MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative Zuber

To: Banking and Financial Services

HOUSE BILL NO. 1511
(As Passed the House)

AN ACT TO BE KNOWN AS THE MISSISSIPPI CONSUMER ALTERNATIVE INSTALLMENT LOAN ACT; TO PROHIBIT ENGAGING IN THE BUSINESS OF MAKING CONSUMER INSTALLMENT LOANS AND CHARGING OR CONTRACTING FOR INTEREST ON THOSE LOANS WITHOUT APPROVAL FROM THE COMMISSIONER OF BANKING AND CONSUMER FINANCE; TO PROVIDE THAT THE COMMISSIONER OF BANKING AND CONSUMER FINANCE SHALL NOT UNREASONABLY WITHHOLD APPROVAL OF ANY PERSON, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION WHO HAS MET CERTAIN REQUIREMENTS; TO PRESCRIBE THE MAXIMUM CHARGES PERMITTED FOR LOANS MADE BY LICENSEES UNDER THIS ACT AND THE METHOD OF COMPUTING THOSE CHARGES; TO PRESCRIBE THE TERMS OF LOANS MADE BY LICENSEES UNDER THIS ACT; TO AUTHORIZE THE COMMISSIONER OF BANKING AND CONSUMER FINANCE TO ADOPT RULES AND REGULATIONS NECESSARY FOR THE ENFORCEMENT OF THIS ACT; TO PROVIDE CERTAIN LIABILITY PROTECTIONS TO LICENSEES; TO CREATE NEW SECTION 75-67-123, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR PURPOSES OF COMPLIANCE WITH MAXIMUM CHARGES PERMITTED UNDER CERTAIN PROVISIONS OF LAW, ANY CHARGES, FEES OR PREMIUMS FOR CREDIT INSURANCE OR AUTO CLUB MEMBERSHIPS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE FINANCE CHARGE; TO AMEND SECTIONS 75-17-21, 75-17-25 AND 75-67-119, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Sections 1 through 6 of this act shall be known as the "Mississippi Consumer Alternative Installment Loan Act."

SECTION 2. (1) No person, partnership, association, limited liability company or corporation shall engage in the business of making consumer installment loans of money as provided by Sections

1 through 6 of this act and charge, contract for, or receive on any such loan interest, discount, or consideration therefor without demonstrating to the satisfaction of the Commissioner of Banking and Consumer Finance that they are the holder of a valid and subsisting license under the Small Loan Privilege Tax Law, Section 75-67-201 et seq.

(2) Sections 1 through 6 of this act shall not apply to persons engaged in the business of extending credit to borrowers primarily for business or commercial purposes.

(3) For any consumer installment loan that a licensee makes, the licensee has the option to either lend at the rates and fees indicated under the Small Loan Regulatory Law (Section 75-17-21), or at the rates and charges under Section 4 this act.

(4) The provisions of Sections 1 through 6 of this act shall be administered and enforced by the Commissioner of Banking and Consumer Finance, or his duly authorized agents, representatives and employees.

SECTION 3. (1) For the purposes of Sections 1 through 6 of this act and for loans made at the rates indicated in Section 4 of this act, the following terms shall have the meanings as defined in this subsection:

(a) "Applicable interest," for a precomputed loan contract, means the amount of interest attributable to each monthly installment period. It is computed as if each installment period were one (1) month and any interest charged for extending

the first installment period. The applicable interest for any monthly installment period is that portion of the precomputed interest that bears the same ratio to the total precomputed interest as the balances scheduled to be outstanding during that month bear to the sum of all scheduled monthly outstanding balances in the original contract.

(b) "Commissioner" means the Commissioner of the Mississippi Department of Banking and Consumer Finance.

(c) "Department" means the Mississippi Department of Banking and Consumer Finance.

(d) "Licensee" means any individual, partnership, association or corporation making loans under Sections 1 through 6 of this act and duly licensed under the provisions of the Small Loan Privilege Tax Law, Section 75-67-201 et seq.

(e) "Person" means a natural person, sole proprietorship, corporation, company, limited liability company, partnership, association or any other legal entity however organized.

(f) "Precomputed loan" means a loan in which the debt is expressed as the sum of the original principal amount plus interest computed actuarially in advance, assuming all payments will be made when scheduled.

(2) To compute time for loans made in accordance with the interest indicated under Section 4 of this act, for the calculation of interest and other purposes, a month shall be a

calendar month and a day shall be considered one-thirtieth (1/30th) of a month when calculation is made for a fraction of a month. A month shall be one-twelfth (1/12th) of a year. A calendar month is that period from a given date in one (1) month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a month and a fraction of a month, the fraction of the month is considered to follow the whole month. In the alternative, the licensee may charge interest at the rate of one three-hundred sixty-fifth (1/365th) of the agreed annual rate for each day actually elapsed.

