

By: Representative Guice

To: Banks and Banking

## HOUSE BILL NO. 1264

1 AN ACT RELATING TO MORTGAGE COMPANIES; TO PROVIDE FOR THE  
2 LICENSING OF MORTGAGE COMPANIES BY THE DEPARTMENT OF BANKING AND  
3 CONSUMER FINANCE; TO PROVIDE FOR EXEMPTIONS FROM LICENSURE; TO  
4 PROHIBIT THE PURCHASE OF A MORTGAGE LOAN FROM AN UNLICENSED  
5 MORTGAGE COMPANY; TO ESTABLISH PROCEDURES AND CRITERIA FOR  
6 APPLICANTS TO BECOME LICENSED; TO ESTABLISH LICENSE RENEWAL  
7 PROCEDURES AND CRITERIA; TO REQUIRE NOTIFICATION OF CERTAIN  
8 ACTIONS AND ACTIVITIES BY THE LICENSEE; TO PROVIDE FOR THE  
9 MAINTENANCE AND INVESTIGATION OF BUSINESS RECORDS; TO REQUIRE A  
10 BIENNIAL INVESTIGATION OF BUSINESS RECORDS; TO PROHIBIT CERTAIN  
11 CONDUCT BY LICENSEES; TO PROVIDE FOR THE DENIAL, SUSPENSION AND  
12 REVOCATION OF LICENSES; TO PROVIDE FOR THE PROMULGATION OF RULES  
13 AND REGULATIONS BY THE DEPARTMENT; TO PROVIDE FOR ENFORCEMENT OF  
14 THIS ACT; TO PRESCRIBE PENALTIES FOR VIOLATIONS OF THIS ACT; TO  
15 AMEND SECTION 81-19-7, MISSISSIPPI CODE OF 1972, TO EXEMPT  
16 LICENSEES UNDER THIS ACT FROM THE CONSUMER LOAN BROKER ACT; AND  
17 FOR RELATED PURPOSES.

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

19 SECTION 1. This act shall be known and cited as the  
20 Mississippi Mortgage Consumer Protection Act.

21 SECTION 2. For purposes of this act, the following terms  
22 shall have the following meanings:

23 (a) "Borrower" means a person who submits an  
24 application for a loan secured by a first or subordinate mortgage  
25 or deed of trust on a single- to four-family home to be occupied  
26 by a natural person.

27 (b) "Commissioner" means the Commissioner of the  
28 Mississippi Department of Banking and Consumer Finance.

29 (c) "Commitment" means a statement by a lender required  
30 to be licensed or registered under this act that sets forth the  
31 terms and conditions upon which the lender is willing to make a  
32 particular mortgage loan to a particular borrower.

33 (d) "Control" means the direct or indirect possession

34 of the power to direct or cause the direction of the management  
35 and policies of a person, whether through the ownership of voting  
36 securities, by contract or otherwise, and shall include  
37 "controlling," "controlled by," and "under common control with."

38 (e) "Department" means the Department of Banking and  
39 Consumer Finance of the State of Mississippi.

40 (f) "Executive officer" means the chief executive  
41 officer, the president, the principal financial officer, the  
42 principal operating officer, each vice president with  
43 responsibility involving policy-making functions for a significant  
44 aspect of a person's business, the secretary, the treasurer, or  
45 any other person performing similar managerial or supervisory  
46 functions with respect to any organization whether incorporated or  
47 unincorporated.

48 (g) "License" means a license to act as a mortgage  
49 company issued by the department under this act.

50 (h) "Licensee" means a person or entity who is required  
51 to be licensed as a mortgage company under this act.

52 (i) "Loan originator" means an individual who directly  
53 or indirectly solicits, processes, places or negotiates mortgage  
54 loans for others, or offers to solicit, process, place or  
55 negotiate mortgage loans for others or who closes mortgage loans.

56 (j) "Make a mortgage loan" means to advance funds,  
57 offer to advance funds or make a commitment to advance funds to an  
58 applicant for a mortgage loan.

59 (k) "Misrepresent" means to make a false statement of a  
60 substantive fact or to engage in, with intent to deceive or  
61 mislead, any conduct that leads to a false belief that is material  
62 to the transaction.

63 (l) "Mortgage company" means any person or entity who  
64 directly or indirectly solicits, processes, places or negotiates  
65 mortgage loans for others, or offers to solicit, process, place or  
66 negotiate mortgage loans for others, or who closes mortgage loans,

67 whether or not in the mortgage company's own name.

68 (m) "Mortgage loan" means a loan or agreement to extend  
69 credit made to a natural person, which loan is secured by a deed  
70 to secure debt, security deed, mortgage, security instrument, deed  
71 of trust or other document representing a security interest or  
72 loan upon any interest in a lot intended for residential purposes,  
73 or single- to four-family residential property located in  
74 Mississippi, regardless of where made, including the renewal or  
75 refinancing of any loan.

76 (n) "Person" means any individual, sole proprietorship,  
77 corporation, limited liability company, partnership, trust or any  
78 other group of individuals, however organized.

79 (o) "Principal" means a natural person who, directly or  
80 indirectly, owns or controls an ownership interest of ten percent  
81 (10%) or more in a corporation or any other form of business  
82 organization, regardless of whether the natural person owns or  
83 controls the ownership interest through one or more natural  
84 persons or one or more proxies, powers of attorney, nominees,  
85 corporations, associations, limited liability companies,  
86 partnerships, trusts, joint-stock companies, other entities or  
87 devises, or any combination thereof.

