

By: Senator(s) Robertson

To: Business and Financial
Institutions

SENATE BILL NO. 2688

1 AN ACT TO AMEND SECTION 75-67-137, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATIONS OF THE SMALL LOAN
3 REGULATORY LAW AND VIOLATIONS OF COMMON-LAW DUTIES OF SMALL LOAN
4 LICENSEES; TO PROVIDE THAT THE REMEDIES AND PENALTIES PROVIDED
5 UNDER THIS ACT ARE EXCLUSIVE; TO AMEND SECTION 75-67-127,
6 MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION WHICH PROVIDES
7 PENALTIES FOR VIOLATING CERTAIN REQUIREMENTS FOR THE MAKING AND
8 PAYMENT OF SMALL LOANS; TO REPEAL SECTION 75-67-119, MISSISSIPPI
9 CODE OF 1972, WHICH PROVIDES CIVIL AND CRIMINAL PENALTIES FOR THE
10 IMPOSITION OF EXCESSIVE FINANCE CHARGES UNDER THE SMALL LOAN
11 REGULATORY LAW; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 75-67-137, Mississippi Code of 1972, is
14 amended as follows:

15 75-67-137. (1) In addition to the definitions provided in
16 Section 75-67-103 of this article, the following words and phrases
17 when used in this section shall have the following meanings:

18 (a) "Civil remedies" means civil penalties, attorney's
19 fees and out-of-pocket expenses.

20 (b) "Good faith error" means errors of law as well as
21 errors of fact made without actual knowledge of the error or
22 without intent to violate the law.

23 (c) "Multiple violation" means a violation that has
24 recurred more than one hundred (100) times as a result of a common
25 error.

26 (d) "Noneconomic damages" means subjective,
27 nonpecuniary damages arising from pain, suffering, inconvenience,
28 mental anguish, worry, emotional distress, injury to reputation,
29 humiliation, embarrassment and other nonpecuniary damages. The
30 term "noneconomic damages" shall not include punitive damages.

31 (e) "Other charges" means any amounts contracted for or
32 received by any licensee or other person in connection with making
33 a consumer loan (including, without limitation, insurance
34 premiums), but not finance charges as defined in Section 75-17-25.

35 (f) "Punitive damages" means damages awarded in
36 addition to actual damages when the licensee acted with malice or
37 gross negligence or reckless disregard for the rights of the
38 plaintiff.

39 (g) "Total Amount of Loan" means the sum of payments to
40 be paid by the borrower.

41 (2) Notwithstanding any provision of law to the contrary, a
42 licensee under this article shall have no liability for any act or
43 practice done or omitted in conformity with (a) any rule or
44 regulation of the commissioner, or (b) any rule, regulation,
45 interpretation or approval of any other state or federal agency or
46 any opinion of the Attorney General, regardless that after such
47 act or omission has occurred the rule, regulation, interpretation,
48 approval or opinion is amended, rescinded, or determined by
49 judicial or other authority to be invalid for any reason.

50 (3) Notwithstanding any provision of law to the contrary, a
51 licensee under this article, acting in conformity with a written
52 interpretation or approval by an official or employee of any state
53 or federal agency or department, shall be presumed to have acted
54 in accordance with applicable law, regardless that after such act
55 has occurred, the interpretation or approval is amended,
56 rescinded, or determined by judicial or other authority to be
57 incorrect or invalid for any reason.

58 (4) (a) If a court finds that a licensee has intentionally
59 or as a result of error not in good faith violated the provisions
60 of this article, the complaining borrower is entitled to a refund
61 of all unlawful finance charges or other charges and has the
62 additional right to recover three (3) times the amount of such
63 finance charges or other charges, together with a reasonable

64 attorney's fee. The right to recover the civil penalty in this
65 paragraph (a) accrues only after:

66 (i) The complaining borrower gives written notice
67 to the licensee by mail addressed to the licensee's place of
68 business in which the consumer credit transaction arose and
69 presents proof of receipt by licensee of such notice;

70 (ii) The complaining borrower mails a copy of such
71 notice to the licensee's agent for service of process; and

72 (iii) Thirty (30) days have elapsed since receipt
73 of such notice by the licensee, and the violation has not been
74 corrected.

75 (b) Except as otherwise provided herein, if the notices
76 provided for in paragraph (a) of this subsection have been given
77 by the complaining borrower, the following shall be presumed to be
78 an intentional violation or a violation not resulting from good
79 faith error: the licensee's failure to return or give credit for
80 an overcharge in the finance charge (in violation of Section
81 75-17-21) or other charges, or failure to return a deficiency in a
82 refund required by law within the thirty-day time period set forth
83 in subparagraph (iii) of paragraph (a) of this subsection when
84 such overcharge or deficiency exceeds the greater of (i) ten
85 percent (10%) of such finance charge, other charge or refund; or
86 (ii) Twenty-five Dollars (\$25.00).

