

By: Representative Blackmon

To: Select Committee on  
Civil Justice Reform

## 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 TREBLE 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 BRING FORWARD SECTION  
14 15-1-33, MISSISSIPPI CODE OF 1972, WHICH PROVIDES A STATUTE OF  
15 LIMITATIONS FOR ACTIONS AND SUITS FOR PENALTY OR FORFEITURE; AND  
16 FOR RELATED PURPOSES.

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

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

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

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

28 (b) "Licensee" means and includes every person holding  
29 a valid license issued under the provisions of the Small Loan  
30 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this  
31 state, except those specifically exempt by the provisions of this  
32 article, who, in addition to any other rights and powers he or it  
33 might otherwise possess, shall engage in the business of lending  
34 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.

**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



68 that exceeds the maximum finance charge authorized by law by more  
69 than one hundred percent (100%), the principal and all finance  
70 charges and other charges shall be forfeited and any amount paid  
71 may be recovered by suit; and, in addition, the licensee and the  
72 several members, officers, directors, agents, and employees  
73 thereof who shall have participated in such violation shall be  
74 guilty of a misdemeanor and, upon conviction thereof, shall be  
75 punished by a fine of not more than One Thousand Dollars  
76 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
77 the discretion of the court; and, further, the Commissioner of  
78 Banking and Consumer Finance shall forthwith cite such licensee to  
79 show cause why its license should not be revoked and proceedings  
80 thereon shall be as is specifically provided in the Small Loan  
81 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

82       (2) If, in connection with a consumer loan, any licensee or  
83 other person contracts for or receives, or participates in  
84 contracting for or receiving, other charges in violation of any  
85 applicable statutory or common law duty, or which are otherwise  
86 unlawful, then all those unlawful other charges, all finance  
87 charges and all principal shall be forfeited and may be recovered  
88 by the consumer, by suit or other proceeding, whether the contract  
89 is executed or executory. However, no person who contracts for or  
90 receives other charges in violation of any applicable statutory or  
91 common law duty, or otherwise unlawfully, shall be subject to  
92 forfeiture of principal if the person shows by a preponderance of  
93 the evidence that those other charges were contracted for or  
94 received unintentionally and as a result of a bona fide error  
95 notwithstanding the maintenance of procedures reasonably adapted  
96 to avoid any such violation. Examples of bona fide errors  
97 include, but are not limited to, clerical, calculation, computer  
98 malfunction and programming, and printing errors, except that an  
99 error of legal judgment with respect to applicable statutory or  
100 common law duty is not a bona fide error.



101       (3) If the other charges subject to forfeiture under this  
102 section are found to have been contracted for or received by  
103 actual fraud, any penalty recovered under subsection (2) of this  
104 section shall be trebled.

105       (4) If a consumer recovers any penalty provided for under  
106 subsection (2) of this section, the consumer also may recover  
107 damages, subject to the following limitations:

108           (a) If the principal amount of the consumer loan is  
109 Five Hundred Dollars (\$500.00) or less, the maximum amount of  
110 damages that may be recovered by the consumer as to each  
111 individual claim is Three Thousand Dollars (\$3,000.00).

112           (b) If the principal amount of the consumer loan is  
113 more than Five Hundred Dollars (\$500.00) but less than Five  
114 Thousand Dollars (\$5,000.00), the maximum amount of damages that  
115 may be recovered by the consumer as to each individual claim is  
116 Fifteen Thousand Dollars (\$15,000.00).

117           (c) If the principal amount of the consumer loan is  
118 more than Five Thousand Dollars (\$5,000.00) but less than Ten  
119 Thousand Dollars (\$10,000.00), the maximum amount of damages that  
120 may be recovered by the consumer as to each individual claim is  
121 Thirty Thousand Dollars (\$30,000.00).

122           (d) If the principal amount of the consumer loan is  
123 more than Ten Thousand Dollars (\$10,000.00) but less than Fifteen  
124 Thousand Dollars (\$15,000.00), the maximum amount of damages that  
125 may be recovered by the consumer as to each individual claim is  
126 Forty-five Thousand Dollars (\$45,000.00).

127           (e) If the principal amount of the consumer loan is  
128 more than Fifteen Thousand Dollars (\$15,000.00) but not more than  
129 Twenty Thousand Dollars (\$20,000.00), the maximum amount of  
130 damages that may be recovered by the consumer as to each  
131 individual claim is Sixty Thousand Dollars (\$60,000.00).



132       (5) If any penalty is recovered under subsection (2) of this  
133 section, a reasonable attorney's fee may also be recovered by the  
134 consumer.

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

143       (7) The remedies, penalties and damages provided for in this  
144 section are supplemental to the defense provided in Section  
145 75-67-127(3) and to the enforcement powers conferred upon the  
146 Commissioner of Banking and Consumer Finance.

147       (8) No action for recovery of any penalty or damages  
148 provided for under this section may be brought unless it is filed  
149 within one (1) year after the cause of action accrues. However,  
150 if the cause of action accrued before the effective date of House  
151 Bill No.       , Third Extraordinary Session 2002, no action for  
152 recovery of any penalty or damages provided for under this section  
153 based on that cause of action may be brought unless it is filed  
154 within one (1) year after the effective date of House Bill No.       ,  
155 Third Extraordinary Session 2002.

