

By: Representative Zuber

To: Banking and Financial Services

HOUSE BILL NO. 1511  
(As Passed the House)

1 AN ACT TO BE KNOWN AS THE MISSISSIPPI CONSUMER ALTERNATIVE  
2 INSTALLMENT LOAN ACT; TO PROHIBIT ENGAGING IN THE BUSINESS OF  
3 MAKING CONSUMER INSTALLMENT LOANS AND CHARGING OR CONTRACTING FOR  
4 INTEREST ON THOSE LOANS WITHOUT APPROVAL FROM THE COMMISSIONER OF  
5 BANKING AND CONSUMER FINANCE; TO PROVIDE THAT THE COMMISSIONER OF  
6 BANKING AND CONSUMER FINANCE SHALL NOT UNREASONABLY WITHHOLD  
7 APPROVAL OF ANY PERSON, PARTNERSHIP, ASSOCIATION, LIMITED  
8 LIABILITY COMPANY OR CORPORATION WHO HAS MET CERTAIN REQUIREMENTS;  
9 TO PRESCRIBE THE MAXIMUM CHARGES PERMITTED FOR LOANS MADE BY  
10 LICENSEES UNDER THIS ACT AND THE METHOD OF COMPUTING THOSE  
11 CHARGES; TO PRESCRIBE THE TERMS OF LOANS MADE BY LICENSEES UNDER  
12 THIS ACT; TO AUTHORIZE THE COMMISSIONER OF BANKING AND CONSUMER  
13 FINANCE TO ADOPT RULES AND REGULATIONS NECESSARY FOR THE  
14 ENFORCEMENT OF THIS ACT; TO PROVIDE CERTAIN LIABILITY PROTECTIONS  
15 TO LICENSEES; TO CREATE NEW SECTION 75-67-123, MISSISSIPPI CODE OF  
16 1972, TO PROVIDE THAT FOR PURPOSES OF COMPLIANCE WITH MAXIMUM  
17 CHARGES PERMITTED UNDER CERTAIN PROVISIONS OF LAW, ANY CHARGES,  
18 FEES OR PREMIUMS FOR CREDIT INSURANCE OR AUTO CLUB MEMBERSHIPS  
19 SHALL NOT BE INCLUDED IN THE CALCULATION OF THE FINANCE CHARGE; TO  
20 AMEND SECTIONS 75-17-21, 75-17-25 AND 75-67-119, MISSISSIPPI CODE  
21 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Sections 1 through 6 of this act shall be known  
24 as the "Mississippi Consumer Alternative Installment Loan Act."

25 **SECTION 2.** (1) No person, partnership, association, limited  
26 liability company or corporation shall engage in the business of  
27 making consumer installment loans of money as provided by Sections



28 1 through 6 of this act and charge, contract for, or receive on  
29 any such loan interest, discount, or consideration therefor  
30 without demonstrating to the satisfaction of the Commissioner of  
31 Banking and Consumer Finance that they are the holder of a valid  
32 and subsisting license under the Small Loan Privilege Tax Law,  
33 Section 75-67-201 et seq.

34 (2) Sections 1 through 6 of this act shall not apply to  
35 persons engaged in the business of extending credit to borrowers  
36 primarily for business or commercial purposes.

37 (3) For any consumer installment loan that a licensee makes,  
38 the licensee has the option to either lend at the rates and fees  
39 indicated under the Small Loan Regulatory Law (Section 75-17-21),  
40 or at the rates and charges under Section 4 this act.

41 (4) The provisions of Sections 1 through 6 of this act shall  
42 be administered and enforced by the Commissioner of Banking and  
43 Consumer Finance, or his duly authorized agents, representatives  
44 and employees.

45 **SECTION 3.** (1) For the purposes of Sections 1 through 6 of  
46 this act and for loans made at the rates indicated in Section 4 of  
47 this act, the following terms shall have the meanings as defined  
48 in this subsection:

49 (a) "Applicable interest," for a precomputed loan  
50 contract, means the amount of interest attributable to each  
51 monthly installment period. It is computed as if each installment  
52 period were one (1) month and any interest charged for extending



53 the first installment period. The applicable interest for any  
54 monthly installment period is that portion of the precomputed  
55 interest that bears the same ratio to the total precomputed  
56 interest as the balances scheduled to be outstanding during that  
57 month bear to the sum of all scheduled monthly outstanding  
58 balances in the original contract.

