

By: Representative Blackmon

To: Select Committee on
Civil Justice ReformCOMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 14

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,
2 TO REVISE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO
3 INCLUDE DEFINITIONS FOR THE TERMS "OTHER CHARGES," "CONSUMER
4 LOAN," AND "CONSUMER"; TO AMEND SECTIONS 75-67-119 AND 75-17-25,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMEDIES, PENALTIES AND
6 DAMAGES FOR CONTRACTING FOR AND RECEIVING UNLAWFUL OTHER CHARGES
7 IN CONNECTION WITH CONSUMER LOANS; TO PROVIDE FOR DOUBLE PENALTY
8 AMOUNTS IF OTHER CHARGES ARE CONTRACTED FOR OR RECEIVED BY ACTUAL
9 FRAUD; TO PROVIDE FOR THE RECOVERY OF ATTORNEY'S FEES IF PENALTIES
10 ARE RECOVERED; TO PROVIDE THAT THE REMEDIES, PENALTIES AND DAMAGES
11 PROVIDED FOR UNDER THIS ACT ARE EXCLUSIVE; TO PROVIDE FOR A
12 ONE-YEAR STATUTE OF LIMITATIONS ON FILING ACTIONS FOR RECOVERY OF
13 PENALTIES OR DAMAGES UNDER THIS ACT; TO PROVIDE THAT THE
14 PROVISIONS OF THIS ACT SHALL STAND REPEALED ON JULY 1, 2004; AND
15 FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 75-67-103, Mississippi Code of 1972, is
18 amended as follows:

19 75-67-103. (1) The following words and phrases, when used
20 in this article, shall, for the purposes of this article, have the
21 meanings respectively ascribed to them in this section, except
22 where the context clearly describes and indicates a different
23 meaning:

24 (a) "Person" means and includes every natural person,
25 firm, corporation, copartnership, joint-stock or other association
26 or organization, and any other legal entity whatsoever.

27 (b) "Licensee" means and includes every person holding
28 a valid license issued under the provisions of the Small Loan
29 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this
30 state, except those specifically exempt by the provisions of this
31 article, who, in addition to any other rights and powers he or it
32 might otherwise possess, shall engage in the business of lending
33 money either directly or indirectly, to be paid back in monthly



installments or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires security from the borrower as indemnity for the repayment of the loan.

(c) "Occasional lender" means a person making not more than one (1) loan in any month or not more than twelve (12) loans in any twelve-month period.

(d) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(e) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(f) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(g) "Other charges" means any amounts contracted for or received by any licensee or other person in connection with a loan, other than finance charges as defined in Section 75-17-25.

(h) "Consumer loan" means any loan or extension of credit in the principal amount of Twenty Thousand Dollars (\$20,000.00) or less offered or extended primarily for personal, family or household purposes.

(i) "Consumer" means any natural person who is obligated on any consumer loan.

(2) Paragraphs (g) through (i) of subsection (1) of this section shall stand repealed on July 1, 2004; however, the provisions of paragraphs (g) through (i) of subsection (1) of this section shall remain in full force and effect with respect to any loan agreement that is entered into before July 1, 2004.

SECTION 2. Section 75-67-119, Mississippi Code of 1972, is amended as follows:



75-67-119. (1) If any finance charge in excess of that expressly permitted by Section 75-17-21 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in the discretion of the court; and, further, the Commissioner of Banking and Consumer Finance shall forthwith cite such licensee to show cause why its license should not be revoked and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-243).

(2) If, in connection with a consumer loan, any licensee or other person contracts for or receives, or participates in contracting for or receiving, other charges in violation of any applicable statutory or common law duty, or which are otherwise unlawful, then all those unlawful other charges, all finance charges and all principal shall be forfeited and may be recovered by the consumer, by suit or other proceeding, whether the contract is executed or executory. However, no person who contracts for or receives other charges in violation of any applicable statutory or common law duty, or otherwise unlawfully, shall be subject to forfeiture of principal if the person shows by a preponderance of the evidence that those other charges were contracted for or received unintentionally and as a result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted



100 to avoid any such violation. Examples of bona fide errors
101 include, but are not limited to, clerical, calculation, computer
102 malfunction and programming, and printing errors, except that an
103 error of legal judgment with respect to applicable statutory or
104 common law duty is not a bona fide error.

105 (3) If the other charges subject to forfeiture under this
106 section are found to have been contracted for or received by
107 actual fraud, any penalty recovered under subsection (2) of this
108 section shall be doubled.

109 (4) If a consumer recovers any penalty provided for under
110 subsection (2) of this section, the consumer also may recover
111 damages, to the extent proven by competent evidence, subject to
112 the following limitations:

113 (a) If the amount of the unlawful other charges is One
114 Hundred Dollars (\$100.00) or less, the maximum amount of damages
115 that may be recovered by the consumer as to each individual loan
116 is Three Thousand Dollars (\$3,000.00).

