

By: Representatives Turner, Aguirre

To: Banking and Financial Services

HOUSE BILL NO. 1127

1 AN ACT TO AMEND SECTION 11-53-81, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE THE TERM "OPEN ACCOUNT"; TO PROVIDE THAT AN OPEN ACCOUNT
 3 INVOICE OR ITEMIZED STATEMENT OF THE ACCOUNT MAY OR MAY NOT
 4 INCLUDE WRITTEN TERMS OF SALE; TO PROVIDE THAT SUCH PROVISIONS OF
 5 LAW SHALL NOT APPLY TO RETAIL SALES INSTALLMENT CONTRACTS THAT ARE
 6 ASSIGNED TO LENDERS WHO ARE LICENSED UNDER THE SMALL LOAN
 7 PRIVILEGE TAX LAW; TO BRING FORWARD SECTION 11-53-67, WHICH
 8 RELATES TO CERTAIN FEES AND COSTS, FOR PURPOSES OF POSSIBLE
 9 AMENDMENT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 11-53-81, Mississippi Code of 1972, is
 12 amended as follows:

13 11-53-81. (1) For purposes of this section, the term "open
 14 account" includes, but is not limited to, any and all accounts for
 15 which a part, or all of, the balance is owed, whether the account
 16 is for a single transaction, multiple transactions, or a series of
 17 transactions, whether or not there was an expectation of future
 18 transactions, and whether or not the parties agreed upon a fixed
 19 price.

20 An "open account" may involve the sale of goods or services
 21 or both between persons or entities or both, and may be based on



22 an oral or written promise or an agreement, express or implied,
23 for the debtor to pay the account. "Open accounts" shall include
24 debts incurred for professional services, including, but not
25 limited to, legal services, medical services and construction
26 services. The term "open account" shall be broadly construed.

27 (2) When * * * a person or entity fails to pay an open
28 account within thirty (30) days after receipt of written
29 demand * * * for payment correctly setting forth the amount owed
30 and an itemized statement of the account in support * * * of the
31 demand, * * * the person or entity shall be liable for reasonable
32 attorney's fees to be set by the * * * court for the prosecution
33 and collection of such claim when judgment on the claim is
34 rendered in favor of the plaintiff or counter-plaintiff, as the
35 case may be. An open account invoice or itemized statement of the
36 account may or may not include written terms of sale.

37 (3) Evidence of receipt of written demand by the spouse of
38 the debtor when they are living together as husband and wife on
39 behalf of the debtor may be introduced as evidence of written
40 demand on the debtor. If that person who is being sued on the
41 open account * * * prevails in the * * * lawsuit, he or she shall
42 be entitled to reasonable attorney's fees to be set by the * * *
43 court.

44 (4) If delivery of written demand on the debtor is
45 attempted, but not accomplished because circumstances made
46 delivery of written demand impossible or impractical, a notation,



47 on the envelope containing the written demand, made by the person
48 attempting delivery stating the date of the attempted delivery,
49 the reasons why delivery could not be accomplished along with the
50 initials of the person attempting delivery and making * * * the
51 notation may be introduced as evidence of written demand on the
52 debtor, and if the * * * court, in * * * its discretion, finds
53 that sufficient evidence of due diligence in delivery of written
54 demand has been made, * * * the court may make a conclusion of
55 written demand for purposes of justice and find that there has
56 been written demand on the debtor. Nothing contained herein
57 requires written demand to be made by any certain means.

58 (5) Nothing in this section shall apply to retail sales
59 installment contracts that are assigned to lenders who are
60 licensed under the Small Loan Privilege Tax Law, Sections
61 75-67-201 through 75-67-247.

62 **SECTION 2.** Section 11-53-67, Mississippi Code of 1972, is
63 brought forward as follows:

64 11-53-67. Fees and costs shall not be payable by any person
65 until there be produced to the person chargeable with the same a
66 bill, or account in writing, containing the particulars of such
67 fees, signed by the clerk or officer, in which shall be
68 intelligently expressed and specified each section of the law,
69 and, if any, each paragraph or subdivision of section by virtue of
70 which each fee is charged. If any fee shall be paid without the
71 production of such bill, the party paying the same shall at all



72 times be entitled to demand and have from the officer receiving
73 the same a copy of such bill without charge.

74 **SECTION 3.** This act shall take effect and be in force from
75 and after July 1, 2022.

