

By: Representative Guice

To: Banks and Banking

## 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; AND FOR  
5 RELATED PURPOSES.

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

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

9 81-19-23. (1) No consumer loan broker may:

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

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

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

26 (iii) Any indirect payment or compensation by a  
27 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 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

65 commissioner or refuse to permit an examination of the consumer  
66 loan broker's records by the commissioner or his agent;

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

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

71 (2) Any person who knowingly violates any provision of this  
72 section shall be guilty of a felony and, upon conviction thereof,  
73 shall be punished by a fine of not more than One Thousand Dollars  
74 (\$1,000.00) or by commitment to the custody of the State  
75 Department of Corrections for a term of not more than three (3)  
76 years, or by both such fine and commitment.

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

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

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

89 SECTION 2. This act shall take effect and be in force from  
90 and after July 1, 1999.