

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 1128
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 81-19-23, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CONSUMER LOAN BROKER SHALL NOT CHARGE OR COLLECT
3 ANY SERVICE CHARGE OR ADVANCE FEE FROM A BORROWER THAT EXCEEDS SIX
4 PERCENT OF THE ORIGINAL PRINCIPAL AMOUNT OF THE LOAN; TO AUTHORIZE
5 THE COMMISSIONER OF BANKING AND CONSUMER FINANCE TO INVESTIGATE
6 AND RESOLVE CONSUMER COMPLAINTS AND DISPUTES AGAINST MORTGAGE
7 COMPANIES; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 81-19-23, Mississippi Code of 1972, is
10 amended as follows:

11 **[Through June 30, 2000, this section shall read as follows:]**

12 81-19-23. (1) No consumer loan broker may:

13 (a) Charge or collect any service charge or advance fee
14 from a borrower unless and until a loan is actually found,
15 obtained and closed for that borrower, and in no event shall a
16 service charge exceed six percent (6%) of the original principal
17 amount of the loan;

18 (b) Advertise:

19 (i) Using false, misleading or deceptive
20 statements regarding the services provided by the consumer loan
21 broker, the amount of service charge or the rates, terms and
22 conditions of any loan which might be obtained through the
23 services of the consumer loan broker;

24 (ii) Using the terms "insured," "bonded,"
25 "guaranteed" or "secured" with regard to the consumer loan
26 broker's services or to any loan which might be obtained through
27 the services of the consumer loan broker; or

28 (iii) Without including the full name and address

29 of the consumer loan broker;

30 (c) Act as a lender on any consumer loan transaction
31 from which the consumer loan broker receives a service charge from
32 the borrower;

33 (d) Receive a service charge from a borrower on any
34 consumer loan made by an affiliated lender, meaning a lender under
35 common control or ownership with the consumer loan broker;

36 (e) Receive a service charge on any consumer loan from
37 which the consumer loan broker also receives compensation as a
38 licensed real estate broker or real estate salesman, unless the
39 fact of payment, the amount of the service charge and the identity
40 of the consumer loan broker is fully disclosed to the borrower;

41 (f) Accept an assignment of wages or salary from any
42 borrower for any purpose;

43 (g) Make a false promise in order to influence or
44 induce a person to use the consumer loan broker's services,
45 whether made through agents, employees, advertising or otherwise;

46 (h) Misrepresent or conceal essential or material facts
47 regarding the consumer loan broker's services on any transaction
48 under this chapter;

49 (i) Withhold or suppress information from the
50 commissioner or refuse to permit an examination of the consumer
51 loan broker's records by the commissioner or his agent;

52 (j) Fail to disburse funds in compliance with written
53 agreements or to account for all monies received and disbursed; or

54 (k) Fail to comply with the provisions of this chapter
55 or of the regulations of the commissioner.

56 (2) Any person who knowingly violates any provision of this
57 section shall be guilty of a felony and, upon conviction thereof,
58 shall be punished by a fine of not more than One Thousand Dollars
59 (\$1,000.00) or by commitment to the custody of the State
60 Department of Corrections for a term of not more than three (3)
61 years, or by both such fine and commitment.

62 (3) (a) Any borrower injured by a violation of this section
63 may bring an action for recovery of damages. Judgment shall be
64 entered for actual damages but in no case shall be less than the
65 amount paid by the borrower to the loan broker, plus reasonable
66 attorney's fees and costs. An award may also be entered for
67 punitive damages.

68 (b) Any borrower injured by a violation of this section
69 may bring an action against the surety bond or trust account, if
70 any, of the loan broker.

71 (c) The remedies provided under this section are in
72 addition to any other procedures or remedies for any violation or
73 conduct provided for in any other law.

