HOUSE BILL NO. 1145

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

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

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

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

(a) "Consumer" means a person other than an organization to whom credit is granted in a consumer loan or a line of credit.
(b) "Consumer loan" means an unsecured loan made in return for compensation to a consumer primarily for a personal, family or household purpose with an original principal amount that does not exceed Ten Thousand Dollars ($10,000.00) and with an original term that does not exceed sixty (60) months. A "consumer loan" does not include: (i) a loan for a business, investment or commercial purpose, (ii) a consumer line of credit, or (iii) a payday or deferred deposit loan.

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

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

SECTION 3. Disclosure requirements. (1) The lender must make the disclosures required by this section clearly and conspicuously in writing. The lender may provide these disclosures in electronic form subject to compliance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC Section 7001 et seq.) except that they may be provided without regard to the consumer consent requirement.
The disclosures are not required to be provided on a separate sheet of paper but must be segregated from everything else.

Lenders must disclose the information required by subsection (3)(a) or (3)(b) of this section.

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

(3) The lender must disclose the following:

(a) For a consumer loan:

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

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

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

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

   (v) Due Date. The date by which the consumer must pay the total loan amount.
(vi) Payment Amounts and Due Dates. An identification of the consumer's payment due dates and each payment due on that date.

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

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

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

(b) For a consumer line of credit:

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

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

(iii) Interest Rate. The cost of your line of credit.
(iv) Usage Fees. The cost for cash advances or other transaction-related services.

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

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

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

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

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

SECTION 4. Finance Charges. Notwithstanding any other statutory limitation, a lender may charge a finance charge for a consumer loan or consumer line of credit at any rate agreed to by the parties.
SECTION 5. Additional Charges. (1) Besides the finance charge authorized by Section 4 of this act, the lender may charge and collect the following additional fees and charges identified in subsection (2) of this section and agreed upon between the lender and the borrower, in amounts specified in or determined under the agreement between the lender and the borrower.

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

(i) A late payment or delinquency charge;

(ii) Returned payment charges; and

(iii) An origination fee.

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

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

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

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

(iv) Charges for exceeding a predetermined credit limit;

(v) A late payment or delinquency charge; and

(vi) Returned payment charges.
SECTION 6. Ability to Repay. (1) A lender must not make a consumer loan or open a consumer line of credit unless the lender considers the consumer's ability to repay the consumer loan or to make the minimum payments on the consumer line of credit.

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

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

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

or

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

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

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

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

(c) Impose a fee on the consumer for prepayment of the consumer loan or for termination of a consumer line of credit; or
(d) Make a consumer loan that contains a payment schedule that includes payments that are not substantially equal.

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

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

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

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

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

(2) Any borrower or debtor may contract for and agree to pay a finance charge for any loan or other extension of credit made
directly or indirectly to a borrower or debtor which will result in a yield not to exceed the greater of ten percent (10%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located, each calculated according to the actuarial method. The rate of finance charge authorized under this subsection (2) shall be known as the "contract rate."

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

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

(5) Notwithstanding the foregoing and any other provision of
law to the contrary, except as otherwise provided in Section 4 of
this act, any borrower or debtor may contract for and agree to pay
and any lender or extender of credit may contract for and receive
any finance charge agreed to in writing by the parties,
notwithstanding that such charge is in excess of that otherwise
allowed on any contract, credit sale, obligation or other
extension of credit, regardless of the security taken or the
purpose of the extension of credit, under which the principal
balance to be repaid originally exceeds Two Thousand Dollars
($2,000.00), or on any series of advances of money pursuant to a
contract if the aggregate of sums advanced or originally proposed
to be advanced exceeds Two Thousand Dollars ($2,000.00), or on any
extension or renewal thereof; and as to any such agreement, the
claim or defense of usury or violation of any law prescribing,
limiting or regulating the rate of finance charge by any borrower
or debtor, or his successors, guarantors, assigns or anyone on his
behalf is prohibited.

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

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