

By: Representative Zuber

To: Banking and Financial Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1460

1 AN ACT TO PROVIDE THAT SELF-ASSESSMENT REPORTS OF DEPOSITORY
2 FINANCIAL INSTITUTIONS ARE PRIVILEGED AND NOT ADMISSIBLE IN ANY
3 LEGAL OR INVESTIGATIVE ACTION IN ANY CIVIL OR ADMINISTRATIVE
4 PROCEEDING, AND ARE NOT SUBJECT TO ANY DISCOVERY PURSUANT TO THE
5 RULES OF CIVIL PROCEDURE OR ADMINISTRATIVE PROCEDURE; TO PROVIDE
6 EXCEPTIONS TO THE SELF-ASSESSMENT PRIVILEGE; TO PROVIDE THAT ALL
7 REPORTS THAT ARE PROTECTED BY THE SELF-ASSESSMENT PRIVILEGE SHALL
8 BE EXEMPT FROM THE PUBLIC RECORDS ACT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1. Definitions.** For purposes of this act, the
11 following words and phrases shall have the meanings ascribed
12 herein, unless the context requires otherwise:

13 (a) "Bank" shall have the same definition as set forth
14 in Section 81-3-1 and shall include the bank holding company,
15 affiliates, and subsidiaries of a bank.

16 (b) "Self-assessment" means a voluntary, self-initiated
17 internal assessment, audit or review of a bank, its practices,
18 policies and procedures or the bank's review of a facility or
19 activity at a facility acting under contract as the bank's service
20 provider, including, but not limited to, mortgage servicers and
21 sub-servicers, credit and debit card processors, and providers of
22 loan document systems.

23 (c) "Self-assessment report" means any document,
24 including any audit, report, finding, communication or opinion or
25 any draft of an audit, report, finding, communication or opinion,
26 prepared by internal personnel or by outside attorneys,
27 accountants or consultants as a part of or in connection with a
28 self-assessment that is made in good faith, and which report is
29 not published outside the bank unless publication is made to bank



30 regulators or to third parties acting pursuant to an agreement to
31 preserve its confidentiality. Such agreement to preserve
32 confidentiality need not be in writing and may be evidenced by an
33 indication of confidentiality on the face of any such
34 self-assessment report, or by a verbal agreement regarding its
35 confidentiality.

36 (d) "Bank regulators" means any state, federal or
37 municipal governmental agency, bureau, commission, office or other
38 governmental entity charged with the regulation and/or supervision
39 of a bank or regulation or supervision of any activity in which a
40 bank may be engaged. The term shall include, but is not limited
41 to, the Office of the Comptroller of the Currency, the Federal
42 Reserve Board, the Federal Deposit Insurance Corporation, the
43 Consumer Financial Protection Bureau, the Fair Trade Commission,
44 and the Mississippi Department of Consumer Finance and Banking.

45 (e) "Banking law" means any federal, state or local
46 statute, rule or regulation affecting or governing a bank or any
47 activity in which a bank is or may be engaged, or any order,
48 award, agreement, release, permit, license, standard or notice or
49 issued by a federal, state or local court, agency, or governmental
50 authority in pursuance thereof.

51 **SECTION 2. Discovery and admissibility in evidence of**
52 **self-evaluation reports of depository financial institutions;**
53 **divulgence or dissemination of information in reports; exemption**
54 **from Public Records Act.** (1) A self-assessment report is
55 privileged and is not admissible in any legal or investigative
56 action in any civil or administrative proceeding and is not
57 subject to any discovery under the rules of civil procedure or
58 administrative procedure, unless:

59 (a) The bank, irrespective of whether the
60 self-assessment was conducted and/or prepared by a private
61 contractor hired by the bank, expressly waives the protections of
62 this section; or



63 (b) The court of record or hearing officer, who shall
64 be neutral and independent, after an in camera review, determines
65 that:

66 (i) The self-assessment report shows that the bank
67 is not or was not in substantial compliance with a material
68 provision of banking law, and

69 (ii) The bank did not initiate good-faith efforts
70 to achieve substantial compliance with a material provision of
71 banking law within a reasonable time after the noncompliance was
72 discovered, and

73 (iii) The bank's failure to comply caused material
74 harm to a bank customer or consumer.

