

By: Representative Guice

To: Banking and Financial
ServicesCOMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1323

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,
2 DEFINE THE TERM "OTHER CHARGES" UNDER THE SMALL LOAN REGULATORY
3 LAW; TO AMEND SECTION 75-67-119, MISSISSIPPI CODE OF 1972, TO
4 PROVIDE THE REMEDIES AND PENALTIES FOR CONTRACTING FOR OR
5 RECEIVING UNLAWFUL OTHER CHARGES UNDER THE SMALL LOAN REGULATORY
6 LAW; AND FOR RELATED PURPOSES.

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

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

10 75-67-103. The following words and phrases, when used in
11 this article, shall, for the purposes of this article, have the
12 meanings respectively ascribed to them in this section, except
13 where the context clearly describes and indicates a different
14 meaning:

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

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

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

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

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

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

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

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

47 75-67-119. (1) If any finance charge in excess of that
48 expressly permitted by Section 75-17-21 is contracted for or
49 received, all finance charges and other charges shall be forfeited
50 and may be recovered, whether the contract is executed or
51 executory. If any finance charge is contracted for or received
52 that exceeds the maximum finance charge authorized by law by more
53 than one hundred percent (100%), the principal and all finance
54 charges and other charges shall be forfeited and any amount paid
55 may be recovered by suit. In addition, the licensee and the
56 several members, officers, directors, agents and employees thereof
57 who * * * participated in that violation shall be guilty of a
58 misdemeanor and, upon conviction thereof, shall be punished by a
59 fine of not more than Twenty Thousand Dollars (\$20,000.00) and not
60 less than Five Thousand Dollars (\$5,000.00), in the discretion of
61 the court. In addition to any action taken in court, the

Commissioner of Banking and Consumer Finance shall immediately
cite the 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
to 75-67-243).

(2) If any licensee or other person violates any provision
of this article or any rule or regulation promulgated under this
article or any provision of Title 75, Chapter 17, of the
Mississippi Code of 1972, or contracts for or receives, or
participates in contracting for or receiving, other charges by
misleading or deceptive means, or in violation of any applicable
statutory or common law duty, or which are otherwise unlawful, all
those unlawful other charges shall be forfeited and may be
recovered, whether the contract is executed or executory. If the
other charges subject to forfeiture under this section exceed Two
Hundred Fifty Dollars (\$250.00), all finance charges shall
additionally be forfeited and may be recovered. If the other
charges subject to forfeiture under this section exceed One
Thousand Dollars (\$1,000.00), all principal shall additionally be
forfeited and may be recovered. If the other charges subject to
forfeiture under this section are found to have been contracted
for or received by misleading or deceptive means, the amounts
authorized to be recovered under this subsection (2) shall be
tripled.

(3) Except as provided in subsection (4) of this section,
the remedies and penalties provided in this section shall be the
exclusive remedies and penalties for all claims against a licensee
or any other person for contracting for or receiving any finance
charge in excess of that expressly permitted by Section 75-17-21,
or for violation of any provision of this article or any rule or
regulation promulgated under this article or any provision of
Title 75, Chapter 17, of the Mississippi Code of 1972, or for
contracting for or receiving, or participating in contracting for

95 or receiving, other charges by misleading or deceptive means, or
96 in violation of any applicable statutory or common law duty, or
97 which are otherwise unlawful.

98 (4) The remedies and penalties provided in this section are
99 supplemental to the defense provided in Section 75-67-127(3) and
100 to the enforcement powers conferred upon the Commissioner of
101 Banking and Consumer Finance.

102 (5) Attorney fees awarded in any action under this section
103 shall be determined by the court, not the jury, based upon the
104 time reasonably expended and the work performed by the borrower's
105 attorney, and not by the amount of recovery or a percentage of the
106 recovery.

107 **SECTION 3.** This act shall take effect and be in force from
108 and after its passage.