

By: Representatives Dickson, Fredericks,  
Banks, Buck, Clark, Cockerham, Evans, Gibbs,  
Hines, Holloway, Robinson (63rd), Straughter

To: Banking and Financial  
Services; Judiciary A

HOUSE BILL NO. 1359

1 AN ACT TO CREATE THE MISSISSIPPI PREDATORY LENDING ACT; TO  
2 DEFINE CERTAIN TERMS; TO PRESCRIBE CERTAIN PROCEDURES, LIMITATIONS  
3 AND RESTRICTIONS REGARDING HOME LOANS, CONSUMER HOME LOANS AND  
4 CONSUMER LOANS TO PROTECT BORROWERS; TO PROVIDE FOR ENFORCEMENT OF  
5 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** This act shall be known and may be cited as the  
8 Mississippi Predatory Lending Act.

9 **SECTION 2.** (1) Parties to a home loan may contract in  
10 writing as follows:

11 (a) Where the principal amount is Ten Thousand Dollars  
12 (\$10,000.00) or more, the parties may contract for the payment of  
13 interest as agreed upon by the parties;

14 (b) Where the principal amount is less than Ten  
15 Thousand Dollars (\$10,000.00), the parties may contract for the  
16 payment of interest as agreed upon by the parties, if the lender  
17 is either:

18 (i) Approved as a mortgagee by the United States  
19 Secretary of Housing and Urban Development, the Federal Housing  
20 Administration, the United States Department of Veterans Affairs,  
21 a national mortgage association or any federal agency; or

22 (ii) A local or foreign bank, savings and loan  
23 association or service corporation wholly owned by one or more  
24 savings and loan associations and permitted by law to make home  
25 loans, credit union or insurance company; or

26 (iii) A state or federal agency;

27 (c) Where the principal amount is less than Ten  
28 Thousand Dollars (\$10,000.00) and the lender is not a lender

29 described in paragraph (b) of this subsection, the parties may  
30 contract for the payment of interest not in excess of the maximum  
31 rate permitted by this subsection.

32 On the fifteenth day of each month, the Commissioner of  
33 Banking and Consumer Finance shall announce and publish the  
34 maximum rate of interest permitted by this subsection. The rate  
35 shall be the latest published noncompetitive rate for United  
36 States Treasury bills with a six-month maturity as of the  
37 fifteenth day of the month plus six percent (6%), rounded upward  
38 or downward, as the case may be, to the nearest one-half of one  
39 percent (1/2 of 1%) or fifteen percent (15%), whichever is less.  
40 If there is no nearest one-half of one percent (1/2 of 1%), the  
41 commissioner shall round downward to the lower one-half of one  
42 percent (1/2 of 1%). The rate so announced shall be the maximum  
43 rate permitted for the term of loans made under this section  
44 during the following calendar month when the parties to those  
45 loans have agreed that the rate of interest to be charged by the  
46 lender and paid by the borrower shall not vary or be adjusted  
47 during the term of the loan. The parties to a loan made under  
48 this section may agree to a rate of interest that will vary or be  
49 adjusted during the term of the loan in which case the maximum  
50 rate of interest permitted on those loans during a month during  
51 the term of the loan shall be the rate announced by the  
52 Commissioner of Banking and Consumer Finance in the preceding  
53 calendar month.

54 An affiliate operating in the same office or subsidiary  
55 operating in the same office of a licensee under the Mississippi  
56 banking laws or the Small Loan Regulatory Law may not make a home  
57 loan that provides for a balloon payment for a term in excess of  
58 six (6) months. For purposes of this paragraph, a balloon payment  
59 means any scheduled payment that is more than twice as large as  
60 the average of earlier scheduled payments.

61           (2) Subject to federal requirements, when a natural person  
62 applies for a home loan primarily for personal, family, or  
63 household purposes, the lender shall comply with the provisions of  
64 this subsection.

65           (a) Not later than the date of the home loan closing or  
66 three (3) business days after the lender receives an application  
67 for a home loan, whichever is earlier, the lender shall deliver or  
68 mail to the applicant information and examples of amortization of  
69 home loans reflecting various terms in a form made available by  
70 the Commissioner of Banking and Consumer Finance. The  
71 commissioner shall develop and make available to home loan lenders  
72 materials necessary to satisfy the provisions of this subsection.