88 (p) "Registrant" means any person required to register  
89 under paragraph (k) of Section 3 of this act.

90 (q) "Residential property" means improved real property  
91 or lot used or occupied, or intended to be used or occupied, as a  
92 residence by a natural person.

93 (r) "Service a mortgage loan" means the collection or  
94 remittance for another, or the right to collect or remit for  
95 another, of payments of principal interest, trust items such as  
96 insurance and taxes, and any other payments pursuant to a mortgage  
97 loan.

98 SECTION 3. The following persons are not subject to the  
99 provisions of this act, unless otherwise provided in this act:

100           (a) Any lender authorized to engage in business as a  
101 bank, credit card bank, savings bank, savings institution, savings  
102 and loan association, building and loan association, or credit  
103 union under the laws of the United States, any state or territory  
104 of the United States, or the District of Columbia, the deposits of  
105 which are federally insured.

106           (b) Any attorney licensed to practice law in  
107 Mississippi who provides mortgage loan services incidental to the  
108 practice of law and who is not a principal of a mortgage company  
109 as defined under this act.

110           (c) A real estate company or real estate  
111 salesperson who is actively engaged in the real estate business  
112 who does not receive any fee, commission, kickback, rebate or  
113 other payment for directly or indirectly negotiating, placing or  
114 finding a mortgage for others.

115           (d) Any person performing any act relating to mortgage  
116 loans under order of any court.

117           (e) Any natural person, or the estate of or trust  
118 created by a natural person, making a mortgage loan with his or  
119 her own funds for his or her own investment, including but not  
120 limited to, those natural persons, or the estates of or trusts  
121 created by the natural person, who makes a purchase money mortgage  
122 or financing sales of his or her own property. Any person who  
123 enters into more than five (5) such investments or sales in any  
124 twelve-month period is not exempt from being licensed under this  
125 act.

126           (f) Any natural person who purchases mortgage loans  
127 from a licensed mortgage company solely as an investment and who  
128 is not in the business of making or servicing mortgage loans.

129           (g) Any person who makes a mortgage loan to his or her  
130 employee as an employment benefit.

131           (h) The United States of America, the State of  
132 Mississippi or any other state, and any agency, division or

133 corporate instrumentality thereof including, but not limited to,  
134 the Mississippi Home Corporation, Rural Economic Community  
135 Development (RECD), Habitat for Humanity, the Federal National  
136 Mortgage Association (FNMA), the Federal Home Loan Mortgage  
137 Company (FHLMC), the Government National Mortgage Association  
138 (GNMA), the United States Department of Housing and Urban  
139 Development (HUD), the Federal Housing Administration (FHA), the  
140 Department of Veterans Affairs (VA), the Farmers Home  
141 Administration (FmHA), and the Federal Land Banks and Production  
142 Credit Associations.

143 (i) Government sponsored nonprofit corporations making  
144 mortgage loans to promote home ownership or home improvements for  
145 the disadvantaged.

146 (j) A natural person employed by a licensed mortgage  
147 company or any person exempted from the licensing requirements of  
148 this act when acting within the scope of employment with the  
149 licensee or exempted person. Persons employed as loan originators  
150 as defined under Section 2 of this act are exempt from the  
151 licensing requirements of this act but shall register as a loan  
152 originator with the department. This initial registration of a  
153 loan originator shall be accompanied by a fee of One Hundred  
154 Dollars (\$100.00), plus any fee charged by the Department of  
155 Public Safety to perform the necessary background check as  
156 required in subsection (5) of Section 7 of this act. Annual  
157 renewals of this registration shall require a fee of Fifty Dollars  
158 (\$50.00).

159 (k) Any natural person claiming an exemption under  
160 paragraph (g) of this section who has no banking location in this  
161 state and any natural person claiming an exemption under  
162 paragraph (j) of this section shall register initially with the  
163 department and thereafter file an application for renewal of  
164 registration with the department on or before August 31 of each  
165 year providing the department with such information as the

166 department may prescribe by regulation, including but not limited  
167 to, the business addresses where the person engages in any  
168 business activities covered by this act and a telephone number  
169 that customers may use to contact the person. No person required  
170 to register under this paragraph (k) shall transact business in  
171 this state directly or indirectly as a mortgage company or a  
172 mortgage lender unless that person is registered with the  
173 department.

174       SECTION 4. (1) On and after the effective date of this act,  
175 no person or natural person shall transact business in this state,  
176 directly or indirectly, as a mortgage company unless he or she is  
177 licensed as a mortgage company by the department or is a person  
178 exempted from the licensing requirements under Section 3 of this  
179 act.

180       (2) A violation of this section does not affect the  
181 obligation of the borrower under the terms of the mortgage loan.  
182 The department shall publish and provide for distribution of  
183 information regarding approved or revoked licenses.

184       (3) On and after the effective date of this act, every  
185 person who directly or indirectly controls a person who violates  
186 this section, including a general partner, executive officer,  
187 joint venturer, contractor, or director of the person, violates  
188 this section to the same extent as the person, unless the person  
189 whose violation arises under this subsection shows by a  
190 preponderance of evidence the burden of proof that he or she did  
191 not know and, in the exercise of reasonable care, could not have  
192 known of the existence of the facts by reason of which the  
193 original violation is alleged to exist.

194       SECTION 5. (1) An application for a license under this act  
195 shall be made in writing and in the form as the department may  
196 prescribe.