87 (c) If the licensee fails to return or give credit for
88 an overcharge or deficiency as provided in paragraph (b) of this
89 subsection, in addition to the penalties in paragraph (a) of this
90 subsection, the borrower who executed the consumer credit
91 transaction and gave the required notices shall be entitled to
92 collect from the licensee not more than One Hundred Dollars
93 (\$100.00) of such borrower's actual documented out-of-pocket
94 expenses incurred as a direct result of the licensee's failure to
95 act.

96 (d) In the case of multiple violations involving an
97 overcharge in the finance charge or other charges or a deficiency
98 in a refund of the size described in paragraph (b) of this
99 subsection, the licensee must notify the commissioner of the
100 licensee's receipt of written notice of the multiple violations
101 and must give the commissioner a reasonable description of the
102 multiple violations within thirty (30) days after the receipt of
103 the written notice from the complaining borrower, and the licensee
104 must correct the multiple violations as to each borrower affected
105 thereby within thirty (30) days of the receipt of the written
106 notice from the complaining borrower. Upon good cause shown, the
107 commissioner may grant not more than two (2) thirty-day extensions
108 within which the licensee must correct the violations. If the
109 licensee fails to give the commissioner the required notice or
110 fails to correct the multiple violations as required herein, then
111 from the failure it shall be presumed that the multiple violations
112 were intentional or not in good faith.

113 (5) (a) If a violation of this article is not intentional
114 or is made in good faith on the part of the licensee, the court
115 may require the licensee to correct the violation, but the
116 complaining borrower is not entitled to the civil remedies granted
117 by this section.

118 (b) If the complaining borrower gives the licensee
119 written notice of an alleged violation as provided in subsection
120 (4)(a)(i) and (ii) of this section, although the violation was
121 unintentional or resulted from good faith error or did not in fact
122 exist, the licensee must give the complaining borrower a
123 reasonable response to the complaint in writing within thirty (30)
124 days of the receipt of written notice from the complaining
125 borrower. If the licensee fails to give the response timely, the
126 complaining borrower shall be entitled to collect from the
127 licensee not more than One Hundred Dollars (\$100.00) of the
128 complaining borrower's actual documented out-of-pocket expenses

129 incurred as a direct result of the failure of the licensee to
130 comply with the provisions hereof.

131 (6) (a) A licensee has no liability for the civil remedies
132 granted by this section in all instances other than multiple
133 violations and whether intentional or resulting from good faith
134 error or not, if: (i) within fifteen (15) days after discovering
135 a violation and prior to receipt of written notice of the
136 violation from a borrower, or (ii) within fifteen (15) days after
137 the occurrence of the violation, regardless of receipt of such
138 notice from a borrower, the licensee gives written notice to the
139 borrower or the borrower's designated agent of the violation and
140 corrects the violation. Violations discovered by the licensee in
141 the manner described in subparagraphs (i) and (ii) above are
142 referred to in this section as "self-discovered" violations. If
143 the self-discovered violation consists of a prohibited agreement,
144 the licensee shall correct the violation by giving the borrower a
145 corrected copy of the writing that contained the violation. If
146 the self-discovered violation consists of an excessive charge, the
147 licensee shall correct the violation by an adjustment or refund.

148 (b) In the case of all self-discovered multiple
149 violations by a licensee, whether intentional or resulting from
150 good faith error or not, the licensee shall have no liability for
151 the civil remedies granted by this section if: (i) within fifteen
152 (15) days after discovering the multiple violations the
153 commissioner is notified of the existence of the multiple
154 violations and given a reasonable description thereof, and (ii)
155 the multiple violations are corrected as to each borrower affected
156 thereby within thirty (30) days after the licensee discovers the
157 multiple violations. Upon good cause shown, the commissioner may
158 grant not more than two (2) thirty-day extensions within which the
159 licensee may correct the multiple violations. If a borrower
160 delivers written notice of any such violation at any time after
161 the commissioner is notified by the licensee, it shall not affect

162 the rights of the licensee to be relieved of liability as provided
163 herein.

164 (7) (a) Except as otherwise provided herein, any written
165 notice required in this section shall be given by registered,
166 certified or first-class mail at the sender's option. Proof of
167 receipt by the licensee may consist of a return receipt executed
168 by an employee of the licensee. Proof of receipt by the borrower
169 may be a return receipt executed by the borrower. Proof of
170 mailing any written notice may be a postmarked registered mail
171 receipt, a postmarked certified mail receipt, or a post office
172 certificate of mailing.

173 (b) At a minimum, the written notice shall clearly
174 identify the consumer credit contract at issue, state the names of
175 the licensee and the borrower, and shall include the date and a
176 reasonable description of the violation.

177 (c) In any case where the licensee must respond in
178 writing to a complaining borrower, the written notice or other
179 required written response shall be mailed to the last address
180 contained in the licensee's file on that borrower, unless the
181 borrower specifies a different address in the borrower's written
182 notice received by the licensee.

183 (8) Notwithstanding any provision of law to the contrary,
184 any civil action under this section shall be brought within the
185 earliest to occur of: (a) sixty (60) days from the date of final
186 payment of the consumer credit contract at issue, and (b) within
187 one (1) year of the date of the violation, and not thereafter.

