

By: Representative Guice

To: Banking and Financial
ServicesHOUSE BILL NO. 786
(As Sent to Governor)

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; AND FOR RELATED PURPOSES.

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

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

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

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

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

44 63-19-55. (1) Any person who * * * willfully and
45 intentionally violates any provision of this chapter or engages in
46 the business of a sales finance company in this state without a
47 license therefor as provided in this chapter shall be guilty of a
48 misdemeanor and, upon conviction, shall be punished by a fine not
49 exceeding Five Hundred Dollars (\$500.00). However, any licensee
50 who is exempt from liability for an act or omission under Section
51 63-19-57 shall not be guilty of a misdemeanor under this section
52 for the same act or omission.

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

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

68 (4) Any person willfully violating Sections 63-19-31 through
69 63-19-45, shall be barred from recovery of any finance charge,
70 delinquency or collection charge on the contract.

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

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

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

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

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

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

107 75-15-31. (1) If any person to whom or which this chapter
108 applies or any agent, subagent or representative of that person
109 violates any of the provisions of this chapter or attempts to
110 transact the business of selling or issuing or delivering checks
111 as a service or for a fee or other consideration, without having
112 first obtained license from the commissioner under the provisions
113 of this chapter, that person and each such agent, subagent or
114 representative shall be deemed guilty of a misdemeanor and, upon
115 conviction, shall be fined not less than One Hundred Dollars
116 (\$100.00) nor more than Five Hundred Dollars (\$500.00), and * * *
117 may also be confined to the county jail or sentenced to hard labor
118 for the county, for not more than twelve (12) months. Each
119 violation shall constitute a separate offense.

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

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

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

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

147 81-21-3. (1) No person shall engage in the business of a
148 premium finance company in this state without first having
149 obtained a license as a premium finance company from the
150 commissioner.

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

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

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

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

181 (4) Application for licensing shall be made on forms
182 prepared by the commissioner and shall contain the following
183 information:

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

186 (b) Name and business address of corporate officers and
187 directors or principals or partners; and

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

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

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

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

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

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

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

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

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

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

236 81-21-13. A premium finance agreement shall:

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

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

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

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

249 (ii) The amount of the down payment;

250 (iii) The principal balance, which is the
251 difference between the amounts stated under subparagraphs (i) and
252 (ii) of this paragraph;

253 (iv) The amount of the interest and the annual
254 percentage rate;

255 (v) The balance payable by the insured, meaning
256 the sum of amounts stated under subparagraphs (iii) and (iv) of
257 this paragraph; and

258 (vi) The number of installments required, the
259 amount of each installment expressed in dollars and the due date
260 or period thereof.

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

263 81-21-15. (1) A premium finance company shall not charge,
264 contract for, receive or collect any interest or service charge
265 other than as permitted in this section.

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

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

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

289 **SECTION 9.** This act shall take effect and be in force from
290 and after its passage.