

By: Representative Mayo

To: Banking and Financial
Services

HOUSE BILL NO. 1161

1 AN ACT TO CREATE THE "MISSISSIPPI ALTERNATIVE LOAN ACT"; TO
2 DEFINE CERTAIN TERMS; TO PROHIBIT ANY PERSON FROM ENGAGING IN THE
3 BUSINESS OF LENDING MONEY, EXCEPT AS AUTHORIZED BY THIS ACT; TO
4 PROVIDE FOR APPLICATIONS FOR A LICENSE FOR SUCH LOANS; TO
5 AUTHORIZE LICENSING FEES; TO PROVIDE FOR THE REVOCATION OR
6 SUSPENSION OF LICENSES BY THE COMMISSIONER OF BANKING AND CONSUMER
7 FINANCE; TO AUTHORIZE AN EXAMINATION FEE; TO PROVIDE RECORD
8 KEEPING REQUIREMENTS; TO AUTHORIZE THE COMMISSIONER OF BANKING AND
9 CONSUMER FINANCE TO PROMULGATE RULES AND REGULATIONS FOR
10 ADMINISTRATION OF THIS ACT; TO AUTHORIZE CERTAIN LOAN CHARGES BY
11 THE LICENSEE; TO PRESCRIBE CERTAIN TERMS OF THE LOAN CONTRACT; TO
12 REQUIRE ALL BORROWER CONTRACTS AND RECORDS OF THE LICENSEE TO BE
13 OPEN TO THE INSPECTION OF THE COMMISSIONER OR HIS DULY AUTHORIZED
14 REPRESENTATIVES; TO PROVIDE THAT CERTAIN FINANCE CHARGES
15 CONTRACTED FOR OR RECEIVED IN EXCESS OF THAT AUTHORIZED BY THIS
16 ACT SHALL BE FORFEITED AND MAY BE RECOVERED; AND FOR RELATED
17 PURPOSES.

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

19 **SECTION 1.** This act shall be known and may be cited as the
20 "Mississippi Alternative Loan Act."

21 **SECTION 2.** The Legislature finds and declares as follows:

22 (1) There exists among citizens of this state a demand for
23 loans in amounts less than One Thousand Dollars (\$1,000.00). The
24 scope and intensity of this demand have been increased
25 progressively by many social and economic forces;

26 (2) The expense of making and collecting loans in those
27 certain amounts, which are usually made on comparatively
28 unsubstantial security to wage earners, salaried employees and
29 other persons, is necessarily high in relation to the amounts
30 lent;

31 (3) Such loans cannot be made profitably under the
32 limitations imposed by existing laws relating to interest and



33 usury. These limitations have tended to exclude lawful
34 enterprises from the small loan field;

35 (4) It is the intent of the Legislature in enacting this law
36 to provide for an act to permit and govern an alternative loan
37 offering to the citizens of this state in order to meet the
38 demands described herein.

39 **SECTION 3.** The following words and phrases, when used in
40 this act, shall have the following meanings, except where the
41 context clearly describes and indicates otherwise:

42 (a) "Person" means and includes every natural person, firm,
43 corporation, partnership, joint-stock or other association or
44 organization, and any other legal entity whatsoever.

45 (b) "License" means a license issued under the authority of
46 this act to make loans in accordance with the provisions of this
47 act at a single place of business.

48 (c) "Licensee" means a person or entity duly licensed by the
49 commissioner under this chapter.

50 (d) "Commissioner" means the Commissioner of Banking and
51 Consumer Finance of the State of Mississippi.

52 (e) "Department" means the Department of Banking and
53 Consumer Finance of the State of Mississippi.

54 (f) "Cash advance" means the amount of cash or its
55 equivalent that the borrower actually receives or is paid at his
56 direction or on his behalf.

57 (g) "Finance charges" mean the total of all acquisition
58 charges and installment account handling charges.

59 **SECTION 4.** (1) No person shall engage in the business of
60 lending money except as authorized in this act in the amounts
61 provided herein without being the holder of a valid and subsisting
62 license to engage in such business and furnishing the requisite
63 bond.

