

By: Guice

To: Banks and Banking

## HOUSE BILL NO. 1446

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; TO  
17 AMEND SECTION 81-20-1, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
18 REPEALER ON THE PROVISION AUTHORIZING THE COMMISSIONER OF BANKING  
19 AND CONSUMER FINANCE TO INVESTIGATE COMPLAINTS AGAINST MORTGAGE  
20 COMPANIES; AND FOR RELATED PURPOSES.

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

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

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

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

30 (b) "Commissioner" means the Commissioner of the  
31 Mississippi Department of Banking and Consumer Finance.

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

36           (d) "Control" means the direct or indirect possession  
37 of the power to direct or cause the direction of the management  
38 and policies of a person, whether through the ownership of voting  
39 securities, by contract or otherwise, and shall include  
40 "controlling," "controlled by," and "under common control with."

41           (e) "Department" means the Department of Banking and  
42 Consumer Finance of the State of Mississippi.

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

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

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

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

59           (j) "Make a mortgage loan" means to advance funds,  
60 offer to advance funds or make a commitment to advance funds to an  
61 applicant for a mortgage loan.

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

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

69 negotiate mortgage loans for others, or who closes mortgage loans,  
70 whether or not in the mortgage company's own name.

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

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

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

91 (p) "Records" or "documents" means any item in hard  
92 copy or produced in a format of storage commonly described as  
93 electronic, imaged, magnetic, microphotographic or otherwise, and  
94 any reproduction so made shall have the same force and effect as  
95 the original thereof and be admitted in evidence equally with the  
96 original.

97 (q) "Registrant" means any person required to register  
98 under paragraph (m) of Section 3 of this act.

99 (r) "Residential property" means improved real property  
100 or lot used or occupied, or intended to be used or occupied, as a  
101 residence by a natural person.

102           (s) "Service a mortgage loan" means the collection or  
103 remittance for another, or the right to collect or remit for  
104 another, of payments of principal interest, trust items such as  
105 insurance and taxes, and any other payments pursuant to a mortgage  
106 loan.

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

109           (a) Any lender authorized to engage in business as a  
110 bank, credit card bank, savings bank, savings institution, savings  
111 and loan association, building and loan association, or credit  
112 union under the laws of the United States, any state or territory  
113 of the United States, or the District of Columbia, the deposits of  
114 which are federally insured.

115           (b) Approved mortgages of the United States Department  
116 of Housing and Urban Development or the Federal Housing  
117 Administration when the mortgages have been approved as a seller,  
118 servicer, mortgagee or issuer or when they have satisfied  
119 Veterans Administration requirements to qualify for automatic  
120 authority; however, if these mortgagees/lenders make any other  
121 type of mortgage loan, they will be subject to the entire  
122 provisions of this act.

123           (c) Any lender holding a license under the Small Loan  
124 Regulatory Law (Section 75-67-101 et seq.) and making real estate  
125 loans under that law are exempt from this act. However, those  
126 lenders holding a license under the Small Loan Regulatory Law and  
127 making real estate loans outside that law shall be subject to the  
128 entire provisions of this act.

129           (d) Any attorney licensed to practice law in  
130 Mississippi who provides mortgage loan services incidental to the  
131 practice of law and who is not a principal of a mortgage company  
132 as defined under this act.

133           (e) A real estate company or real estate  
134 salesperson who is actively engaged in the real estate business

135 who does not receive any fee, commission, kickback, rebate or  
136 other payment for directly or indirectly negotiating, placing or  
137 finding a mortgage for others.

138 (f) Any person performing any act relating to mortgage  
139 loans under order of any court.

140 (g) Any natural person, or the estate of or trust  
141 created by a natural person, making a mortgage loan with his or  
142 her own funds for his or her own investment, including but not  
143 limited to, those natural persons, or the estates of or trusts  
144 created by the natural person, who makes a purchase money mortgage  
145 or financing sales of his or her own property. Any person who  
146 enters into more than five (5) such investments or sales in any  
147 twelve-month period is not exempt from being licensed under this  
148 act.

149 (h) Any natural person who purchases mortgage loans  
150 from a licensed mortgage company solely as an investment and who  
151 is not in the business of making or servicing mortgage loans.

152 (i) Any person who makes a mortgage loan to his or her  
153 employee as an employment benefit.