59 (b) "Commissioner" means the Commissioner of the  
60 Mississippi Department of Banking and Consumer Finance.

61 (c) "Department" means the Mississippi Department of  
62 Banking and Consumer Finance.

63 (d) "Licensee" means any individual, partnership,  
64 association or corporation making loans under Sections 1 through 6  
65 of this act and duly licensed under the provisions of the Small  
66 Loan Privilege Tax Law, Section 75-67-201 et seq.

67 (e) "Person" means a natural person, sole  
68 proprietorship, corporation, company, limited liability company,  
69 partnership, association or any other legal entity however  
70 organized.

71 (f) "Precomputed loan" means a loan in which the debt  
72 is expressed as the sum of the original principal amount plus  
73 interest computed actuarially in advance, assuming all payments  
74 will be made when scheduled.

75 (2) To compute time for loans made in accordance with the  
76 interest indicated under Section 4 of this act, for the  
77 calculation of interest and other purposes, a month shall be a



78 calendar month and a day shall be considered one-thirtieth  
79 (1/30th) of a month when calculation is made for a fraction of a  
80 month. A month shall be one-twelfth (1/12th) of a year. A  
81 calendar month is that period from a given date in one (1) month  
82 to the same numbered date in the following month, and if there is  
83 no same numbered date, to the last day of the following month.  
84 When a period of time includes a month and a fraction of a month,  
85 the fraction of the month is considered to follow the whole month.  
86 In the alternative, the licensee may charge interest at the rate  
87 of one three-hundred sixty-fifth (1/365th) of the agreed annual  
88 rate for each day actually elapsed.

89 (3) With respect to loans made under the interest indicated  
90 in Section 4 of this act:

91 (a) Loans shall be repayable in substantially equal and  
92 consecutive monthly installments of principal and interest  
93 combined, except that the first installment period may be longer  
94 than one (1) month by not more than fifteen (15) days, and the  
95 first installment payment amount may be larger than the remaining  
96 payments by the amount of interest charged for the extra days.

97 (b) Payments may be applied to the combined total of  
98 principal and precomputed interest until the loan is fully paid.

99 (c) When any loan contract is paid in full by cash,  
100 renewal or refinancing, or a new loan, one (1) month or more  
101 before the final installment due date, a licensee shall refund or  
102 credit the obligor the applicable interest for all fully unexpired



103 installment periods, as originally scheduled or as deferred, that  
104 follow the day of prepayment, and a month shall be earned if the  
105 prepayment occurs one (1) or more days after the payment due date.  
106 However, if the prepayment occurs before the first installment due  
107 date, the licensee shall refund or credit the obligor the  
108 applicable interest on a pro rata basis from the date of the loan  
109 to the date of prepayment. "Applicable interest" for any  
110 installment period means that portion of the precomputed monthly  
111 installment interest attributable to the installment period  
112 calculated based on a method at least as favorable to the consumer  
113 as the actuarial method, as defined by the federal Truth in  
114 Lending Act. If the maturity of the loan is accelerated for any  
115 reason and judgment is entered, the licensee shall credit the  
116 borrower with the same refund as if prepayment in full had been  
117 made on the date the lawsuit is filed.

118 (d) If two (2) or more installments are delinquent one  
119 (1) full month or more on any due date, and if the contract so  
120 provides, the licensee may reduce the unpaid balance by the refund  
121 credit that would be required for prepayment in full on the due  
122 date of the most recent maturing installment in default.  
123 Thereafter, and in lieu of any other default or deferment charges,  
124 the agreed rate of interest or interest at the rate of eighteen  
125 percent (18%) per annum may be charged on the unpaid balance until  
126 fully paid.



127 (e) Fifteen (15) days after the final installment as  
128 originally scheduled or deferred, the licensee may compute and  
129 charge interest on any balance remaining unpaid, including unpaid  
130 default or deferment charges, at a default rate of interest as  
131 agreed in the contract or at the rate of eighteen percent (18%)  
132 per annum, until fully paid.

133 (f) A late payment charge that complies with Section  
134 75-17-27 shall not be considered a finance charge, if contracted  
135 for in writing.

136 (g) No licensee or other person may condition an  
137 extension of credit to a consumer borrower on the consumer's  
138 repayment by preauthorized electronic fund transfers or post-dated  
139 check. Consumers may choose any method of payment offered by the  
140 licensee, including, but not limited to, electronic fund transfers  
141 or debit card payments.