64 (2) Every person engaged in the business of lending money as
65 authorized by this act shall have a physical office located in the



66 State of Mississippi. A separate license is required for each
67 office doing business in the State of Mississippi.

68 (3) This act shall not apply to any person doing business
69 under the authority of, and as permitted by, any law of this state
70 or of the United States relating to banks, trust companies,
71 savings or building and loan associations, credit unions as
72 defined by law, nor to any Mississippi licensed small loan,
73 pawnbroker or check-cashing business, nor to any person making
74 loans to their tenants engaged in agriculture, nor to loans by
75 agricultural suppliers to persons whose principal business is
76 farming, nor to agricultural credit corporations or associations
77 organized under an act of the Congress of the United States, nor
78 to the business of financing the purchase of motor vehicles,
79 refrigerators or other personal property, nor to loans insured or
80 guaranteed by the United States or any of its agencies.

81 (4) The provisions of subsection (1) shall apply to any
82 person who seeks to evade its application by any device,
83 subterfuge or pretense whatsoever, including, but not thereby
84 limiting, the generality of the foregoing: The loan, forbearance,
85 use or sale of credit (as guarantor, surety, endorser, comaker or
86 otherwise), money, goods or things in action; the use of
87 collateral or related sales or purchases of goods or services or
88 agreements to sell or purchase, whether real or pretended; and,
89 receiving or charging compensation for goods or services, whether
90 or not sold, delivered or provided and the real or pretended
91 negotiation, arrangement or procurement of a loan through any use
92 of activity of a third person, whether real or fictitious.

93 (5) Whoever violates, or participates in the violation of,
94 any provision of this section shall be guilty of a misdemeanor
95 and, upon conviction thereof, shall be punishable by a fine of not
96 more than One Thousand Dollars (\$1,000.00), or by imprisonment in
97 the county jail for not more than six (6) months, or by both such
98 fine and imprisonment. Any contract of loan, in the making or



99 collection of which any act shall have been done which violates
100 this section, shall be void, and the lender shall have no right to
101 collect, receive or retain any principal or charges whatsoever.

102 (6) The commissioner may impose a civil penalty against any
103 license adjudged by the commissioner to be in violation of the
104 provisions of this article. The civil penalty against any
105 licensee shall not exceed Five Hundred Dollard (\$500.00) per
106 violation and shall be deposited into the Department of Banking
107 and Consumer Finance, "Consumer Finance Fund."

108 **SECTION 5.** (1) Application for a license shall be in
109 writing, under oath and in the form prescribed by the
110 commissioner. The application shall give the location where the
111 business will be conducted and shall contain such further relevant
112 information as the commissioner may require, including the names
113 and addresses of the partners, officers, directors or trustees and
114 of such principal owners or members as will provide the basis for
115 the investigations and findings contemplated by Section 6 of this
116 act. No applicant shall have been convicted of a felony in the
117 last ten (10) years or be active as a beneficial owner for someone
118 who has been convicted of a felony in the last ten (10) years.

119 (2) Each license shall remain in full force and effect until
120 relinquished, suspended, revoked or expired. With each initial
121 application for a license, the applicant shall pay the
122 commissioner at the time of making the application a license fee
123 of Seven Hundred Fifty Dollars (\$750.00), and on or before
124 September 1 of each year thereafter, an annual renewal fee of Four
125 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
126 remains unpaid twenty-nine (29) days after September 1, the
127 license shall thereupon expire, but not before the thirtieth day
128 of September of any year for which the annual fee has been paid.
129 If any licensee fails to pay the annual renewal fee before the
130 thirtieth day of September of any year for which the renewal fee
131 is due, then the licensee shall be liable for the full amount of



132 the license fee, plus a penalty in an amount not to exceed
133 Twenty-five Dollars (\$25.00) for each day that the licensee has
134 engaged in business after September 30. All licensing fees and
135 penalties shall be paid into the Consumer Finance Fund of the
136 Department of Banking and Consumer Finance.

137 (3) There shall be presented and filed with the application
138 a good and sufficient bond in the principal amount of Ten Thousand
139 Dollars (\$10,000.00), payable to the State of Mississippi for the
140 faithful performance by the licensee of the duties and obligations
141 pertaining to the business so licensed and the prompt payment of
142 any judgment which may be recovered against the licensee on
143 account of charges or other claims arising directly or
144 collectively from any violation of the provisions of this article.
145 The bond shall not be valid until it is approved by the
146 commissioner. The applicant may file, in lieu of the bond, cash,
147 a certificate of deposit or government bonds in the amount of Ten
148 Thousand Dollars (\$10,000.00). Those deposits shall be filed with
149 the commissioner and are subject to the same terms and conditions
150 as are provided for in the surety bond required in this paragraph.
151 Any interest or earnings on those deposits are payable to the
152 depositor.