154 (j) The United States of America, the State of  
155 Mississippi or any other state, and any agency, division or  
156 corporate instrumentality thereof including, but not limited to,  
157 the Mississippi Home Corporation, Rural Economic Community  
158 Development (RECD), Habitat for Humanity, the Federal National  
159 Mortgage Association (FNMA), the Federal Home Loan Mortgage  
160 Company (FHLMC), the Government National Mortgage Association  
161 (GNMA), the United States Department of Housing and Urban  
162 Development (HUD), the Federal Housing Administration (FHA), the  
163 Department of Veterans Affairs (VA), the Farmers Home  
164 Administration (FmHA), and the Federal Land Banks and Production  
165 Credit Associations.

166 (k) Government sponsored nonprofit corporations making  
167 mortgage loans to promote home ownership or home improvements for

168 the disadvantaged.

169           (1) A natural person employed by a licensed mortgage  
170 company or any person exempted from the licensing requirements of  
171 this act when acting within the scope of employment with the  
172 licensee or exempted person. Persons employed as loan originators  
173 as defined under Section 2 of this act are exempt from the  
174 licensing requirements of this act but shall register as a loan  
175 originator with the department. This initial registration of a  
176 loan originator shall be accompanied by a fee of One Hundred  
177 Dollars (\$100.00), plus any fee charged by the Department of  
178 Public Safety to perform the necessary background check as  
179 required in subsection (5) of Section 7 of this act. Annual  
180 renewals of this registration shall require a fee of Fifty Dollars  
181 (\$50.00).

182           (m) Any natural person claiming an exemption under  
183 paragraph (i) of this section who has no banking location in this  
184 state and any natural person claiming an exemption under  
185 paragraph (1) of this section shall register initially with the  
186 department and thereafter file an application for renewal of  
187 registration with the department on or before August 31 of each  
188 year providing the department with such information as the  
189 department may prescribe by regulation, including but not limited  
190 to, the business addresses where the person engages in any  
191 business activities covered by this act and a telephone number  
192 that customers may use to contact the person. No person required  
193 to register under this paragraph (m) shall transact business in  
194 this state directly or indirectly as a mortgage company or a  
195 mortgage lender unless that person is registered with the  
196 department.

197       SECTION 4. (1) On and after the effective date of this act,  
198 no person or natural person shall transact business in this state,  
199 directly or indirectly, as a mortgage company unless he or she is  
200 licensed as a mortgage company by the department or is a person

201 exempted from the licensing requirements under Section 3 of this  
202 act.

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

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

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

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

221 (a) The legal name, residence, and business address of  
222 the applicant and, if applicable the legal name, residence and  
223 business address of every principal, together with the resume of  
224 the applicant and of every principal of the applicant.

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

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

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

233 (e) Documentation satisfactory to the department as to

234 a certificate of existence of authority to transact business  
235 lawfully in Mississippi, if an individual, sole proprietorship,  
236 limited liability company, partnership, trust or any other group  
237 of individuals, however organized.

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

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

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

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

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

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

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

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

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

266 (c) An original or certified copy of a surety bond in



267 favor of the State of Mississippi for the use, benefit, and  
268 indemnity of any person who suffers any damage or loss as a result  
269 of the mortgage company's breach of contract or of any obligation  
270 arising therefrom or any violation of law; and

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

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

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

287 (b) "Mortgage broker" shall be defined as any company  
288 that directly solicits, processes, places or negotiates mortgage  
289 loans for others and that does not close mortgage loans in the  
290 company name, does not use its own funds, or who closes mortgage  
291 loans in the name of the company, and sells, assigns or transfers  
292 the loan to others within forty-eight (48) hours of the closing.  
293 The amount of the surety bond for mortgage brokers shall be  
294 Twenty-five Thousand Dollars (\$25,000.00).

295 (c) "Mortgage lender" shall be defined as any company  
296 that makes a mortgage loan, using its own funds, for others or for  
297 compensation or gain, with the expectation of retaining servicing  
298 rights to those loans, or in the expectation of gain, either  
299 directly or indirectly, sells or offers to sell a mortgage loan to

300 an investor in the secondary market. The amount of the surety  
301 bond for a mortgage lender shall be One Hundred Fifty Thousand  
302 Dollars (\$150,000.00).

