4/19 4:12p

Chapter No. 444
12/HR40/R1905CS
CST / JP

HOUSE BILL NO. 1460

Originated in House _____ Clerk

HOUSE BILL NO. 1460

AN ACT TO PROVIDE THAT SELF-ASSESSMENT REPORTS OF DEPOSITORY FINANCIAL INSTITUTIONS ARE PRIVILEGED AND NOT ADMISSIBLE IN ANY LEGAL OR INVESTIGATIVE ACTION IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING, AND ARE NOT SUBJECT TO ANY DISCOVERY PURSUANT TO THE RULES OF CIVIL PROCEDURE OR ADMINISTRATIVE PROCEDURE; TO PROVIDE EXCEPTIONS TO THE SELF-ASSESSMENT PRIVILEGE; TO PROVIDE THAT ALL REPORTS THAT ARE PROTECTED BY THE SELF-ASSESSMENT PRIVILEGE SHALL BE EXEMPT FROM THE PUBLIC RECORDS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Definitions. For purposes of this act, the following words and phrases shall have the meanings ascribed herein, unless the context requires otherwise:

(a) "Bank" shall have the same definition as set forth in Section 81-3-1 and shall include the bank holding company, affiliates, and subsidiaries of a bank.

(b) "Self-assessment" means a voluntary, self-initiated internal assessment, audit or review of a bank, its practices, policies and procedures or the bank's review of a facility or activity at a facility acting under contract as the bank's service provider, including, but not limited to, mortgage servicers and sub-servicers, credit and debit card processors, and providers of loan document systems.

(c) "Self-assessment report" means any document, including any audit, report, finding, communication or opinion or any draft of an audit, report, finding, communication or opinion, prepared by internal personnel or by outside attorneys, accountants or consultants as a part of or in connection with a self-assessment that is made in good faith, and which report is not published outside the bank unless publication is made to bank

regulators or to third parties acting pursuant to an agreement to preserve its confidentiality. Such agreement to preserve confidentiality need not be in writing and may be evidenced by an indication of confidentiality on the face of any such self-assessment report, or by a verbal agreement regarding its confidentiality.

(d) "Bank regulators" means any state, federal or municipal governmental agency, bureau, commission, office or other governmental entity charged with the regulation and/or supervision of a bank or regulation or supervision of any activity in which a bank may be engaged. The term shall include, but is not limited to, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Fair Trade Commission, and the Mississippi Department of Consumer Finance and Banking.

(e) "Banking law" means any federal, state or local statute, rule or regulation affecting or governing a bank or any activity in which a bank is or may be engaged, or any order, award, agreement, release, permit, license, standard or notice or issued by a federal, state or local court, agency, or governmental authority in pursuance thereof.

SECTION 2. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act. (1) A self-assessment report is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery under the rules of civil procedure or administrative procedure, unless:

(a) The bank, irrespective of whether the self-assessment was conducted and/or prepared by a private contractor hired by the bank, expressly waives the protections of this section; or

(b) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that:

(i) The self-assessment report shows that the bank is not or was not in substantial compliance with a material provision of banking law, and

(ii) The bank did not initiate good-faith efforts to achieve substantial compliance with a material provision of banking law within a reasonable time after the noncompliance was discovered, and

(iii) The bank's failure to comply caused material harm to a bank customer or consumer.

(iv) For purposes of subparagraphs (i) and (ii) of this paragraph (b) only, if the evidence shows noncompliance by the bank, the bank may demonstrate that appropriate efforts to achieve compliance were or are being taken by establishing a phased schedule of actions to be taken to bring the bank into compliance, and those efforts shall protect the bank's self-assessment report(s) from disclosure.

(c) The court of record or a hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the self-assessment report was prepared to avoid disclosure of information in an investigative, administrative or judicial proceeding that was underway at the time of its preparation, or for which the bank had been provided written notification that an investigation into a specific violation had been initiated, or it is found that a condition exists that demonstrates imminent and substantial harm to bank customers or consumers.

(2) The self-evaluation privilege does not apply to:

(a) Information in the possession of a regulatory agency obtained through observation, sampling, examination or

otherwise and which is subject to public disclosure under the Mississippi Public Records Act of 1983; or

(b) Information obtained through any source independent of the self-assessment report and which was not protected by a confidentiality agreement; or

(c) Evidence existing before the commencement of and independent of the voluntary self-assessment, which is not protected by a confidentiality agreement and is not related to a request for compliance assistance from bank regulators.

(3) (a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-assessment privilege under subsection (1) of this section is applicable to a self-assessment report or that privilege does not apply to a self-assessment report under the provisions of subsection (2) of this section, then a court record or hearing officer, who shall be neutral and independent, may allow that party limited access to the self-assessment report for the purposes of an in-camera review only. The court of record or the hearing officer may grant limited access to all or part of the self-assessment under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the self-assessment report. A moving party who obtains access to a self-assessment report under the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in a self-assessment report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in a self-assessment report that was provided to the person in violation of the provisions of paragraph (a) of this subsection (3), the party or other person is liable for any damages caused by the divulgence or dissemination of the

information that are incurred by the bank. The court or hearing officer may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common law privilege.

(5) A bank asserting a self-assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a self-assessment report has the burden of proving that such a privilege does not exist under this section.

(6) All self-assessment reports that are protected by the self-assessment privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11.

SECTION 3. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 13, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 9, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

4:12pm