153 (4) The application shall be accompanied by a set of
154 fingerprints of the applicant from any law enforcement agency. In
155 order to determine the applicant's suitability for license, the
156 commissioner shall forward the fingerprints to the Department of
157 Public Safety; and if no disqualifying record is identified at the
158 state level, the fingerprints shall be forwarded by the Department
159 of Public Safety to the FBI for a national criminal history record
160 check.

161 (5) Each application shall be accompanied by sworn financial
162 statements of the applicant showing a net worth of at least Twenty
163 Thousand Dollars (\$20,000.00) for the first license. The
164 applicant shall possess and maintain a net worth of at least



165 Twenty Thousand Dollars (\$20,000.00) for the first license and at
166 least Five Thousand Dollars (\$5,000.00) for each additional
167 license.

168 **SECTION 6.** (1) Upon the filing of such application and the
169 payment of the prescribed fees, the commissioner shall investigate
170 the facts concerning the application and the requirements provided
171 in subsection (2).

172 (2) If the commissioner finds that the liquid assets,
173 financial responsibility, experience, character and the general
174 fitness of the applicant are such as to warrant the belief that
175 the business will be operated lawfully, honestly, fairly and
176 efficiently, within the purposes of this act, and that allowing
177 such applicant to engage in the business would promote the
178 convenience and advantage of the community in which the business
179 of the applicant is to be conducted, he shall thereupon grant such
180 application and file his findings with the department and
181 forthwith issue and deliver a license to the applicant.

182 (3) If the commissioner shall not so find, he shall notify
183 the applicant in writing who may request a hearing on the
184 application. The request for a hearing shall be within thirty
185 (30) days of the rejection. After such hearing or if no hearing
186 is demanded, the commissioner may deny such application by written
187 order accompanied by his findings of fact and shall deliver a copy
188 of such to the applicant. The initial license fee shall be
189 retained by the commissioner.

190 **SECTION 7.** (1) Each license shall state the address at
191 which the business is to be conducted and shall state fully the
192 name of the licensee. Each license shall be kept conspicuously
193 posted in the licensed place of business and shall not be
194 transferable or assignable.

195 (2) Each license shall remain in full force and effect for
196 one (1) year or until surrendered, revoked or suspended as
197 provided in this act.



198 **SECTION 8.** (1) Not more than one (1) place of business
199 shall be maintained under the same license, but the commissioner
200 may issue additional licenses to the same licensee upon his
201 compliance with all the provisions of this act governing the
202 issuance of the first or original license.

203 (2) No change in the place of business of a licensee to a
204 location outside of the original licensed location shall be
205 permitted under the same license. When a licensee wishes to
206 change his place of business, he shall give written notice thereof
207 to the commissioner who shall investigate the facts and, if he
208 finds the proposed location is reasonably accessible to borrowers
209 under existing loan contracts, shall permit the change and shall
210 amend the license accordingly. If the commissioner does not so
211 find, he shall deny the licensee such permission in the manner
212 specified in and subject to the provisions of Section 6 of this
213 act.

214 (3) Nothing in this act shall be construed to restrict the
215 loans of any licensee to residents of the community in which the
216 licensed place of business is situated.

217 **SECTION 9.** (1) The commissioner may revoke any license
218 issued under this act if he finds that:

219 (a) The licensee has failed to pay the annual license
220 fee;

221 (b) The licensee, either knowingly or without the
222 exercise of due care to prevent the same, has violated any
223 provisions of this act or any regulation or order lawfully made
224 pursuant to and within the authority of this act;

225 (c) Any fact or condition exists which, if it had
226 existed or had been known to exist at the time of the original
227 application for such license, clearly would have justified the
228 commissioner in refusing originally to issue such license; except,
229 that the license shall not be revoked because of convenience and
230 advantage; or



231 (d) The licensee is guilty of using unreasonable
232 collection tactics.

233 (2) If the commissioner finds that probable cause for
234 revocation of any license exists and that enforcement of the act
235 requires immediate suspension of such license pending
236 investigation, he may, upon three (3) days' written notice and a
237 hearing, enter an order suspending such license for a period not
238 exceeding thirty (30) days.