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

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

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

320 (4) The department shall not issue a license if it finds  
321 that the applicant, or any person who is a director, officer,  
322 partner, or principal of the applicant, has been convicted of a  
323 felony involving moral turpitude in any jurisdiction or of a crime  
324 that, if committed within this state, would constitute a felony  
325 involving moral turpitude under the laws of this state. For the  
326 purposes of this act, a person shall be deemed to have been  
327 convicted of a crime if the person has pleaded guilty to a crime  
328 before a court or federal magistrate, or plea of nolo contendere,  
329 or has been found guilty of a crime by the decision or judgment of  
330 a court or federal magistrate or by the verdict of a jury,  
331 irrespective of the pronouncement of sentence or the suspension of  
332 a sentence, unless the plea of guilty, or the decision, judgment

333 or verdict, has been set aside, reversed or otherwise abrogated by  
334 lawful judicial process, or unless the person convicted of the  
335 crime has received a pardon from the President of the United  
336 States or the Governor or other pardoning authority in the  
337 jurisdiction where the conviction was obtained.

338 (5) In order to determine the applicant's suitability for a  
339 license, the commissioner shall forward the fingerprints submitted  
340 with the application to the Department of Public Safety; and if no  
341 disqualifying record is identified at the state level, the  
342 fingerprints shall be forwarded by the Department of Public Safety  
343 to the FBI for a national criminal history record check. All  
344 conviction data received by the department shall be used by the  
345 department for the exclusive purpose of carrying out the  
346 responsibilities of this act, may not be a public record, shall be  
347 privileged, and may not be disclosed to any other person or  
348 agency, except to any person or agency that otherwise has a legal  
349 right to inspect the file. All records shall be maintained by the  
350 department according to law. As used in this section "conviction  
351 data" means a record of a finding or verdict of guilty or plea of  
352 guilty or plea of nolo contendere with regard to any crime  
353 regardless of whether an appeal of the conviction has been sought.

354 (6) The department shall deny a license or otherwise  
355 restrict a license if it finds that the applicant, or any person  
356 who is a director, officer, partner, affiliate, contractor or  
357 principal of the applicant, has had any professional license  
358 denied, revoked or suspended by any state within two (2) years of  
359 the date of the application.

360 (7) Any mortgage company that has a United States Department  
361 of Housing and Urban Development designation as a mortgagee shall  
362 automatically be granted a license under this act without  
363 investigation by the department, unless the department has actual  
364 knowledge of facts that would constitute grounds for the  
365 revocation or suspension of that designation.

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

371 (9) A person shall not be indemnified for any act covered by  
372 this act or for any fine or penalty incurred under this act as a  
373 result of any violation of this act or regulations adopted under  
374 this act, due to the legal form, corporate structure, or choice of  
375 organization of the person including, but not limited to, a  
376 limited liability corporation.

377 SECTION 8. (1) Each license shall remain in full force and  
378 effect until relinquished, suspended, revoked or expired. With  
379 each initial application for a license, the applicant shall pay to  
380 the commissioner a license fee of Seven Hundred Fifty Dollars  
381 (\$750.00), and on or before August 31 of each year thereafter, an  
382 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).

383 If the annual renewal fee remains unpaid thirty (30) days after  
384 August 31, the license shall expire, but not before September 30  
385 of any year for which the annual renewal fee has been paid. If  
386 any person engages in business as provided for in this act without  
387 paying the license fee provided for in this subsection before  
388 commencing business or before the expiration of the person's  
389 current license, as the case may be, then the person shall be  
390 liable for the full amount of the license fee, plus a penalty in  
391 an amount not to exceed Twenty-five Dollars (\$25.00) for each day  
392 that the person has engaged in such business without a license or  
393 after the expiration of a license. All licensing fees and  
394 penalties shall be paid into the Consumer Finance Fund of the  
395 department.

396 (2) Any licensee making timely and proper application for a  
397 license renewal shall be permitted to continue to operate under  
398 its existing license until its application is approved or

399 rejected, but shall not be released from or otherwise indemnified  
400 for any act covered by this act or for any penalty incurred under  
401 this act as a result of any violation of this act or regulations  
402 adopted under this act, pending final approval or disapproval of  
403 the application for the license renewal.

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

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

417 (2) A licensee shall post a copy of the license in a  
418 conspicuous place in each place of business of the licensee.