197       (2) The application shall include at least the following:

198           (a) The legal name, residence, and business address of

199 the applicant and, if applicable the legal name, residence and  
200 business address of every principal, together with the resume of  
201 the applicant and of every principal of the applicant.

202 (b) The name under which the applicant will conduct  
203 business in the state.

204 (c) The complete address of the applicant's initial  
205 registered office, branch office(s) and any other locations at  
206 which the applicant will engage in any business activity covered  
207 by this act.

208 (d) A copy of the certificate of incorporation, if a  
209 Mississippi corporation.

210 (e) Documentation satisfactory to the department as to  
211 a certificate of existence of authority to transact business  
212 lawfully in Mississippi, if an individual, sole proprietorship,  
213 limited liability company, partnership, trust or any other group  
214 of individuals, however organized.

215 (f) If a foreign corporation, a copy of a certificate  
216 of authority to conduct business in Mississippi and the address of  
217 the main corporate office of the foreign corporation.

218 (g) Documentation of a minimum of two (2) years'  
219 experience directly in mortgage lending by a person or at least  
220 one (1) executive officer. Evidence shall include, where  
221 applicable:

222 (i) Copies of business licenses issued by  
223 governmental agencies.

224 (ii) Written letters of employment history of the  
225 person filing the application for at least two (2) years before  
226 the date of the filing of an application including, but not  
227 limited to, job descriptions, length of employment, names,  
228 addresses and phone numbers for past employers.

229 (iii) A listing of wholesale lenders with whom the  
230 applicant has done business with in the past two (2) years either  
231 directly as a mortgage company or indirectly as an employee of a

232 mortgage company.

233 (iv) Any other data and pertinent information as  
234 the department may require with respect to the applicant, its  
235 directors, principals, trustees, officers, members, contractors or  
236 agents.

237 (3) The application shall be filed together with the  
238 following:

239 (a) The license fee specified in Section 8 of this act;

240 (b) A completed and signed form authorizing the  
241 department to obtain information from outside sources for each  
242 person, executive officer and employee;

243 (c) An original or certified copy of a surety bond in  
244 favor of the State of Mississippi for the use, benefit, and  
245 indemnity of any person who suffers any damage or loss as a result  
246 of the mortgage company's breach of contract or of any obligation  
247 arising therefrom or any violation of law; and

248 (d) A set of fingerprints from any local law  
249 enforcement agency, from any applicant and any person who is a  
250 director with at least ten percent (10%) ownership in the  
251 corporation, an executive officer, a partner or a loan originator.

252 SECTION 6. (1) For purposes of Section 5 of this act, the  
253 definitions of the classes of companies and their respective  
254 minimum amounts of surety bonds will be:

255 (a) "Correspondent lender" shall be defined as a  
256 company that directly or indirectly solicits, processes, places or  
257 negotiates mortgage loans for others, or offers to solicit,  
258 process, place or negotiate mortgage loans for others, that uses  
259 its own funds for closing and may hold loans and may service those  
260 loans for a period of time not to exceed six (6) months before  
261 selling the loan in the secondary market. The amount of the  
262 surety bond for correspondent lenders shall be Fifty Thousand  
263 Dollars (\$50,000.00).

264 (b) "Mortgage broker" shall be defined as any company



265 that directly solicits, processes, places or negotiates mortgage  
266 loans for others and that does not close mortgage loans in the  
267 company name, does not use its own funds, or who closes mortgage  
268 loans in the name of the company, and sells, assigns or transfers  
269 the loan to others within forty-eight (48) hours of the closing.  
270 The amount of the surety bond for mortgage brokers shall be  
271 Twenty-five Thousand Dollars (\$25,000.00).

272 (c) "Mortgage lender" shall be defined as any company  
273 that makes a mortgage loan, using its own funds, for others or for  
274 compensation or gain, with the expectation of retaining servicing  
275 rights to those loans, or in the expectation of gain, either  
276 directly or indirectly, sells or offers to sell a mortgage loan to  
277 an investor in the secondary market. The amount of the surety  
278 bond for a mortgage lender shall be One Hundred Fifty Thousand  
279 Dollars (\$150,000.00).

280 SECTION 7. (1) Upon receipt of an application for a  
281 license, which shall include the required set of fingerprints from  
282 any local law enforcement agency, the department shall conduct  
283 such an investigation as it deems necessary to determine that the  
284 applicant and its officers, directors and principals are of good  
285 character and ethical reputation; that the applicant demonstrates  
286 reasonable financial responsibility; that the applicant has  
287 reasonable policies and procedures to receive and process customer  
288 grievances and inquiries promptly and fairly; and that the  
289 applicant has and maintains a place of business in this state.

290 (2) The department may not license an applicant unless it is  
291 satisfied that the applicant will operate its mortgage company  
292 activities in compliance with the laws, rules and regulations of  
293 this state and the United States.

294 (3) The department may not license any mortgage company  
295 unless the applicant meets the requirements of Section 6 of this  
296 act.

