

By: Representatives Dickson, Fredericks,
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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.