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

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

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

427 (6) No licensee shall open a branch office without prior  
428 approval of the department. An application for any branch office  
429 shall be made in writing on a form prescribed by the department,  
430 which shall include at least evidence of compliance with  
431 subsection (1) of Section 13 of this act as to that branch and

432 shall be accompanied by payment of a nonrefundable application fee  
433 of One Hundred Dollars (\$100.00). The application shall be  
434 approved unless the department finds that the applicant has not  
435 conducted business under this act in accordance with law. The  
436 application shall be deemed approved if notice to the contrary has  
437 not been mailed by the department to the applicant within thirty  
438 (30) days of the date that the application is received by the  
439 department. After approval, the applicant shall give written  
440 notice to the department within ten (10) days of the commencement  
441 of business at the branch office.

442       SECTION 10. (1) Except as provided in this section, on and  
443 after July 1, 2000, no person shall acquire directly or indirectly  
444 ten percent (10%) or more of the voting shares of a corporation or  
445 ten percent (10%) or more of the ownership of any other entity  
446 licensed to conduct business under this act unless it first does  
447 all of the following:

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

450               (b) Delivers any other information required by the  
451 department as the department concerning the surety bond, the  
452 applicants background and experience, and activities, its  
453 directors and officers, if applicable, and its members, if  
454 applicable, and of any proposed new directors, officers or members  
455 of the licensee.

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

458       (2) Upon the filing and investigation of an application, the  
459 department shall permit the applicant to acquire the interest in  
460 the licensee if it is satisfied and finds that the applicant and  
461 its members, if applicable, its directors and officers, if a  
462 corporation, and any proposed new directors and officers have  
463 provided its surety bond and have the character, reputation and  
464 experience to warrant belief that the business will be operated

465 fairly and in accordance with the law. The department shall grant  
466 or deny the application within sixty (60) days from the date a  
467 completed application accompanied by the required fee is filed,  
468 unless the period is extended by order of the department  
469 specifying the reasons for the extension. If the application is  
470 denied, the department shall notify the applicant of the denial  
471 and the reasons for the denial.

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

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

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

482 (b) The acquisition of an interest in a licensee  
483 directly or indirectly including an acquisition by merger or  
484 consolidation by or with a person affiliated through common  
485 ownership with the licensee.

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

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

494 SECTION 11. (1) Any person required to be licensed under  
495 this act shall maintain in its offices, or such other location as  
496 the department shall permit, the books, accounts and records  
497 necessary for the department to determine whether or not the

498 person is complying with the provisions of this act and the rules  
499 and regulations adopted by the department under this act. These  
500 books, accounts and records shall be maintained apart and separate  
501 from any other business in which the person is involved and may  
502 represent historical data for two (2) years preceding the date of  
503 the last license application date forward.

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

516 (3) The department, its designated officers and employees,  
517 or its duly authorized representatives, for the purposes of  
518 discovering violations of this act and for the purpose of  
519 determining whether any person or individual reasonably suspected  
520 by the commissioner of conducting business that requires a license  
521 or registration under this act, may investigate those persons and  
522 individuals and examine all relevant books, records and papers  
523 employed by those persons or individuals in the transaction of  
524 business, and may summon witnesses and examine them under oath  
525 concerning matters as to the business of those persons, or other  
526 such matters as may be relevant to the discovery of violations of  
527 this act including, without limitation, the conduct of business  
528 without a license or registration as required under this act.

529 (4) The department, in its discretion, may disclose  
530 information concerning any violation of this act or any rule,



531 regulation, or order under this act, provided the information is  
532 derived from a final order of the department.

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

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

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

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

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

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

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

563 (2) Each principal place of business and branch office in

564 the state also shall meet all of the following requirements:

565 (a) Be in compliance with local zoning ordinances and  
566 have posted any licenses required by local government agencies.

567 It is the responsibility of the licensee to meet local zoning  
568 ordinances and obtain the required occupational licenses.

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

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

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

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

582 SECTION 14. No person transacting a mortgage business in or  
583 from this state, including any person required to be licensed or  
584 registered under this act and any person exempted from the  
585 licensing requirements of this act shall:

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

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

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

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

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

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

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

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

616           (i) Make, directly or indirectly, any residential  
617 mortgage loan with the intent to foreclose on the borrower's  
618 property. For purposes of this paragraph, there is a presumption  
619 that a person has made a residential mortgage loan with the intent  
620 to foreclose on the borrower's property if all of the following  
621 circumstances are proven:

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

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

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

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

629                   (v) That the person does business under a trade

630 name that misrepresents or tends to misrepresent that the person  
631 is a bank, trust company, savings bank, savings and loan  
632 association, credit union, or insurance company.