74 **[From and after July 1, 2000, this section shall read as**
75 **follows:]**

76 81-19-23. (1) No consumer loan broker may:

77 (a) Charge or collect any service charge or advance fee
78 from a borrower unless and until a loan is actually found,
79 obtained and closed for that borrower, and in no event shall a
80 service charge exceed three percent (3%) of the original principal
81 amount of the loan;

82 (b) Advertise:

83 (i) Using false, misleading or deceptive
84 statements regarding the services provided by the consumer loan
85 broker, the amount of service charge or the rates, terms and
86 conditions of any loan which might be obtained through the
87 services of the consumer loan broker;

88 (ii) Using the terms "insured," "bonded,"
89 "guaranteed" or "secured" with regard to the consumer loan
90 broker's services or to any loan which might be obtained through
91 the services of the consumer loan broker; or

92 (iii) Without including the full name and address
93 of the consumer loan broker;

94 (c) Act as a lender on any consumer loan transaction

95 from which the consumer loan broker receives a service charge from
96 the borrower;

97 (d) Receive a service charge from a borrower on any
98 consumer loan made by an affiliated lender, meaning a lender under
99 common control or ownership with the consumer loan broker;

100 (e) Receive a service charge on any consumer loan from
101 which the consumer loan broker also receives compensation as a
102 licensed real estate broker or real estate salesman, unless the
103 fact of payment, the amount of the service charge and the identity
104 of the consumer loan broker is fully disclosed to the borrower;

105 (f) Accept an assignment of wages or salary from any
106 borrower for any purpose;

107 (g) Make a false promise in order to influence or
108 induce a person to use the consumer loan broker's services,
109 whether made through agents, employees, advertising or otherwise;

110 (h) Misrepresent or conceal essential or material facts
111 regarding the consumer loan broker's services on any transaction
112 under this chapter;

113 (i) Withhold or suppress information from the
114 commissioner or refuse to permit an examination of the consumer
115 loan broker's records by the commissioner or his agent;

116 (j) Fail to disburse funds in compliance with written
117 agreements or to account for all monies received and disbursed; or

118 (k) Fail to comply with the provisions of this chapter
119 or of the regulations of the commissioner.

120 (2) Any person who knowingly violates any provision of this
121 section shall be guilty of a felony and, upon conviction thereof,
122 shall be punished by a fine of not more than One Thousand Dollars
123 (\$1,000.00) or by commitment to the custody of the State
124 Department of Corrections for a term of not more than three (3)
125 years, or by both such fine and commitment.

126 (3) (a) Any borrower injured by a violation of this section
127 may bring an action for recovery of damages. Judgment shall be

128 entered for actual damages but in no case shall be less than the
129 amount paid by the borrower to the loan broker, plus reasonable
130 attorney's fees and costs. An award may also be entered for
131 punitive damages.

132 (b) Any borrower injured by a violation of this section
133 may bring an action against the surety bond or trust account, if
134 any, of the loan broker.

135 (c) The remedies provided under this section are in
136 addition to any other procedures or remedies for any violation or
137 conduct provided for in any other law.

138 SECTION 2. (1) For purposes of this section, the following
139 terms shall have the following meanings:

140 (a) "Mortgage company" means any person or entity that
141 directly or indirectly solicits, processes, places or negotiates
142 mortgage loans for others, or offers to solicit, process, place or
143 negotiate mortgage loans for others, or who closes mortgage loans,
144 whether or not in the mortgage company's own name.

145 (b) "Mortgage loan" means a loan or agreement to extend
146 credit made to a natural person, which loan is secured by a deed
147 to secure debt, security deed, mortgage, security instrument, deed
148 of trust or other document representing a security interest or
149 loan upon any interest in a lot intended for residential purposes,
150 or single- to four-family residential property located in
151 Mississippi, regardless of where made, including the renewal or
152 refinancing of any loan.

153 (c) "Residential property" means improved real property
154 or lot used or occupied, or intended to be used or occupied, as a
155 residence by a natural person.

156 (2) The Commissioner of Banking and Consumer Finance is
157 authorized to investigate and resolve consumer complaints and
158 disputes against mortgage companies. The commissioner or his duly
159 authorized representative, for the purpose of resolving any
160 consumer complaint or dispute against a mortgage company, may

161 examine the mortgage company and all relevant books, records and
162 papers employed by the mortgage company in the transaction of its
163 business, and may summon witnesses and examine them under oath
164 concerning matters relating to the business of the mortgage
165 company or such other matters as may be relevant to resolving the
166 consumer complaint or dispute against the mortgage company.

167 (3) This section shall stand repealed on July 1, 2000.

168 SECTION 3. This act shall take effect and be in force from
169 and after July 1, 1999.