297 (4) The department may not issue a license if it finds that

298 the applicant, or any person who is a director, officer, partner,  
299 or principal of the applicant, has been convicted of a felony  
300 involving moral turpitude in any jurisdiction or of a crime that,  
301 if committed within this state, would constitute a felony  
302 involving moral turpitude under the laws of this state. For the  
303 purposes of this act, a person shall be deemed to have been  
304 convicted of a crime if the person has pleaded guilty to a crime  
305 before a court or federal magistrate, or plea of nolo contendere,  
306 or has been found guilty of a crime by the decision or judgment of  
307 a court or federal magistrate or by the verdict of a jury,  
308 irrespective of the pronouncement of sentence or the suspension of  
309 a sentence, unless the plea of guilty, or the decision, judgment  
310 or verdict, has been set aside, reversed or otherwise abrogated by  
311 lawful judicial process, or unless the person convicted of the  
312 crime has received a pardon from the President of the United  
313 States or the Governor or other pardoning authority in the  
314 jurisdiction where the conviction was obtained.

315 (5) In order to determine the applicant's suitability for a  
316 license, the commissioner shall forward the fingerprints submitted  
317 with the application to the Department of Public Safety; and if no  
318 disqualifying record is identified at the state level, the  
319 fingerprints shall be forwarded by the Department of Public Safety  
320 to the FBI for a national criminal history record check. Any fee  
321 charged by the Department of Public Safety for that search shall  
322 be the responsibility of the applicant. All conviction data  
323 received by the department shall be used by the department for the  
324 exclusive purpose of carrying out the responsibilities of this  
325 act, may not be a public record, shall be privileged, and may not  
326 be disclosed to any other person or agency, except to any person  
327 or agency that otherwise has a legal right to inspect the file.  
328 All records shall be maintained by the department according to  
329 law. As used in this section "conviction data" means a record of  
330 a finding or verdict of guilty or plea of guilty or plea of nolo

331 contendere with regard to any crime regardless of whether an  
332 appeal of the conviction has been sought.

333 (6) The department may deny a license or otherwise restrict  
334 a license if it finds that the applicant, or any person who is a  
335 director, officer, partner, affiliate, contractor or principal of  
336 the applicant, has had any professional license denied, revoked or  
337 suspended by any state within two (2) years of the date of the  
338 application.

339 (7) Any mortgage company that has a United States Department  
340 of Housing and Urban Development designation as a mortgagee shall  
341 automatically be granted a license under this act without  
342 investigation by the department, unless the department has actual  
343 knowledge of facts that would constitute grounds for the  
344 revocation or suspension of that designation.

345 (8) Within fifteen (15) days after receipt of a completed  
346 application, final verification from the Department of Public  
347 Safety and/or FBI, and payment of licensing fees prescribed by  
348 this act, the department shall either grant or deny the request  
349 for license.

350 (9) A person shall not be indemnified for any act covered by  
351 this act or for any fine or penalty incurred under this act as a  
352 result of any violation of this act or regulations adopted under  
353 this act, due to the legal form, corporate structure, or choice of  
354 organization of the person including, but not limited to, a  
355 limited liability corporation.

356 SECTION 8. (1) Each license shall remain in full force and  
357 effect until relinquished, suspended, revoked or expired. With  
358 each initial application for a license, the applicant shall pay to  
359 the commissioner a license fee of Seven Hundred Fifty Dollars  
360 (\$750.00), and on or before August 31 of each year thereafter, an  
361 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).

362 If the annual renewal fee remains unpaid thirty (30) days after  
363 August 31, the license shall expire, but not before September 30

364 of any year for which the annual renewal fee has been paid. If  
365 any person engages in business as provided for in this act without  
366 paying the license fee provided for in this subsection before  
367 commencing business or before the expiration of the person's  
368 current license, as the case may be, then the person shall be  
369 liable for the full amount of the license fee, plus a penalty in  
370 an amount not to exceed Twenty-five Dollars (\$25.00) for each day  
371 that the person has engaged in such business without a license or  
372 after the expiration of a license. All licensing fees and  
373 penalties shall be paid into the Consumer Finance Fund of the  
374 department.

375 (2) Any licensee making timely and proper application for a  
376 license renewal shall be permitted to continue to operate under  
377 its existing license until its application is approved or  
378 rejected, but shall not be released from or otherwise indemnified  
379 for any act covered by this act or for any penalty incurred under  
380 this act as a result of any violation of this act or regulations  
381 adopted under this act, pending final approval or disapproval of  
382 the application for the license renewal.

383 (3) Each application for licensing, renewal or registration  
384 renewal shall include evidence of the satisfactory completion of  
385 at least twelve (12) hours of approved continuing education in  
386 primary and subordinated financing transactions by the officers,  
387 principals and registered employees. For purposes of this  
388 subsection (3), approved courses shall be those as approved by the  
389 Education Committee of the National Association of Mortgage  
390 Brokers or those approved by the Mississippi Association of  
391 Mortgage Brokers, who shall submit to the department a listing of  
392 approved schools, courses, programs and special training sessions.

393 SECTION 9. (1) Each license issued under this act shall  
394 state the address of the licensee's principal place of business in  
395 Mississippi and the name of the licensee.

396 (2) A licensee shall post a copy of the license in a

397 conspicuous place in each place of business of the licensee.

398 (3) A license may not be transferred or assigned.

399 (4) No licensee shall transact business under any name other  
400 than that designated in the license.

401 (5) Each licensee shall notify the department, in writing,  
402 of any change in the address of its principal place of business or  
403 of any additional location of business or any change of officer,  
404 director or principal of the licensee within thirty (30) days of  
405 the change.

