

By: Senator(s) Huggins, Dearing

To: Business and Financial
Institutions

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2088

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

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

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

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

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

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

29 (c) Mortgage companies required to be licensed and
30 individuals required to be registered under the Mississippi
31 Mortgage Consumer Protection Law (Sections 81-18-1 through
32 81-18-47), and persons exempt from licensing and registration as
33 provided in Section 81-18-5.

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

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

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

49 **SECTION 2.** Section 81-19-23, Mississippi Code of 1972, is
50 amended as follows:

51 81-19-23. (1) No consumer loan broker may:

52 (a) Charge or collect any service charge or advance fee
53 from a borrower unless and until a loan is actually found,
54 obtained and closed for that borrower, and in no event shall a
55 service charge exceed three percent (3%) of the original principal
56 amount of the loan or a fee of Twenty-five Dollars (\$25.00),
57 whichever is greater;

58 (b) Advertise:

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

64 (ii) Using the terms "insured," "bonded,"
65 "guaranteed" or "secured" with regard to the consumer loan

66 broker's services or to any loan which might be obtained through
67 the services of the consumer loan broker; or

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

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

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

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

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

83 (g) Make a false promise in order to influence or
84 induce a person to use the consumer loan broker's services,
85 whether made through agents, employees, advertising or otherwise;

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

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

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

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

96 (2) Any person who knowingly violates any provision of this
97 section shall be guilty of a felony and, upon conviction thereof,
98 shall be punished by a fine of not more than One Thousand Dollars

99 (\$1,000.00) or by commitment to the custody of the State
100 Department of Corrections for a term of not more than three (3)
101 years, or by both such fine and commitment.

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

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

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

114 **SECTION 3.** Section 81-19-29, Mississippi Code of 1972, is
115 amended as follows:

116 81-19-29. (1) After notice and hearing, the commissioner
117 may suspend or revoke any license if he finds that the licensee
118 has knowingly and without exercising due care:

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

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

124 (2) After receiving a complaint that a person is violating a
125 provision of this article, if the commissioner has reasonable
126 cause to believe that the person actually is violating a provision
127 of this article, the commissioner, in addition to and without
128 prejudice to the authority provided elsewhere in this chapter, may
129 enter an order requiring the person to stop or to refrain from the
130 violation. The commissioner may sue in any circuit court of the
131 state having jurisdiction and venue to enjoin the person from

132 engaging in or continuing the violation or from doing any act in
133 furtherance of the violation. In such an action, the court may
134 enter an order or judgment awarding a preliminary or permanent
135 injunction.

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