

By: Representative Guice

To: Banking and Financial Services

HOUSE BILL NO. 791

1 AN ACT TO AMEND SECTION 75-17-33, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DUTIES OF THE COMMISSIONER OF BANKING AND CONSUMER
3 FINANCE REGARDING THE ANNOUNCEMENT OF DISCOUNT RATES AND INDICES;
4 TO AMEND SECTION 75-17-1, MISSISSIPPI CODE OF 1972, TO DELETE THE
5 PROVISION ALLOWING ANY BORROWER OR DEBTOR TO CONTRACT FOR A
6 FINANCE CHARGE NOT TO EXCEED THE GREATER OF 10% PER ANNUM OR 5%
7 PER ANNUM ABOVE THE INDEX OF CERTAIN MARKET YIELDS ON ANY LOAN,
8 MORTGAGE OR ADVANCE THAT IS SECURED BY A LIEN ON RESIDENTIAL REAL
9 PROPERTY; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 75-17-33, Mississippi Code of 1972, is
12 amended as follows:

13 75-17-33. The Commissioner of Banking and Consumer Finance,
14 upon any change in a rate that has been determined to be the
15 equivalent of the discount rate on ninety-day commercial paper by
16 the Federal Reserve bank of a Federal Reserve district of which
17 this state is a part, shall * * * make an official announcement of
18 the new discount rate on the same day as the change, or as soon
19 thereafter as possible * * *.

20 In contracting for a finance charge pursuant to the
21 provisions of Section 75-17-1 or Sections 75-17-21 and 75-17-23,
22 any person shall be entitled to rely conclusively upon the most
23 recent * * * rate * * * officially announced by the Commissioner
24 of Banking and Consumer Finance. The Commissioner of Banking and
25 Consumer Finance shall acquire, keep and maintain a separate
26 record in which he shall note or post the maximum permissible
27 rates of finance charges available under Section 75-17-1 and
28 Sections 75-17-21 and 75-17-23. Each rate so determined shall be
29 the maximum permissible rate of finance charge available under
30 each particular section or subsection thereof, and when certified

31 by the Commissioner of Banking and Consumer Finance shall be
32 admissible in evidence or judicially noticed as the maximum
33 permissible rate of finance charge under the provisions of that
34 particular section or subsection.

35 **SECTION 2.** Section 75-17-1, Mississippi Code of 1972, is
36 amended as follows:

37 75-17-1. (1) The legal rate of interest on all notes,
38 accounts and contracts shall be eight percent (8%) per annum,
39 calculated according to the actuarial method, but contracts may be
40 made, in writing, for payment of a finance charge as otherwise
41 provided by this section or as otherwise authorized by law.

42 (2) Any borrower or debtor may contract for and agree to pay
43 a finance charge for any loan or other extension of credit made
44 directly or indirectly to a borrower or debtor which will result
45 in a yield not to exceed the greater of ten percent (10%) per
46 annum or five percent (5%) per annum above the discount rate,
47 excluding any surcharge thereon, on ninety-day commercial paper in
48 effect at the Federal Reserve bank in the Federal Reserve district
49 where the lender is located, each calculated according to the
50 actuarial method. The rate of finance charge authorized under
51 this subsection (2) shall be known as the "contract rate."

52 (3) Notwithstanding the foregoing and any other provision of
53 law to the contrary, any partnership, joint venture, religious
54 society, unincorporated association, or domestic or foreign
55 corporation, whether organized for profit or nonprofit, may
56 contract for and agree to pay a finance charge which will result
57 in a yield not to exceed the greater of fifteen percent (15%) per
58 annum or five percent (5%) per annum above the discount rate,
59 excluding any surcharge thereon, on ninety-day commercial paper in
60 effect at the Federal Reserve bank in the Federal Reserve district
61 where the lender is located, each calculated according to the
62 actuarial method, on any contract, loan, extension of credit or
63 other obligation under which the principal balance to be repaid

64 shall originally exceed Two Thousand Five Hundred Dollars
65 (\$2,500.00), or on any series of advances of money pursuant to a
66 contract if the aggregate of sums advanced or originally proposed
67 to be advanced shall exceed Two Thousand Five Hundred Dollars
68 (\$2,500.00); and as to any such agreement, the claim or defense of
69 usury by such partnership, joint venture, religious society,
70 unincorporated association, or corporation, or their successors,
71 guarantors, assigns or anyone on their behalf is prohibited.

72 * * *

73 (4) Notwithstanding the foregoing and any other provision of
74 law to the contrary, any borrower or debtor may contract for and
75 agree to pay and any lender or extender of credit may contract for
76 and receive any finance charge agreed to in writing by the
77 parties, notwithstanding that such charge is in excess of that
78 otherwise allowed on any contract, credit sale, obligation or
79 other extension of credit, regardless of the security taken or the
80 purpose of the extension of credit, under which the principal
81 balance to be repaid originally exceeds Two Thousand Dollars
82 (\$2,000.00), or on any series of advances of money pursuant to a
83 contract if the aggregate of sums advanced or originally proposed
84 to be advanced exceeds Two Thousand Dollars (\$2,000.00), or on any
85 extension or renewal thereof; and as to any such agreement, the
86 claim or defense of usury or violation of any law prescribing,
87 limiting or regulating the rate of finance charge by any borrower
88 or debtor, or his successors, guarantors, assigns or anyone on his
89 behalf is prohibited.

90 (5) Notwithstanding the foregoing and any other provisions
91 of law to the contrary, the outstanding balance of a prior loan or
92 lease of a motor vehicle used as a trade-in, as well as other
93 items that are capitalized or amortized during the lease term, may
94 be included in a lease for a motor vehicle, provided that the rate
95 of finance charge associated with the lease contract does not at

96 any time exceed the finance charge limitations specified in
97 Section 63-19-43.

98 **SECTION 3.** This act shall take effect and be in force from
99 and after its passage.