HOUSE BILL NO. 1475

AN ACT TO AMEND SECTION 81-18-27, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT A LOAN MUST BE A CONSTRUCTION LOAN IN ORDER TO BE EXCLUDED FROM CERTAIN RESTRICTIONS ON THE MAXIMUM AMOUNT OF DIRECT PAYMENTS, COMPENSATION AND ADVANCE FEES WHICH A LICENSED MORTGAGE COMPANY MAY CHARGE A PROSPECTIVE BORROWER; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 81-18-27, Mississippi Code of 1972, is amended as follows:

81-18-27. No person required to be licensed or registered under this chapter shall:

(a) Misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by its agents or employees.

(b) Misrepresent to or conceal from an applicant for a mortgage loan or mortgagor, material facts, terms or conditions of a transaction to which the mortgage company is a party.

(c) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(d) Improperly refuse to issue a satisfaction of a mortgage loan.

(e) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the mortgage company and that are not the property of the mortgage
company, or that the mortgage company is not by law or at equity 
entitled to retain.

(f) Engage in any transaction, practice, or course of 
business that is not in good faith, or that operates a fraud upon 
any person in connection with the making of or purchase or sale of 
any mortgage loan.

(g) Engage in any fraudulent residential mortgage 
derwriting practices.

(h) Induce, require, or otherwise permit the applicant 
for a mortgage loan or mortgagor to sign a security deed, note, or 
other pertinent financial disclosure documents with any blank 
spaces to be filled in after it has been signed, except blank 
spaces relating to recording or other incidental information not 
available at the time of signing.

(i) Make, directly or indirectly, any residential 
mortgage loan with the intent to foreclose on the borrower's 
property. For purposes of this paragraph, there is a presumption 
that a person has made a residential mortgage loan with the intent 
to foreclose on the borrower's property if all of the following 
circumstances are proven:

  (i) Lack of substantial benefit to the borrower;
  (ii) The probability that full payment of the loan 
cannot be made by the borrower;

  (iii) That the person has made a significant 
proportion of loans foreclosed under similar circumstances;
  (iv) That the person has provided an extension of 
credit or collected a mortgage debt by extortion;

  (v) That the person does business under a trade 
name that misrepresents or tends to misrepresent that the person 
is a bank, trust company, savings bank, savings and loan 
association, credit union, or insurance company.

(j) Charge or collect any direct payment, compensation 
or advance fee from a borrower unless and until a loan is actually
found, obtained and closed for that borrower, and in no event shall that direct payment, compensation or advance fee exceed seven and ninety-five one-hundredths percent (7.95%) of the original principal amount of the loan, and any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations if required under Regulation Z of the federal Truth in Lending Act (TILA). A direct payment, compensation or advance fee as defined in this section shall not include:

(i) Any direct payment, compensation or advance fee collected by a licensed mortgage company to be paid to a nonrelated third party;

(ii) Any indirect payment to a licensed mortgage company by a lender if those fees are not required to be disclosed under the Real Estate Settlement Procedures Act (RESPA);

(iii) Any indirect payment or compensation by a lender to a licensed mortgage company required to be disclosed by the licensed mortgage company under RESPA, provided that the payment or compensation is disclosed to the borrower by the licensed mortgage company on a good faith estimate of costs, is included in the APR if required under Regulation Z of TILA, and is made pursuant to a written agreement between the licensed mortgage company and the borrower as may be required by Section 81-18-33; or

(iv) A fee not to exceed one percent (1%) of the principal amount of a loan ***, provided that a binding commitment for the loan has been obtained for the prospective borrower.

SECTION 2. This act shall take effect and be in force from and after July 1, 2001.