MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Senator(s) Mettetal

To: Business and Financial Institutions

SENATE BILL NO. 2481

AN ACT TO AMEND SECTION 63-19-27, MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT THAT THE COMMISSIONER OF BANKING AND CONSUMER FINANCE MAY CHARGE LICENSEES UNDER THE MOTOR VEHICLE SALES FINANCE LAW FOR EXPENSES OF EXAMINATIONS; TO AMEND SECTION 63-19-55, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM VIOLATING PROVISIONS OF THE MOTOR VEHICLE SALES FINANCE LAW; TO AMEND SECTION 63-19-56, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER TO EXAMINE PERSONS SUSPECTED OF CONDUCTING BUSINESS THAT REQUIRES A LICENSE UNDER THE MOTOR VEHICLE SALES FINANCE LAW WITHOUT FIRST HAVING TO RECEIVE A WRITTEN COMPLAINT; TO AMEND SECTION 75-15-31, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM VIOLATING PROVISIONS OF THE SALE OF CHECKS LAW; TO AMEND SECTION 81-21-3, MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT THAT THE COMMISSIONER MAY CHARGE LICENSEES UNDER THE INSURANCE PREMIUM FINANCE COMPANY LAW FOR EXPENSES OF EXAMINATIONS; TO AMEND SECTION 81-21-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER TO ENTER ORDERS THAT REQUIRE PERSONS TO REFRAIN FROM VIOLATING PROVISIONS OF THE INSURANCE PREMIUM FINANCE COMPANY LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 63-19-27, Mississippi Code of 1972, is amended as follows:

63-19-27. The commissioner may charge the licensee an examination fee in an amount not less than <u>Three Hundred Dollars ($300.00)</u> nor more than <u>Six Hundred Dollars ($600.00) for</u> each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

All expense fees paid to the commissioner shall be deposited by the commissioner in the State Treasury in a special and separate fund to be known as the "Consumer Finance Fund."

SECTION 2. Section 63-19-55, Mississippi Code of 1972, is amended as follows:

63-19-55. (1) Any person who * * * willfully and intentionally violates any provision of this chapter or engages in the business of a sales finance company in this state without a license therefor as provided in this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00). However, any licensee who is exempt from liability for an act or omission under Section 63-19-57 shall not be guilty of a misdemeanor under this section for the same act or omission.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Any person willfully violating Sections 63-19-31 through 63-19-45, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract.

(5) However, any such contract purchased in good faith for value by any bank, trust company, private bank, industrial bank or investment company authorized to do business in this state shall be held and construed to be valid and enforceable in the hands of the purchaser for value, except that such purchaser shall not be permitted to recover on such contract from the buyer anything in excess of the principal balance due thereon, plus the amount of the finance and collection charges permitted under the terms and provisions of this chapter.

(6) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SECTION 3. Section 63-19-56, Mississippi Code of 1972, is amended as follows:

63-19-56. The commissioner, or his duly authorized representative, * * * for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of

violations of this chapter, including without limitation the conduct of business without a license as required by this chapter.

SECTION 4. Section 75-15-31, Mississippi Code of 1972, is amended as follows:

75-15-31. (1) If any person to whom or which this chapter applies or any agent, subagent or representative of that person violates any of the provisions of this chapter or attempts to transact the business of selling or issuing or delivering checks as a service or for a fee or other consideration, without having first obtained license from the commissioner under the provisions of this chapter, that person and each such agent, subagent or representative shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and * * * may also be confined to the county jail or sentenced to hard labor for the county, for not more than twelve (12) months. Each violation shall constitute a separate offense.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SECTION 5. Section 81-21-3, Mississippi Code of 1972, is amended as follows:

81-21-3. (1) No person shall engage in the business of a premium finance company in this state without first having obtained a license as a premium finance company from the commissioner.

(2) With each initial application for a license, the applicant shall pay to the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00) payable as of the first day of July of each year to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." The commissioner may employ persons as necessary to administer this chapter and to examine or investigate and make reports on violations of this chapter.

(3) The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period

unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner. Those fees shall be payable in addition to other fees and taxes now required by law and shall be expendable receipts for the use of the commissioner in defraying the cost of the administration of this chapter.

All fees, license tax and penalties provided for in this chapter that are payable to the commissioner shall, when collected by him or his designated representative, be deposited in the special fund in the State Treasury known as the "Consumer Finance Fund" and shall be expended by the commissioner solely and exclusively for the purpose of administering and enforcing the provisions of this chapter.

(4) Application for licensing shall be made on forms prepared by the commissioner and shall contain the following information:

(a) Name, business address and telephone number of the premium finance company;

(b) Name and business address of corporate officers and directors or principals or partners; and

(c) A sworn statement by an appropriate officer, principal or partner of the premium finance company that:

(i) The premium finance company is financially capable to engage in the business of insurance premium financing;

(ii) If a corporation, that the corporation is authorized to transact business in this state; and

(iii) If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the commissioner.

(5) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Mississippi Administrative Procedures Law.

SECTION 6. Section 81-21-9, Mississippi Code of 1972, is amended as follows:

81-21-9. (1) In lieu of revoking or suspending the license for any of the causes enumerated in this chapter, after a hearing as provided in Section 81-21-7, the commissioner may subject the company to a penalty not to exceed Five Hundred Dollars ($500.00) for each offense when the commissioner finds that the public interest would not be harmed by the continued operation of the company. The amount of any such penalty shall be paid by the company to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." At any hearing provided by this chapter, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SECTION 7. This act shall take effect and be in force from and after its passage.

ST: Consumer finance licensees; revise various provisions applicable to.