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To: Business and Financial
Institutions

SENATE BILL NO. 2778
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE TERMS "OTHER CHARGES," "CONSUMER CREDIT" AND
3 "CONSUMER" AS THEY RELATE TO THE SMALL LOAN REGULATORY LAW; TO
4 AMEND SECTION 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE FOR REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR
6 AND RECEIVING OTHER CHARGES IN CONNECTION WITH CONSUMER CREDIT
7 WHICH ARE UNLAWFUL FOR REASONS OTHER THAN ACTUAL FRAUD; TO PROVIDE
8 THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED UNDER THIS ACT
9 ARE EXCLUSIVE EXCEPT IN CASES OF ACTUAL FRAUD; TO AMEND SECTION
10 11-1-60, MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON
11 NONECONOMIC DAMAGES IN CIVIL ACTIONS; AND FOR RELATED PURPOSES.

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

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

15 75-67-103. The following words and phrases, when used in
16 this article, shall, for the purposes of this article, have the
17 meanings respectively ascribed to them in this section, except
18 where the context clearly describes and indicates a different
19 meaning:

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

23 (b) "Licensee" means and includes every person holding
24 a valid license issued under the provisions of the Small Loan
25 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this
26 state, except those specifically exempt by the provisions of this
27 article, who, in addition to any other rights and powers he or it
28 might otherwise possess, shall engage in the business of lending
29 money either directly or indirectly, to be paid back in monthly
30 installments or other regular installments for periods of more or
31 less than one (1) month, and whether or not the lender requires



32 security from the borrower as indemnity for the repayment of the
33 loan.

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

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

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

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

47 (g) "Other charges" means any amounts contracted for or
48 received by any licensee or other person in connection with
49 consumer credit, other than finance charges as defined in Section
50 75-17-25.

51 (h) "Consumer credit" means any loan or extension of
52 credit to a consumer primarily for personal, family or household
53 purposes.

54 (i) "Consumer" means a natural person.

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

57 75-67-119. (1) If any finance charge in excess of that
58 expressly permitted by Section 75-17-21 is contracted for or
59 received, all finance charges and other charges shall be forfeited
60 and may be recovered, whether the contract be executed or
61 executory. If any finance charge is contracted for or received
62 that exceeds the maximum finance charge authorized by law by more
63 than one hundred percent (100%), the principal and all finance
64 charges and other charges shall be forfeited and any amount paid



65 may be recovered by suit; and, in addition, the licensee and the
66 several members, officers, directors, agents, and employees
67 thereof who shall have participated in such violation shall be
68 guilty of a misdemeanor and, upon conviction thereof, shall be
69 punished by a fine of not more than One Thousand Dollars
70 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
71 the discretion of the court; and, further, the Commissioner of
72 Banking and Consumer Finance shall forthwith cite such licensee to
73 show cause why its license should not be revoked and proceedings
74 thereon shall be as is specifically provided in the Small Loan
75 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

76 (2) If in connection with consumer credit any licensee or
77 other person contracts for or receives, or participates in
78 contracting for or receiving, other charges in violation of any
79 applicable statutory or common law duty or which are otherwise
80 unlawful for any reason, other than by means constituting actual
81 fraud or fraudulent concealment, all such other charges shall be
82 forfeited and any such amounts paid may be recovered, whether the
83 contract be executed or executory. If the other charges subject
84 to forfeiture under this section exceed Five Hundred Dollars
85 (\$500.00), all finance charges shall additionally be forfeited and
86 any such amounts paid may be recovered. If the other charges
87 subject to forfeiture under this section exceed One Thousand Five
88 Hundred Dollars (\$1,500.00), all principal shall additionally be
89 forfeited and any such amounts paid may be recovered. If any
90 penalty is recovered under this subsection, the consumer may also
91 recover a reasonable attorney's fee from the offending party.

92 (3) The penalties provided for in subsection (2) shall not
93 apply if it is proven by a preponderance of the evidence that the
94 violation was not intentional and resulted from a bona fide error
95 notwithstanding the maintenance of procedures reasonably adapted
96 to avoid any such error, except that the licensee may be required
97 to correct the error by refund or credit to the consumer's



98 remaining obligation. The penalties provided for in subsection
99 (2) shall not apply if the licensee discovers the violation or is
100 notified of the violation by the commissioner and within sixty
101 (60) days after discovering the violation, and prior to the
102 receipt of written notice of the violation from the consumer, the
103 licensee notifies the affected consumer of the violation and
104 either refunds or gives credit for the unlawful other charge.