406 (6) No licensee shall open a branch office without prior  
407 approval of the department. An application for any branch office  
408 shall be made in writing on a form prescribed by the department,  
409 which shall include at least evidence of compliance with  
410 subsection (1) of Section 13 of this act as to that branch and  
411 shall be accompanied by payment of a nonrefundable application fee  
412 of One Hundred Dollars (\$100.00). The application shall be  
413 approved unless the department finds that the applicant has not  
414 conducted business under this act in accordance with law. The  
415 application shall be deemed approved if notice to the contrary has  
416 not been mailed by the department to the applicant within thirty  
417 (30) days of the date that the application is received by the  
418 department. After approval, the applicant shall give written  
419 notice to the department within ten (10) days of the commencement  
420 of business at the branch office.

421 SECTION 10. (1) Except as provided in this section, on and  
422 after July 1, 1999, no person shall acquire directly or indirectly  
423 ten percent (10%) or more of the voting shares of a corporation or  
424 ten percent (10%) or more of the ownership of any other entity  
425 licensed to conduct business under this act unless it first does  
426 all of the following:

427 (a) Files an application in such form as the department  
428 may prescribe.

429 (b) Delivers any other information required by the

430 department as the department concerning the surety bond, the  
431 applicants background and experience, and activities, its  
432 directors and officers, if applicable, and its members, if  
433 applicable, and of any proposed new directors, officers or members  
434 of the licensee.

435 (c) Pays an application fee of One Hundred Fifty  
436 Dollars (\$150.00).

437 (2) Upon the filing and investigation of an application, the  
438 department shall permit the applicant to acquire the interest in  
439 the licensee if it is satisfied and finds that the applicant and  
440 its members, if applicable, its directors and officers, if a  
441 corporation, and any proposed new directors and officers have  
442 provided its surety bond and have the character, reputation and  
443 experience to warrant belief that the business will be operated  
444 fairly and in accordance with the law. The department shall grant  
445 or deny the application within sixty (60) days from the date a  
446 completed application accompanied by the required fee is filed,  
447 unless the period is extended by order of the department  
448 specifying the reasons for the extension. If the application is  
449 denied, the department shall notify the applicant of the denial  
450 and the reasons for the denial.

451 (3) A decision of the department denying a license or  
452 registration, original or renewal shall be conclusive, except that  
453 it shall be subject to judicial review in the chancery court of  
454 the First Judicial District of Hinds County.

455 (4) The provisions of this section do not apply to the  
456 following, subject to notification as required in this section:

457 (a) The acquisition of an interest in a licensee  
458 directly or indirectly including an acquisition by merger or  
459 consolidation by or with a person exempt from this act under  
460 Section 3 of this act.

461 (b) The acquisition of an interest in a licensee  
462 directly or indirectly including an acquisition by merger or

463 consolidation by or with a person affiliated through common  
464 ownership with the licensee.

465 (c) The acquisition of an interest in a licensee by a  
466 person by bequest, devise, gift or survivorship or by operation of  
467 law.

468 (5) A person acquiring an interest in a licensee in a  
469 transaction that is requesting exemption from filing an  
470 application for approval of the application shall send a written  
471 request to the department for an exemption within thirty (30) days  
472 before the closing of the transaction.

473 SECTION 11. (1) Any person required to be licensed under  
474 this act shall maintain in its offices, or such other location as  
475 the department shall permit, the books, accounts and records  
476 necessary for the department to determine whether or not the  
477 person is complying with the provisions of this act and the rules  
478 and regulations adopted by the department under this act. These  
479 books, accounts and records shall be maintained apart and separate  
480 from any other business in which the person is involved and shall  
481 represent historical data for two (2) years preceding the date of  
482 the last license application date forward.

483 (2) To assure compliance with the provisions of this act,  
484 the department may examine the books and records of any licensee  
485 without notice during normal business hours. The commissioner may  
486 charge the licensee an examination fee in an amount not less than  
487 Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars  
488 (\$300.00) per examination of each office or location within the  
489 State of Mississippi, plus any actual expenses incurred while  
490 examining the licensee's records or books that are located outside  
491 the State of Mississippi. However, in no event shall a licensee  
492 be examined more than once in a two-year period unless for cause  
493 shown based upon consumer complaint and/or other exigent reasons  
494 as determined by the commissioner.

495 (3) The department, its designated officers and employees,

496 or its duly authorized representatives, for the purposes of  
497 discovering violations of this act and for the purpose of  
498 determining whether any person or individual reasonably suspected  
499 by the commissioner of conducting business that requires a license  
500 or registration under this act, may investigate those persons and  
501 individuals and examine all relevant books, records and papers  
502 employed by those persons or individuals in the transaction of  
503 business, and may summon witnesses and examine them under oath  
504 concerning matters as to the business of those persons, or other  
505 such matters as may be relevant to the discovery of violations of  
506 this act including, without limitation, the conduct of business  
507 without a license or registration as required under this act.

508 (4) The department, in its discretion, may disclose  
509 information concerning any violation of this act or any rule,  
510 regulation, or order under this act, provided the information is  
511 derived from a final order of the department.

512 (5) Examinations and investigations conducted under this act  
513 and information obtained by the department, except as provided in  
514 subsection (4) of this section, in the course of its duties under  
515 this act are confidential.

516 (6) In the absence of malice, fraud, or bad faith a person  
517 is not subject to civil liability arising from the filing of a  
518 complaint with the department, furnishing other information  
519 required by this act, information required by the department under  
520 the authority granted in this act, or information voluntarily  
521 given to the department related to allegations that a licensee or  
522 prospective licensee has violated this act.

