

By: Representative Baker (74th)

To: Banking and Financial Services

HOUSE BILL NO. 681

1 AN ACT TO AMEND SECTION 81-18-27, MISSISSIPPI CODE OF 1972,
2 TO ALLOW LICENSED MORTGAGE COMPANIES TO COLLECT FROM A BORROWER AN
3 ADVANCE FEE TO BE PAID TO A LENDER TO LOCK IN AN INTEREST RATE
4 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) An advance fee, not exceeding one percent (1%)
89 of the principal amount of the loan, collected by a licensed
90 mortgage company to be paid to a lender to lock in an interest
91 rate and/or a certain number of points on a mortgage loan from the
92 lender for more than sixty (60) days.

93 (k) Pay to any person not licensed or registered under
94 the provisions of this chapter any commission, bonus or fee in

95 connection with arranging for or originating a mortgage loan for a
96 borrower, except that a registered loan originator may be paid a
97 bonus, commission, or fee by his or her licensed employer.

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

102 (2) A mortgage company shall only broker a residential
103 mortgage loan to a mortgage company licensed or registered under
104 this chapter or to a person exempt from licensure under the
105 provisions of this chapter.

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