

By: Representative Guice

To: Banking and Financial
Services

HOUSE BILL NO. 1323

1 AN ACT TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO
3 INCLUDE A DEFINITION OF THE TERM "OTHER CHARGES"; TO AMEND
4 SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THE REMEDY FOR CONTRACTING FOR AND RECEIVING UNLAWFUL
6 OTHER CHARGES; 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 Ten Thousand Dollars (\$10,000.00) and not
60 less than One Thousand Dollars (\$1,000.00), in the discretion of
61 the court. If a licensee contracts for or receives finance

charges in excess of that expressly permitted by Section 75-17-21
ten (10) or more times, in a pattern of intentional abuse of the
law, the licensee and the several members, officers, directors,
agents, and employees thereof who participated in that violation
shall be guilty of a felony and, upon conviction thereof, shall be
punished by imprisonment in the State Penitentiary for not less
than one (1) year nor more than ten (10) years, and by a fine of
not less than One Thousand Dollars (\$1,000.00) nor more than Ten
Thousand Dollars (\$10,000.00), in the discretion of 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.

95 (3) Except as provided in subsection (4) of this section,
96 the remedies and penalties provided in this section shall be the
97 exclusive remedies and penalties for all claims against a licensee
98 or any other person for contracting for or receiving any finance
99 charge in excess of that expressly permitted by Section 75-17-21,
100 or for violation of any provision of this article or any rule or
101 regulation promulgated under this article or any provision of
102 Title 75, Chapter 17, of the Mississippi Code of 1972, or for
103 contracting for or receiving, or participating in contracting for
104 or receiving, other charges by misleading or deceptive means, or
105 in violation of any applicable statutory or common law duty, or
106 which are otherwise unlawful.

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

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

113 75-17-25. (1) The term "finance charge" as used in this
114 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
115 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
116 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
117 payable, directly or indirectly, by a debtor for receiving a loan
118 or incident to or as a condition of the extension of credit,
119 including, but not limited to, interest, brokerage fees, finance
120 charges, loan fees, discount, points, service charges, transaction
121 charges, activity charges, carrying charges, time price
122 differential, finders fees or any other cost or expense to the
123 debtor for services rendered or to be rendered to the debtor in
124 making, arranging or negotiating a loan of money or an extension
125 of credit and for the accounting, guaranteeing, endorsing,
126 collecting and other actual services rendered by the lender; * * *
127 however, * * * 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, 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount or otherwise, so long as the annual percentage rate does not exceed that permitted by law. If a greater finance charge than that authorized by applicable law is stipulated for or received in any case, all interest and finance charge shall be forfeited, and may be recovered back, whether the contract is executed or executory. If a finance charge is contracted for or received that exceeds the maximum authorized by law by more than one hundred percent (100%), the principal and all finance charges shall be forfeited and any amount paid may be recovered by suit. The provisions of this section, Section 75-17-1 and Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not restrict the extension of credit under any other applicable law. A licensee under the Small Loan Regulatory Law (Sections 75-67-101 through 75-67-135), and the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-243), may contract for and receive finance charges as authorized by Section 75-17-21, and the late payment charge as authorized by Section

161 75-17-27, regardless of the purpose for which the loan or other
162 extension of credit is made.

163 (3) If in connection with a consumer loan any person
164 contracts for or receives, or participates in contracting for or
165 receiving, other charges by misleading or deceptive means, or in
166 violation of any applicable statutory or common law duty, or which
167 are otherwise unlawful, all those unlawful other charges shall be
168 forfeited and may be recovered, whether the contract is executed
169 or executory. If the other charges subject to forfeiture under
170 this section exceed Two Hundred Fifty Dollars (\$250.00), all
171 finance charges shall additionally be forfeited and may be
172 recovered. If the other charges subject to forfeiture under this
173 section exceed One Thousand Dollars (\$1,000.00), all principal
174 shall additionally be forfeited and may be recovered. If the
175 other charges subject to forfeiture under this section are found
176 to have been contracted for or received by misleading or deceptive
177 means, the amounts authorized to be recovered under this
178 subsection (3) shall be tripled.

179 The remedies and penalties provided in this section shall be
180 the exclusive remedies and penalties for contracting for or
181 receiving any finance charge in excess of that permitted by
182 applicable law or for contracting for or receiving, or
183 participating in contracting for or receiving, other charges by
184 misleading or deceptive means, or in violation of any applicable
185 statutory or common law duty, or which are otherwise unlawful.

186 As used in this subsection (3), the term "consumer loan"
187 means any loan or extension of credit offered or extended
188 primarily for personal, family or household purposes; and the term
189 "other charges" means any amounts contracted for or received by
190 any person in connection with a consumer loan, other than finance
191 charges as defined in this section.

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