73           (b) Not later than three (3) business days after the  
74 home loan closing, the lender shall deliver or mail to the  
75 borrower an amortization schedule for the borrower's home loan.  
76 However, a lender shall not be required to provide an amortization  
77 schedule unless the loan is a fixed rate home loan that requires  
78 the borrower to make regularly scheduled periodic amortizing  
79 payments of principal and interest. In addition, with respect to  
80 a construction/permanent home loan, the amortization schedule must  
81 be provided only with respect to the permanent portion of the home  
82 loan during which amortization occurs.

83           (c) If the home loan transaction involves more than one  
84 natural person, the lender may deliver or mail the materials  
85 required by this subsection to any one or more of such persons.

86           (d) This subsection does not apply if the home loan  
87 applicant is not a natural person or if the home loan is for a  
88 purpose other than a personal, family, or household purpose.

89           (3) (a) Except as provided in paragraph (b) of this  
90 subsection, a lender and a borrower may agree on any terms as to  
91 the prepayment of a home loan.

92           (b) No prepayment fees or penalties shall be contracted  
93 by the borrower and lender with respect to any home loan in which:

94 (i) The principal amount borrowed is One Hundred  
95 Fifty Thousand Dollars (\$150,000.00) or less,

96 (ii) The borrower is a natural person,

97 (iii) The debt is incurred by the borrower  
98 primarily for personal, family, or household purposes, and

99 (iv) The loan is secured by a first mortgage or  
100 first deed of trust on real estate upon which there is located or  
101 there is to be located a structure or structures designed  
102 principally for occupancy of from one (1) to four (4) families  
103 that is or will be occupied by the borrower as the borrower's  
104 principal dwelling.

105 (c) The limitations on prepayment fees and penalties in  
106 paragraph (b) of this subsection shall not apply to the extent  
107 that state law limitations on prepayment fees and penalties are  
108 preempted by federal law or regulation.

109 (3) If the home loan is one described in subsection (1)(a)  
110 or (1)(b) of this section, the lender may charge the borrower the  
111 following fees and charges in addition to interest and other fees  
112 and charges as permitted in this section and late payment charges  
113 as permitted by applicable Mississippi law:

114 (a) At or before loan closing, the lender may charge  
115 such of the following fees and charges as may be agreed upon by  
116 the parties notwithstanding the provisions of any state law other  
117 than this act, limiting the amount of those fees or charges:

118 (i) Loan application, origination, commitment, and  
119 interest rate lock fees;

120 (ii) Fees to administer a construction loan or a  
121 construction/permanent loan, including inspection fees and loan  
122 conversion fees;

123 (iii) Discount points, but only to the extent that  
124 the discount points are paid for the purpose of reducing, and in  
125 fact result in a bona fide reduction of, the interest rate or  
126 time-price differential;

127 (iv) Assumption fees to the extent permitted by  
128 Mississippi law;

129 (v) Appraisal fees to the extent permitted by  
130 Mississippi law;

131 (vi) Additional fees and charges, however  
132 individually or collectively denominated, payable to the lender  
133 that, in the aggregate, do not exceed the greater of one quarter  
134 of one percent (1/4 of 1%) of the principal amount of the loan, or  
135 One Hundred Fifty Dollars (\$150.00).

136 (b) Except as provided in subsection (7) of this  
137 section with respect to the deferral of loan payments, upon  
138 modification, renewal, extension, or amendment of any of the terms  
139 of a home loan, the lender may charge such of the following fees  
140 and charges as may be agreed upon by the parties, notwithstanding  
141 the provisions of any state law other than this act, limiting the  
142 amount of those fees or charges:

143 (i) Discount points, but only to the extent that  
144 the discount points are paid for the purpose of reducing, and in  
145 fact result in a bona fide reduction of, the interest rate or  
146 time-price differential;