188 (9) If any finance charge or other charge is contracted for
189 or received that exceeds the maximum finance charge or other
190 charge authorized by law by more than one hundred percent (100%),
191 the licensee and the several members, officers, directors, agents
192 and employees thereof who shall have participated in the violation
193 shall be guilty of a misdemeanor and, upon conviction thereof,
194 shall be punished by a fine of not more than One Thousand Dollars

195 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
196 the discretion of the court; and, further, the commissioner shall
197 forthwith cite the licensee to show cause why its license should
198 not be revoked and proceedings thereon shall be as specifically
199 provided in the Small Loan Privilege Tax Law (Sections 75-67-201
200 through 75-67-243).

201 (10) Attorney fees awarded under this section shall be
202 determined by the court, not the jury, based upon the time
203 reasonably expended and the work performed by the borrower's
204 attorney, and not by the amount of recovery or a percentage of the
205 recovery.

206 (11) (a) Notwithstanding any provision of law to the
207 contrary, including, without limitation, Section 11-1-65, in any
208 civil action for injury, if the trier of fact finds a licensee
209 liable in tort or liable for other common-law violations, the
210 plaintiff shall not be awarded noneconomic damages and/or punitive
211 damages that total, in the aggregate, more than four (4) times the
212 "Total Amount of Loan" of any unlawful loan that the licensee made
213 to the plaintiff. Nothing in this paragraph (a) shall be
214 construed to impose a limitation on actual documented
215 out-of-pocket expenses incurred by the plaintiff as a direct
216 result of the licensee's tort or other common-law violation.

217 (b) The jury shall not be advised of the limitations
218 imposed by paragraph (a) of this subsection, and the judge shall
219 appropriately reduce any award of noneconomic damages or punitive
220 damages, as the case may be.

221 (12) The remedies and penalties provided in this section
222 shall be the exclusive remedies and penalties for all claims
223 against a licensee for: (a) contracting for or receiving any
224 finance charge in violation of any applicable statutory or
225 common-law duty, including, without limitation, Section 75-17-21;
226 (b) a violation of any provision of this article or any rule or
227 regulation promulgated under this article or any provision of

228 Title 75, Chapter 17, Mississippi Code of 1972; (c) contracting
229 for or receiving, or participating in contracting for or
230 receiving, other charges in violation of any applicable statutory
231 or common-law duty, or which are otherwise unlawful; or (d) any
232 common-law tort violation or violation of any other common-law
233 duty related to the licensee's business.

234 **SECTION 2.** Section 75-67-127, Mississippi Code of 1972, is
235 amended as follows:

236 75-67-127. (1) Every licensee shall:

237 (a) At the time any loan is made, deliver to the
238 borrower, or if there are two (2) or more borrowers to one (1) of
239 them, a statement in the English language, disclosing (i) the date
240 of the loan, (ii) the amount of the loan, (iii) the schedule of
241 payments or a description thereof, (iv) the type of the security,
242 which may be by mortgage or deed of trust upon real estate or
243 personal property, or both, (v) the name and address of the
244 licensed office and of each person primarily obligated on the
245 note, and (vi) the total amount of finance charges expressed as a
246 dollar amount and as an annual percentage rate.

247 (b) For each payment made on account of any such loan,
248 give to the person making it at the time the payment is made a
249 receipt specifying in plain, clear and simple terms the amount of
250 the payment and the balance owing on the combined principal and
251 finance charges after credit for each payment. When payment is
252 made by check or money order, the licensee shall not be required
253 to furnish a receipt. Compliance with the Federal Truth in
254 Lending Act shall constitute compliance with this section.

255 (c) When loans made or handled by a licensee under the
256 provisions of the Small Loan Privilege Tax Law are paid in full
257 prior to maturity, after July 1, 1974, whether by cash, renewal or
258 otherwise, refund to the borrower the finance charge exceeding One
259 Dollar (\$1.00) calculated on the rule of the sum of the digits,
260 commonly known as the "Rule of 78ths." The refund shall be based

261 and calculated on the number of days by which the loan is paid in
262 advance, less twenty (20) days.

263 (d) Upon repayment of the loan in full, release any
264 mortgage or security agreement and restore any pledge unless such
265 mortgage, security agreement or pledge continues to secure an
266 obligation to the licensee, and cancel and return any note and any
267 assignment given to the licensee for the loan which is repaid.

268 (2) No licensee shall:

269 (a) Take any confession of judgment or any power of
270 attorney running to himself or to any third person to confess
271 judgment or to appear for the borrower in a judicial proceeding;
272 nor

273 (b) Take any note, promise to pay, or instrument of
274 security that does not disclose the amount of the loan before the
275 addition of precomputed charges, a schedule of payments or a
276 description thereof, the agreed rate of charge, nor any instrument
277 in which blanks are left to be filled in after the loan is made.

278 * * *

279 **SECTION 3.** Section 75-67-119, Mississippi Code of 1972,
280 which provides civil and criminal penalties for the imposition of
281 excessive finance charges under the Small Loan Regulatory Law, is
282 hereby repealed.

283 **SECTION 4.** This act shall take effect and be in force from
284 and after July 1, 2004.