

By: Representative Carpenter

To: Banking and Financial Services

HOUSE BILL NO. 1145

1 AN ACT TO CREATE THE MISSISSIPPI FLEXIBLE CREDIT ACT; TO
 2 AUTHORIZE LENDERS TO MAKE UNSECURED CONSUMER LOANS THAT ARE
 3 PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES WITH AN
 4 ORIGINAL PRINCIPAL AMOUNT THAT DOES NOT EXCEED TEN THOUSAND
 5 DOLLARS AND WITH AN ORIGINAL TERM THAT DOES NOT EXCEED SIXTY
 6 MONTHS; TO AUTHORIZE LENDERS TO PROVIDE UNSECURED CONSUMER LINES
 7 OF CREDIT THAT ARE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD
 8 PURPOSES WITH AN ORIGINAL PRINCIPAL BALANCE THAT DOES NOT EXCEED
 9 TEN THOUSAND DOLLARS; TO REQUIRE LENDER TO MAKE CERTAIN
 10 DISCLOSURES TO THE CONSUMER AT OR BEFORE CONSUMMATION OF THE
 11 CONSUMER LOAN OR OPENING OF THE LINE OF CREDIT; TO AUTHORIZE A
 12 LENDER TO CHARGE A FINANCE CHARGE FOR A CONSUMER LOAN OR CONSUMER
 13 LINE OF CREDIT AT ANY RATE AGREED TO BY THE PARTIES; TO AUTHORIZE
 14 THE LENDER TO CHARGE AND COLLECT CERTAIN ADDITIONAL FEES AND
 15 CHARGES THAT ARE AGREED UPON BETWEEN THE LENDER AND THE BORROWER;
 16 TO PROVIDE THAT CERTAIN ACTIONS BY A LENDER ARE VIOLATIONS OF THIS
 17 ACT; TO AMEND SECTION 75-17-1, MISSISSIPPI CODE OF 1972, TO
 18 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

20 **SECTION 1. Short title.** This Act shall be known and may be
 21 cited as the "Mississippi Flexible Credit Act."

22 **SECTION 2. Definitions.** As used in this act, the following
 23 terms shall have the meanings as defined in this section:

24 (a) "Consumer" means a person other than an
 25 organization to whom credit is granted in a consumer loan or a
 26 line of credit.



27 (b) "Consumer loan" means an unsecured loan made in
28 return for compensation to a consumer primarily for a personal,
29 family or household purpose with an original principal amount that
30 does not exceed Ten Thousand Dollars (\$10,000.00) and with an
31 original term that does not exceed sixty (60) months. A "consumer
32 loan" does not include: (i) a loan for a business, investment or
33 commercial purpose, (ii) a consumer line of credit, or (iii) a
34 payday or deferred deposit loan.

35 (c) "Consumer line of credit" means an unsecured line
36 of credit made in return for compensation to a consumer primarily
37 for a personal, family or household purpose with an original
38 principal balance that does not exceed Ten Thousand Dollars
39 (\$10,000.00). A "consumer line of credit" does not include: (i)
40 a consumer loan, (ii) a line of credit for a business, investment
41 or commercial purpose, or (iii) a payday or deferred deposit loan.

42 (d) "Lender" means a person who makes or funds a
43 consumer loan or a line of credit.

44 **SECTION 3. Disclosure requirements.** (1) The lender must
45 make the disclosures required by this section clearly and
46 conspicuously in writing. The lender may provide these
47 disclosures in electronic form subject to compliance with the
48 Electronic Signatures in Global and National Commerce Act (E-Sign
49 Act) (15 USC Section 7001 et seq.) except that they may be
50 provided without regard to the consumer consent requirement.



51 The disclosures are not required to be provided on a separate
52 sheet of paper but must be segregated from everything else.
53 Lenders must disclose the information required by subsection
54 (3) (a) or (3) (b) of this section.

55 (2) The lender must make the disclosures at or before
56 consummation of the consumer loan or opening of the line of
57 credit.

58 (3) The lender must disclose the following:

59 (a) For a consumer loan:

60 (i) Borrower Warning. The following or
61 substantially similar notice in bold type and at least 12-point
62 font: "NOTICE: A SHORT TERM LOAN SHOULD BE USED FOR SHORT-TERM
63 FINANCIAL NEEDS ONLY, NOT AS A LONG-TERM FINANCIAL SOLUTION.
64 CUSTOMERS WITH CREDIT DIFFICULTIES SHOULD SEEK CREDIT COUNSELING
65 OR MEET WITH A NONPROFIT FINANCIAL COUNSELING SERVICE IN THEIR
66 COMMUNITY."

67 (ii) Loan Amount. The money the consumer will
68 receive.

69 (iii) Total of Fees. The cost of your loan.

70 (iv) Total Loan Amount. The loan amount plus the
71 cost of the loan.

72 (v) Due Date. The date by which the consumer must
73 pay the total loan amount.



74 (vi) Payment Amounts and Due Dates. An
75 identification of the consumer's payment due dates and each
76 payment due on that date.