523 SECTION 12. (1) Each licensee shall annually, on or before  
524 April 1, file a written report with the department containing the  
525 information that the department may reasonably require concerning  
526 the licensee's business and operations during the preceding  
527 calendar year. The report shall be made in the form prescribed by  
528 the department.



529           (2) Any licensee who fails to file with the department by  
530 April 1 the report required by this section shall be subject to a  
531 late penalty of Fifty Dollars (\$50.00) for each day after April 1  
532 the report is delinquent, but in no event shall the aggregate of  
533 late penalties exceed Five Hundred Dollars (\$500.00).

534           (3) The department, in its discretion, may relieve any  
535 licensee from the payment of any penalty, in whole or in part, for  
536 good cause.

537           (4) If a licensee fails to pay a penalty from which it has  
538 not been relieved, the department may maintain an action at law to  
539 recover the penalty.

540           SECTION 13. (1) Each licensee shall maintain and transact  
541 business from a principal place of business in the state.

542           (2) Each principal place of business and branch office in  
543 the state also shall meet all of the following requirements:

544           (a) Be in compliance with local zoning ordinances and  
545 have posted any licenses required by local government agencies.  
546 It is the responsibility of the licensee to meet local zoning  
547 ordinances and obtain the required occupational licenses.

548           (b) Consist of at least one (1) enclosed room or  
549 building of stationary construction in which negotiations of  
550 mortgage loan transactions may be conducted in privacy.

551           (c) Display a permanent sign outside the place of  
552 business readily visible to the general public. The sign must  
553 contain the name of the licensee and the words "Mississippi  
554 Licensed Mortgage Company."

555           (3) Each licensee shall prominently display a copy of its  
556 current license at the principal place of business and each branch  
557 office.

558           (4) Each person registered under this act shall prominently  
559 display his or her registration in the office where the person is  
560 employed.

561           SECTION 14. No person transacting a mortgage business in or

562 from this state, including any person required to be licensed or  
563 registered under this act and any person exempted from the  
564 licensing requirements of this act shall:

565 (a) Misrepresent the material facts or make false  
566 promises intended to influence, persuade or induce an applicant  
567 for a mortgage loan or mortgagor to take a mortgage loan or cause  
568 or contribute to misrepresentation by its agents or employees.

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

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

574 (d) Improperly refuse to issue a satisfaction of a  
575 mortgage loan.

576 (e) Fail to account for or deliver to any person any  
577 personal property obtained in connection with a mortgage loan,  
578 such as money, funds, deposits, checks, drafts, mortgages or other  
579 documents or things of value that have come into the possession of  
580 the mortgage company and that are not the property of the mortgage  
581 company, or that the mortgage company is not by law or at equity  
582 entitled to retain.

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

587 (g) Engage in any fraudulent residential mortgage  
588 underwriting practices.

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

595           (i) Make, directly or indirectly, any residential  
596 mortgage loan with the intent to foreclose on the borrower's  
597 property. For purposes of this paragraph, there is a presumption  
598 that a person has made a residential mortgage loan with the intent  
599 to foreclose on the borrower's property if all of the following  
600 circumstances are proven:

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

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

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

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

608                   (v) That the person does business under a trade  
609 name that misrepresents or tends to misrepresent that the person  
610 is a bank, trust company, savings bank, savings and loan  
611 association, credit union, or insurance company.

612           (j) Charge or collect any direct payment, compensation  
613 or advance fee from a borrower unless and until a loan is actually  
614 found, obtained and closed for that borrower, and in no event  
615 shall that direct payment, compensation or advance fee exceed ten  
616 percent (10%) of the original principal amount of the loan, and  
617 any such direct payments, compensation or advance fees shall be  
618 included in all annual percentage rate (APR) calculations if  
619 required under Regulation Z of the federal Truth in Lending Act  
620 (TILA). A direct payment, compensation or advance fee as defined  
621 in this section shall not include:

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

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

628 (iii) Any indirect payment or compensation by a  
629 lender to a licensed mortgage company required to be disclosed by  
630 the licensed mortgage company under RESPA, provided that the  
631 payment or compensation is disclosed to the borrower by the  
632 licensed mortgage company on a good faith estimate of costs, is  
633 included in the APR if required under Regulation Z of TILA, and is  
634 made pursuant to a written agreement between the licensed mortgage  
635 company and the borrower as may be required by Section 17 of this  
636 act.

637 SECTION 15. The department shall promulgate those rules and  
638 regulations, not inconsistent with law, necessary for the  
639 enforcement of this act.

640 SECTION 16. The department shall promulgate regulations  
641 governing the advertising of mortgage loans, including, but not  
642 limited to, the following requirements:

643 (a) That all advertisements for loans regulated under  
644 this act may not be false, misleading or deceptive. No person  
645 whose activities are regulated under this act may advertise in any  
646 manner so as to indicate or imply that its interest rates or  
647 charges for loans are "recommended," "approved," "set" or  
648 "established" by the State of Mississippi;

649 (b) That all licensees shall maintain a copy of all  
650 advertisements citing interest rates or payment amounts primarily  
651 disseminated in this state and shall attach to each advertisement  
652 documentation that provides corroboration of the availability of  
653 the interest rate and terms of loans and names the specific media  
654 sources by which the advertisements were distributed;

655 (c) That all published advertisements disseminated  
656 primarily in this state by a license shall contain the name and an  
657 office address of the licensee, which shall be the same as the  
658 name and address of the licensee on record with the department.

