

By: Representative Guice

To: Banking and Financial
Services

HOUSE BILL NO. 787

1 AN ACT TO AMEND SECTION 75-17-27, MISSISSIPPI CODE OF 1972,
 2 TO MODIFY THE LATE PAYMENT CHARGES PERMITTED ON CERTAIN
 3 TRANSACTIONS; TO AMEND SECTION 63-19-35, MISSISSIPPI CODE OF 1972,
 4 TO CONFORM TO THE PRECEDING PROVISION THE DELINQUENCY AND
 5 COLLECTION CHARGE PROVISIONS APPLICABLE TO COMMERCIAL VEHICLE
 6 SALES CONTRACTS AND MOTOR VEHICLE SALES FINANCE CONTRACTS; TO
 7 AMEND SECTION 75-67-115, MISSISSIPPI CODE OF 1972, TO INCREASE THE
 8 AMOUNT THAT THE COMMISSIONER OF BANKING AND CONSUMER FINANCE MAY
 9 CHARGE LICENSEES UNDER THE SMALL LOAN REGULATORY LAW FOR EXPENSES
 10 OF EXAMINATIONS; TO AMEND SECTION 75-67-215, MISSISSIPPI CODE OF
 11 1972, TO AUTHORIZE THE COMMISSIONER TO ENTER ORDERS THAT REQUIRE
 12 PERSONS TO REFRAIN FROM VIOLATING PROVISIONS OF THE SMALL LOAN
 13 PRIVILEGE TAX LAW; TO CREATE A NEW SECTION TO BE CODIFIED AS
 14 SECTION 75-67-139, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
 15 MUNICIPALITIES TO ENACT ORDINANCES THAT ARE IN COMPLIANCE WITH,
 16 BUT NOT MORE RESTRICTIVE THAN, THE PROVISIONS OF THE SMALL LOAN
 17 REGULATORY LAW; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
 18 75-67-247, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MUNICIPALITIES
 19 TO ENACT ORDINANCES THAT ARE IN COMPLIANCE WITH, BUT NOT MORE
 20 RESTRICTIVE THAN, THE PROVISIONS OF THE SMALL LOAN PRIVILEGE TAX
 21 LAW; TO REPEAL SECTION 75-17-15, MISSISSIPPI CODE OF 1972, WHICH
 22 AUTHORIZES SMALL LOAN LICENSEES TO COLLECT A DEFAULT CHARGE ON
 23 CERTAIN TRANSACTIONS; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 75-17-27, Mississippi Code of 1972, is
 26 amended as follows:

27 75-17-27. A late payment charge, not exceeding Ten Dollars
 28 (\$10.00) or five percent (5%) of the amount of any delinquency,
 29 whichever is greater, if contracted for in writing, shall not be
 30 considered a finance charge, but no such charge shall be made
 31 unless the delinquency is more than ten (10) days past due; * * *
 32 however, the late payment charge may be collected only one (1)
 33 time on a specific installment and no late payment charge may be
 34 collected on a partial payment resulting from the deduction of a
 35 late payment charge from a regular scheduled payment. On loans of
 36 One Hundred Thousand Dollars (\$100,000.00) or less having a stated

37 maturity of five (5) years or less, the late payment charge shall
38 in no event exceed Fifty Dollars (\$50.00).

39 **SECTION 2.** Section 63-19-35, Mississippi Code of 1972, is
40 amended as follows:

41 63-19-35. The holder may, if the contract or refinancing
42 agreement so provides, collect a delinquency and collection charge
43 on a contract * * * in an amount not exceeding that permitted in
44 Section 75-17-27. The contract may provide for the payment of
45 court costs and of attorney's fee not exceeding fifteen per cent
46 (15%) of the amount actually due and unpaid at the time the
47 balance of the contract is accelerated and the entire amount
48 thereof is declared to be due, if the same is referred to an
49 attorney for collection. However, no such attorney's fee may be
50 charged or collected where the attorney to whom the contract was
51 referred for collection is a salaried employee of the holder of
52 the contract.

53 **SECTION 3.** Section 75-67-115, Mississippi Code of 1972, is
54 amended as follows:

55 75-67-115. The commissioner may charge the licensee an
56 examination fee in an amount not less than Three Hundred Dollars
57 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
58 office or location within the State of Mississippi, plus any
59 actual expenses incurred while examining the licensee's records or
60 books that are located outside the State of Mississippi. However,
61 in no event shall a licensee be examined more than once in a
62 two-year period unless for cause shown based upon consumer
63 complaint and/or other exigent reasons as determined by the
64 commissioner.

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

68 **SECTION 4.** Section 75-67-215, Mississippi Code of 1972, is
69 amended as follows:

70 75-67-215. (1) If any person * * * engages in business as
71 provided for in this article without paying the license fee
72 provided for in this article before commencing business or before
73 the expiration of the person's current license, as the case may
74 be, then the person shall be liable for the full amount of the
75 license fee plus a penalty in an amount not to exceed Twenty-five
76 Dollars (\$25.00) for each day that the person has engaged in the
77 business without a license or after the expiration of a license.

78 (2) The commissioner may, after notice and hearing as defined
79 in Section 75-67-237 in cases of revocation of license, impose a
80 civil penalty against any licensee if the licensee is adjudged by
81 the commissioner to be in willful violation of the provisions of
82 this article. The civil penalty shall not exceed Five Hundred
83 Dollars (\$500.00) per violation and shall be deposited into the
84 Consumer Finance Fund of the Department of Banking and Consumer
85 Finance. Any licensee who has been imposed a civil penalty by the
86 commissioner may, within twenty (20) days after the fine is
87 imposed, appeal to the circuit court of the county where the
88 business is being conducted, as in cases from an order of a lesser
89 tribunal. The trial on appeal shall be de novo.

90 (3) When the commissioner has reasonable cause to believe
91 that a person is violating any provision of this article, the
92 commissioner, in addition to and without prejudice to the
93 authority provided elsewhere in this article, may enter an order
94 requiring the person to stop or to refrain from the violation.
95 The commissioner may sue in any circuit court of the state having
96 jurisdiction and venue to enjoin the person from engaging in or
97 continuing the violation or from doing any act in furtherance of
98 the violation. In such an action, the court may enter an order or
99 judgment awarding a preliminary or permanent injunction.

100 **SECTION 5.** The following shall be codified as Section
101 75-67-139, Mississippi Code of 1972:

102 75-67-139. Municipalities and counties in this state may
103 enact ordinances that are in compliance with, but not more
104 restrictive than, the provisions of this article. Any order,
105 ordinance or regulation existing on the effective date of House
106 Bill No. 787, 2004 Regular Session, or any order, ordinance or
107 regulation enacted after the effective date of House Bill No. 787,
108 2004 Regular Session, that conflicts with any of the provisions of
109 this article shall be void to the extent of the conflict.

110 **SECTION 6.** The following shall be codified as Section
111 75-67-247, Mississippi Code of 1972:

112 75-67-247. Municipalities and counties in this state may
113 enact ordinances that are in compliance with, but not more
114 restrictive than, the provisions of this article. Any order,
115 ordinance or regulation existing on the effective date of House
116 Bill No. 787, 2004 Regular Session, or any order, ordinance or
117 regulation enacted after the effective date of House Bill No. 787,
118 2004 Regular Session, that conflicts with any of the provisions of
119 this article shall be void to the extent of the conflict.

120 **SECTION 7.** Section 75-17-15, Mississippi Code of 1972, which
121 authorizes small loan licensees to collect a default charge on
122 certain transactions, is repealed.

123 **SECTION 8.** This act shall take effect and be in force from
124 and after its passage.