147 (ii) Fees that do not exceed one quarter of one  
148 percent (1/4 of 1%) of the principal amount of the loan if the  
149 principal amount of the loan is less than One Hundred Fifty  
150 Thousand Dollars (\$150,000.00), or one percent (1%) of the  
151 principal amount of the loan if the principal amount of the loan  
152 is One Hundred Fifty Thousand Dollars (\$150,000.00) or more, for  
153 the conversion of a variable interest rate loan to a fixed  
154 interest rate loan, of a fixed interest rate loan to a variable  
155 interest rate loan, of a closed-end loan to an open-end loan, or  
156 of an open-ended loan to a closed-end loan;

157 (iii) Assumption fees to the extent permitted by  
158 Mississippi law;

159 (iv) Appraisal fees to the extent permitted by  
160 Mississippi law;

161 (v) Fees and charges to the extent permitted by  
162 Mississippi law; and

163 (vi) If no fees are charged under subparagraph  
164 (iii) of this paragraph, additional fees and charges, however  
165 individually or collectively denominated, payable to the lender  
166 that, in the aggregate, do not exceed the greater of one quarter  
167 of one percent (1/4 of 1%) of the balance outstanding at the time  
168 of the modification, renewal, extension, or amendment of terms, or  
169 One Hundred Fifty Dollars (\$150.00). The fees and charges  
170 permitted by this subparagraph may be charged only under a written  
171 agreement that states the amount of the fee or charge and is made  
172 at the time of the specific modification, renewal, extension, or  
173 amendment, or at the time the specific modification, renewal,  
174 extension, or amendment is requested.

175 (4) No lender on home loans under subsection (1)(c) of this  
176 section may charge or receive any interest, fees, charges, or  
177 discount points other than:

178 (a) To the extent permitted by Mississippi law, sums  
179 for the payment of bona fide loan-related goods, products, and  
180 services provided or to be provided by third parties, and sums for  
181 the payment of taxes, filing fees, recording fees, and other  
182 charges and fees, paid or to be paid to public officials;

183 (b) Interest as permitted in subsection (1)(c) of this  
184 section; and

185 (c) Late payment charges to the extent permitted by  
186 Mississippi law.

187 (5) As used in this section, the term "home loan" means a  
188 loan, other than an open-end credit plan, where the principal  
189 amount is less than Three Hundred Thousand Dollars (\$300,000.00)  
190 secured by a first mortgage or first deed of trust on real estate

191 upon which there is located or there is to be located one or more  
192 single-family dwellings or dwelling units.

193 (6) Any home loan obligation existing before July 1, 2006,  
194 shall be construed with regard to the law existing at the time the  
195 home loan or commitment to lend was made, and this act shall only  
196 apply to home loans or loan commitments made on or after July 1,  
197 2006.

198 (7) (a) The parties to a home loan governed by subsection  
199 (1)(a) or (b) of this section may contract to defer the payment of  
200 all or part of one or more unpaid installments and for payment of  
201 interest on deferred interest as agreed upon by the parties. The  
202 parties may agree that deferred interest may be added to the  
203 principal balance of the loan. This subsection shall not be  
204 construed to limit payment of interest upon interest in connection  
205 with other types of loans. Except as restricted by this act, the  
206 lender may charge deferral fees as may be agreed upon by the  
207 parties to defer the payment of one or more unpaid installments.  
208 If the home loan is of a type described in paragraph (b) of this  
209 subsection, the deferral fees shall be subject to the limitations  
210 set forth in paragraph (c) of this subsection.

211 (b) A home loan will be subject to the deferral fee  
212 limitations set forth in paragraph (c) of this subsection if:

213 (i) The borrower is a natural person;

214 (ii) The debt is incurred by the borrower  
215 primarily for personal, family, or household purposes; and

216 (iii) The loan is secured by a first mortgage or  
217 first deed of trust on real estate upon which there is located or  
218 there is to be located a structure or structures designed  
219 principally for occupancy of from one (1) to four (4) families  
220 that is or will be occupied by the borrower as the borrower's  
221 principal dwelling.