239 (3) Whenever the commissioner revokes or suspends a license,
240 he shall enter an order to that effect and forthwith notify the
241 licensee of the revocation or suspension. Within five (5) days
242 after the entry of such an order he shall file with the department
243 his findings and a summary of the evidence supporting them, and he
244 shall forthwith deliver a copy thereof to the licensee.

245 (4) Any licensee may surrender any license by delivering it
246 to the commissioner with written notice of its surrender, but such
247 surrender shall not affect his civil or criminal liability for
248 acts committed prior thereto.

249 (5) No revocation, suspension or surrender of any license
250 shall impair or affect the obligation of any preexisting contract
251 between the licensee and any borrower.

252 (6) The commissioner may reinstate suspended licenses or
253 issue new licenses to a person whose license or licenses have been
254 revoked if no fact or condition then exists which clearly would
255 have justified the commissioner in refusing originally to issue
256 such license under this act.

257 (7) The commissioner shall, upon sworn complaint of any
258 borrower, investigate or cause to be investigated any alleged
259 violation of this act.

260 **SECTION 10.** (1) The commissioner may charge the licensee an
261 examination fee in an amount not less than Three Hundred Dollars
262 (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each
263 office or location within the State of Mississippi, plus any



264 actual expenses incurred while examining the licensee's records or
265 books that are located outside the State of Mississippi. However,
266 in no event shall the licensee be examined more than once in a
267 two-year period unless for cause shown based upon consumer
268 complaint and/or other exigent reasons as determined by the
269 commissioner.

270 (2) All fees paid to the commissioner shall be deposited
271 into the Consumer Finance Fund of the Department of Banking and
272 Consumer Finance.

273 (3) For the purpose of discovering violations of this act or
274 of securing information lawfully required hereunder, the
275 commissioner or his duly authorized representatives may at any
276 time investigate the business and examine the books, accounts,
277 papers and records used therein of: (a) any licensee; (b) any
278 other person engaged in the business described in Section 4(1) of
279 this act or participating in such business as principal, agent,
280 broker or otherwise; and (c) any person who the commissioner has
281 reasonable cause to believe is violating or is about to violate
282 any provisions of this act, whether or not the person shall claim
283 to be within the authority or beyond the scope of this act. For
284 purposes of this section, any person who shall advertise for,
285 solicit or hold himself out as willing to make loan transactions
286 in the amount of less than One Thousand Dollars (\$1,000.00) under
287 this act shall be presumed to be engaged in the business described
288 in Section 4(1) of this act, unless exempted by Section 4(3) of
289 this act.

290 (4) For the purposes of this act, the commissioner or his
291 duly authorized representatives shall have and be given free
292 access to the offices and places of business, files, safes and
293 vaults of all such persons and may require the attendance of any
294 person and to examine him under oath relative to the loans or the
295 business or to the subject matter of any examination,
296 investigation, or hearing.



297 (5) Whenever the commissioner has reasonable cause to
298 believe that any person is violating or is threatening to or
299 intends to violate any provision of this act, he may, in addition
300 to all actions provided for in this act and in addition to all
301 other remedies that he may have at law and without prejudice
302 thereto, enter an order requiring such person to desist or to
303 refrain from such violation, and an action may be brought on
304 behalf of the Attorney General or commissioner to enjoin the
305 person from engaging in or continuing the violation or from doing
306 any act or acts in furtherance thereof. In any action, an order
307 or judgment may be entered awarding the preliminary or final
308 injunction as may be deemed proper. In addition to all other
309 means provided by law for the enforcement of a restraining order
310 or injunction, the court in which the action is brought shall have
311 the power and jurisdiction to impound and to appoint a receiver
312 for the property and business of the defendant, including books,
313 papers, documents and records pertaining thereto or so much
314 thereof as the court may deem reasonably necessary to prevent
315 violations of this act through or by means of the use of the
316 property and business. The receiver, when appointed and
317 qualified, shall have such powers and duties as to custody,
318 collection, administration, winding up and liquidation of the
319 property and business as shall from time to time be conferred upon
320 him by the court.

321 (6) Reports of examinations and investigations of the
322 commissioner, and the books and records of licensees are to be
323 held strictly confidential, and may not be produced, reproduced,
324 or otherwise made available by the department to any persons.
325 This subsection does not apply to disclosures in proceedings
326 brought by the commissioner pursuant to this act.

