

By: Representative Guice

To: Banking and Financial
Services

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; AND FOR
21 RELATED PURPOSES.

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

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

25 63-19-27. The commissioner may charge the licensee an
26 examination fee in an amount not less than Three Hundred Dollars
27 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
28 office or location within the State of Mississippi, plus any
29 actual expenses incurred while examining the licensee's records or
30 books that are located outside the State of Mississippi. However,
31 in no event shall a licensee be examined more than once in a
32 two-year period unless for cause shown based upon consumer
33 complaint and/or other exigent reasons as determined by the
34 commissioner.

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

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

40 63-19-55. (1) Any person who * * * willfully and
41 intentionally violates any provision of this chapter or engages in
42 the business of a sales finance company in this state without a
43 license therefor as provided in this chapter shall be guilty of a
44 misdemeanor and, upon conviction, shall be punished by a fine not
45 exceeding Five Hundred Dollars (\$500.00). However, any licensee
46 who is exempt from liability for an act or omission under Section
47 63-19-57 shall not be guilty of a misdemeanor under this section
48 for the same act or omission.

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

57 (3) The commissioner may, after notice and hearing, impose a
58 civil penalty against any licensee if the licensee or employee is
59 adjudged by the commissioner to be in violation of the provisions
60 of this chapter. The civil penalty shall not exceed Five Hundred
61 Dollars (\$500.00) per violation and shall be deposited into the
62 Consumer Finance Fund of the Department of Banking and Consumer
63 Finance.

64 (4) Any person willfully violating Sections 63-19-31 through
65 63-19-45, shall be barred from recovery of any finance charge,
66 delinquency or collection charge on the contract.

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

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

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

88 63-19-56. The commissioner, or his duly authorized
89 representative, * * * for the purpose of discovering violations of
90 this chapter and for the purpose of determining whether persons
91 are subject to the provisions of this chapter, may examine persons
92 licensed under this chapter and persons reasonably suspected by
93 the commissioner of conducting business that requires a license
94 under this chapter, including all relevant books, records and
95 papers employed by those persons in the transaction of their
96 business, and may summon witnesses and examine them under oath
97 concerning matters relating to the business of those persons, or
98 such other matters as may be relevant to the discovery of

99 violations of this chapter, including without limitation the
100 conduct of business without a license as required by this chapter.

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

103 75-15-31. (1) If any person to whom or which this chapter
104 applies or any agent, subagent or representative of that person
105 violates any of the provisions of this chapter or attempts to
106 transact the business of selling or issuing or delivering checks
107 as a service or for a fee or other consideration, without having
108 first obtained license from the commissioner under the provisions
109 of this chapter, that person and each such agent, subagent or
110 representative shall be deemed guilty of a misdemeanor and, upon
111 conviction, shall be fined not less than One Hundred Dollars
112 (\$100.00) nor more than Five Hundred Dollars (\$500.00), and * * *
113 may also be confined to the county jail or sentenced to hard labor
114 for the county, for not more than twelve (12) months. Each
115 violation shall constitute a separate offense.

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

124 (3) The commissioner may, after notice and hearing, impose a
125 civil penalty against any licensee if the licensee or employee is
126 adjudged by the commissioner to be in violation of the provisions
127 of this chapter. The civil penalty shall not exceed Five Hundred
128 Dollars (\$500.00) per violation and shall be deposited into the
129 Consumer Finance Fund of the Department of Banking and Consumer
130 Finance.

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

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

143 81-21-3. (1) No person shall engage in the business of a
144 premium finance company in this state without first having
145 obtained a license as a premium finance company from the
146 commissioner.

147 (2) With each initial application for a license, the
148 applicant shall pay to the commissioner at the time of making the
149 application a license fee of Seven Hundred Fifty Dollars
150 (\$750.00), and for renewal applications, an annual renewal fee of
151 Four Hundred Seventy-five Dollars (\$475.00) payable as of the
152 first day of July of each year to the commissioner for deposit
153 into the special fund in the State Treasury designated as the
154 "Consumer Finance Fund." The commissioner may employ persons as
155 necessary to administer this chapter and to examine or investigate
156 and make reports on violations of this chapter.

157 (3) The commissioner may charge the licensee an examination
158 fee in an amount not less than Three Hundred Dollars (\$300.00) nor
159 more than Six Hundred Dollars (\$600.00) for each office or
160 location within the State of Mississippi, plus any actual expenses
161 incurred while examining the licensee's records or books that are
162 located outside the State of Mississippi. However, in no event
163 shall a licensee be examined more than once in a two-year period

164 unless for cause shown based upon consumer complaint and/or other
165 exigent reasons as determined by the commissioner. Those fees
166 shall be payable in addition to other fees and taxes now required
167 by law and shall be expendable receipts for the use of the
168 commissioner in defraying the cost of the administration of this
169 chapter.

170 All fees, license tax and penalties provided for in this
171 chapter that are payable to the commissioner shall, when collected
172 by him or his designated representative, be deposited in the
173 special fund in the State Treasury known as the "Consumer Finance
174 Fund" and shall be expended by the commissioner solely and
175 exclusively for the purpose of administering and enforcing the
176 provisions of this chapter.

177 (4) Application for licensing shall be made on forms
178 prepared by the commissioner and shall contain the following
179 information:

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

182 (b) Name and business address of corporate officers and
183 directors or principals or partners; and

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

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

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

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

193 (5) The commissioner is authorized to promulgate rules and
194 regulations to effectuate the purposes of this chapter. All such
195 rules and regulations shall be promulgated in accordance with the
196 provisions of the Mississippi Administrative Procedures Law.

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

199 81-21-9. (1) In lieu of revoking or suspending the license
200 for any of the causes enumerated in this chapter, after a hearing
201 as provided in Section 81-21-7, the commissioner may subject the
202 company to a penalty not to exceed Five Hundred Dollars (\$500.00)
203 for each offense when the commissioner finds that the public
204 interest would not be harmed by the continued operation of the
205 company. The amount of any such penalty shall be paid by the
206 company to the commissioner for deposit into the special fund in
207 the State Treasury designated as the "Consumer Finance Fund." At
208 any hearing provided by this chapter, the commissioner shall have
209 authority to administer oaths to witnesses. Anyone testifying
210 falsely, after having been administered such oath, shall be
211 subject to the penalty of perjury.

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

220 (3) When the commissioner has reasonable cause to believe
221 that a person is violating any provision of this chapter, the
222 commissioner, in addition to and without prejudice to the
223 authority provided elsewhere in this chapter, may enter an order
224 requiring the person to stop and refrain from the violation. The
225 commissioner may sue in any circuit court of the state having
226 jurisdiction and venue to enjoin the person from engaging in or
227 continuing the violation or from doing any act in furtherance of
228 the violation. In such an action, the court may enter an order or
229 judgment awarding a preliminary or permanent injunction.

230 **SECTION 7.** This act shall take effect and be in force from
231 and after its passage.