222 (c) Deferral fees for home loans identified in  
223 paragraph (b) of this subsection shall be subject to the following  
224 limitations:

225 (i) Deferral fees may be charged only under an  
226 agreement that states the amount of the fee and is made at the  
227 time of the specific deferral or at the time the specific deferral  
228 is requested; however, if the agreement relates to an installment  
229 that is then past due for fifteen (15) days or more, the agreement  
230 must be in writing and signed by at least one (1) of the  
231 borrowers. For purposes of this paragraph, an agreement will be  
232 considered a signed writing if the lender receives from at least  
233 one (1) of the borrowers a facsimile or computer-generated message  
234 confirming or otherwise accepting the agreement.

235 (ii) Deferral fees may not exceed the greater of  
236 five percent (5%) of each installment deferred or Fifty Dollars  
237 (\$50.00), multiplied by the number of complete months in the  
238 deferral period. A month shall be measured from the date an  
239 installment is due. The deferral period is that period during  
240 which no payment is required or made as measured from the date on  
241 which the deferred installment would otherwise have been due to  
242 the date the next installment is due under the terms of the note  
243 or the deferral agreement.

244 (iii) If a deferral fee has once been imposed with  
245 respect to a particular installment, no deferral fee may be  
246 imposed with respect to any future payment that would have been  
247 timely and sufficient but for the previous deferral.

248 (iv) If a deferral fee is charged under a deferral  
249 agreement, a late charge may be imposed with respect to the  
250 deferred payment only if the amount deferred is not paid when due  
251 under the terms of the deferral agreement and no new deferral  
252 agreement is entered into with respect to that installment.

253 (v) A lender may charge a deferral fee under this  
254 subsection for deferring the payment of all or part of one or more

255 regularly scheduled payments, regardless of whether the deferral  
256 results in an extension of the loan maturity date or the date a  
257 balloon payment is due. A modification or extension of the loan  
258 maturity date or the date a balloon payment is due that is not  
259 incident to the deferral of a regularly scheduled payment shall be  
260 considered a modification or extension subject to the provisions  
261 of subsection (3)(b) of this section.

262 (8) The parties to a home loan governed by subsection (1)(a)  
263 or (1)(b) of this section may agree in writing to a mortgage or  
264 deed of trust that provides that periodic payments may be  
265 graduated during parts of or over the entire term of the loan.  
266 The parties to such a loan may also agree in writing to a mortgage  
267 or deed of trust that provides that periodic disbursements of part  
268 of the loan proceeds may be made by the lender over a period of  
269 time agreed upon by the parties, or over a period of time agreed  
270 upon by the parties ending with the death of the borrower(s).  
271 Those mortgages or deeds of trust may include provisions for  
272 adding deferred interest to principal or otherwise providing for  
273 charging of interest on deferred interest as agreed upon by the  
274 parties. This subsection shall not be construed to limit other  
275 types of mortgages or deeds of trust or methods or plans of  
276 disbursement or repayment of loans that may be agreed upon by the  
277 parties.

278 (9) Nothing in this section shall be construed to authorize  
279 or prohibit a lender, a borrower, or any other party to pay  
280 compensation to a mortgage broker or a mortgage banker for  
281 services provided by the mortgage broker or the mortgage banker in  
282 connection with a home loan.

283 **SECTION 3.** (1) **Definitions.** The following definitions  
284 apply for the purposes of this section:

285 (a) "Affiliate" means any company that controls, is  
286 controlled by, or is under common control with another company, as

287 set forth in the Bank Holding Company Act of 1956 (12 USCS Section  
288 1841 et seq.), as amended from time to time.

289 (b) "Annual percentage rate" means the annual  
290 percentage rate for the loan calculated according to the  
291 provisions of the federal Truth in Lending Act (15 USCS Section  
292 1601 et seq.), and the regulations promulgated under that act by  
293 the Federal Reserve Board (as that act and regulations are amended  
294 from time to time).

295 (c) "Bona fide loan discount points" means loan  
296 discount points knowingly paid by the borrower for the purpose of  
297 reducing, and which in fact result in a bona fide reduction of,  
298 the interest rate or time-price differential applicable to the  
299 loan, provided the amount of the interest rate reduction purchased  
300 by the discount points is reasonably consistent with established  
301 industry norms and practices for secondary mortgage market  
302 transactions.

