

By: Representative Perkins

To: Banks and Banking

HOUSE BILL NO. 230

1 AN ACT TO REQUIRE BANKS TO ADVISE BORROWERS IN WRITING OF
2 THEIR RIGHT TO SELECT AN ATTORNEY OF THEIR CHOICE TO CLOSE LOANS
3 AND LOOK AFTER THE BORROWER'S INTERESTS IN CONNECTION WITH A LOAN;
4 TO PROVIDE THAT A BORROWER SHALL NOT BE REQUIRED TO PAY AN
5 ATTORNEY'S FEE TO ANY ATTORNEY OTHER THAN THE ATTORNEY SELECTED BY
6 THE BORROWER; TO PROHIBIT BANKS FROM RECOMMENDING ANY ATTORNEY OR
7 REFERRING TO ANY ATTORNEY AS REPRESENTING THE BANK WHEN INFORMING
8 A BORROWER OF HIS RIGHT TO SELECT AN ATTORNEY; TO PROHIBIT BANKS
9 FROM DISCRIMINATING IN ANY FORM WHATSOEVER ON ANY LOAN CLOSED BY
10 AN ATTORNEY SELECTED BY A BORROWER; TO PROVIDE PENALTIES FOR
11 VIOLATIONS; TO AMEND SECTION 81-12-165, MISSISSIPPI CODE OF 1972,
12 TO PROHIBIT SAVINGS ASSOCIATIONS FROM RECOMMENDING ANY ATTORNEY OR
13 REFERRING TO ANY ATTORNEY AS REPRESENTING THE SAVINGS ASSOCIATION
14 WHEN INFORMING A BORROWER OF THE RIGHT TO SELECT AN ATTORNEY; TO
15 AMEND SECTION 81-14-307, MISSISSIPPI CODE OF 1972, TO REQUIRE
16 SAVINGS BANKS TO ADVISE BORROWERS IN WRITING OF THEIR RIGHT TO
17 SELECT AN ATTORNEY OF THEIR CHOICE IN CONNECTION WITH A LOAN; TO
18 PROHIBIT SAVINGS BANKS FROM RECOMMENDING ANY ATTORNEY OR REFERRING
19 TO ANY ATTORNEY AS REPRESENTING THE SAVINGS BANK WHEN INFORMING A
20 BORROWER OF HIS RIGHT TO SELECT AN ATTORNEY; TO PROHIBIT SAVINGS
21 BANKS FROM DISCRIMINATING IN ANY FORM WHATSOEVER ON ANY LOAN
22 CLOSED BY AN ATTORNEY SELECTED BY A BORROWER; TO PROVIDE THAT A
23 BORROWER SHALL NOT BE REQUIRED TO PAY AN ATTORNEY'S FEE TO ANY
24 ATTORNEY OTHER THAN THE ATTORNEY SELECTED BY THE BORROWER; TO
25 PROVIDE PENALTIES FOR VIOLATIONS; AND FOR RELATED PURPOSES.

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

27 SECTION 1. (1) If a bank located in the State of
28 Mississippi charges an attorney's fee to a borrower in connection
29 with any loan, the borrower shall have the right to select an
30 attorney of his choice to close the loan and to look after his
31 interests in connection with the loan, and the fee will be paid to
32 the attorney selected. The borrower shall not be required to pay
33 any attorney's fee to any attorney other than the attorney
34 selected by the borrower to close the loan. The bank shall advise
35 the borrower in writing of his right to select an attorney,
36 provided that the attorney is on an approved list of a title
37 insurance company acceptable to the bank and authorized to do

38 business in the State of Mississippi. The reference to title
39 insurance in this section is used as a criterion for
40 qualifications for attorneys only, and nothing in this section
41 shall be construed as requiring any bank to require a borrower to
42 secure a title insurance policy in addition to the regular
43 attorney's certification of title. A bank may, if it desires,
44 require title insurance policies on loans, but if policies are
45 required for one (1) attorney, they shall be required for all
46 attorneys used in connection with loans under this section. When
47 informing a borrower of his right to select an attorney, a bank
48 shall not recommend any attorney or refer to any attorney as being
49 an attorney that the bank uses to represent it in legal matters.
50 A bank shall not discriminate as to any charges, fees or
51 discounts, or make any different charges or credit decisions
52 whatsoever between loans closed by any attorney selected or
53 recommended by or representing the bank and loans closed by an
54 attorney selected by the borrower under the authority of this
55 section. Borrowers shall be free to select attorneys of their
56 choice to close all loans under the authority of this section,
57 without incurring any additional charge or expense or disparate
58 treatment by a bank whatsoever.

