

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 1475

1 AN ACT TO AMEND SECTION 81-18-27, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE REQUIREMENT THAT A LOAN MUST BE A CONSTRUCTION LOAN
3 IN ORDER TO BE EXCLUDED FROM CERTAIN RESTRICTIONS ON THE MAXIMUM
4 AMOUNT OF DIRECT PAYMENTS, COMPENSATION AND ADVANCE FEES WHICH A
5 LICENSED MORTGAGE COMPANY MAY CHARGE A PROSPECTIVE BORROWER; AND
6 FOR RELATED PURPOSES.

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

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

10 81-18-27. No person required to be licensed or registered
11 under this chapter shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76 (iii) Any indirect payment or compensation by a
77 lender to a licensed mortgage company required to be disclosed by
78 the licensed mortgage company under RESPA, provided that the
79 payment or compensation is disclosed to the borrower by the
80 licensed mortgage company on a good faith estimate of costs, is
81 included in the APR if required under Regulation Z of TILA, and is
82 made pursuant to a written agreement between the licensed mortgage
83 company and the borrower as may be required by Section 81-18-33;
84 or

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

89 SECTION 2. This act shall take effect and be in force from
90 and after July 1, 2001.