77 (vii) Additional Fees. An identification of
78 additional fees charged on the loan and a description of the
79 circumstances under which they will be charged.

80 (viii) Borrower Rights. A description of the
81 borrower's rights related to his or her military status, right to
82 rescind, electronic repayment and renewals, rollovers and
83 extensions.

84 (ix) Repayment Options. The lender must provide
85 contact information via either a telephone number or website for
86 the consumer to contact to discuss repayment options if the
87 consumer cannot repay the loan with information related to
88 locating a credit counselor.

89 (b) For a consumer line of credit:

90 (i) Borrower Warning. The following or
91 substantially similar notice in bold type and at least 12-point
92 font: "NOTICE: CUSTOMERS WITH CREDIT DIFFICULTIES SHOULD SEEK
93 CREDIT COUNSELING OR MEET WITH A NONPROFIT FINANCIAL COUNSELING
94 SERVICE IN THEIR COMMUNITY."

95 (ii) Line of Credit. The original line of credit.

96 (iii) Interest Rate. The cost of your line of
97 credit.



98 (iv) Usage Fees. The cost for cash advances or
99 other transaction-related services.

100 (v) Penalty Fees. Additional fees charged for
101 late payment, over-the-limit, or returned payment.

102 (vi) Minimum Payment. The calculation for
103 determining the minimum amount a borrower must pay per billing
104 cycle.

105 (vii) Borrower Rights. A description of the
106 borrower's rights related to his or her military status, right to
107 rescind, or electronic repayment.

108 (viii) Repayment Options. The Lender must provide
109 contact information via either a telephone number or website for
110 the consumer to contact to discuss repayment options if the
111 consumer cannot make his minimum payments with information related
112 to locating a credit counselor.

113 (3) The consumer must sign the disclosure and certify that
114 he has received the disclosure, understands the terms of the
115 consumer loan or line of credit and has the ability to repay the
116 consumer loan or make the minimum payments under the line of
117 credit.

118 **SECTION 4. Finance Charges.** Notwithstanding any other
119 statutory limitation, a lender may charge a finance charge for a
120 consumer loan or consumer line of credit at any rate agreed to by
121 the parties.



122 **SECTION 5. Additional Charges.** (1) Besides the finance
123 charge authorized by Section 4 of this act, the lender may charge
124 and collect the following additional fees and charges identified
125 in subsection (2) of this section and agreed upon between the
126 lender and the borrower, in amounts specified in or determined
127 under the agreement between the lender and the borrower.

128 (2) (a) Lenders may charge the following additional fees on
129 a consumer loan:

130 (i) A late payment or delinquency charge;

131 (ii) Returned payment charges; and

132 (iii) An origination fee.

133 (b) Lenders may charge the following additional fees on
134 a consumer line of credit:

135 (i) A monthly, annual or other periodic charge or
136 a one-time charge for the privileges or services made available to
137 the borrower under the consumer line of credit;

138 (ii) Transaction charges for each cash advance
139 under the consumer line of credit;

140 (iii) A minimum charge for each monthly, annual or
141 other scheduled billing period under the plan during any portion
142 of which there is an outstanding unpaid indebtedness;

143 (iv) Charges for exceeding a predetermined credit
144 limit;

145 (v) A late payment or delinquency charge; and

146 (vi) Returned payment charges.



147 **SECTION 6. Ability to Repay.** (1) A lender must not make a
148 consumer loan or open a consumer line of credit unless the lender
149 considers the consumer's ability to repay the consumer loan or to
150 make the minimum payments on the consumer line of credit.

151 (2) A lender is in compliance with subsection (1) of this
152 section if, before consummation of the consumer loan or opening of
153 the consumer line of credit, the lender obtains at least one of
154 the following regarding the consumer seeking the consumer loan or
155 consumer credit line:

156 (a) A consumer report, as defined in 15 USC Section
157 1681a, from a consumer reporting agency, as defined in 15 USC
158 Section 1681a;

159 (b) Written proof or verification of income from the
160 consumer seeking the consumer loan or the consumer line of credit;
161 or

162 (c) Prior repayment history with the lender from the
163 records of the lender.

164 **SECTION 7. Prohibited Practices.** It is a violation of this
165 act for a lender to:

166 (a) Directly or indirectly employ any scheme, device,
167 or artifice to defraud or mislead borrowers;

168 (b) Engage in any unfair or deceptive practice toward
169 any person;

170 (c) Impose a fee on the consumer for prepayment of the
171 consumer loan or for termination of a consumer line of credit; or



172 (d) Make a consumer loan that contains a payment
173 schedule that includes payments that are not substantially equal.

174 **SECTION 8. Refinancings.** With respect to a consumer loan,
175 the lender may, by agreement with the consumer, refinance the
176 unpaid balance and may contract for and receive a finance charge
177 based on the amount financed resulting from the refinancing at a
178 rate not exceeding that permitted by Section 4 of this act.