327 **SECTION 11.** Each licensee shall keep and use in his business
328 such books, accounts and records as will enable the commissioner
329 to determine whether such licensee is complying with the



330 provisions of this act and with the orders and regulations
331 lawfully made by the commissioner hereunder. Each licensee shall
332 preserve such books, accounts and records for at least two (2)
333 years after making the final entry on any loan recorded therein.

334 **SECTION 12.** The commissioner shall have the power and
335 authority to adopt, promulgate and issue such rules and
336 regulations, not inconsistent with this act or some other statute,
337 as he deems necessary for the purpose of the administration of the
338 act. A copy of every rule and regulation promulgated by the
339 commissioner shall be filed in accordance with the Administrative
340 Procedures Law, Section 25-43-1 et seq. Any licensee whose
341 practices are consistent with any regulation or written
342 interpretation shall not be liable for any violation of this
343 chapter, even though the rule, or interpretation thereof, is ruled
344 invalid for any reason by a court of competent jurisdiction.

345 **SECTION 13.** (1) No licensee or other person subject to this
346 act shall advertise, display, distribute or broadcast or cause to
347 permit to be advertised, displayed, distributed or broadcast in
348 any manner whatsoever any false, misleading or deceptive statement
349 or representation with regard to the rates, terms or conditions
350 for loans in the amount of less than One Thousand Dollars
351 (\$1,000.00) under this act. The commissioner may require that
352 charges or rates of charge, if stated by a licensee, be stated
353 fully and clearly in such manner as he may deem necessary to
354 prevent misunderstanding thereof by prospective borrowers. The
355 commissioner may require the posting of said rates with a
356 statement that the location's supervised by the Department of
357 Banking and Consumer Finance followed by a toll free contact
358 telephone number. The commissioner may permit or require
359 licensees to refer in their advertising to the fact that their
360 business is under state supervision, subject to conditions imposed
361 by him to prevent an erroneous impression as to the scope or
362 degree of protections provided by this act.



363 (2) Each licensee shall conspicuously display in each
364 licensed place of business a full and accurate schedule of the
365 rates of charge upon all classes of loans currently to be made by
366 him.

367 **SECTION 14.** (1) Every licensee under this act may contract
368 for and receive charges on any loan of money less than One
369 Thousand Dollars (\$1,000.00) in an amount at a rate not exceeding
370 the following:

371 (a) A licensee may charge an acquisition charge for
372 making the loan in an amount not in excess of ten percent (10%) of
373 the amount of the principal.

374 (b) A licensee may charge an installment account
375 handling charge in an amount no greater than the following:

376 (i) Twelve Dollars (\$12.00) per month on any loan
377 of an amount of One Hundred Dollars (\$100.00), but not more than
378 Three Hundred Dollars (\$300.00).

379 (ii) Fourteen Dollars (\$14.00) per month on any
380 loan of an amount in excess of Three Hundred Dollars (\$300.00),
381 but not more than Four Hundred Dollars (\$400.00).

382 (iii) Sixteen Dollars (\$16.00) per month on any
383 loan of an amount in excess of Four Hundred Dollars (\$400.00), but
384 not more than Five Hundred Dollars (\$500.00).

385 (iv) Seventeen Dollars (\$17.00) per month on any
386 loan in excess of Five Hundred Dollars (\$500.00), but not more
387 than Eight Hundred Dollars (\$800.00).

388 (v) Twenty Dollars (\$20.00) per month on any loan
389 of an amount in excess of Eight Hundred Dollars (\$800.00), but
390 less than One Thousand Dollars (\$1,000.00).

391 (2) (a) When any loan contract is paid in full by cash, a
392 new loan, renewal or otherwise, one (1) month or more before the
393 final installment date, the licensee shall refund or credit the
394 borrower with that portion of the installment account handling
395 charge which shall be due the borrower as determined by schedules



396 prepared under the rule of seventy-eighths or sum of digit
397 principal as follows: The amount of the refund or credit shall be
398 as great a proportion of the total charges originally contracted
399 for as the sum of the periodic time balances of the contract
400 scheduled to follow the date of prepayment bears to the sum of all
401 the periodic time balances of the contract, both sums to be
402 determined according to the payment schedule originally contracted
403 for. No refund of less than One Dollar (\$1.00) need be made. The
404 acquisition charge shall not be subject to refund.

405 (b) In the event the borrower shall repay the loan in
406 full within three (3) business days following the date of the
407 loan, then all charges of every kind shall be refunded including
408 the acquisition charge.

