

By: Representative Guice

To: Banking and Financial Services

HOUSE BILL NO. 1323  
(As Passed the House)

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,  
2 DEFINE THE TERM "OTHER CHARGES" UNDER THE SMALL LOAN REGULATORY  
3 LAW; TO AMEND SECTION 75-67-119, MISSISSIPPI CODE OF 1972, TO  
4 PROVIDE THE REMEDIES AND PENALTIES FOR CONTRACTING FOR OR  
5 RECEIVING UNLAWFUL OTHER CHARGES UNDER THE SMALL LOAN REGULATORY  
6 LAW; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 75-67-103, Mississippi Code of 1972, is  
9 amended as follows:

10 75-67-103. The following words and phrases, when used in  
11 this article, shall, for the purposes of this article, have the  
12 meanings respectively ascribed to them in this section, except  
13 where the context clearly describes and indicates a different  
14 meaning:

15 (a) "Person" means and includes every natural person,  
16 firm, corporation, copartnership, joint-stock or other association  
17 or organization, and any other legal entity whatsoever.

18 (b) "Licensee" means and includes every person holding  
19 a valid license issued under the provisions of the Small Loan  
20 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this  
21 state, except those specifically exempt by the provisions of this  
22 article, who, in addition to any other rights and powers he or it  
23 might otherwise possess, \* \* \* engages in the business of lending  
24 money either directly or indirectly, to be paid back in monthly  
25 installments or other regular installments for periods of more or  
26 less than one (1) month, and whether or not the lender requires  
27 security from the borrower as indemnity for the repayment of the  
28 loan.

29 (c) "Occasional lender" means a person making not more  
30 than one (1) loan in any month or not more than twelve (12) loans  
31 in any twelve-month period.

32 (d) "Commissioner" means the Commissioner of Banking  
33 and Consumer Finance of the State of Mississippi.

34 (e) "Department" means the Department of Banking and  
35 Consumer Finance of the State of Mississippi.

36 (f) "Records" or "documents" means any item in hard  
37 copy or produced in a format of storage commonly described as  
38 electronic, imaged, magnetic, microphotographic or otherwise, and  
39 any reproduction so made shall have the same force and effect as  
40 the original thereof and be admitted in evidence equally with the  
41 original.

42 (g) "Other charges" means any amounts contracted for or  
43 received by any licensee or other person in connection with a  
44 loan, other than finance charges as defined in Section 75-17-25.

45 **SECTION 2.** Section 75-67-119, Mississippi Code of 1972, is  
46 amended as follows:

47 75-67-119. (1) If any finance charge in excess of that  
48 expressly permitted by Section 75-17-21 is contracted for or  
49 received, all finance charges and other charges shall be forfeited  
50 and may be recovered, whether the contract is executed or  
51 executory. If any finance charge is contracted for or received  
52 that exceeds the maximum finance charge authorized by law by more  
53 than one hundred percent (100%), the principal and all finance  
54 charges and other charges shall be forfeited and any amount paid  
55 may be recovered by suit. In addition, the licensee and the  
56 several members, officers, directors, agents and employees thereof  
57 who \* \* \* participated in that violation shall be guilty of a  
58 misdemeanor and, upon conviction thereof, shall be punished by a  
59 fine of not more than Twenty Thousand Dollars (\$20,000.00) and not  
60 less than Five Thousand Dollars (\$5,000.00), in the discretion of  
61 the court, which shall be paid to the consumer. Any attorney's

62 fees awarded shall be determined by the court, not the jury. In  
63 addition to any action taken in court, the Commissioner of Banking  
64 and Consumer Finance shall immediately cite the licensee to show  
65 cause why its license should not be revoked, and proceedings  
66 thereon shall be as is specifically provided in the Small Loan  
67 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

68 (2) If any licensee or other person violates any provision  
69 of this article or any rule or regulation promulgated under this  
70 article or any provision of Title 75, Chapter 17, of the  
71 Mississippi Code of 1972, or contracts for or receives, or  
72 participates in contracting for or receiving, other charges by  
73 misleading or deceptive means, or in violation of any applicable  
74 statutory or common law duty, or which are otherwise unlawful, all  
75 those unlawful other charges shall be forfeited and may be  
76 recovered, whether the contract is executed or executory. If the  
77 other charges subject to forfeiture under this section exceed Two  
78 Hundred Fifty Dollars (\$250.00), all finance charges shall  
79 additionally be forfeited and may be recovered. If the other  
80 charges subject to forfeiture under this section exceed One  
81 Thousand Dollars (\$1,000.00), all principal shall additionally be  
82 forfeited and may be recovered. If the other charges subject to  
83 forfeiture under this section are found to have been contracted  
84 for or received by misleading or deceptive means, the amounts  
85 authorized to be recovered under this subsection (2) shall be  
86 tripled.

87 (3) Except as provided in subsection (4) of this section,  
88 the remedies and penalties provided in this section shall be the  
89 exclusive remedies and penalties for all claims against a licensee  
90 or any other person for contracting for or receiving any finance  
91 charge in excess of that expressly permitted by Section 75-17-21,  
92 or for violation of any provision of this article or any rule or  
93 regulation promulgated under this article or any provision of  
94 Title 75, Chapter 17, of the Mississippi Code of 1972, or for

95 contracting for or receiving, or participating in contracting for  
96 or receiving, other charges by misleading or deceptive means, or  
97 in violation of any applicable statutory or common law duty, or  
98 which are otherwise unlawful.

99 (4) The remedies and penalties provided in this section are  
100 supplemental to the defense provided in Section 75-67-127(3) and  
101 to the enforcement powers conferred upon the Commissioner of  
102 Banking and Consumer Finance.

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