633 (j) Charge or collect any direct payment, compensation  
634 or advance fee from a borrower unless and until a loan is actually  
635 found, obtained and closed for that borrower, and in no event  
636 shall that direct payment, compensation or advance fee exceed ten  
637 percent (10%) of the original principal amount of the loan, and  
638 any such direct payments, compensation or advance fees shall be  
639 included in all annual percentage rate (APR) calculations if  
640 required under Regulation Z of the federal Truth in Lending Act  
641 (TILA). A direct payment, compensation or advance fee as defined  
642 in this section shall not include:

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

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

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

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

661 SECTION 16. The department shall promulgate regulations  
662 governing the advertising of mortgage loans, including, but not

663 limited to, the following requirements:

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

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

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

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

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

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

687 (iii) The APR as computed under federal  
688 guidelines; and

689 (e) That no licensee shall advertise its services in  
690 Mississippi in any media disseminated primarily in this state,  
691 whether print or electronic, without the words "Mississippi  
692 Licensed Mortgage Company."

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

695 (a) A mortgage origination agreement provided to the

696 borrower containing at least the information as contained in the  
697 currently effective form of HUD-1-B and including the following  
698 statements:

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

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

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

708 Mississippi Department of Banking and  
709 Consumer Finance  
710 P.O. Box 23729  
711 Jackson, MS 39225-3729."

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

714 (c) A copy of the signed closing statement as required  
715 by HUD or documentation of denial or cancellation of the loan  
716 application;

717 (d) A copy of the good faith estimate of costs provided  
718 to the borrower;

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

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

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

727 SECTION 18. Each licensee shall maintain a journal of  
728 mortgage transactions at the principal place of business as stated

729 on its license, which shall include at least the following  
730 information:

- 731 (a) Name of applicant,
- 732 (b) Date of application, and
- 733 (c) Disposition of loan application, indicating date of  
734 loan funding, loan denial, withdrawal and name of lender if  
735 applicable.

736 SECTION 19. (1) The department may suspend or revoke any  
737 license or registration for any reason that would have been  
738 grounds for refusal to issue an original license or registration  
739 or for:

- 740 (a) A violation of any provision of this act or any  
741 rule or regulation adopted under this act;
- 742 (b) Failure of the licensee or registrant to pay,  
743 within thirty (30) days after it becomes final and nonappealable,  
744 a judgment recovered in any court within this state by a claimant  
745 or creditor in an action arising out of the licensee's or  
746 registrant's business in this state as a mortgage company.

747 (2) Notice of the department's intention to enter an order  
748 denying an application for a license or registration under this  
749 act or of an order suspending or revoking a license or  
750 registration under this act shall be given to the applicant,  
751 licensee or registrant in writing, sent by registered or certified  
752 mail addressed to the principal place of business of the  
753 applicant, licensee or registrant. Within thirty (30) days of the  
754 date of the notice of intention to enter an order of denial,  
755 suspension or revocation under this act, the applicant, licensee  
756 or registrant may request in writing a hearing to contest the  
757 order. If a hearing is not requested in writing within thirty  
758 (30) days of the date of the notice of intention, the department  
759 shall enter a final order regarding the denial, suspension or  
760 revocation. Any final order of the department denying, suspending  
761 or revoking a license or registration shall state the grounds upon

762 which it is based and shall be effective on the date of issuance.  
763 A copy of the final order shall be forwarded promptly by  
764 registered or certified mail addressed to the principal place of  
765 business of the applicant, licensee or registrant.

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

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

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

792       (4) Any person required to be licensed or registered under  
793 this act who has been deemed by the court to have violated the  
794 terms of any order properly issued by the department under this



795 section shall be liable for a civil penalty not to exceed Three  
796 Thousand Dollars (\$3,000.00). The department, in determining the  
797 amount of the penalty, shall take into account the appropriateness  
798 of the penalty relative to the size of the financial resources of  
799 the person, the good faith efforts of the person to comply with  
800 the order, the gravity of the violation, the history of previous  
801 violations by the person, and other factors or circumstances that  
802 contributed to the violation. The department may compromise,  
803 modify or refund any penalty that has been imposed under this  
804 section. Any person assessed a penalty as provided in this  
805 subsection shall have the right to request a hearing on the amount  
806 of the penalty within ten (10) days after receiving notification  
807 of the assessment. If no hearing is requested within ten (10)  
808 days of the receipt of the notice, the penalty shall be final  
809 except as to judicial review in the chancery court of the First  
810 Judicial District of Hinds County.