59 (2) The Commissioner of Banking and Consumer Finance shall
60 have the authority to adopt reasonable rules and regulations to
61 promulgate the provisions of this section. Any bank or any
62 officer or employee of any such bank willfully violating the
63 provisions of this section shall be guilty of a misdemeanor and,
64 upon conviction thereof, shall be fined not less than One Hundred
65 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

66 SECTION 2. Section 81-12-165, Mississippi Code of 1972, is
67 amended as follows:

68 81-12-165. Every association may require borrowers to pay
69 all reasonable expenses incurred in connection with the making,
70 closing, disbursing, extending, readjusting or renewing of real
71 estate loans as shall be authorized by the commissioner. If an
72 attorney's fee is charged the borrower in connection with any
73 loan, the borrower shall have the right to select an attorney of
74 his choice to close the loan and to look after his interests in

75 connection with the loan and the fee shall be paid to the attorney
76 selected. It is the intention of the Legislature to insure that
77 the borrower shall not be required to pay any attorney's fee to
78 any attorney other than the attorney selected by the borrower to
79 close the loan. The borrower shall be advised by the association
80 in writing of his right to select an attorney, provided that such
81 attorney is on an approved list of a title insurance company
82 acceptable to the association, and authorized to do business in
83 the State of Mississippi. Title insurance is used herein as a
84 criterion for qualifications of attorneys only, and nothing in
85 this chapter shall be construed as requiring any association to
86 require a borrower to secure a title insurance policy in addition
87 to the regular attorney's certification of title. However, an
88 association may, if it desires, require title insurance policies
89 on loans, but if policies are required from one (1) attorney they
90 shall be required from all attorneys used in connection with loans
91 under this section. When informing a borrower of his right to
92 select an attorney, an association shall not recommend any
93 attorney or refer to any attorney as being an attorney that the
94 association uses to represent it in legal matters. No association
95 shall discriminate as to any charges, fees or discounts, or make
96 any different charges or credit decisions whatsoever between loans
97 closed by an attorney selected or recommended by, or representing
98 the association and loans closed by an attorney selected by the
99 borrower under the authority of this subsection. It is the intent
100 of the Legislature that borrowers shall be free to select
101 attorneys of their choice to close all loans under the authority
102 of this paragraph, without incurring any additional charge or
103 expense or disparate treatment whatsoever. The commissioner shall
104 have the authority to adopt reasonable rules and regulations to
105 promulgate the provisions of this subsection. Any association, or
106 any officer or employee of any such association willfully
107 violating the provisions of this subsection shall be guilty of a

108 misdemeanor and, upon conviction thereof, shall be fined not less
109 than One Hundred Dollars (\$100.00) nor more than Five Hundred
110 Dollars (\$500.00).

111 SECTION 3. Section 81-14-307, Mississippi Code of 1972, is
112 amended as follows:

113 81-14-307. (1) No savings bank, or subsidiary thereof,
114 shall require as a condition of making a loan that the borrower
115 contract with any specific person or organization for particular
116 goods or services.

117 (2) A savings bank, or subsidiary thereof, must notify
118 borrowers in writing at or prior to the loan commitment of their
119 right to select the attorney or law firm rendering legal services
120 in connection with the loan, provided that the attorney or law
121 firm is on an approved list of a title insurance company
122 acceptable to the savings bank, and authorized to do business in
123 the State of Mississippi, and the person or organization rendering
124 insurance services in connection with the loan. The reference to
125 title insurance in this section is used as a criterion for
126 qualifications for attorneys only, and nothing in this section
127 shall be construed as requiring any savings bank to require a
128 borrower to secure a title insurance policy in addition to the
129 regular attorney's certification of title. A savings bank may, if
130 it desires, require title insurance policies on loans, but if
131 policies are required for one (1) attorney, they shall be required
132 for all attorneys used in connection with loans under this
133 section. When informing a borrower of his right to select an
134 attorney, a savings bank shall not recommend any attorney or refer
135 to any attorney as being an attorney that the savings bank uses to
136 represent it in legal matters. A savings bank shall not
137 discriminate as to any charges, fees or discounts, or make any
138 different charges or credit decisions whatsoever between loans
139 closed by any attorney selected or recommended by or representing
140 the savings bank and loans closed by an attorney selected by the

141 borrower under the authority of this section. Borrowers shall be
142 free to select attorneys of their choice to close all loans under
143 the authority of this section, without incurring any additional
144 charge or expense or disparate treatment by a savings bank
145 whatsoever. Borrowers shall not be required to pay any attorney's
146 fee to any attorney other than the attorney selected by the
147 borrower in connection with the loan.

148 (3) The Commissioner of Banking and Consumer Finance shall
149 have the authority to adopt reasonable rules and regulations to
150 promulgate the provisions of this section. Any savings bank or
151 subsidiary thereof, or any officer or employee of any such savings
152 bank or subsidiary thereof, willfully violating the provisions of
153 this section shall be guilty of a misdemeanor and, upon conviction
154 thereof, shall be fined not less than One Hundred Dollars
155 (\$100.00) nor more than Five Hundred Dollars (\$500.00).

156 SECTION 4. This act shall take effect and be in force from
157 and after July 1, 1999.