105 (4) Except as provided in subsection (5) of this section,
106 the remedies and penalties provided in this section shall be the
107 exclusive remedies and penalties for all claims against a licensee
108 or any other person for contracting for or receiving any finance
109 charge in excess of that expressly permitted by Section 75-17-21,
110 or for contracting for or receiving, or participating in
111 contracting for or receiving, other charges in violation of any
112 applicable statutory or common law duty or which are otherwise
113 unlawful, other than by means constituting actual fraud or
114 fraudulent concealment.

115 (5) The remedies and penalties provided in this section are
116 supplemental to the defense provided in Section 75-67-127(3) and
117 to the enforcement powers conferred upon the Commissioner of
118 Banking and Consumer Finance.

119 (6) Actual fraud or fraudulent concealment, as those terms
120 are used in this section, shall not be found to have occurred in
121 the event written disclosures were provided to the consumer
122 disclosing the other charges in compliance with applicable federal
123 and state disclosure statutes and regulations, including, but not
124 limited to, the federal Consumer Credit Protection Act, as
125 amended, and Regulation Z promulgated thereunder.

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

128 75-17-25. (1) The term "finance charge" as used in this
129 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
130 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,



131 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
132 payable, directly or indirectly, by a debtor for receiving a loan
133 or incident to or as a condition of the extension of credit,
134 including, but not limited to, interest, brokerage fees, finance
135 charges, loan fees, discount, points, service charges, transaction
136 charges, activity charges, carrying charges, time price
137 differential, finders fees or any other cost or expense to the
138 debtor for services rendered or to be rendered to the debtor in
139 making, arranging or negotiating a loan of money or an extension
140 of credit and for the accounting, guaranteeing, endorsing,
141 collecting and other actual services rendered by the lender;
142 provided, however, that recording fees, motor vehicle title fees,
143 attorney's fees, insurance premiums, fees permitted to be charged
144 under the provisions of Section 79-7-7, service charges as
145 provided in Section 81-19-31, and with respect to a debt secured
146 by an interest in land, bona fide closing costs and appraisal fees
147 incidental to the transaction shall not be included in the finance
148 charge.

149 (2) Subject to the other provisions of this section,
150 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
151 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
152 75-67-127 and 75-67-217, the finance charge may be calculated on
153 the assumption that the indebtedness will be discharged as it
154 becomes due, and prepayment penalties and statutory default
155 charges shall not be included in the finance charge. Nothing in
156 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
157 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
158 of contracting for such finance charge, whether by way of add-on,
159 discount or otherwise, so long as the annual percentage rate does
160 not exceed that permitted by law. If a greater finance charge
161 than that authorized by applicable law shall be stipulated for or
162 received in any case, all interest and finance charge shall be
163 forfeited, and may be recovered back, whether the contract be



164 executed or executory. If a finance charge be contracted for or
165 received that exceeds the maximum authorized by law by more than
166 one hundred percent (100%), the principal and all finance charges
167 shall be forfeited and any amount paid may be recovered by suit.
168 The provisions of this section, Section 75-17-1 and Sections
169 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
170 shall not restrict the extension of credit pursuant to any other
171 applicable law. A licensee under the Small Loan Regulatory Law
172 (Sections 75-67-101 through 75-67-135), and the Small Loan
173 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
174 contract for and receive finance charges as authorized by Section
175 75-17-21, and the late payment charge as authorized by Section
176 75-17-27, regardless of the purpose for which the loan or other
177 extension of credit is made.

178 (3) If in connection with consumer credit any person
179 contracts for or receives, or participates in contracting for or
180 receiving, other charges in violation of any applicable statutory
181 or common law duty or which are otherwise unlawful for any reason,
182 other than by means constituting actual fraud or fraudulent
183 concealment, all such other charges shall be forfeited and any
184 such amounts paid may be recovered, whether the contract be
185 executed or executory. If the other charges subject to forfeiture
186 under this section exceed Five Hundred Dollars (\$500.00), all
187 finance charges shall additionally be forfeited and any such
188 amounts paid may be recovered. If the other charges subject to
189 forfeiture under this section exceed One Thousand Five Hundred
190 Dollars (\$1,500.00), all principal shall additionally be forfeited
191 and any such amounts paid may be recovered. If any penalty is
192 recovered under this subsection (3), the consumer may also recover
193 a reasonable attorney's fee from the offending party.

