

By: Representative Guice

To: Banking and Financial
ServicesHOUSE BILL NO. 787
(As Passed the House)

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

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

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

29 75-17-27. A late payment charge, not exceeding Seven Dollars
 30 (\$7.00) or five percent (5%) of the amount of any delinquency,
 31 whichever is greater, if contracted for in writing, shall not be
 32 considered a finance charge, but no such charge shall be made
 33 unless the delinquency is more than *fifteen (15)* days past
 34 due; * * * however, the late payment charge may be collected only
 35 one (1) time on a specific installment and no late payment charge
 36 may be collected on a partial payment resulting from the deduction
 37 of a late payment charge from a regular scheduled payment. * * *

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

40 63-19-35. The holder may, if the contract or refinancing
41 agreement so provides, collect a delinquency and collection charge
42 on a contract * * * in an amount not exceeding that permitted in
43 Section 75-17-27. The contract may provide for the payment of
44 court costs and of attorney's fee not exceeding fifteen per cent
45 (15%) of the amount actually due and unpaid at the time the
46 balance of the contract is accelerated and the entire amount
47 thereof is declared to be due, if the same is referred to an
48 attorney for collection. However, no such attorney's fee may be
49 charged or collected where the attorney to whom the contract was
50 referred for collection is a salaried employee of the holder of
51 the contract.

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

54 75-67-115. The commissioner may charge the licensee an
55 examination fee in an amount not less than Three Hundred Dollars
56 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
57 office or location within the State of Mississippi, plus any
58 actual expenses incurred while examining the licensee's records or
59 books that are located outside the State of Mississippi. However,
60 in no event shall a licensee be examined more than once in a
61 two-year period unless for cause shown based upon consumer
62 complaint and/or other exigent reasons as determined by the
63 commissioner.

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

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

69 75-67-215. (1) If any person * * * engages in business as
70 provided for in this article without paying the license fee

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

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

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

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

101 75-67-139. Municipalities and counties in this state may
102 enact ordinances that are in compliance with, but not more
103 restrictive than, the provisions of this article. Any order,

104 ordinance or regulation existing on the effective date of House
105 Bill No. 787, 2004 Regular Session, or any order, ordinance or
106 regulation enacted after the effective date of House Bill No. 787,
107 2004 Regular Session, that conflicts with any of the provisions of
108 this article shall be void to the extent of the conflict.

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

111 75-67-247. Municipalities and counties in this state may
112 enact ordinances that are in compliance with, but not more
113 restrictive than, the provisions of this article. Any order,
114 ordinance or regulation existing on the effective date of House
115 Bill No. 787, 2004 Regular Session, or any order, ordinance or
116 regulation enacted after the effective date of House Bill No. 787,
117 2004 Regular Session, that conflicts with any of the provisions of
118 this article shall be void to the extent of the conflict.

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

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