(3) With respect to loans made under the interest indicated in Section 4 of this act:

(a) Loans shall be repayable in substantially equal and consecutive monthly installments of principal and interest combined, except that the first installment period may be longer than one (1) month by not more than fifteen (15) days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days.

(b) Payments may be applied to the combined total of principal and precomputed interest until the loan is fully paid.

(c) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one (1) month or more before the final installment due date, a licensee shall refund or credit the obligor the applicable interest for all fully unexpired

installment periods, as originally scheduled or as deferred, that follow the day of prepayment, and a month shall be earned if the prepayment occurs one (1) or more days after the payment due date. However, if the prepayment occurs before the first installment due date, the licensee shall refund or credit the obligor the applicable interest on a pro rata basis from the date of the loan to the date of prepayment. "Applicable interest" for any installment period means that portion of the precomputed monthly installment interest attributable to the installment period calculated based on a method at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the lawsuit is filed.

(d) If two (2) or more installments are delinquent one (1) full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit that would be required for prepayment in full on the due date of the most recent maturing installment in default. Thereafter, and in lieu of any other default or deferment charges, the agreed rate of interest or interest at the rate of eighteen percent (18%) per annum may be charged on the unpaid balance until fully paid.

(e) Fifteen (15) days after the final installment as originally scheduled or deferred, the licensee may compute and charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at a default rate of interest as agreed in the contract or at the rate of eighteen percent (18%) per annum, until fully paid.

(f) A late payment charge that complies with Section 75-17-27 shall not be considered a finance charge, if contracted for in writing.

(g) No licensee or other person may condition an extension of credit to a consumer borrower on the consumer's repayment by preauthorized electronic fund transfers or post-dated check. Consumers may choose any method of payment offered by the licensee, including, but not limited to, electronic fund transfers or debit card payments.

(h) The loan shall be fully amortizing and be repayable in its entirety in a minimum of nine (9) substantially equal and consecutive monthly payments with a period of not less than two hundred seventy-two (272) days to maturity.

(i) Each loan agreement entered into between a licensee and a consumer borrower shall include the following language: "This business is licensed and regulated by the Department of Banking and Consumer Finance. If you have any unresolved problem with a transaction at this location, you are entitled to

assistance. Please call or write the Mississippi Department of Banking and Consumer Finance."

(j) A licensee is prohibited from making a loan to a consumer borrower if the payments to be made in any month on the loan exceed twenty-two and five-tenths percent (22.5%) of the consumer's gross monthly income, as demonstrated by documentation of the income, including, but not limited to, the consumer's most recent pay stub, receipt reflecting payment of government benefits, or other official documentation. "Official documentation" includes tax returns and documentation prepared by the source of the income. Notwithstanding anything contained in this section to the contrary, a licensee may rely upon the borrower's written statement or other written information provided by the borrower in those cases where the borrower is self-employed or employed in seasonal work.

(k) At the time a loan is made or within twenty (20) days after a loan is made, a licensee shall not (i) accept a check and agree to hold it for a period of days before deposit or presentment, or (ii) accept a check dated later than the date written.

SECTION 4. In lieu of the interest and charges in Section 75-17-21, on loans of Four Thousand Dollars ($4,000.00) or less, a licensee may contract and charge a monthly finance charge not to exceed an annual percentage rate, calculated according to the

actuarial method, of fifty-nine percent (59%) per annum on the unpaid balance of the amount financed.

SECTION 5. (1) The commissioner shall have the power and authority to adopt, promulgate and issue any rules and regulations, not inconsistent with law, necessary for the enforcement of Sections 1 through 6 of this act. The commissioner may investigate any business conducted in the licensed office to determine whether any evasion or violation of Sections 1 through 6 of this act has occurred.

(2) Licensees shall comply with, and all loans made under Sections 1 through 6 of this act shall be in conformity with, all applicable provisions of the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), as determined by the commissioner.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of Sections 1 through 6 of this act, or any regulation of the commissioner made under the authority of Sections 1 through 6 of this act or any other applicable statute of this state, the commissioner, in addition to and without prejudice to the authority provided elsewhere in Sections 1 through 6 of this act, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any 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 6. (1) A licensee shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after the act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after that act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SECTION 7. The following shall be codified as Section 75-67-123, Mississippi Code of 1972:

75-67-123. Notwithstanding any other law to the contrary, for purposes of compliance with maximum charges permitted under Section 75-17-21 and Section 4 of this act, any charges, fees or premiums for voluntarily purchased credit insurance or auto club

memberships shall not be included in the maximum finance charge allowed by state law.

