MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Representative McCoy

To: Banking and Financial Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 924

AN ACT TO AMEND SECTION 81-19-7, MISSISSIPPI CODE OF 1972, TO EXEMPT CERTIFIED PUBLIC ACCOUNTANTS FROM THE PROVISIONS OF THE CONSUMER LOAN BROKER ACT; TO PROVIDE THAT ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS EXEMPTED FROM THE ACT STILL ARE SUBJECT TO THE PROVISIONS OF THE ACT EXCEPT FOR THE REQUIREMENTS OF OBTAINING A LICENSE AND POSTING A BOND; TO AMEND SECTION 81-19-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CONSUMER LOAN BROKER SHALL NOT CHARGE A SERVICE CHARGE EXCEEDING THREE PERCENT OF THE ORIGINAL PRINCIPAL AMOUNT OF THE LOAN OR A FEE OF TWENTY-FIVE DOLLARS, WHICHEVER IS GREATER; TO AMEND SECTION 81-19-29, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING AND CONSUMER FINANCE TO ENTER ORDERS TO REQUIRE PERSONS TO REFRAIN FROM VIOLATING THE CONSUMER LOAN BROKER ACT; AND FOR RELATED PURPOSES.

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

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

81-19-7. Except as otherwise provided in this section, this chapter does not apply to:

(a) Banks, bank holding companies, credit unions, insurance companies, savings and loan associations, savings banks, savings and loan association holding companies, small loan licensees, pawnbrokers, trust companies and their employees when acting on behalf of the employer.

(b) Approved mortgagees of the United States Department of Housing and Urban Development, the Federal Housing Administration or other federal agency.

(c) Mortgage companies required to be licensed and individuals required to be registered under the Mississippi Mortgage Consumer Protection Act (Sections 1 through 24 of this act), and persons exempt from licensing and registration as provided in Section 81-18-5.

(d) An attorney or certified public accountant licensed in this state who is not actively and principally engaged in the business of being a consumer loan broker even though the services of a consumer loan broker are occasionally rendered in the attorney's practice of law or the certified public accountant's practice of accounting. However, any such attorney or certified public accountant still shall be subject to the provisions of this chapter except for the provisions of Section 81-19-5.

(e) A person who, without the consent of the owner, receives a mortgage or deed of trust on real or personal property as security for an obligation arising from use of materials or services in the improvement or repair of the property.

(f) A seller of real property who receives one or more mortgages or deeds of trust as security for a purchase money obligation.

SECTION 2. Section 81-19-23, Mississippi Code of 1972, is amended 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 three percent (3%) of the original principal amount of the loan or a fee of Twenty-five Dollars ($25.00), whichever is greater;

(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 3. Section 81-19-29, Mississippi Code of 1972, is amended as follows:

81-19-29. (1) After notice and hearing, the commissioner may suspend or revoke any license if he finds that the licensee has knowingly and without exercising due care:

(a) Failed to pay the annual license fee imposed by this chapter or an examination fee imposed by the commissioner under authority of this chapter; or

(b) Violated any provision of this chapter or of any rule or regulation issued under this chapter.

(2) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order to require the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of

the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SECTION 4. This act shall take effect and be in force from and after its passage.