659 (d) That an advertisement containing either a quoted  
660 interest rate or monthly payment amount must include:

661 (i) The interest rate of the mortgage, a statement  
662 as to whether the rate is fixed or adjustable, and the adjustment  
663 index and frequency of adjustments;

664 (ii) The term in years or months to fully repay  
665 the mortgage; and

666 (iii) The APR as computed under federal  
667 guidelines; and

668 (e) That no licensee shall advertise its services in  
669 Mississippi in any media disseminated primarily in this state,  
670 whether print or electronic, without the words "Mississippi  
671 Licensed Mortgage Company."

672 SECTION 17. The individual borrower files of a mortgage  
673 company shall contain at least the following:

674 (a) A mortgage origination agreement provided to the  
675 borrower containing at least the information as contained in the  
676 currently effective form of HUD-1-B and including the following  
677 statements:

678 (i) "As required by Mississippi Law, (licensed  
679 company name) has secured a bond issued by (name of insurance  
680 company), a surety company authorized to do business in this  
681 state. A certified copy of this bond is filed with the  
682 Mississippi Commissioner of Banking and Consumer Finance."

683 (ii) "As a borrower you are protected under the  
684 Mississippi Mortgage Consumer Protection Act."

685 (iii) "Complaints against a mortgage company may  
686 be made by contacting the:

687 Mississippi Department of Banking and

688 Consumer Finance

689 P.O. Box 23729

690 Jackson, MS 39225-3729."

691 (b) A copy of the original loan application signed and  
692 dated by the mortgage company;

693 (c) A copy of the signed closing statement as required

694 by HUD or documentation of denial or cancellation of the loan  
695 application;

696 (d) A copy of the good faith estimate of costs provided  
697 to the borrower;

698 (e) A copy of the appraisal or statement of value if  
699 procured as a part of the loan application process;

700 (f) Evidence of a loan lock-in provided by the lender;  
701 and

702 (g) A copy of the disclosures required under Regulation  
703 Z of the federal Truth In Lending Act and other disclosures as  
704 required under federal regulations and evidence that those  
705 disclosures have been properly and timely made to the borrower.

706 SECTION 18. Each licensee shall maintain a journal of  
707 mortgage transactions at the principal place of business as stated  
708 on its license, which shall include at least the following  
709 information:

710 (a) Name of applicant,

711 (b) Date of application, and

712 (c) Disposition of loan application, indicating date of  
713 loan funding, loan denial, withdrawal and name of lender if  
714 applicable.

715 SECTION 19. (1) The department may suspend or revoke any  
716 license or registration for any reason that would have been  
717 grounds for refusal to issue an original license or registration  
718 or for:

719 (a) A violation of any provision of this act or any  
720 rule or regulation adopted under this act;

721 (b) Failure of the licensee or registrant to pay,  
722 within thirty (30) days after it becomes final and nonappealable,  
723 a judgment recovered in any court within this state by a claimant  
724 or creditor in an action arising out of the licensee's or  
725 registrant's business in this state as a mortgage company.

726 (2) Notice of the department's intention to enter an order

727 denying an application for a license or registration under this  
728 act or of an order suspending or revoking a license or  
729 registration under this act shall be given to the applicant,  
730 licensee or registrant in writing, sent by registered or certified  
731 mail addressed to the principal place of business of the  
732 applicant, licensee or registrant. Within thirty (30) days of the  
733 date of the notice of intention to enter an order of denial,  
734 suspension or revocation under this act, the applicant, licensee  
735 or registrant may request in writing a hearing to contest the  
736 order. If a hearing is not requested in writing within thirty  
737 (30) days of the date of the notice of intention, the department  
738 shall enter a final order regarding the denial, suspension or  
739 revocation. Any final order of the department denying, suspending  
740 or revoking a license or registration shall state the grounds upon  
741 which it is based and shall be effective on the date of issuance.  
742 A copy of the final order shall be forwarded promptly by  
743 registered or certified mail addressed to the principal place of  
744 business of the applicant, licensee or registrant.

745       SECTION 20. (1) For purposes of this section, the term  
746 "person" shall be construed to include any officer, director,  
747 employee, affiliate or other person participating in the conduct  
748 of the affairs of the person subject to the orders issued under  
749 this section.

750       (2) If the department reasonably determines that a person  
751 required to be licensed or registered under this act has violated  
752 any law of this state or any order or regulation of the  
753 department, the department may issue a written order requiring the  
754 person to cease and desist from unlawful or unauthorized  
755 practices. In the case of an unlawful purchase of mortgage loans,  
756 the cease and desist order to a purchaser shall constitute the  
757 knowledge required under this section for any subsequent  
758 violations.

759       (3) Whenever a person required to be licensed or registered

760 under this act fails to comply with the terms of an order of the  
761 department that has been properly issued, the department, upon  
762 notice of three (3) days to the person, may petition a court of  
763 competent jurisdiction for an order directing the person to obey  
764 the orders of the department within a period of time specified by  
765 the court. Upon the filing of a petition, the court shall issue  
766 an order to the licensee requiring the licensee to show cause why  
767 it should not be entered. If the court determines, after a  
768 hearing upon the merits or after failure of the person to appear  
769 when so ordered, that the order of the department was properly  
770 issued, it shall grant the relief sought by the department.

