

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.