142 (h) The loan shall be fully amortizing and be repayable  
143 in its entirety in a minimum of nine (9) substantially equal and  
144 consecutive monthly payments with a period of not less than two  
145 hundred seventy-two (272) days to maturity.

146 (i) Each loan agreement entered into between a licensee  
147 and a consumer borrower shall include the following language:  
148 "This business is licensed and regulated by the Department of  
149 Banking and Consumer Finance. If you have any unresolved problem  
150 with a transaction at this location, you are entitled to



151 assistance. Please call or write the Mississippi Department of  
152 Banking and Consumer Finance."

153 (j) A licensee is prohibited from making a loan to a  
154 consumer borrower if the payments to be made in any month on the  
155 loan exceed twenty-two and five-tenths percent (22.5%) of the  
156 consumer's gross monthly income, as demonstrated by documentation  
157 of the income, including, but not limited to, the consumer's most  
158 recent pay stub, receipt reflecting payment of government  
159 benefits, or other official documentation. "Official  
160 documentation" includes tax returns and documentation prepared by  
161 the source of the income. Notwithstanding anything contained in  
162 this section to the contrary, a licensee may rely upon the  
163 borrower's written statement or other written information provided  
164 by the borrower in those cases where the borrower is self-employed  
165 or employed in seasonal work.

166 (k) At the time a loan is made or within twenty (20)  
167 days after a loan is made, a licensee shall not (i) accept a check  
168 and agree to hold it for a period of days before deposit or  
169 presentment, or (ii) accept a check dated later than the date  
170 written.

171 **SECTION 4.** In lieu of the interest and charges in Section  
172 75-17-21, on loans of Four Thousand Dollars (\$4,000.00) or less, a  
173 licensee may contract and charge a monthly finance charge not to  
174 exceed an annual percentage rate, calculated according to the



175 actuarial method, of fifty-nine percent (59%) per annum on the  
176 unpaid balance of the amount financed.

177       **SECTION 5.** (1) The commissioner shall have the power and  
178 authority to adopt, promulgate and issue any rules and  
179 regulations, not inconsistent with law, necessary for the  
180 enforcement of Sections 1 through 6 of this act. The commissioner  
181 may investigate any business conducted in the licensed office to  
182 determine whether any evasion or violation of Sections 1 through 6  
183 of this act has occurred.

184       (2) Licensees shall comply with, and all loans made under  
185 Sections 1 through 6 of this act shall be in conformity with, all  
186 applicable provisions of the Small Loan Regulatory Law (Section  
187 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section  
188 75-67-201 et seq.), as determined by the commissioner.

189       (3) When the commissioner has reasonable cause to believe  
190 that a person is violating any provision of Sections 1 through 6  
191 of this act, or any regulation of the commissioner made under the  
192 authority of Sections 1 through 6 of this act or any other  
193 applicable statute of this state, the commissioner, in addition to  
194 and without prejudice to the authority provided elsewhere in  
195 Sections 1 through 6 of this act, may enter an order requiring the  
196 person to stop and refrain from the violation. The commissioner  
197 may sue in any court of the state having jurisdiction and venue to  
198 enjoin the person from engaging in or continuing the violation or  
199 from doing any act in furtherance of the violation. In such an





200 action, the court may enter an order or judgment awarding a  
201 preliminary or permanent injunction.

202       **SECTION 6.** (1) A licensee shall have no liability for any  
203 act or practice done or omitted in conformity with (a) any rule or  
204 regulation of the commissioner, or (b) any rule, regulation,  
205 interpretation or approval of any other state or federal agency or  
206 any opinion of the Attorney General, notwithstanding that after  
207 the act or omission has occurred the rule, regulation,  
208 interpretation, approval or opinion is amended, rescinded, or  
209 determined by judicial or other authority to be invalid for any  
210 reason.

211       (2) A licensee, acting in conformity with a written  
212 interpretation or approval by an official or employee of any state  
213 or federal agency or department, shall be presumed to have acted  
214 in accordance with applicable law, notwithstanding that after that  
215 act has occurred, the interpretation or approval is amended,  
216 rescinded, or determined by judicial or other authority to be  
217 incorrect or invalid for any reason.

218       **SECTION 7.** The following shall be codified as Section  
219 75-67-123, Mississippi Code of 1972:

220       75-67-123. Notwithstanding any other law to the contrary,  
221 for purposes of compliance with maximum charges permitted under  
222 Section 75-17-21 and Section 4 of this act, any charges, fees or  
223 premiums for voluntarily purchased credit insurance or auto club



224 memberships shall not be included in the maximum finance charge  
225 allowed by state law.