303 (d) A "high-cost home loan" means a loan other than an  
304 open-end credit plan or a reverse mortgage transaction in which:

305 (i) The principal amount of the loan does not  
306 exceed the lesser of the conforming loan size limit for a  
307 single-family dwelling as established from time to time by Fannie  
308 Mae, or Three Hundred Thousand Dollars (\$300,000.00);

309 (ii) The borrower is a natural person;

310 (iii) The debt is incurred by the borrower  
311 primarily for personal, family, or household purposes;

312 (iv) The loan is secured by either a security  
313 interest in a manufactured home as defined under Mississippi law  
314 that is or will be occupied by the borrower as the borrower's  
315 principal dwelling, or a mortgage or deed of trust on real estate  
316 upon which there is located or there is to be located a structure  
317 or structures designed principally for occupancy of from one (1)  
318 to four (4) families that is or will be occupied by the borrower  
319 as the borrower's principal dwelling; and

320 (v) The terms of the loan exceed one or more of  
321 the thresholds as defined in paragraph (f) of this section.

322 (e) "Points and fees" means:

323 (i) All items required to be disclosed under  
324 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
325 Regulations, as amended from time to time, except interest or the  
326 time-price differential;

327 (ii) All charges for items listed under Section  
328 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as  
329 amended from time to time, but only if the lender receives direct  
330 or indirect compensation in connection with the charge or the  
331 charge is paid to an affiliate of the lender; otherwise, the  
332 charges are not included within the meaning of the phrase "points  
333 and fees";

334 (iii) All compensation paid directly by the  
335 borrower to a mortgage broker not otherwise included in  
336 subparagraph (i) or (ii) of this paragraph;

337 (iv) The maximum prepayment fees and penalties  
338 that may be charged or collected under the terms of the loan  
339 documents; and

340 (v) "Points and fees" does not include taxes,  
341 filing fees, recording and other charges and fees paid or to be  
342 paid to public officials for determining the existence of or for  
343 perfecting, releasing, or satisfying a security interest; and  
344 fees paid to a person other than a lender or an affiliate of the  
345 lender or to the mortgage broker or an affiliate of the mortgage  
346 broker for the following: fees for tax payment services; fees for  
347 flood certification; fees for pest infestation and flood  
348 determinations; appraisal fees; fees for inspections performed  
349 before closing; credit reports; surveys; attorney's fees (if the  
350 borrower has the right to select the attorney from an approved  
351 list or otherwise); notary fees; escrow charges, so long as not  
352 otherwise included under subparagraph (i) of this paragraph (e);

353 title insurance premiums; and fire insurance and flood insurance  
354 premiums, provided that the conditions in Section 226.4(d)(2) of  
355 Title 12 of the Code of Federal Regulations are met.

356 (f) "Thresholds" means:

357 (i) Without regard to whether the loan transaction  
358 is or may be a "residential mortgage transaction" (as the term  
359 "residential mortgage transaction" is defined in Section 226.2  
360 (a)(24) of Title 12 of the Code of Federal Regulations, as amended  
361 from time to time), the annual percentage rate of the loan at the  
362 time the loan is consummated is such that the loan is considered a  
363 "mortgage" under Section 152 of the Home Ownership and Equity  
364 Protection Act of 1994 (Public Law 103-25, [15 USCS Section 1602  
365 (aa)]), as the same may be amended from time to time, and  
366 regulations adopted under that act by the Federal Reserve Board,  
367 including Section 226.32 of Title 12 of the Code of Federal  
368 Regulations, as the same may be amended from time to time;

369 (ii) The total points and fees payable by the  
370 borrower at or before the loan closing exceed five percent (5%) of  
371 the total loan amount if the total loan amount is Twenty Thousand  
372 Dollars (\$20,000.00) or more, or the lesser of eight percent (8%)  
373 of the total loan amount or One Thousand Dollars (\$1,000.00), if  
374 the total loan amount is less than Twenty Thousand Dollars  
375 (\$20,000.00); however, the following discount points and  
376 prepayment fees and penalties shall be excluded from the  
377 calculation of the total points and fees payable by the borrower:

378 1. Up to and including two (2) bona fide loan  
379 discount points payable by the borrower in connection with the  
380 loan transaction, but only if the interest rate from which the  
381 loan's interest rate will be discounted does not exceed by more  
382 than one (1) percentage point the required net yield for a  
383 ninety-day standard mandatory delivery commitment for a reasonably  
384 comparable loan from either Fannie Mae or the Federal Home Loan  
385 Mortgage Corporation, whichever is greater;

386                   2. Up to and including one (1) bona fide loan  
387 discount point payable by the borrower in connection with the loan  
388 transaction, but only if the interest rate from which the loan's  
389 interest rate will be discounted does not exceed by more than two  
390 (2) percentage points the required net yield for a ninety-day  
391 standard mandatory delivery commitment for a reasonably comparable  
392 loan from either Fannie Mae or the Federal Home Loan Mortgage  
393 Corporation, whichever is greater;

394                   3. Prepayment fees and penalties that may be  
395 charged or collected under the terms of the loan documents that do  
396 not exceed one percent (1%) of the amount prepaid, provided the  
397 loan documents do not permit the lender to charge or collect any  
398 prepayment fees or penalties more than thirty (30) months after  
399 the loan closing; or

400                   (iii) The loan documents permit the lender to  
401 charge or collect prepayment fees or penalties more than thirty  
402 (30) months after the loan closing or that exceed, in the  
403 aggregate, more than two percent (2%) of the amount prepaid.

404                   (g) "Total loan amount" means the same as the term  
405 "total loan amount" as used in Section 226.32 of Title 12 of the  
406 Code of Federal Regulations, and the same shall be calculated in  
407 accordance with the Federal Reserve Board's Official Staff  
408 Commentary thereto.

409                   (2) **Limitations.** A high-cost home loan shall be subject to  
410 the following limitations:

411                   (a) **No call provision.** No high-cost home loan may  
412 contain a provision that permits the lender, in its sole  
413 discretion, to accelerate the indebtedness. This provision does  
414 not apply when repayment of the loan has been accelerated by  
415 default, under a due-on-sale provision, or under some other  
416 provision of the loan documents unrelated to the payment schedule.

417                   (b) **No balloon payment.** No high-cost home loan may  
418 contain a scheduled payment that is more than twice as large as

419 the average of earlier scheduled payments. This provision does  
420 not apply when the payment schedule is adjusted to the seasonal or  
421 irregular income of the borrower.

422 (c) **No negative amortization.** No high-cost home loan  
423 may contain a payment schedule with regular periodic payments that  
424 cause the principal balance to increase.

425 (d) **No increased interest rate.** No high-cost home loan  
426 may contain a provision that increases the interest rate after  
427 default. This provision does not apply to interest rate changes  
428 in a variable rate loan otherwise consistent with the provisions  
429 of the loan documents, provided the change in the interest rate is  
430 not triggered by the event of default or the acceleration of the  
431 indebtedness.

432 (e) **No advance payments.** No high-cost home loan may  
433 include terms under which more than two (2) periodic payments  
434 required under the loan are consolidated and paid in advance from  
435 the loan proceeds provided to the borrower.

436 (f) **No modification or deferral fees.** A lender may not  
437 charge a borrower any fees to modify, renew, extend, or amend a  
438 high-cost home loan or to defer any payment due under the terms of  
439 the high-cost home loan.

440 (3) **Prohibited acts and practices.** The following acts and  
441 practices are prohibited in the making of a high-cost home loan:

442 (a) **No lending without home-ownership counseling.** A  
443 lender may not make a high-cost home loan without first receiving  
444 certification from an approved counselor that the borrower has  
445 received counseling on the advisability of the loan transaction  
446 and the appropriate loan for the borrower.

