

By: Senator(s) Hewes

To: Business and
Financial
Institutions

SENATE BILL NO. 2978

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

mortgage company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conspicuous place in each place of business of the licensee.

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

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

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

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

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

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

(b) Delivers any other information required by the

department as the department concerning the surety bond, the applicant's background and experience, and activities, its directors and officers, if applicable, and its members, if applicable, and of any proposed new directors, officers or members of the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. No person transacting a mortgage business in or

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

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

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

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

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

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

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

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

(h) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not 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

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

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

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

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

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

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

(d) That an advertisement containing either a quoted 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) When the commissioner has reasonable cause to believe that a person is violating any provision of this act, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this act, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any chancery 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.

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

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

employees authorized for the department for the Fiscal Year 2000, to carry out and enforce the provisions of this act. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SECTION 24. 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 23 of Senate Bill No. 2978, 1999 Regular Session).

(d) An attorney 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.

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

892 and after July 1, 1999.