811 SECTION 21. Nothing in this act shall preclude a person  
812 whose license or registration has been suspended or revoked from  
813 continuing to service mortgage loans pursuant to servicing  
814 contracts in existence at the time of the suspension or  
815 revocation.

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

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

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

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

841           (3) Any licensee convicted in the manner provided in  
842 subsection (2) of this section shall forfeit the surety bond or  
843 deposit required in Section 6 of this act and the amount of the  
844 bond or deposit shall be credited to the budget of the state or  
845 local agency that directly participated in the prosecution of the  
846 licensee, for the specific purpose of increasing law enforcement  
847 resources for that specific state or local agency. Any proceeds  
848 of a forfeited bond or deposit shall be used to augment existing  
849 state and local law enforcement budgets and not to supplant them.

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

854           (5) When the commissioner has reasonable cause to believe  
855 that a person is violating any provision of this act, the  
856 commissioner, in addition to and without prejudice to the  
857 authority provided elsewhere in this act, may enter an order  
858 requiring the person to stop or to refrain from the violation.  
859 The commissioner may sue in any chancery court of the state having  
860 jurisdiction and venue to enjoin the person from engaging in or

861 continuing the violation or from doing any act in furtherance of  
862 the violation. In such an action, the court may enter an order or  
863 judgment awarding a preliminary or permanent injunction.

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

878 SECTION 23. The commissioner may employ the necessary  
879 full-time employees above the number of permanent full-time  
880 employees authorized for the department for the fiscal year 2001,  
881 to carry out and enforce the provisions of this act. The  
882 commissioner also may expend the necessary funds and equip and  
883 provide necessary travel expenses for those employees.

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

886 81-19-7. Except as otherwise provided in this section, this  
887 chapter does not apply to:

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

893 (b) Approved mortgagees of the United States Department

894 of Housing and Urban Development, the Federal Housing  
895 Administration or other federal agency.

896 (c) Mortgage companies required to be licensed and  
897 individuals required to be registered under the Mississippi  
898 Mortgage Consumer Protection Act (Sections 1 through 23 of this  
899 act).

900 (d) An attorney licensed in this state who is not  
901 actively and principally engaged in the business of being a  
902 consumer loan broker even though the services of a consumer loan  
903 broker are occasionally rendered in the attorney's practice of  
904 law.

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

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

912 SECTION 25. Section 81-20-1, Mississippi Code of 1972, is  
913 amended as follows:[RF1]

914 81-20-1. (1) For purposes of this section, the following  
915 terms shall have the following meanings:

916 (a) "Mortgage company" means any person or entity that  
917 directly or indirectly solicits, processes, places or negotiates  
918 mortgage loans for others, or offers to solicit, process, place or  
919 negotiate mortgage loans for others, or who closes mortgage loans,  
920 whether or not in the mortgage company's own name.

921 (b) "Mortgage loan" means a loan or agreement to extend  
922 credit made to a natural person, which loan is secured by a deed  
923 to secure debt, security deed, mortgage, security instrument, deed  
924 of trust or other document representing a security interest or  
925 loan upon any interest in a lot intended for residential purposes,  
926 or single- to four-family residential property located in

927 Mississippi, regardless of where made, including the renewal or  
928 refinancing of any loan.

929           (c) "Residential property" means improved real property  
930 or lot used or occupied, or intended to be used or occupied, as a  
931 residence by a natural person.

932           (2) The Commissioner of Banking and Consumer Finance is  
933 authorized to investigate and resolve consumer complaints and  
934 disputes against mortgage companies. The commissioner or his duly  
935 authorized representative, for the purpose of resolving any  
936 consumer complaint or dispute against a mortgage company, may  
937 examine the mortgage company and all relevant books, records and  
938 papers employed by the mortgage company in the transaction of its  
939 business, and may summon witnesses and examine them under oath  
940 concerning matters relating to the business of the mortgage  
941 company or such other matters as may be relevant to resolving the  
942 consumer complaint or dispute against the mortgage company.

943           (3) This section shall stand repealed on July 1, 2001.

944           SECTION 26. This act shall take effect and be in force from  
945 and after July 1, 2000.