dollars (\$500.00)
210 for each offense when the commissioner finds that the public
211 interest would not be harmed by the continued operation of the
212 company. The amount of any such penalty shall be paid by the
213 company to the commissioner for deposit into the special fund in
214 the State Treasury designated as the "Consumer Finance Fund." At
215 any hearing provided by this chapter, the commissioner shall have
216 authority to administer oaths to witnesses. Anyone testifying
217 falsely, after having been administered such oath, shall be
218 subject to the penalty of perjury.

219 (2) If any person engages in business as provided for in
220 this chapter without paying the license fee provided for in this
221 chapter before commencing business or before the expiration of the
222 person's current license, as the case may be, then the person
223 shall be liable for the full amount of the license fee, plus a
224 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
225 for each day that the person has engaged in the business without a
226 license or after the expiration of a license.

227 (3) When the commissioner has reasonable cause to believe
228 that a person is violating any provision of this chapter, the
229 commissioner, in addition to and without prejudice to the
230 authority provided elsewhere in this chapter, may enter an order
231 requiring the person to stop and refrain from the violation. The
232 commissioner may sue in any circuit court of the state having
233 jurisdiction and venue to enjoin the person from engaging in or
234 continuing the violation or from doing any act in furtherance of

235 the violation. In such an action, the court may enter an order or
236 judgment awarding a preliminary or permanent injunction.

237 **SECTION 7.** Section 81-21-13, Mississippi Code of 1972, is
238 amended as follows:

239 81-21-13. A premium finance agreement shall:

240 (a) Be dated and signed by or on behalf of the insured,
241 and the printed portion thereof shall be in at least eight-point
242 type;

243 (b) Contain the name and place of business of the
244 insurance agent or broker negotiating the related insurance
245 contract, the name and residence or place of business of the
246 insured, the name and place of business of the premium finance
247 company, a brief description of the insurance contracts involved
248 and the amount of the premium; and

249 (c) Set forth the following items, where applicable:

250 (i) The total amount of the premium, less an
251 itemized listing of any nonrefundable charges;

252 (ii) The amount of the down payment;

253 (iii) The principal balance, which is the
254 difference between the amounts stated under subparagraphs (i) and
255 (ii) of this paragraph;

256 (iv) The amount of the interest and the annual
257 percentage rate;

258 (v) The balance payable by the insured, meaning
259 the sum of amounts stated under subparagraphs (iii) and (iv) of
260 this paragraph; and

261 (vi) The number of installments required, the
262 amount of each installment expressed in dollars and the due date
263 or period thereof.

264 **SECTION 8.** Section 81-21-15, Mississippi Code of 1972, is
265 amended as follows:

266 81-21-15. (1) A premium finance company shall not charge,
267 contract for, receive or collect any interest or service charge
268 other than as permitted in this section.

269 (2) The interest is to be computed on the balance of the
270 premiums due, after subtracting the down payment made by the
271 insured in accordance with the premium finance agreement, from the
272 effective date of the insurance contract or as otherwise agreed to
273 by the parties, for which the premiums are being advanced, to the
274 date when the final installment of the premium finance agreement
275 is payable.

276 (3) Notwithstanding any provision of law to the contrary,
277 for any loan or extension of credit in an amount of Ten Thousand
278 Dollars (\$10,000.00) or less, made by a licensee under this
279 chapter, the licensee may contract for and receive any finance
280 charge agreed to in writing by the licensee and the insured, not
281 to exceed twenty-four percent (24%) per annum on the unpaid
282 balance; * * * however, if the loan or extension of credit is in
283 an amount more than Ten Thousand Dollars (\$10,000.00), the
284 licensee may contract for and receive any finance charge agreed to
285 in writing by the licensee and the insured.

286 (4) Notwithstanding the provisions of any premium finance
287 agreement, any insured shall receive a refund of the unearned
288 finance charge, based on the Rule of 78's, upon the voluntary
289 prepayment of the obligation in full or upon the cancellation of
290 such contract. Where the amount of the refund credit is less than
291 Three Dollars (\$3.00), no refund need be made.

292 **SECTION 9.** Section 81-21-21, Mississippi Code of 1972, is
293 amended as follows:

294 81-21-21. (1) Whenever a financed insurance contract is
295 cancelled, the premium finance company shall return whatever gross
296 unearned premiums are due under the insurance contract, calculated
297 pro rata unless otherwise required by law, directly to the * * *
298 account of the insured or insureds as soon as reasonably possible,

299 but in no event later than thirty (30) days after the effective
300 date of cancellation.

301 (2) If a premium is subject to an audit to determine the
302 final premium amount, the gross unearned premium shall be
303 calculated upon the deposit premium and the premium finance
304 company shall return whatever gross unearned premiums are due
305 based upon that deposit to * * * the account of the insured.

306 (3) If that the crediting of return premiums to the account
307 of the insured results in a surplus over the amount due from the
308 insured, the premium finance company shall refund such excess to
309 the insured, provided that no such refund shall be required if it
310 amounts to less than Three Dollars (\$3.00).

311 **SECTION 10.** This act shall take effect and be in force from
312 and after its passage.