771 (4) Any person required to be licensed or registered under  
772 this act who has been deemed by the court to have violated the  
773 terms of any order properly issued by the department under this  
774 section shall be liable for a civil penalty not to exceed Three  
775 Thousand Dollars (\$3,000.00). The department, in determining the  
776 amount of the penalty, shall take into account the appropriateness  
777 of the penalty relative to the size of the financial resources of  
778 the person, the good faith efforts of the person to comply with  
779 the order, the gravity of the violation, the history of previous  
780 violations by the person, and other factors or circumstances that  
781 contributed to the violation. The department may compromise,  
782 modify or refund any penalty that has been imposed under this  
783 section. Any person assessed a penalty as provided in this  
784 subsection shall have the right to request a hearing on the amount  
785 of the penalty within ten (10) days after receiving notification  
786 of the assessment. If no hearing is requested within ten (10)  
787 days of the receipt of the notice, the penalty shall be final  
788 except as to judicial review in the chancery court of the First  
789 Judicial District of Hinds County.

790 SECTION 21. Nothing in this act shall preclude a person  
791 whose license or registration has been suspended or revoked from  
792 continuing to service mortgage loans pursuant to servicing



793 contracts in existence at the time of the suspension or  
794 revocation.

795 SECTION 22. (1) In addition to any other penalty that may  
796 be applicable, any licensee, individual required to be registered,  
797 or employee who willfully violates any provision of this act, or  
798 who willfully makes a false entry in any document specifically  
799 required by this act, shall be guilty of a misdemeanor and, upon  
800 conviction thereof, shall be punishable by a fine not in excess of  
801 One Thousand Dollars (\$1,000.00) per violation or false entry.

802 (2) In addition to any other penalty that may be applicable,  
803 any licensee, individual required to be registered, or employee  
804 who fails to make a record of a mortgage transaction and  
805 subsequently sells or disposes of the mortgage from that  
806 transaction shall be punished as follows:

807 (a) For a first offense, the licensee, individual  
808 required to be registered, or employee shall be guilty of a  
809 misdemeanor and, upon conviction thereof, shall be punishable by a  
810 fine not in excess of One Thousand Dollars (\$1,000.00) or by  
811 imprisonment in the county jail for not more than one (1) year, or  
812 both fine and imprisonment;

813 (b) For a second offense, the licensee, individual  
814 required to be registered, or employee shall be guilty of a felony  
815 and, upon conviction thereof, shall be punishable by a fine not in  
816 excess of Five Thousand Dollars (\$5,000.00) or by imprisonment in  
817 the custody of the State Department of Corrections for a term not  
818 less than one (1) year nor more than five (5) years, or by both  
819 fine and imprisonment.

820 (3) Any licensee convicted in the manner provided in  
821 subsection (2) of this section shall forfeit the surety bond or  
822 deposit required in Section 6 of this act and the amount of the  
823 bond or deposit shall be credited to the budget of the state or  
824 local agency that directly participated in the prosecution of the  
825 licensee, for the specific purpose of increasing law enforcement

826 resources for that specific state or local agency. Any proceeds  
827 of a forfeited bond or deposit shall be used to augment existing  
828 state and local law enforcement budgets and not to supplant them.

829 (4) Compliance with the criminal provisions of this act  
830 shall be enforced by the appropriate law enforcement agency, which  
831 may exercise for that purpose any authority conferred upon the  
832 agency by law.

833 (5) When the commissioner has reasonable cause to believe  
834 that a person is violating any provision of this act, the  
835 commissioner, in addition to and without prejudice to the  
836 authority provided elsewhere in this act, may enter an order  
837 requiring the person to stop or to refrain from the violation.  
838 The commissioner may sue in any chancery court of the state having  
839 jurisdiction and venue to enjoin the person from engaging in or  
840 continuing the violation or from doing any act in furtherance of  
841 the violation. In such an action, the court may enter an order or  
842 judgment awarding a preliminary or permanent injunction.

843 (6) The commissioner may, after notice and hearing, impose a  
844 civil penalty against any licensee if the licensee, individual  
845 required to be registered, or employee is adjudged by the  
846 commissioner to be in violation of the provisions of this act.  
847 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
848 per violation and shall be deposited into the Consumer Finance  
849 Fund of the department. Any person or officers, directors and  
850 employees thereof who violate any of the provisions of this act  
851 shall be guilty of a misdemeanor and, upon conviction, shall be  
852 punished by imprisonment for not more than one (1) year or by a  
853 fine of not more than Three Thousand Dollars (\$3,000.00), or by  
854 both fine and imprisonment. The state may enforce its rights  
855 under the surety bond as required in Section 6 of this act as an  
856 available remedy for the collection of these fines.

857 SECTION 23. The commissioner may employ the necessary  
858 full-time employees above the number of permanent full-time

859 employees authorized for the department for the fiscal year 2000,  
860 to carry out and enforce the provisions of this act. The  
861 commissioner also may expend the necessary funds and equip and  
862 provide necessary travel expenses for those employees.

863 SECTION 24. Section 81-19-7, Mississippi Code of 1972 is  
864 amended as follows:

865 81-19-7. Except as otherwise provided in this section, this  
866 chapter does not apply to:

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

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

875 (c) Mortgage companies required to be licensed and  
876 individuals required to be registered under the Mississippi  
877 Mortgage Consumer Protection Act (Sections 1 through 23 of this  
878 act).

879 (d) An attorney licensed in this state who is not  
880 actively and principally engaged in the business of being a  
881 consumer loan broker even though the services of a consumer loan  
882 broker are occasionally rendered in the attorney's practice of  
883 law.

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

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

891 SECTION 25. This act shall take effect and be in force from

892 and after July 1, 1999.