409 (3) If the contract so provides, when a scheduled payment is
410 in default or delinquent for ten (10) or more days, the licensee
411 shall charge and collect an additional late charge not to exceed
412 the greater of Ten Dollars (\$10.00) or five percent (5%) of the
413 amount of the scheduled payment in default. Each of the late
414 charges permitted under this subsection may be collected only once
415 on any scheduled payment, regardless of the period during which
416 the payment remains in default or is delinquent.

417 (4) In addition to the general authority granted to him by
418 Section 12 of this act, the commissioner may make such rules and
419 regulations as he may deem necessary or advisable to insure that
420 rebates and default charges are so computed, paid to or collected
421 from borrowers that the total charges collected by licensees under
422 this section are substantially equivalent to charges authorized to
423 be collected by licensees under this section.

424 (5) The licensee may collect from the borrower the actual
425 fees paid a public official or agency of the state for filing,
426 recording or releasing any instrument securing the loan.

427 (6) The minimum term of any loan made under this act is
428 three (3) months and the maximum term of any loan made under this



429 act is twelve (12) months. Every loan contract shall require
430 payment of the cash advance and charges in installments which
431 shall be payable at approximately equal periodic intervals. The
432 scheduled payments shall be in amounts equal to or greater than
433 Forty Dollars (\$40.00) per month, inclusive of the installment
434 account handling charge. The acquisition charge and the
435 installment account handling charge may be calculated for the term
436 of the contract and added to the amount of the principal. The
437 acceptance or payment of charges on loans made under this act
438 shall not be deemed to constitute payment, deduction or receipt
439 thereof in advance nor compounding under this act. No installment
440 contracted for shall be substantially larger than any preceding
441 installment.

442 (7) The licensee may require, within the contract, payment
443 by the debtor of any actual accessed court costs in any civil
444 action brought by licensee to enforce the contract.

445 (8) Any licensee hereunder who receives a check, draft,
446 negotiable order of withdrawal or like instrument drawn on a bank
447 or other depository institution given by any person in full or
448 partial payment of a loan or other extension of credit may, if
449 such instrument is not paid or is dishonored by such institution,
450 charge and collect from the borrower or person to whom the credit
451 was extended, a bad check charge in an amount not to exceed the
452 sum of Fifteen Dollars (\$15.00). This charge may be made only
453 once with respect to the same instrument, and after the nonpayment
454 or dishonor of the instrument, it shall be returned by the
455 licensee to the borrower or person to whom credit was extended.
456 This charge shall not be deemed to be a finance charge or other
457 charge made as an incident to or as a condition to the grant of
458 the loan or other extension of credit and shall not be included in
459 determining the limit on charges which may be made in connection
460 with the loan or extension of credit as provided in this act or in
461 any other law of this state.



462 (9) The licensee shall be entitled to receive any assessed
463 court costs in connection with the collection of any loan. No
464 insurance charge, nor any other charge of any nature whatsoever,
465 is permitted for loans made pursuant to the rate structure of this
466 section, except for those charges and fees permitted in this
467 section.

468 (10) The loan charges allowed under this section may not be
469 imposed on more than one (1) outstanding loan to a borrower with
470 the licensee and upon which loan charges were imposed under this
471 section.

472 (11) No licensee shall file a claim against a decedent
473 borrower's estate for any unpaid indebtedness for a loan made
474 pursuant to this section.

475 **SECTION 15.** (1) Every licensee shall:

476 (a) At the time a loan is made deliver to the borrower
477 a copy of the loan contract, executed by the borrower, in language
478 in clear and distinct terms:

479 (i) The name and address of the lender and the
480 borrower on the loan.

481 (ii) The date of the loan contract and the period
482 of time for which the loan is extended.

483 (iii) Schedule of installments or description
484 thereof.

485 (iv) The cash advance.

486 (v) The total amount of the note evidencing the
487 loan.

488 (vi) The finance charges allowed by this act.

489 (vii) The amount collected or paid for filing or
490 other fees allowed by this act.

491 (viii) The collateral or security for the loan.

492 (ix) The federal annual percentage rate.

493 (b) Give to the person making any cash payment on the
494 account of any loan, a receipt at the time the payment is made



495 which receipt need only show the total amount of the cash payment.
496 No receipt shall be required in the case of payments made by the
497 borrower's check or money order, and the use of a coupon book
498 system shall be deemed in compliance with this section.