447 (b) **No lending without due regard to repayment ability.**  
448 As used in this paragraph, the term "obligor" refers to each  
449 borrower, co-borrower, cosigner, or guarantor obligated to pay a  
450 loan. A lender may not make a high-cost home loan unless the  
451 lender reasonably believes at the time the loan is consummated

452 that one or more of the obligators, when considered individually  
453 or collectively, will be able to make the scheduled payments to  
454 repay the obligation based upon a consideration of their current  
455 and expected income, current obligations, employment status, and  
456 other financial resources (other than the borrower's equity in the  
457 dwelling that secures repayment of the loan). An obligor shall be  
458 presumed to be able to make the scheduled payments to repay the  
459 obligation if, at the time the loan is consummated, the  
460 obligator's total monthly debts, including amounts owed under the  
461 loan, do not exceed fifty percent (50%) of the obligor's monthly  
462 gross income as verified by the credit application, the obligor's  
463 financial statements, a credit report, financial information  
464 provided to the lender by or on behalf of the obligor, or any  
465 other reasonable means; however, no presumption of inability to  
466 make the scheduled payments to repay the obligation shall arise  
467 solely from the fact that, at the time the loan is consummated,  
468 the obligor's total monthly debts (including amounts owed under  
469 the loan) exceed fifty percent (50%) of the obligor's monthly  
470 gross income.

471 (c) **No financing of fees or charges.** In making a  
472 high-cost home loan, a lender may not directly or indirectly  
473 finance:

474 (i) Any prepayment fees or penalties payable by  
475 the borrower in a refinancing transaction if the lender or an  
476 affiliate of the lender is the noteholder of the note being  
477 refinanced;

478 (ii) Any points and fees; or

479 (iii) Any other charges payable to third parties.

480 (d) **No benefit from refinancing existing high-cost home**  
481 **loan with new high-cost home loan.** A lender may not charge a  
482 borrower points and fees in connection with a high-cost home loan  
483 if the proceeds of the high-cost home loan are used to refinance

484 an existing high-cost home loan held by the same lender as  
485 noteholder.

486           (e) **Restrictions on home improvement contracts.** A  
487 lender may not pay a contractor under a home improvement contract  
488 from the proceeds of a high-cost home loan other than (i) by an  
489 instrument payable to the borrower or jointly to the borrower and  
490 the contractor, or (ii) at the election of the borrower, through a  
491 third-party escrow agent in accordance with terms established in a  
492 written agreement signed by the borrower, the lender, and the  
493 contractor before the disbursement.

494           (f) **No shifting of liability.** A lender is prohibited  
495 from shifting any loss, liability, or claim of any kind to the  
496 closing agent or closing attorney for any violation of this  
497 section.

498           (4) **Unfair and deceptive acts or practices.** Except as  
499 provided in subsection (5) of this section, the making of a  
500 high-cost home loan that violates any provisions of subsection (2)  
501 or (3) of this section is declared usurious in violation of the  
502 provisions of this act and unlawful as an unfair or deceptive act  
503 or practice in or affecting commerce in violation of the  
504 provisions of applicable Mississippi law. The provisions of this  
505 section shall apply to any person who in bad faith attempts to  
506 avoid the application of this section by (i) the structuring of a  
507 loan transaction as an open-end credit plan for the purpose and  
508 with the intent of evading the provisions of this section when the  
509 loan would have been a high-cost home loan if the loan had been  
510 structured as a closed-end loan, or (ii) dividing any loan  
511 transaction into separate parts for the purpose and with the  
512 intent of evading the provisions of this section, or (iii) any  
513 other such subterfuge. The Attorney General, the Commissioner of  
514 Banking and Consumer Finance, or any party to a high-cost home  
515 loan may enforce the provisions of this section.

516           (5) **Corrections and unintentional violations.** A lender in a  
517 high-cost home loan who, when acting in good faith, fails to  
518 comply with subsections (2) or (3) of this section, will not be  
519 deemed to have violated this section if the lender established  
520 that either:

521           (a) Within thirty (30) days of the loan closing and  
522 before the institution of any action under this section, the  
523 borrower is notified of the compliance failure, appropriate  
524 restitution is made, and whatever adjustments are necessary are  
525 made to the loan to either, at the choice of the borrower, (i)  
526 make the high-cost home loan satisfy the requirements of  
527 subsections (2) and (3) of this section, or (ii) change the terms  
528 of the loan in a manner beneficial to the borrower so that the  
529 loan will no longer be considered a high-cost home loan subject to  
530 the provisions of this section; or

