

By: Representatives Zuber, Sykes

To: Banking and Financial Services

HOUSE BILL NO. 1338

1 AN ACT TO AMEND SECTION 81-5-85, MISSISSIPPI CODE OF 1972, TO  
2 REVISE PROVISIONS REGARDING THE BANK MERGER PROCESS TO MAKE THEM  
3 CONSISTENT WITH THE MISSISSIPPI BUSINESS CORPORATION ACT; TO AMEND  
4 SECTION 81-5-1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MISSISSIPPI  
5 CHARTERED OR DOMICILED BANKS OFFERING OPEN-END CREDIT TO ASSESS  
6 FINANCE CHARGES AND OTHER CHARGES AT RATES NOT MORE THAN THE RATES  
7 IMPOSED BY OUT-OF-STATE BANKS ON MISSISSIPPI CUSTOMERS; AND FOR  
8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 81-5-85, Mississippi Code of 1972, is  
11 amended as follows:

12 81-5-85. Any two (2) or more state-chartered banks, or any  
13 national bank and any state-chartered bank, or any state or  
14 federal savings and loan association and any state-chartered bank,  
15 or any state or federal savings bank and any state-chartered bank,  
16 may, with the approval of the commissioner, consolidate with or  
17 merge into one (1) state-chartered bank, under the charter of the  
18 existing state bank, on such terms and conditions, as may be  
19 lawfully agreed upon \* \* \*, adopted and approved in a merger plan  
20 in accordance with Article 11, Chapter 4 of Title 79, Mississippi  
21 Code of 1972. Following receipt of the required corporate



22 approvals and approval of the merger plan by the commissioner, the  
23 resulting amendments to charters of any state-chartered bank that  
24 is a party to the merger plan shall be approved and filed with  
25 other state officials in accordance with Section 81-3-15. The  
26 capital stock of such consolidated bank shall not be less than  
27 that required under the Mississippi banking laws for the  
28 organization of a bank in the place in which it is located. And  
29 all the rights, franchises and interests of the institutions so  
30 consolidated in and to every species of property, personal and  
31 mixed, and choses in action thereto belonging, shall be deemed to  
32 be transferred to and vested in such bank into which they are  
33 consolidated without any deed or other transfer, and the said  
34 consolidated bank shall hold and enjoy the same and all rights of  
35 property, franchises and interests in the same manner and to the  
36 same extent as were held and enjoyed by the institutions so  
37 consolidated therewith.

38 Any national bank, state or federal savings and loan  
39 association, or state or federal savings bank may apply for  
40 conversion into a state-chartered bank upon the affirmative vote  
41 of the shareholders owning at least two-thirds (2/3) of its  
42 capital stock outstanding, or of fifty-one percent (51%) or more  
43 of the total number of the members, at a meeting called by the  
44 directors \* \* \*, notice of which, specifying the purpose, shall be  
45 given the manner required by the bylaws, or in the absence of such  
46 bylaw, then by sending the notice to each shareholder of record by



47 registered mail at least ten (10) days before the meeting. Upon  
48 such affirmative vote, the converting institution may apply for a  
49 certificate of authority by filing with the commissioner a  
50 certificate signed by its president and cashier which sets forth  
51 the corporate action herein prescribed and asserts that the  
52 institution has complied with the provisions of the laws of the  
53 United States. The converting institution shall also file with  
54 the commissioner the plan of conversion and the proposed  
55 amendments to its articles of incorporation as approved by the  
56 stockholders for the operation of the institution as a state bank.  
57 Upon receipt of the prescribed application, the commissioner shall  
58 examine all facts associated with the conversion. The expenses  
59 and cost incurred for such special examination shall be paid by  
60 the institution applying for permission to convert. The  
61 commissioner shall present his findings and recommendations to the  
62 State Board of Banking Review for consideration. Upon approval by  
63 the State Board of Banking Review, the commissioner shall issue a  
64 certificate of authority to the applicant allowing the conversion  
65 to proceed.

