

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 1471

1 AN ACT TO AMEND SECTION 75-17-25, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT FEES FOR SETTING UP, ESTABLISHING, PROCESSING OR
3 MAINTAINING A LOAN TO A PARTICIPANT FROM A TAX-QUALIFIED
4 RETIREMENT PLAN THAT ARE PAID OR PAYABLE TO THE PLAN'S RECORD
5 KEEPER OR THIRD PARTY ADMINISTRATOR SHALL NOT BE CONSIDERED TO BE
6 A "FINANCE CHARGE"; AND FOR RELATED PURPOSES.

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

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

10 75-17-25. The term "finance charge" as used in this section,
11 Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
12 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
13 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
14 payable, directly or indirectly, by a debtor for receiving a loan
15 or incident to or as a condition of the extension of credit,
16 including, but not limited to, interest, brokerage fees, finance
17 charges, loan fees, discount, points, service charges, transaction
18 charges, activity charges, carrying charges, time price
19 differential, finders fees or any other cost or expense to the
20 debtor for services rendered or to be rendered to the debtor in
21 making, arranging or negotiating a loan of money or an extension
22 of credit and for the accounting, guaranteeing, endorsing,
23 collecting and other actual services rendered by the lender;
24 provided, however, that recording fees, motor vehicle title fees,
25 attorney's fees, insurance premiums, fees permitted to be charged
26 under the provisions of Section 79-7-7, service charges as
27 provided in Section 81-19-31, and with respect to a debt secured
28 by an interest in land, bona fide closing costs and appraisal fees
29 incidental to the transaction shall not be included in the finance

30 charge. The term "finance charge," as used in this section and
31 the sections enumerated above, shall not include any fees for the
32 set up, establishment, processing or maintenance of a loan to a
33 plan participant from a retirement plan intending to be
34 tax-qualified (within the meaning of 26 USCS Section 401 et seq.)
35 that are paid or payable directly or indirectly by the plan
36 participant to the plan record keeper or third party
37 administrator.

38 Subject to the other provisions of this section, Sections
39 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21,
40 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and
41 75-67-217, the finance charge may be calculated on the assumption
42 that the indebtedness will be discharged as it becomes due, and
43 prepayment penalties and statutory default charges shall not be
44 included in the finance charge. Nothing in Section 75-17-1 or
45 Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or
46 75-17-33 shall limit or restrict the manner of contracting for
47 such finance charge, whether by way of add-on, discount or
48 otherwise, so long as the annual percentage rate does not exceed
49 that permitted by law. If a greater finance charge than that
50 authorized by applicable law shall be stipulated for or received
51 in any case, all interest and finance charge shall be forfeited,
52 and may be recovered back, whether the contract be executed or
53 executory. If a finance charge be contracted for or received that
54 exceeds the maximum authorized by law by more than one hundred
55 percent (100%), the principal and all finance charges shall be
56 forfeited and any amount paid may be recovered by suit. The
57 provisions of this section, Section 75-17-1 and Sections 75-17-19,
58 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not
59 restrict the extension of credit pursuant to any other applicable
60 law. A licensee under the Small Loan Regulatory Law (Sections
61 75-67-101 through 75-67-135), and the Small Loan Privilege Tax Law
62 (Sections 75-67-201 through 75-67-243), may contract for and

63 receive finance charges as authorized by Section 75-17-21, and the
64 late payment charge as authorized by Section 75-17-27, regardless
65 of the purpose for which the loan or other extension of credit is
66 made.

67 **SECTION 2.** This act shall take effect and be in force from
68 and after its passage.