531           (b) The compliance failure was not intentional and  
532 resulted from a bona fide error notwithstanding the maintenance of  
533 procedures reasonably adapted to avoid those errors, and within  
534 sixty (60) days after the discovery of the compliance failure and  
535 before the institution of any action under this section or the  
536 receipt of written notice of the compliance failure, the borrower  
537 is notified of the compliance failure, appropriate restitution is  
538 made, and whatever adjustments are necessary are made to the loan  
539 to either, at the choice of the borrower, (i) make the high-cost  
540 home loan satisfy the requirements of subsections (2) and (3) of  
541 this section, or (ii) change the terms of the loan in a manner  
542 beneficial to the borrower so that the loan will no longer be  
543 considered a high-cost home loan subject to the provisions of this  
544 section. Examples of a bona fide error include clerical,  
545 calculation, computer malfunction and programming, and printing  
546 errors. An error of legal judgment with respect to a person's  
547 obligations under this section is not a bona fide error.

548           **SECTION 4.** (1) For purposes of this section:

549 (a) "Consumer home loan" means a loan in which:  
550 (i) The borrower is a natural person;  
551 (ii) The debt is incurred by the borrower  
552 primarily for personal, family, or household purposes; and  
553 (iii) The loan is secured by a mortgage or deed of  
554 trust upon real estate upon which there is located or there is to  
555 be located a structure or structures designed principally for  
556 occupancy of from one (1) to four (4) families that is or will be  
557 occupied by the borrower as the borrower's principal dwelling.

558 (b) "Consumer loan" means any loan or extension of  
559 credit offered or extended primarily for personal, family or  
560 household purposes.

561 (2) It shall be unlawful for any lender in a consumer home  
562 loan or consumer loan to finance, directly or indirectly, any  
563 credit life, disability, or unemployment insurance, or any other  
564 life or health insurance premiums; however, insurance premiums  
565 calculated and paid on a monthly basis shall not be considered  
566 financed by the lender.

567 (3) No lender may knowingly or intentionally engage in the  
568 unfair act or practice of "flipping" a consumer home loan.  
569 "Flipping" a consumer loan is the making of a consumer home loan  
570 to a borrower that refinances an existing consumer home loan when  
571 the new loan does not have reasonable, tangible net benefit to the  
572 borrower considering all of the circumstances, including the terms  
573 of both the new and refinanced loans, the cost of the new loan,  
574 and the borrower's circumstances. This provision shall apply  
575 regardless of whether the interest rate, points, fees, and charges  
576 paid or payable by the borrower in connection with the refinancing  
577 exceed those thresholds specified in Section 3(1)(f)(i) through  
578 (iii).

579 (4) No lender shall recommend or encourage default on an  
580 existing loan or other debt before and in connection with the

581 closing or planned closing of a consumer home loan that refinances  
582 all or any portion of that existing loan or debt.

583 (5) The making of a consumer home loan or consumer loan that  
584 violates the provisions of this section is declared usurious in  
585 violation of the provisions of this act and unlawful as an unfair  
586 or deceptive act or practice in or affecting commerce in violation  
587 of the provisions of the Mississippi usury laws. The Attorney  
588 General, the Commissioner of Banking and Consumer Finance, or any  
589 party to a consumer home loan may enforce the provisions of this  
590 section.

591 (6) In any suit instituted by a borrower who alleges that  
592 the defendant violated this section, the presiding judge shall  
593 allow reasonable attorney's fees to the attorney representing the  
594 borrower, the attorney's fees to be taxed as a part of the court  
595 costs and payable by the lender upon a finding by the presiding  
596 judge that the party charged with the violation has willfully  
597 engaged in the act or practice, and there was unwarranted refusal  
598 by that party to fully resolve the matter that constitutes the  
599 basis of the suit.

600 (7) This section establishes specific consumer protections  
601 in consumer home loans and consumer loans in addition to other  
602 consumer protections that may be otherwise available by law.

603 **SECTION 5.** Nothing in this act shall be construed to bar any  
604 common law remedies.

605 **SECTION 6.** This act shall take effect and be in force from  
606 and after July 1, 2006.