66 Any bank, savings and loan association or savings bank  
67 chartered by the State of Mississippi is hereby authorized to  
68 convert into, consolidate with, or merge with a national bank  
69 domiciled in the State of Mississippi, with the national bank  
70 charter surviving, without approval of the Department of Banking



71 and Consumer Finance, the Commissioner of Banking and Consumer  
72 Finance, or any state authority whatsoever.

73 **SECTION 2.** Section 81-5-1, Mississippi Code of 1972, is  
74 amended as follows:

75 81-5-1. (1) All banking corporations are prohibited, either  
76 through their officers or as a banking agency, from participating,  
77 directly or indirectly, in the operation of any underwriting  
78 syndicate which handles securities for resale. However, this  
79 inhibition shall not apply to bonds issued by federal, state,  
80 county or other governmental agencies.

81 (2) The executive officers of banking corporations now  
82 existing or hereafter organized under the laws of the State of  
83 Mississippi, are prohibited from owning stock in private banking  
84 houses or other agencies engaged in the business of underwriting  
85 securities for resale.

86 (3) The Commissioner of Banking and Consumer Finance is  
87 authorized, empowered and directed to promulgate rules and  
88 regulations, relative to withdrawals of deposits from savings  
89 banks, trust companies and other banking institutions, and the  
90 commissioner may, in cases of emergency, declare bank holidays and  
91 do any and all things necessary to insure, protect and conserve  
92 the resources of such banks.

93 (4) All state banking corporations are prohibited from  
94 making loans to state, county, municipal and district governmental  
95 agencies, unless such loans are made in strict compliance with



96 legal enactments and regulations which govern, and such banking  
97 corporations are further prohibited from transferring funds from  
98 one state, county, municipal or district account to another unless  
99 authorized by warrant issued by proper authority, and such banking  
100 corporations are prohibited from discounting state, county,  
101 municipal, district or other public certificates and warrants, but  
102 such certificates and warrants may be used as collateral to  
103 guarantee the payment of notes or other obligations.

104 (5) The board of directors of any banking corporation  
105 created under the laws of this state may, at its option, require  
106 any or all employees of such to file with the board of directors a  
107 sworn financial statement semiannually or more often if it so  
108 desires.

109 (6) Any bank may, at its option, pay all checks drawn on it  
110 with currency or valid exchange drawn on a bank in a reserve city  
111 not more than five hundred (500) miles distant from such bank; but  
112 each depositor is entitled to have his checks paid each day in  
113 currency to the total extent of ten percent (10%) of his deposit  
114 if it exceeds One Thousand Dollars (\$1,000.00) and at least One  
115 Hundred Dollars (\$100.00) each day if his balance is over One  
116 Hundred Dollars (\$100.00) and less than One Thousand Dollars  
117 (\$1,000.00), and may demand his entire balance in currency at any  
118 time if One Hundred Dollars (\$100.00) or less.

119 (7) All state banking corporations may purchase for the  
120 account of their customers bonds, stocks and other securities, and



121 such banking corporations may charge for their service in  
122 connection with the handling of such transactions only actual  
123 expenses plus the usual broker's fees allowed for similar service  
124 by national banks.

125 (8) Any state bank may purchase, lease or otherwise acquire  
126 automatic data processing computers and related machinery and  
127 equipment, and such bank may utilize and operate such computers,  
128 machinery and equipment in performing for itself, its customers or  
129 any other bank such services as may be desired including, but not  
130 limited to, check and deposit sorting and posting, computation and  
131 posting of interest and other credits and charges, preparation and  
132 mailing of checks, statements, notices and similar items, or any  
133 other clerical, bookkeeping, accounting, statistical or similar  
134 functions performed by and for a bank. Corporations may be  
135 organized under the laws of the State of Mississippi for the  
136 purpose of owning and operating, by purchase, lease or otherwise,  
137 such computers, related machinery and equipment as aforesaid, and  
138 such corporations may perform for any bank those services as above  
139 mentioned; and stock of such corporations shall be legal  
140 investments for state banks to the same extent that stock of bank  
141 service corporations is eligible for acquisition by national banks  
142 under the provisions of the Bank Service Corporation Act, Public  
143 Law 87-856, 76 Stat. 1132.

