

By: Representative Baker (74th)

To: Banking and Financial Services

HOUSE BILL NO. 681
(As Sent to Governor)

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; TO
5 CREATE A NEW CODE SECTION TO PROVIDE A MAXIMUM AMOUNT THAT MAY BE
6 COLLECTED AS A LOCK-IN FEE AND TO PRESCRIBE THE CONTENTS OF A
7 LOCK-IN FEE AGREEMENT; AND FOR RELATED PURPOSES.

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

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

11 81-18-27. (1) No person required to be licensed or
12 registered under this chapter shall:

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

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

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

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

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

29 company, or that the mortgage company is not by law or at equity
30 entitled to retain.

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

35 (g) Engage in any fraudulent residential mortgage
36 underwriting practices.

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

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

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

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

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

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

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

60 (j) Charge or collect any direct payment, compensation
61 or advance fee from a borrower unless and until a loan is actually

62 found, obtained and closed for that borrower, and in no event
63 shall that direct payment, compensation or advance fee exceed
64 seven and ninety-five one-hundredths percent (7.95%) of the
65 original principal amount of the loan, and any such direct
66 payments, compensation or advance fees shall be included in all
67 annual percentage rate (APR) calculations if required under
68 Regulation Z of the federal Truth in Lending Act (TILA). A direct
69 payment, compensation or advance fee as defined in this section
70 shall not include:

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

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

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

85 81-18-33; * * *

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

90 (v) An advance fee collected by a licensed or
91 registered mortgage company to be paid to a lender to lock in an
92 interest rate and/or a certain number of points on a mortgage loan
93 from the lender as provided in Section 2 of House Bill No. 681,
94 2006 Regular Session.

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

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

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

108 **SECTION 2.** (1) A mortgage broker may enter into lock-in
109 agreements and collect a lock-in fee from a borrower on the
110 lender's behalf. The lock-in fee shall not exceed the following:

111 (a) No fee may be collected to lock in for sixty (60)
112 days or less;

113 (b) One percent (1%) of the principal amount of the
114 loan to lock in for more than sixty (60) days, but not to exceed
115 one hundred eighty (180) days;

116 (c) One and one-half percent (1-1/2%) of the principal
117 amount of the loan to lock in for more than one hundred eighty
118 (180) days, but not to exceed two hundred seventy (270) days; or

119 (d) Two percent (2%) of the principal amount of the
120 loan to lock in for more than two hundred seventy (270) days.

121 (2) Before the collection of a lock-in fee, the applicant
122 must be provided a copy of the lock-in fee agreement. This
123 agreement shall contain at least the following:

124 (a) Identification of the property that is being
125 purchased with the loan;

126 (b) The principal amount and term of the loan;

127 (c) The initial interest rate and/or points, whether
128 the interest rate is fixed or variable, and if variable, the index
129 and margin, or the method by which an interest rate change for the
130 mortgage loan will be calculated;

131 (d) The amount of the lock-in fee, whether the fee is
132 refundable or nonrefundable, the time by which the lock-in fee
133 must be paid to the lender, and if the fee is refundable, the
134 terms and conditions necessary to obtain the refund; and

135 (e) The length of the lock-in period that the agreement
136 covers.

137 **SECTION 3.** This act shall take effect and be in force from
138 and after July 1, 2006.