179 **SECTION 9. Right to Prepay Consumer Loan.** The consumer may
180 prepay in full or in part the unpaid balance of a consumer loan at
181 any time without penalty.

182 **SECTION 10. Right to Cancel.** The consumer has the right to
183 cancel the consumer loan or consumer line of credit without
184 incurring any charge by 5:00 p.m. on the next business day. The
185 consumer does not have the right to cancel a consumer line of
186 credit after he makes his first transaction under the line of
187 credit.

188 **SECTION 11.** Section 75-17-1, Mississippi Code of 1972, is
189 amended as follows:

190 75-17-1. (1) The legal rate of interest on all notes,
191 accounts and contracts shall be eight percent (8%) per annum,
192 calculated according to the actuarial method, but contracts may be
193 made, in writing, for payment of a finance charge as otherwise
194 provided by this section or as otherwise authorized by law.

195 (2) Any borrower or debtor may contract for and agree to pay
196 a finance charge for any loan or other extension of credit made



197 directly or indirectly to a borrower or debtor which will result
198 in a yield not to exceed the greater of ten percent (10%) per
199 annum or five percent (5%) per annum above the discount rate,
200 excluding any surcharge thereon, on ninety-day commercial paper in
201 effect at the Federal Reserve bank in the Federal Reserve district
202 where the lender is located, each calculated according to the
203 actuarial method. The rate of finance charge authorized under
204 this subsection (2) shall be known as the "contract rate."

205 (3) Notwithstanding the foregoing and any other provision of
206 law to the contrary, any partnership, joint venture, religious
207 society, unincorporated association, or domestic or foreign
208 corporation, whether organized for profit or nonprofit, may
209 contract for and agree to pay a finance charge which will result
210 in a yield not to exceed the greater of fifteen percent (15%) per
211 annum or five percent (5%) per annum above the discount rate,
212 excluding any surcharge thereon, on ninety-day commercial paper in
213 effect at the Federal Reserve bank in the Federal Reserve district
214 where the lender is located, each calculated according to the
215 actuarial method, on any contract, loan, extension of credit or
216 other obligation under which the principal balance to be repaid
217 shall originally exceed Two Thousand Five Hundred Dollars
218 (\$2,500.00), or on any series of advances of money pursuant to a
219 contract if the aggregate of sums advanced or originally proposed
220 to be advanced shall exceed Two Thousand Five Hundred Dollars
221 (\$2,500.00); and as to any such agreement, the claim or defense of



222 usury by such partnership, joint venture, religious society,
223 unincorporated association, or corporation, or their successors,
224 guarantors, assigns or anyone on their behalf is prohibited.

225 (4) Notwithstanding the foregoing and any other provision of
226 law to the contrary, any borrower or debtor may contract for and
227 agree to pay a finance charge which will result in a yield not to
228 exceed the greater of ten percent (10%) per annum or five percent
229 (5%) per annum above the index of market yields of the Monthly
230 Twenty-Year Constant Maturity Index of Long-Term United States
231 Government Bond Yields, as compiled by the United States Treasury
232 Department, each calculated according to the actuarial method, on
233 any loan, mortgage or advance which is secured by a lien on
234 residential real property or by a lien on stock in a residential
235 cooperative housing corporation where the loan, mortgage or
236 advance is used to finance the acquisition of such stock. The
237 term "residential real property," as used in this subsection,
238 means real estate upon which there is located or to be located a
239 structure or structures designed in whole or in part for
240 residential use, or which comprises or includes one or more
241 apartments, condominium units or other dwelling units.

242 (5) Notwithstanding the foregoing and any other provision of
243 law to the contrary, except as otherwise provided in Section 4 of
244 this act, any borrower or debtor may contract for and agree to pay
245 and any lender or extender of credit may contract for and receive
246 any finance charge agreed to in writing by the parties,



247 notwithstanding that such charge is in excess of that otherwise
248 allowed on any contract, credit sale, obligation or other
249 extension of credit, regardless of the security taken or the
250 purpose of the extension of credit, under which the principal
251 balance to be repaid originally exceeds Two Thousand Dollars
252 (\$2,000.00), or on any series of advances of money pursuant to a
253 contract if the aggregate of sums advanced or originally proposed
254 to be advanced exceeds Two Thousand Dollars (\$2,000.00), or on any
255 extension or renewal thereof; and as to any such agreement, the
256 claim or defense of usury or violation of any law prescribing,
257 limiting or regulating the rate of finance charge by any borrower
258 or debtor, or his successors, guarantors, assigns or anyone on his
259 behalf is prohibited.

260 (6) Notwithstanding the foregoing and any other provisions
261 of law to the contrary, the outstanding balance of a prior loan or
262 lease of a motor vehicle used as a trade-in, as well as other
263 items that are capitalized or amortized during the lease term, may
264 be included in a lease for a motor vehicle, provided that the rate
265 of finance charge associated with the lease contract does not at
266 any time exceed the finance charge limitations specified in
267 Section 63-19-43.

268 **SECTION 12.** This act shall take effect and be in force from
269 and after July 1, 2016.

