

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H.B. No. 1128: Consumer loan brokers; limit payments and fees from borrowers to 6% of loan amount.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

[Through June 30, 2000, this section shall read as follows:]

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

(a) Charge or collect any service charge or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall a service charge exceed six percent (6%) of the original principal amount of the loan;

(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

67 punitive damages.

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

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

74 **[From and after July 1, 2000, this section shall read as follows:]**

75 81-19-23. (1) No consumer loan broker may:

76 (a) Charge or collect any service charge or advance fee
77 from a borrower unless and until a loan is actually found,
78 obtained and closed for that borrower, and in no event shall a
79 service charge exceed three percent (3%) of the original principal
80 amount of the loan;

81 (b) Advertise:

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

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

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

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

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

99 (e) Receive a service charge on any consumer loan from
100 which the consumer loan broker also receives compensation as a
101 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.

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

139 (a) "Mortgage company" means any person or entity that
140 directly or indirectly solicits, processes, places or negotiates
141 mortgage loans for others, or offers to solicit, process, place or
142 negotiate mortgage loans for others, or who closes mortgage loans,
143 whether or not in the mortgage company's own name.

144 (b) "Mortgage loan" means a loan or agreement to extend
145 credit made to a natural person, which loan is secured by a deed
146 to secure debt, security deed, mortgage, security instrument, deed
147 of trust or other document representing a security interest or
148 loan upon any interest in a lot intended for residential purposes,
149 or single- to four-family residential property located in
150 Mississippi, regardless of where made, including the renewal or
151 refinancing of any loan.

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

155 (2) The Commissioner of Banking and Consumer Finance is
156 authorized to investigate and resolve consumer complaints and
157 disputes against mortgage companies. The commissioner or his duly
158 authorized representative, for the purpose of resolving any
159 consumer complaint or dispute against a mortgage company, may
160 examine the mortgage company and all relevant books, records and
161 papers employed by the mortgage company in the transaction of its
162 business, and may summon witnesses and examine them under oath
163 concerning matters relating to the business of the mortgage
164 company or such other matters as may be relevant to resolving the
165 consumer complaint or dispute against the mortgage company.

166 (3) This section shall stand repealed on July 1, 2000.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 SERVICE CHARGE 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.

CONFEREES FOR THE HOUSE: CONFEREES FOR THE SENATE:

X
Daniel D. Guice, Jr.

X
Clyde Woodfield

X
Ray Rogers

X
Jack Gordon

X
James Evans

X
Billy Hewes III