SECTION 8. Section 75-17-21, Mississippi Code of 1972, is amended as follows:

75-17-21. (1) For any consumer installment loan that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law makes, the licensee has the option to either lend at the rates and fees indicated under this section or at the rates and charges authorized under Section 4 of this act. Except as provided in Section 4 of this act, but notwithstanding any other provision of law to the contrary, the maximum finance charge which may be contracted for and received for any loan or extension of credit made by a licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.) and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.) may result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

(a) Thirty-six percent (36%) per annum for the portion of the unpaid balance of the amount financed that is not greater than One Thousand Dollars ($1,000.00);

(b) Thirty-three percent (33%) per annum for the portion of the unpaid balance of the amount financed in excess of One Thousand Dollars ($1,000.00) but not greater than Two Thousand Five Hundred Dollars ($2,500.00);

(c) Twenty-four percent (24%) per annum for the portion of the unpaid balance of the amount financed in excess of Two Thousand Five Hundred Dollars ($2,500.00) but not greater than Five Thousand Dollars ($5,000.00);

(d) Fourteen percent (14%) per annum for the portion of the unpaid balance of the amount financed in excess of Five Thousand Dollars ($5,000.00).

(2) As an alternative and in lieu of the rates established in paragraphs (a), (b), (c) and (d) of subsection (1), on loans in an amount of Twenty-five Thousand Dollars ($25,000.00) or more, a licensee may contract for and receive a maximum finance charge which will result in a yield not to exceed an annual percentage rate, calculated according to the actuarial method, of eighteen percent (18%) per annum on the unpaid balance of the amount financed.

(3) A licensee choosing to lend at the rates indicated under this section may contract for and charge a closing fee as follows:

(a) For loans in the amount of Ten Thousand Dollars ($10,000.00) or less, four percent (4%) of the total payments due on the loan or Twenty-five Dollars ($25.00), whichever is greater;

(b) For loans in an amount greater than Ten Thousand Dollars ($10,000.00), a maximum charge of Five Hundred Dollars ($500.00).

Such closing fee shall not be part of the finance charge.

(4) The rates set forth in paragraph (a) of subsection (1) may be increased by the number of percentage points by which the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located exceeds eight percent (8%), and the rates set forth in paragraphs (b), (c) and (d) of subsection (1) may be increased by the number of percentage points by which the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located exceeds ten percent (10%).

(5) Except as provided in Section 4 of this act, the finance charges authorized in this section are the maximum rates which may be contracted for or received for any loan or extension of credit made by a licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.). Nothing in this section shall prohibit lending money or handling, negotiating or arranging loans for a finance charge that is less than that specified herein. This section does not 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 of the finance charge does not exceed that permitted by this section or Section 4 of this act.

SECTION 9. Section 75-17-25, Mississippi Code of 1972, is amended as follows:

75-17-25. The term "finance charge" as used in this section, Sections 75-17-1, 75-17-11, 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, 75-67-123, 75-67-127 *** * ***, 75-67-217 and Section 4 of this act means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finder's fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; *** * *** however, *** * *** recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees or charges permitted to be charged under the provisions of Section 75-67-121, 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. The term "finance charge," as used in this section and

the sections enumerated above, shall not include any fees for the set up, establishment, processing or maintenance of a loan to a plan participant from a retirement plan intending to be tax-qualified (within the meaning of 26 USCS Section 401 et seq.) that are paid or payable directly or indirectly by the plan participant to the plan record keeper or third-party administrator.

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 Section 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 such 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 shall be stipulated for or received in any case, all interest and finance charges shall be forfeited, and may be recovered back, whether the contract be executed or executory. If a finance charge be 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 pursuant to any other applicable law. A licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), may contract for and receive finance charges as authorized by Section 75-17-21 or Section 4 of this act, and the late payment charge as authorized by Section 75-17-27, regardless of the purpose for which the loan or other extension of credit is made.

SECTION 10. Section 75-67-119, Mississippi Code of 1972, is amended as follows:

75-67-119. If any finance charge in excess of that expressly permitted by Section 75-17-21 or Section 4 of this act 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 that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof,

shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) and not less than One Hundred Dollars ($100.00), in the discretion of the court; and, further, the Commissioner of Banking and Consumer Finance shall forthwith cite such 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 (Section 75-67-201 et seq.).

SECTION 11. This act shall take effect and be in force from and after July 1, 2016.