75 (iv) For purposes of subparagraphs (i) and (ii) of
76 this paragraph (b) only, if the evidence shows noncompliance by
77 the bank, the bank may demonstrate that appropriate efforts to
78 achieve compliance were or are being taken by establishing a
79 phased schedule of actions to be taken to bring the bank into
80 compliance, and those efforts shall protect the bank's
81 self-assessment report(s) from disclosure.

82 (c) The court of record or a hearing officer, who shall
83 be neutral and independent, after an in camera review, determines
84 that the privilege is being asserted for a fraudulent purpose or
85 that the self-assessment report was prepared to avoid disclosure
86 of information in an investigative, administrative or judicial
87 proceeding that was underway at the time of its preparation, or
88 for which the bank had been provided written notification that an
89 investigation into a specific violation had been initiated, or it
90 is found that a condition exists that demonstrates imminent and
91 substantial harm to bank customers or consumers.

92 (2) The self-evaluation privilege does not apply to:

93 (a) Information in the possession of a regulatory
94 agency obtained through observation, sampling, examination or



95 otherwise and which is subject to public disclosure under the
96 Mississippi Public Records Act of 1983; or

97 (b) Information obtained through any source independent
98 of the self-assessment report and which was not protected by a
99 confidentiality agreement; or

100 (c) Evidence existing before the commencement of and
101 independent of the voluntary self-assessment, which is not
102 protected by a confidentiality agreement and is not related to a
103 request for compliance assistance from bank regulators.

104 (3) (a) Upon a showing by any party, based upon independent
105 knowledge, that probable cause exists to believe that an exception
106 to the self-assessment privilege under subsection (1) of this
107 section is applicable to a self-assessment report or that
108 privilege does not apply to a self-assessment report under the
109 provisions of subsection (2) of this section, then a court record
110 or hearing officer, who shall be neutral and independent, may
111 allow that party limited access to the self-assessment report for
112 the purposes of an in-camera review only. The court of record or
113 the hearing officer may grant limited access to all or part of the
114 self-assessment under the provisions of this subsection (3) upon
115 such conditions as may be necessary to protect the confidentiality
116 of the self-assessment report. A moving party who obtains access
117 to a self-assessment report under the provisions of this
118 subsection (3) may not divulge any information from the report
119 except as specifically allowed by the court or hearing officer.

120 (b) If any party divulges all or any part of the
121 information contained in a self-assessment report in violation of
122 the provisions of paragraph (a) of this subsection (3) or if any
123 other person knowingly divulges or disseminates all or any part of
124 the information contained in a self-assessment report that was
125 provided to the person in violation of the provisions of paragraph
126 (a) of this subsection (3), the party or other person is liable
127 for any damages caused by the divulgence or dissemination of the



128 information that are incurred by the bank. The court or hearing
129 officer may issue such contempt orders and sanctions against the
130 offending party or such party's legal counsel as may be necessary
131 to ensure compliance.

132 (4) Nothing in this section limits, waives or abrogates the
133 scope or nature of any statutory or common law privilege.

134 (5) A bank asserting a self-assessment privilege has the
135 burden of proving a prima facie case as to the privilege. A party
136 seeking disclosure of a self-assessment report has the burden of
137 proving that such a privilege does not exist under this section.

138 (6) All self-assessment reports that are protected by the
139 self-assessment privilege created by this section shall be
140 privileged and exempt from the provisions of the Mississippi
141 Public Records Act in accordance with Section 25-61-11.

142 **SECTION 3.** This act shall take effect and be in force from
143 and after July 1, 2012.