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

158       75-17-25. (1) The term "finance charge" as used in this  
159 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
160 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,  
161 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or  
162 payable, directly or indirectly, by a debtor for receiving a loan  
163 or incident to or as a condition of the extension of credit,  
164 including, but not limited to, interest, brokerage fees, finance



165 charges, loan fees, discount, points, service charges, transaction  
166 charges, activity charges, carrying charges, time price  
167 differential, finders fees or any other cost or expense to the  
168 debtor for services rendered or to be rendered to the debtor in  
169 making, arranging or negotiating a loan of money or an extension  
170 of credit and for the accounting, guaranteeing, endorsing,  
171 collecting and other actual services rendered by the lender;  
172 provided, however, that recording fees, motor vehicle title fees,  
173 attorney's fees, insurance premiums, fees permitted to be charged  
174 under the provisions of Section 79-7-7, service charges as  
175 provided in Section 81-19-31, and with respect to a debt secured  
176 by an interest in land, bona fide closing costs and appraisal fees  
177 incidental to the transaction shall not be included in the finance  
178 charge.

179       (2) Subject to the other provisions of this section,  
180 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,  
181 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,  
182 75-67-127 and 75-67-217, the finance charge may be calculated on  
183 the assumption that the indebtedness will be discharged as it  
184 becomes due, and prepayment penalties and statutory default  
185 charges shall not be included in the finance charge. Nothing in  
186 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,  
187 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner  
188 of contracting for such finance charge, whether by way of add-on,  
189 discount or otherwise, so long as the annual percentage rate does  
190 not exceed that permitted by law. If a greater finance charge  
191 than that authorized by applicable law shall be stipulated for or  
192 received in any case, all interest and finance charge shall be  
193 forfeited, and may be recovered back, whether the contract be  
194 executed or executory. If a finance charge be contracted for or  
195 received that exceeds the maximum authorized by law by more than  
196 one hundred percent (100%), the principal and all finance charges  
197 shall be forfeited and any amount paid may be recovered by suit.



198 The provisions of this section, Section 75-17-1 and Sections  
199 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33  
200 shall not restrict the extension of credit pursuant to any other  
201 applicable law. A licensee under the Small Loan Regulatory Law  
202 (Sections 75-67-101 through 75-67-135), and the Small Loan  
203 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may  
204 contract for and receive finance charges as authorized by Section  
205 75-17-21, and the late payment charge as authorized by Section  
206 75-17-27, regardless of the purpose for which the loan or other  
207 extension of credit is made.

208 (3) If, in connection with a consumer loan, any person  
209 contracts for or receives, or participates in contracting for or  
210 receiving, other charges in violation of any applicable statutory  
211 or common law duty, or which are otherwise unlawful, then all  
212 those unlawful other charges, all finance charges and all  
213 principal shall be forfeited and may be recovered by the consumer,  
214 by suit or other proceeding, whether the contract is executed or  
215 executory. However, no person who contracts for or receives other  
216 charges in violation of any applicable statutory or common law  
217 duty, or otherwise unlawfully, shall be subject to forfeiture of  
218 principal if the person shows by a preponderance of the evidence  
219 that those other charges were contracted for or received  
220 unintentionally and as a result of a bona fide error  
221 notwithstanding the maintenance of procedures reasonably adapted  
222 to avoid any such violation. Examples of bona fide errors  
223 include, but are not limited to, clerical, calculation, computer  
224 malfunction and programming, and printing errors, except that an  
225 error of legal judgment with respect to applicable statutory or  
226 common law duty is not a bona fide error.

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



231       (5) If a consumer recovers any penalty provided for under  
232 subsection (3) of this section, the consumer also may recover  
233 damages, subject to the following limitations:

234           (a) If the principal amount of the consumer loan is  
235 Five Hundred Dollars (\$500.00) or less, the maximum amount of  
236 damages that may be recovered by the consumer as to each  
237 individual claim is Three Thousand Dollars (\$3,000.00).

238           (b) If the principal amount of the consumer loan is  
239 more than Five Hundred Dollars (\$500.00) but less than Five  
240 Thousand Dollars (\$5,000.00), the maximum amount of damages that  
241 may be recovered by the consumer as to each individual claim is  
242 Fifteen Thousand Dollars (\$15,000.00).

243           (c) If the principal amount of the consumer loan is  
244 more than Five Thousand Dollars (\$5,000.00) but less than Ten  
245 Thousand Dollars (\$10,000.00), the maximum amount of damages that  
246 may be recovered by the consumer as to each individual claim is  
247 Thirty Thousand Dollars (\$30,000.00).

248           (d) If the principal amount of the consumer loan is  
249 more than Ten Thousand Dollars (\$10,000.00) but less than Fifteen  
250 Thousand Dollars (\$15,000.00), the maximum amount of damages that  
251 may be recovered by the consumer as to each individual claim is  
252 Forty-five Thousand Dollars (\$45,000.00).

253           (e) If the principal amount of the consumer loan is  
254 more than Fifteen Thousand Dollars (\$15,000.00) but not more than  
255 Twenty Thousand Dollars (\$20,000.00), the maximum amount of  
256 damages that may be recovered by the consumer as to each  
257 individual claim is Sixty Thousand Dollars (\$60,000.00).

258       (6) If any penalty is recovered under subsection (3) of this  
259 section, a reasonable attorney's fee may also be recovered by the  
260 consumer.

261       (7) The remedies, penalties and damages provided for in this  
262 section shall be the exclusive remedies, penalties and damages for  
263 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 cause of action accrues. However,  
if the cause of action accrued before the effective date of House  
Bill No. , Third Extraordinary Session 2002, no action for  
recovery of any penalty or damages provided for under this section  
based on that cause of action may be brought unless it is filed  
within one (1) year after the effective date of House Bill No. ,  
Third Extraordinary Session 2002.

**SECTION 4.** Section 15-1-33, Mississippi Code of 1972, is  
brought forward as follows:

15-1-33. All actions and suits for any penalty or forfeiture  
on any penal statute, brought by any person to whom the penalty or  
forfeiture is given, in whole or in part, shall be commenced  
within one (1) year next after the offense was committed, and not  
after.

**SECTION 5.** This act shall take effect and be in force from  
and after its passage.

