

By: Representative Baker (74th)

To: Banking and Financial Services

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 681

1 AN ACT TO AMEND SECTION 81-18-27, MISSISSIPPI CODE OF 1972,  
2 TO ALLOW LICENSED OR REGISTERED MORTGAGE COMPANIES TO COLLECT FROM  
3 A BORROWER A FEE TO BE PAID TO A LENDER TO LOCK IN AN INTEREST  
4 RATE AND/OR A CERTAIN NUMBER OF POINTS ON A MORTGAGE LOAN FROM THE  
5 LENDER FOR MORE THAN SIXTY DAYS; AND FOR RELATED PURPOSES.

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

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

9 81-18-27. (1) No person required to be licensed or  
10 registered under this chapter shall:

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

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

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

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

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

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

33           (g) Engage in any fraudulent residential mortgage  
34 underwriting practices.

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

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

47                   (i) Lack of substantial benefit to the borrower;

48                   (ii) The probability that full payment of the loan  
49 cannot be made by the borrower;

50                   (iii) That the person has made a significant  
51 proportion of loans foreclosed under similar circumstances;

52                   (iv) That the person has provided an extension of  
53 credit or collected a mortgage debt by extortion;

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

58           (j) Charge or collect any direct payment, compensation  
59 or advance fee from a borrower unless and until a loan is actually  
60 found, obtained and closed for that borrower, and in no event  
61 shall that direct payment, compensation or advance fee exceed

62 seven and ninety-five one-hundredths percent (7.95%) of the  
63 original principal amount of the loan, and any such direct  
64 payments, compensation or advance fees shall be included in all  
65 annual percentage rate (APR) calculations if required under  
66 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
67 payment, compensation or advance fee as defined in this section  
68 shall not include:

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

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

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

83 81-18-33; \* \* \*

84 (iv) A fee not to exceed one percent (1%) of the  
85 principal amount of a loan for construction, provided that a  
86 binding commitment for the loan has been obtained for the  
87 prospective borrower; or

88 (v) A fee, not exceeding one percent (1%) of the  
89 principal amount of the loan, collected by a licensed or  
90 registered mortgage company to be paid to a lender to lock in an  
91 interest rate and/or a certain number of points on a mortgage loan  
92 from the lender for more than sixty (60) days. A mortgage broker  
93 may not enter into lock-in agreements; however, a mortgage broker  
94 may collect the lock-in fees from a borrower on the lender's

95 behalf payable to that lender. Before the collection of a lock-in  
96 fee, the applicant must be provided, within three (3) business  
97 days of signing, the lock-in fee agreement signed and dated by the  
98 lender and the borrower. This agreement shall contain at least  
99 the following:

- 100 1. Identification of the property that is  
101 being purchased with the loan;
- 102 2. The principal amount and term of the loan;
- 103 3. The initial interest rate and/or points,  
104 whether the interest rate is fixed or variable, and if variable,  
105 the index and margin, or the method by which an interest rate  
106 change for the mortgage loan will be calculated;
- 107 4. The amount of the lock-in fee, whether the  
108 fee is refundable or nonrefundable, the time by which the lock-in  
109 fee must be paid to the lender, and if the fee is refundable, the  
110 terms and conditions necessary to obtain the refund; and
- 111 5. The length of the lock-in period that the  
112 agreement covers.

113 (k) Pay to any person not licensed or registered under  
114 the provisions of this chapter any commission, bonus or fee in  
115 connection with arranging for or originating a mortgage loan for a  
116 borrower, except that a registered loan originator may be paid a  
117 bonus, commission, or fee by his or her licensed employer.

118 (1) Refuse to provide the loan payoff within three (3)  
119 business days of an oral or written request from a borrower or  
120 third party. Proof of authorization of the borrower shall be  
121 submitted for a third-party request.

122 (2) A mortgage company shall only broker a residential  
123 mortgage loan to a mortgage company licensed or registered under  
124 this chapter or to a person exempt from licensure under the  
125 provisions of this chapter.

126 **SECTION 2.** This act shall take effect and be in force from  
127 and after July 1, 2006.