226 **SECTION 8.** Section 75-17-21, Mississippi Code of 1972, is  
227 amended as follows:

228 75-17-21. (1) For any consumer installment loan that a  
229 licensee under the Small Loan Regulatory Law and the Small Loan  
230 Privilege Tax Law makes, the licensee has the option to either  
231 lend at the rates and fees indicated under this section or at the  
232 rates and charges authorized under Section 4 of this act. Except  
233 as provided in Section 4 of this act, but notwithstanding any  
234 other provision of law to the contrary, the maximum finance charge  
235 which may be contracted for and received for any loan or extension  
236 of credit made by a licensee under the Small Loan Regulatory Law  
237 (Section 75-67-101 et seq.) and the Small Loan Privilege Tax Law  
238 (Section 75-67-201 et seq.) may result in a yield not to exceed  
239 the following annual percentage rates calculated according to the  
240 actuarial method:

241 (a) Thirty-six percent (36%) per annum for the portion  
242 of the unpaid balance of the amount financed that is not greater  
243 than One Thousand Dollars (\$1,000.00);

244 (b) Thirty-three percent (33%) per annum for the  
245 portion of the unpaid balance of the amount financed in excess of  
246 One Thousand Dollars (\$1,000.00) but not greater than Two Thousand  
247 Five Hundred Dollars (\$2,500.00);



248 (c) Twenty-four percent (24%) per annum for the portion  
249 of the unpaid balance of the amount financed in excess of Two  
250 Thousand Five Hundred Dollars (\$2,500.00) but not greater than  
251 Five Thousand Dollars (\$5,000.00);

252 (d) Fourteen percent (14%) per annum for the portion of  
253 the unpaid balance of the amount financed in excess of Five  
254 Thousand Dollars (\$5,000.00).

255 (2) As an alternative and in lieu of the rates established  
256 in paragraphs (a), (b), (c) and (d) of subsection (1), on loans in  
257 an amount of Twenty-five Thousand Dollars (\$25,000.00) or more, a  
258 licensee may contract for and receive a maximum finance charge  
259 which will result in a yield not to exceed an annual percentage  
260 rate, calculated according to the actuarial method, of eighteen  
261 percent (18%) per annum on the unpaid balance of the amount  
262 financed.

263 (3) A licensee choosing to lend at the rates indicated under  
264 this section may contract for and charge a closing fee as follows:

265 (a) For loans in the amount of Ten Thousand Dollars  
266 (\$10,000.00) or less, four percent (4%) of the total payments due  
267 on the loan or Twenty-five Dollars (\$25.00), whichever is greater;

268 (b) For loans in an amount greater than Ten Thousand  
269 Dollars (\$10,000.00), a maximum charge of Five Hundred Dollars  
270 (\$500.00).

271 Such closing fee shall not be part of the finance charge.



272 (4) The rates set forth in paragraph (a) of subsection (1)  
273 may be increased by the number of percentage points by which the  
274 discount rate, excluding any surcharge thereon, on ninety-day  
275 commercial paper in effect at the Federal Reserve bank in the  
276 Federal Reserve district where the lender is located exceeds eight  
277 percent (8%), and the rates set forth in paragraphs (b), (c) and  
278 (d) of subsection (1) may be increased by the number of percentage  
279 points by which the discount rate, excluding any surcharge  
280 thereon, on ninety-day commercial paper in effect at the Federal  
281 Reserve bank in the Federal Reserve district where the lender is  
282 located exceeds ten percent (10%).

283 (5) Except as provided in Section 4 of this act, the finance  
284 charges authorized in this section are the maximum rates which may  
285 be contracted for or received for any loan or extension of credit  
286 made by a licensee under the Small Loan Regulatory Law (Section  
287 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section  
288 75-67-201 et seq.). Nothing in this section shall prohibit  
289 lending money or handling, negotiating or arranging loans for a  
290 finance charge that is less than that specified herein. This  
291 section does not limit or restrict the manner of contracting for  
292 the finance charge, whether by way of add-on, discount or  
293 otherwise, so long as the annual percentage rate of the finance  
294 charge does not exceed that permitted by this section or Section 4  
295 of this act.