194 (4) The penalties provided for in subsection (3) shall not
195 apply if it is proven by a preponderance of the evidence that the
196 violation was not intentional and resulted from a bona fide error



197 notwithstanding the maintenance of procedures reasonably adapted
198 to avoid any such error, except that the lender may be required to
199 correct the error by refund or credit to the consumer's remaining
200 obligation. The penalties provided for in subsection (3) shall
201 not apply if the lender discovers the violation or is notified of
202 the violation by the commissioner and within sixty (60) days after
203 discovering the violation, and prior to the receipt of written
204 notice of the violation from the consumer, the lender notifies the
205 affected consumer of the violation and either refunds or gives
206 credit for the unlawful other charge.

207 (5) Except as provided herein, the remedies and penalties
208 provided in this section shall be the exclusive remedies and
209 penalties for contracting for or receiving any finance charge in
210 excess of that permitted by applicable law or for contracting for
211 or receiving, or participating in contracting for or receiving,
212 other charges in connection with consumer credit in violation of
213 any applicable statutory or common law duty, or which are
214 otherwise unlawful, other than by means constituting actual fraud
215 or fraudulent concealment.

216 (6) As used in this section, the term "consumer credit"
217 shall mean any loan or extension of credit offered or extended
218 primarily for personal, family or household purposes; the term
219 "consumer" shall mean a natural person; and the term "other
220 charges" shall mean any amounts contracted for or received by any
221 person in connection with consumer credit, other than finance
222 charges as defined in this section.

223 (7) Actual fraud or fraudulent concealment, as those terms
224 are used in this section, shall not be found to have occurred in
225 the event written disclosures were provided to the consumer
226 disclosing the other charges in compliance with applicable federal
227 and state disclosure statutes and regulations, including, but not
228 limited to, the federal Consumer Protection Act, as amended, and
229 Regulation Z promulgated thereunder.



230 SECTION 4. Section 11-1-60, Mississippi Code of 1972, is
231 amended as follows:

232 11-1-60. (1) For the purposes of this section, the
233 following words and phrases shall have the meanings ascribed
234 herein unless the context clearly requires otherwise:

235 (a) "Noneconomic damages" means subjective,
236 nonpecuniary damages arising from death, pain, suffering,
237 inconvenience, mental anguish, worry, emotional distress, loss of
238 society and companionship, loss of consortium, bystander injury,
239 physical impairment, disfigurement, injury to reputation,
240 humiliation, embarrassment, * * * other nonpecuniary damages, and
241 any other theory of damages such as fear of loss, illness or
242 injury. The term "noneconomic damages" shall not include * * *
243 punitive or exemplary damages.

244 (b) "Actual economic damages" means objectively
245 verifiable pecuniary damages arising from medical expenses and
246 medical care, rehabilitation services, custodial care,
247 disabilities, loss of earnings and earning capacity, loss of
248 income, burial costs, loss of use of property, costs of repair or
249 replacement of property, costs of obtaining substitute domestic
250 services, loss of employment, loss of business or employment
251 opportunities, and other objectively verifiable monetary losses.

252 * * *

253 (2) (a) In any civil action for injury * * * if the trier
254 of fact finds the defendant liable, * * * the plaintiff shall not
255 be awarded * * * more than Two Hundred Fifty Thousand Dollars
256 (\$250,000.00) for noneconomic damages * * * for claims for causes
257 of action filed on or after July 1, 2003 * * *.

258 * * *

259 (b) The jury shall not be advised of the limitations
260 imposed by this subsection (2) and the judge shall appropriately
261 reduce any award of noneconomic damages that exceeds the
262 applicable limitation.



263 * * *

264 (3) Nothing in this section shall be construed to impose a
265 limitation on * * * or actual economic damages.

266 **SECTION 5.** Sections 1 through 3 of this act shall take
267 effect and be in force from and after July 1, 2003, and shall
268 apply to all causes of action not yet reduced to judgment.
269 Section 4 of this act shall take effect and be in force from and
270 after July 1, 2003, and shall apply to all causes of action filed
271 on or after July 1, 2003.