117 (b) If the amount of the unlawful other charges is more
118 than One Hundred Dollars (\$100.00) but less than One Thousand
119 Dollars (\$1,000.00), the maximum amount of damages that may be
120 recovered by the consumer as to each individual loan is Fifteen
121 Thousand Dollars (\$15,000.00).

122 (c) If the amount of the unlawful other charges is not
123 less than One Thousand Dollars (\$1,000.00) but less than Two
124 Thousand Dollars (\$2,000.00), the maximum amount of damages that
125 may be recovered by the consumer as to each individual loan is
126 Thirty Thousand Dollars (\$30,000.00).

127 (d) If the amount of the unlawful other charges is not
128 less than Two Thousand Dollars (\$2,000.00) but less than Five
129 Thousand Dollars (\$5,000.00), the maximum amount of damages that
130 may be recovered by the consumer as to each individual loan is
131 Forty-five Thousand Dollars (\$45,000.00).



132 (e) If the amount of the unlawful other charges is not
133 less than Five Thousand Dollars (\$5,000.00), the maximum amount of
134 damages that may be recovered by the consumer as to each
135 individual loan is Sixty Thousand Dollars (\$60,000.00).

136 (5) If any penalty is recovered under subsection (2) of this
137 section, a reasonable attorney's fee also shall be recovered from
138 the offending party by the consumer.

139 (6) Except as provided in subsection (7) of this section,
140 the remedies, penalties and damages provided for in this section
141 shall be the exclusive remedies, penalties and damages for
142 contracting for or receiving any finance charge in excess of that
143 expressly permitted by Section 75-17-21, or for contracting for or
144 receiving, or participating in contracting for or receiving, other
145 charges in violation of any applicable statutory or common law
146 duty, or which are otherwise unlawful.

147 (7) The remedies, penalties and damages provided for in this
148 section are supplemental to the defense provided in Section
149 75-67-127(3) and to the enforcement powers conferred upon the
150 Commissioner of Banking and Consumer Finance.

151 (8) No action for recovery of any penalty or damages
152 provided for under this section may be brought unless it is filed
153 within one (1) year after the date of the act or event that
154 created the cause of action. However, if the act or event that
155 created the cause of action occurred before the effective date of
156 House Bill No. 14, Third Extraordinary Session 2002, no action for
157 recovery of any penalty or damages provided for under this section
158 based on that cause of action may be brought unless it is filed
159 within one (1) year after the effective date of House Bill No. 14,
160 Third Extraordinary Session 2002.

161 (9) Subsections (2) through (8) of this section shall stand
162 repealed on July 1, 2004; however, the provisions of subsections
163 (2) through (8) of this section shall remain in full force and



effect with respect to any loan agreement that is entered into
before July 1, 2004.

SECTION 3. Section 75-17-25, Mississippi Code of 1972, is
amended as follows:

75-17-25. (1) The term "finance charge" as used in this
section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
payable, directly or indirectly, by a debtor for receiving a loan
or incident to or as a condition of the extension of credit,
including, but not limited to, interest, brokerage fees, finance
charges, loan fees, discount, points, service charges, transaction
charges, activity charges, carrying charges, time price
differential, finders fees or any other cost or expense to the
debtor for services rendered or to be rendered to the debtor in
making, arranging or negotiating a loan of money or an extension
of credit and for the accounting, guaranteeing, endorsing,
collecting and other actual services rendered by the lender;
provided, however, that recording fees, motor vehicle title fees,
attorney's fees, insurance premiums, fees permitted to be charged
under the provisions of Section 79-7-7, service charges as
provided in Section 81-19-31, and with respect to a debt secured
by an interest in land, bona fide closing costs and appraisal fees
incidental to the transaction shall not be included in the finance
charge.

(2) Subject to the other provisions of this section,
Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
75-67-127 and 75-67-217, the finance charge may be calculated on
the assumption that the indebtedness will be discharged as it
becomes due, and prepayment penalties and statutory default
charges shall not be included in the finance charge. Nothing in
Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,



197 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner
198 of contracting for such finance charge, whether by way of add-on,
199 discount or otherwise, so long as the annual percentage rate does
200 not exceed that permitted by law. If a greater finance charge
201 than that authorized by applicable law shall be stipulated for or
202 received in any case, all interest and finance charge shall be
203 forfeited, and may be recovered back, whether the contract be
204 executed or executory. If a finance charge be contracted for or
205 received that exceeds the maximum authorized by law by more than
206 one hundred percent (100%), the principal and all finance charges
207 shall be forfeited and any amount paid may be recovered by suit.
208 The provisions of this section, Section 75-17-1 and Sections
209 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
210 shall not restrict the extension of credit pursuant to any other
211 applicable law. A licensee under the Small Loan Regulatory Law
212 (Sections 75-67-101 through 75-67-135), and the Small Loan
213 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
214 contract for and receive finance charges as authorized by Section
215 75-17-21, and the late payment charge as authorized by Section
216 75-17-27, regardless of the purpose for which the loan or other
217 extension of credit is made.