144 (9) In addition to other powers, a state-chartered bank  
145 shall have and possess such of the rights, powers, privileges,



146 immunities, duties and obligations of a national bank having its  
147 principal place of business in this state as may be prescribed by  
148 the State Board of Banking Review by general regulation under the  
149 circumstances and conditions set out therein. In the event of a  
150 conflict between the provisions of this subsection (9) and the  
151 provisions of any other act or acts, directly or indirectly,  
152 governing or regulating the activities of state-chartered banks,  
153 the provisions of this subsection (9) shall control, and insurance  
154 activities of all banks, their subsidiaries, affiliates, branches,  
155 officers and employees doing business in this state shall be  
156 governed by the provisions of Title 83, Mississippi Code of 1972,  
157 only to the extent that Title 83, Mississippi Code of 1972,  
158 applies to national banks in Mississippi.

159 (a) The purpose of this subsection (9) is to provide  
160 for parity among Mississippi chartered or domiciled banks  
161 extending open-end credit in this state, as well as to promote the  
162 retention of existing financial services within the state by  
163 encouraging Mississippi chartered or domiciled banks to continue  
164 their open-end credit operations in this state, rather than  
165 relocating those operations to other states with interest rates,  
166 fees and credit terms that may not be available under Mississippi  
167 law and exporting such interest rates, fees and credit terms back  
168 to Mississippi under the most favored lender doctrine of federal  
169 law.



170           (b) For the purpose of this subsection, "open-end  
171 credit account" means an arrangement between a creditor and a  
172 customer in which:

173           (i) The creditor permits the customer to obtain  
174 credit advances on a pre-authorized basis;

175           (ii) The creditor reasonably contemplates repeated  
176 transactions;

177           (iii) The creditor assesses interest on the  
178 outstanding unpaid balance of the customer's account; or

179           (iv) The amount of credit that may be extended to  
180 the customer, up to any limit set by the creditor, is made  
181 available to the extent that any unpaid balance is repaid.

182           (c) A Mississippi chartered or domiciled bank that  
183 seeks to use the provisions of this subsection shall set forth the  
184 rates and fees to be charged, the state where the rates and fees  
185 are permissible and the identity of one or more of the financial  
186 institutions.

187           (d) Notwithstanding any other provision of law to the  
188 contrary, Mississippi chartered or domiciled banks offering  
189 open-end credit may assess finance charges, credit service charges  
190 and fees and charges that are material to the determination of the  
191 interest rate in connection with open-end accounts at rates and  
192 amounts that are equal to or are less than the amounts that  
193 financial institutions domiciled in other states are permitted to





194 impose and collect when extending credit to Mississippi customers  
195 as a result of the most favored lender doctrine of federal law.

196 (e) Notwithstanding any other provision of law to the  
197 contrary, for purposes of this subsection and Title 12, Sections  
198 85, 1831d and 1730g of the United States Code, as applicable to  
199 the exportation of interest rates and any fees and charges that  
200 are material to their determination, any interest rates, finance  
201 charges, credit service charges and other fees and charges, in  
202 amount, as well as manner and method of computation, imposed by  
203 Mississippi chartered or domiciled banks under this subsection  
204 shall be authorized by Mississippi law.

205 (f) Notwithstanding any other provision of law to the  
206 contrary, any interest, finance charges, credit service charges or  
207 other fees or charges that are adopted from another state by a  
208 Mississippi chartered or domiciled bank, including those that are  
209 otherwise permissible in an amount under Mississippi law, may be  
210 assessed, accrued, earned or changed in the same manner or method  
211 as permitted under the law of the state from which they have been  
212 adopted, regardless of whether such manner or method is material  
213 to the determination of the interest rate under the law of that  
214 state.

215 (g) For purposes of this subsection, Mississippi  
216 chartered or domiciled banks may impose interest, finance charges,  
217 credit service charges or other fees and charges from one or more



218 open-end credit accounts offered by financial institutions in  
219 other states in connection with a single open-end credit account.

220       **SECTION 3.** This act shall take effect and be in force from  
221 and after July 1, 2018.