499 (c) Permit the payment to be made in advance in any
500 amount on any contract of loan at any time during a licensee's
501 regular business hours.

502 (d) Upon repayment of the loan in full, mark plainly
503 every obligation and security signed by any borrower with the word
504 "Paid" or "Cancelled," and release any lien and cancel and return
505 any note and any assignment given to the licensee.

506 (2) No licensee shall take any note or promise to pay that
507 does not disclose the total amount to be repaid, a schedule of
508 payments or a description thereof and the agreed rate or aggregate
509 amount of charge, nor any instrument in which blanks are left to
510 be filled in after execution.

511 (3) Every loan contract shall provide for repayment of
512 principal and charges at approximately equal periodic intervals of
513 time, which shall be so arranged that no installment is
514 substantially greater in amount than any preceding installment.

515 (4) Absent other factors, a loan transaction does not create
516 a confidential relationship between the borrower and the licensee
517 nor does it give rise to or create a fiduciary duty on the part of
518 the licensee.

519 **SECTION 16.** All borrower contracts and records of the
520 licensee shall be open to the inspection of the commissioner or
521 his duly authorized representatives at all times during regular
522 business hours. Such records shall be kept for a period of
523 twenty-four (24) months after the final transaction on such loan.
524 Any action brought against a licensee by any person on account of
525 the violation or alleged violation of any of the provisions of
526 this act with reference to any loan transaction shall be brought



527 within twenty-four (24) months after the date of the final
528 maturity date of the loan, and not thereafter.

529 **SECTION 17.** (1) No licensee shall conduct the business of
530 making loans provided for by this act under any name or at any
531 place of business within this state other than stated in the
532 license. Nothing in this section shall prevent the making of
533 loans by mail nor prohibit accommodations to individual borrowers
534 when necessitated by sickness or other emergency situations.

535 (2) No licensee shall take a lien upon real estate as
536 security for any loan made under this act, except such lien as is
537 created by law through the entry or recording of a judgment.

538 **SECTION 18.** In addition to any other remedy he may have, any
539 licensee and any person considering himself aggrieved by any act
540 or order of the commissioner under this act may, within thirty
541 (30) days from the entry of the order complained of, or within
542 sixty (60) days of the act complained of if there is no order,
543 petition the Chancery Court of the First Judicial District of
544 Hinds County for review of such act or order; provided, that such
545 petition shall be docketed, heard and tried in the same manner as
546 other extraordinary writs issued by the court and a copy of the
547 petition and order setting the same for hearing shall be served on
548 the commissioner, giving him such notice of the time and place of
549 the hearing as may be directed by the court.

550 **SECTION 19.** Except where other specific remedies are
551 provided in this act for violations, in which event those remedies
552 shall apply, any provision of a loan contract which violates this
553 act shall be unenforceable by the licensee to the extent, but only
554 to the extent, of the violation, and the other remaining
555 provisions and agreements shall be enforceable and shall not be
556 void and shall not be affected by the violation.

557 **SECTION 20.** This act or any part thereof may be modified,
558 amended or repealed so as to effect a cancellation or alteration
559 of any license or right of a licensee hereunder; provided, that



560 such cancellation or alteration shall not impair or affect the
561 obligation of any preexisting lawful contract between any licensee
562 and any borrower.

563 **SECTION 21.** If any finance charge in excess of that
564 expressly permitted by Section 14 of this act is contracted for or
565 received, all finance charges and other charges shall be forfeited
566 and may be recovered, whether the contract be executed or
567 executory. If any finance charge is contracted for or received
568 that exceeds the maximum finance charge authorized by law by more
569 than one hundred percent (100%), the principal and all finance
570 charges and other charges shall be forfeited and any amount paid
571 may be recovered by suit; and, in addition, the licensee and the
572 several members, officers, directors, agents and employees thereof
573 who shall have participated in such violation shall be guilty of a
574 misdemeanor and, upon conviction thereof, shall be punished by a
575 fine of not more than One Thousand Dollars (\$1,000.00) and not
576 less than One Hundred Dollars (\$100.00), in the discretion of the
577 court; and further, the Commissioner of Banking and Consumer
578 Finance shall forthwith cite such licensee to show cause why its
579 license should not be revoked.

580 **SECTION 22.** This act shall take effect and be in force from
581 and after July 1, 2010.

