

By: Representative McCoy

To: Banking and Financial Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 924

1 AN ACT TO AMEND SECTION 81-19-7, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT CERTIFIED PUBLIC ACCOUNTANTS FROM THE PROVISIONS OF THE
3 CONSUMER LOAN BROKER ACT; TO PROVIDE THAT ATTORNEYS AND CERTIFIED
4 PUBLIC ACCOUNTANTS EXEMPTED FROM THE ACT STILL ARE SUBJECT TO THE
5 PROVISIONS OF THE ACT EXCEPT FOR THE REQUIREMENTS OF OBTAINING A
6 LICENSE AND POSTING A BOND; TO AMEND SECTION 81-19-23, MISSISSIPPI
7 CODE OF 1972, TO PROVIDE THAT A CONSUMER LOAN BROKER SHALL NOT
8 CHARGE A SERVICE CHARGE EXCEEDING THREE PERCENT OF THE ORIGINAL
9 PRINCIPAL AMOUNT OF THE LOAN OR A FEE OF TWENTY-FIVE DOLLARS,
10 WHICHEVER IS GREATER; TO AMEND SECTION 81-19-29, MISSISSIPPI CODE
11 OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING AND CONSUMER
12 FINANCE TO ENTER ORDERS TO REQUIRE PERSONS TO REFRAIN FROM
13 VIOLATING THE CONSUMER LOAN BROKER ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 81-19-7, Mississippi Code of 1972, is
16 amended as follows:

17 81-19-7. Except as otherwise provided in this section, this
18 chapter does not apply to:

19 (a) Banks, bank holding companies, credit unions,
20 insurance companies, savings and loan associations, savings banks,
21 savings and loan association holding companies, small loan
22 licensees, pawnbrokers, trust companies and their employees when
23 acting on behalf of the employer.

24 (b) Approved mortgagees of the United States Department
25 of Housing and Urban Development, the Federal Housing
26 Administration or other federal agency.

27 (c) Mortgage companies required to be licensed and
28 individuals required to be registered under the Mississippi
29 Mortgage Consumer Protection Act (Sections 1 through 24 of this
30 act), and persons exempt from licensing and registration as
31 provided in Section 81-18-5.

32 (d) An attorney or certified public accountant licensed
33 in this state who is not actively and principally engaged in the
34 business of being a consumer loan broker even though the services
35 of a consumer loan broker are occasionally rendered in the
36 attorney's practice of law or the certified public accountant's
37 practice of accounting. However, any such attorney or certified
38 public accountant still shall be subject to the provisions of this
39 chapter except for the provisions of Section 81-19-5.

40 (e) A person who, without the consent of the owner,
41 receives a mortgage or deed of trust on real or personal property
42 as security for an obligation arising from use of materials or
43 services in the improvement or repair of the property.

44 (f) A seller of real property who receives one or more
45 mortgages or deeds of trust as security for a purchase money
46 obligation.

47 **SECTION 2.** Section 81-19-23, Mississippi Code of 1972, is
48 amended as follows:

49 81-19-23. (1) No consumer loan broker may:

50 (a) Charge or collect any service charge or advance fee
51 from a borrower unless and until a loan is actually found,
52 obtained and closed for that borrower, and in no event shall a
53 service charge exceed three percent (3%) of the original principal
54 amount of the loan or a fee of Twenty-five Dollars (\$25.00),
55 whichever is greater;

56 (b) Advertise:

57 (i) Using false, misleading or deceptive
58 statements regarding the services provided by the consumer loan
59 broker, the amount of service charge or the rates, terms and
60 conditions of any loan which might be obtained through the
61 services of the consumer loan broker;

62 (ii) Using the terms "insured," "bonded,"
63 "guaranteed" or "secured" with regard to the consumer loan

64 broker's services or to any loan which might be obtained through
65 the services of the consumer loan broker; or

66 (iii) Without including the full name and address
67 of the consumer loan broker;

68 (c) Act as a lender on any consumer loan transaction
69 from which the consumer loan broker receives a service charge from
70 the borrower;

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

74 (e) Receive a service charge on any consumer loan from
75 which the consumer loan broker also receives compensation as a
76 licensed real estate broker or real estate salesman, unless the
77 fact of payment, the amount of the service charge and the identity
78 of the consumer loan broker is fully disclosed to the borrower;

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

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

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

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

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

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

94 (2) Any person who knowingly violates any provision of this
95 section shall be guilty of a felony and, upon conviction thereof,
96 shall be punished by a fine of not more than One Thousand Dollars

97 (\$1,000.00) or by commitment to the custody of the State
98 Department of Corrections for a term of not more than three (3)
99 years, or by both such fine and commitment.

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

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

109 (c) The remedies provided under this section are in
110 addition to any other procedures or remedies for any violation or
111 conduct provided for in any other law.

112 **SECTION 3.** Section 81-19-29, Mississippi Code of 1972, is
113 amended as follows:

114 81-19-29. (1) After notice and hearing, the commissioner
115 may suspend or revoke any license if he finds that the licensee
116 has knowingly and without exercising due care:

117 (a) Failed to pay the annual license fee imposed by
118 this chapter or an examination fee imposed by the commissioner
119 under authority of this chapter; or

120 (b) Violated any provision of this chapter or of any
121 rule or regulation issued under this chapter.

122 (2) When the commissioner has reasonable cause to believe
123 that a person is violating any provision of this chapter, the
124 commissioner, in addition to and without prejudice to the
125 authority provided elsewhere in this chapter, may enter an order
126 to require the person to stop or to refrain from the violation.
127 The commissioner may sue in any circuit court of the state having
128 jurisdiction and venue to enjoin the person from engaging in or
129 continuing the violation or from doing any act in furtherance of

130 the violation. In such an action, the court may enter an order or
131 judgment awarding a preliminary or permanent injunction.

132 **SECTION 4.** This act shall take effect and be in force from
133 and after its passage.