218 (3) If, in connection with a consumer loan, any person
219 contracts for or receives, or participates in contracting for or
220 receiving, other charges in violation of any applicable statutory
221 or common law duty, or which are otherwise unlawful, then all
222 those unlawful other charges, all finance charges and all
223 principal shall be forfeited and may be recovered by the consumer,
224 by suit or other proceeding, whether the contract is executed or
225 executory. However, no person who contracts for or receives other
226 charges in violation of any applicable statutory or common law
227 duty, or otherwise unlawfully, shall be subject to forfeiture of
228 principal if the person shows by a preponderance of the evidence
229 that those other charges were contracted for or received



unintentionally and as a result of a bona fide error
notwithstanding the maintenance of procedures reasonably adapted
to avoid any such violation. Examples of bona fide errors
include, but are not limited to, clerical, calculation, computer
malfunction and programming, and printing errors, except that an
error of legal judgment with respect to applicable statutory or
common law duty is not a bona fide error.

(4) If the other charges subject to forfeiture under this
section are found to have been contracted for or received by
actual fraud, any penalty recovered under subsection (3) of this
section shall be doubled.

(5) If a consumer recovers any penalty provided for under
subsection (3) of this section, the consumer also may recover
damages, to the extent proven by competent evidence, subject to
the following limitations:

(a) If the amount of the unlawful other charges is One
Hundred Dollars (\$100.00) or less, the maximum amount of damages
that may be recovered by the consumer as to each individual loan
is Three Thousand Dollars (\$3,000.00).

(b) If the amount of the unlawful other charges is more
than One Hundred Dollars (\$100.00) but less than One Thousand
Dollars (\$1,000.00), the maximum amount of damages that may be
recovered by the consumer as to each individual loan is Fifteen
Thousand Dollars (\$15,000.00).

(c) If the amount of the unlawful other charges is not
less than One Thousand Dollars (\$1,000.00) but less than Two
Thousand Dollars (\$2,000.00), the maximum amount of damages that
may be recovered by the consumer as to each individual loan is
Thirty Thousand Dollars (\$30,000.00).

(d) If the amount of the unlawful other charges is not
less than Two Thousand Dollars (\$2,000.00) but less than Five
Thousand Dollars (\$5,000.00), the maximum amount of damages that



may be recovered by the consumer as to each individual loan is
Forty-five Thousand Dollars (\$45,000.00).

(e) If the amount of the unlawful other charges is not
less than Five Thousand Dollars (\$5,000.00), the maximum amount of
damages that may be recovered by the consumer as to each
individual loan is Sixty Thousand Dollars (\$60,000.00).

(6) If any penalty is recovered under subsection (3) of this
section, a reasonable attorney's fee also shall be recovered from
the offending party by the consumer.

(7) The remedies, penalties and damages provided for in this
section shall be the exclusive remedies, penalties and damages for
contracting for or receiving any finance charge in excess of that
permitted by applicable law, or for contracting for or receiving,
or participating in contracting for or receiving, other charges in
violation of any applicable statutory or common law duty, or which
are otherwise unlawful.

(8) As used in this section:

(a) "Consumer loan" means any loan or extension of
credit offered or extended in the principal amount of Twenty
Thousand Dollars (\$20,000.00) or less primarily for personal,
family or household purposes.

(b) "Consumer" means any natural person obligated on
any consumer loan.

(c) "Other charges" means any amounts contracted for or
received by any person in connection with a consumer loan, other
than finance charges as defined in this section.

(9) No action for recovery of any penalty or damages
provided for under this section may be brought unless it is filed
within one (1) year after the date of the act or event that
created the cause of action. However, if the act or event that
created the cause of action occurred before the effective date of
House Bill No. 14, Third Extraordinary Session 2002, no action for
recovery of any penalty or damages provided for under this section



295 based on that cause of action may be brought unless it is filed
296 within one (1) year after the effective date of House Bill No. 14,
297 Third Extraordinary Session 2002.

298 (10) Subsections (3) through (9) of this section shall stand
299 repealed on July 1, 2004; however, the provisions of subsections
300 (3) through (9) of this section shall remain in full force and
301 effect with respect to any loan agreement that is entered into
302 before July 1, 2004.

303 **SECTION 4.** This act shall take effect and be in force from
304 and after its passage.

