

By: Representative Guice

To: Banks and Banking

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1128

1 AN ACT TO AMEND SECTION 81-19-23, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CONSUMER LOAN BROKER SHALL NOT CHARGE OR COLLECT
3 ANY DIRECT PAYMENT OR ADVANCE FEE FROM A BORROWER THAT EXCEEDS SIX
4 PERCENT OF THE ORIGINAL PRINCIPAL AMOUNT OF THE LOAN; TO AUTHORIZE
5 THE COMMISSIONER OF BANKING AND CONSUMER FINANCE TO INVESTIGATE
6 AND RESOLVE CONSUMER COMPLAINTS AND DISPUTES AGAINST MORTGAGE
7 COMPANIES; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 81-19-23, Mississippi Code of 1972, is
10 amended as follows:

11 81-19-23. (1) No consumer loan broker may:

12 (a) Charge or collect any direct payment, compensation
13 or advance fee from a borrower unless and until a loan is actually
14 found, obtained and closed for that borrower, and in no event
15 shall that direct payment, compensation or advance fee exceed six
16 percent (6%) of the original principal amount of the loan, and any
17 such direct payments, compensation or advance fees shall be
18 included in all annual percentage rate (APR) calculations if
19 required under Regulation Z of the federal Truth in Lending Act
20 (TILA). A direct payment, compensation or advance fee as defined
21 in this paragraph shall not include:

22 (i) Any direct payment, compensation or advance
23 fee collected by a consumer loan broker to be paid to a nonrelated
24 third party;

25 (ii) Any indirect payment to a consumer loan
26 broker by a lender if those fees are not required to be disclosed
27 under the Real Estate Settlement Procedures Act (RESPA); or

28 (iii) Any indirect payment or compensation by a

lender to a consumer loan broker required to be disclosed by the
consumer loan broker under RESPA, provided that the payment or
compensation is disclosed to the borrower by the consumer loan
broker on a good faith estimate of costs, is included in the APR
if required under Regulation Z of TILA, and is made pursuant to a
written agreement between the consumer loan broker and the
borrower;

(b) Advertise:

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

(ii) Using the terms "insured," "bonded,"
"guaranteed" or "secured" with regard to the consumer loan
broker's services or to any loan which might be obtained through
the services of the consumer loan broker; or

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

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

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

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

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

(g) Make a false promise in order to influence or

induce a person to use the consumer loan broker's services,
whether made through agents, employees, advertising or otherwise;

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

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

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

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

(2) Any person who knowingly violates any provision of this
section shall be guilty of a felony and, upon conviction thereof,
shall be punished by a fine of not more than One Thousand Dollars
(\$1,000.00) or by commitment to the custody of the State
Department of Corrections for a term of not more than three (3)
years, or by both such fine and commitment.

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

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

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

SECTION 2. (1) For purposes of this section, the following
terms shall have the following meanings:

(a) "Mortgage company" means any person or entity that

95 directly or indirectly solicits, processes, places or negotiates
96 mortgage loans for others, or offers to solicit, process, place or
97 negotiate mortgage loans for others, or who closes mortgage loans,
98 whether or not in the mortgage company's own name.

99 (b) "Mortgage loan" means a loan or agreement to extend
100 credit made to a natural person, which loan is secured by a deed
101 to secure debt, security deed, mortgage, security instrument, deed
102 of trust or other document representing a security interest or
103 loan upon any interest in a lot intended for residential purposes,
104 or single- to four-family residential property located in
105 Mississippi, regardless of where made, including the renewal or
106 refinancing of any loan.

107 (c) "Residential property" means improved real property
108 or lot used or occupied, or intended to be used or occupied, as a
109 residence by a natural person.

110 (2) The Commissioner of Banking and Consumer Finance is
111 authorized to investigate and resolve consumer complaints and
112 disputes against mortgage companies. The commissioner or his duly
113 authorized representative, for the purpose of resolving any
114 consumer complaint or dispute against a mortgage company, may
115 examine the mortgage company and all relevant books, records and
116 papers employed by the mortgage company in the transaction of its
117 business, and may summon witnesses and examine them under oath
118 concerning matters relating to the business of the mortgage
119 company or such other matters as may be relevant to resolving the
120 consumer complaint or dispute against the mortgage company.

121 SECTION 3. This act shall take effect and be in force from
122 and after July 1, 1999.