296           **SECTION 9.** Section 75-17-25, Mississippi Code of 1972, is  
297 amended as follows:

298           75-17-25. The term "finance charge" as used in this section,  
299 Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
300 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,  
301 63-19-43, 75-67-123, 75-67-127 \* \* \*, 75-67-217 and Section 4 of  
302 this act means the amount or rate paid or payable, directly or  
303 indirectly, by a debtor for receiving a loan or incident to or as  
304 a condition of the extension of credit, including, but not limited  
305 to, interest, brokerage fees, finance charges, loan fees,  
306 discount, points, service charges, transaction charges, activity  
307 charges, carrying charges, time price differential, finder's fees  
308 or any other cost or expense to the debtor for services rendered  
309 or to be rendered to the debtor in making, arranging or  
310 negotiating a loan of money or an extension of credit and for the  
311 accounting, guaranteeing, endorsing, collecting and other actual  
312 services rendered by the lender; \* \* \* however, \* \* \* recording  
313 fees, motor vehicle title fees, attorney's fees, insurance  
314 premiums, fees or charges permitted to be charged under the  
315 provisions of Section 75-67-121, fees permitted to be charged  
316 under the provisions of Section 79-7-7, service charges as  
317 provided in Section 81-19-31, and with respect to a debt secured  
318 by an interest in land, bona fide closing costs and appraisal fees  
319 incidental to the transaction shall not be included in the finance  
320 charge. The term "finance charge," as used in this section and



321 the sections enumerated above, shall not include any fees for the  
322 set up, establishment, processing or maintenance of a loan to a  
323 plan participant from a retirement plan intending to be  
324 tax-qualified (within the meaning of 26 USCS Section 401 et seq.)  
325 that are paid or payable directly or indirectly by the plan  
326 participant to the plan record keeper or third-party  
327 administrator.

328         Subject to the other provisions of this section, Sections  
329 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21,  
330 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43, 75-67-127 and  
331 75-67-217, the finance charge may be calculated on the assumption  
332 that the indebtedness will be discharged as it becomes due, and  
333 prepayment penalties and statutory default charges shall not be  
334 included in the finance charge. Nothing in Section 75-17-1 or  
335 Section 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 or  
336 75-17-33 shall limit or restrict the manner of contracting for  
337 such finance charge, whether by way of add-on, discount or  
338 otherwise, so long as the annual percentage rate does not exceed  
339 that permitted by law. If a greater finance charge than that  
340 authorized by applicable law shall be stipulated for or received  
341 in any case, all interest and finance charges shall be forfeited,  
342 and may be recovered back, whether the contract be executed or  
343 executory. If a finance charge be contracted for or received that  
344 exceeds the maximum authorized by law by more than one hundred  
345 percent (100%), the principal and all finance charges shall be



346 forfeited and any amount paid may be recovered by suit. The  
347 provisions of this section, Section 75-17-1 and Sections 75-17-19,  
348 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not  
349 restrict the extension of credit pursuant to any other applicable  
350 law. A licensee under the Small Loan Regulatory Law (Section  
351 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section  
352 75-67-201 et seq.), may contract for and receive finance charges  
353 as authorized by Section 75-17-21 or Section 4 of this act, and  
354 the late payment charge as authorized by Section 75-17-27,  
355 regardless of the purpose for which the loan or other extension of  
356 credit is made.

357         **SECTION 10.** Section 75-67-119, Mississippi Code of 1972, is  
358 amended as follows:

359         75-67-119. If any finance charge in excess of that expressly  
360 permitted by Section 75-17-21 or Section 4 of this act is  
361 contracted for or received, all finance charges and other charges  
362 shall be forfeited and may be recovered, whether the contract be  
363 executed or executory. If any finance charge is contracted for or  
364 received that exceeds the maximum finance charge authorized by law  
365 by more than one hundred percent (100%), the principal and all  
366 finance charges and other charges shall be forfeited and any  
367 amount paid may be recovered by suit; and, in addition, the  
368 licensee and the several members, officers, directors, agents, and  
369 employees thereof who shall have participated in such violation  
370 shall be guilty of a misdemeanor and, upon conviction thereof,



371 shall be punished by a fine of not more than One Thousand Dollars  
372 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
373 the discretion of the court; and, further, the Commissioner of  
374 Banking and Consumer Finance shall forthwith cite such licensee to  
375 show cause why its license should not be revoked and proceedings  
376 thereon shall be as is specifically provided in the Small Loan  
377 Privilege Tax Law (Section 75-67-201 et seq.).

378         **SECTION 11.** This act shall take effect and be in force from  
379 and after July 1, 2016.

