

By: Representative Ford

To: Banks and Banking

HOUSE BILL NO. 515

1 AN ACT TO AMEND SECTION 81-1-54, MISSISSIPPI CODE OF 1972, TO  
 2 EXTEND THE DATE OF THE REPEALER ON THE CODE SECTIONS THAT CREATE  
 3 THE DEPARTMENT OF BANKING AND CONSUMER FINANCE AND PRESCRIBE ITS  
 4 DUTIES AND POWERS; TO REENACT SECTIONS 81-1-57 THROUGH 81-1-117,  
 5 MISSISSIPPI CODE OF 1972, WHICH CREATE THE DEPARTMENT OF BANKING  
 6 AND CONSUMER FINANCE AND PRESCRIBE ITS DUTIES AND POWERS; TO BRING  
 7 FORWARD SECTIONS 81-1-119 THROUGH 81-1-133, MISSISSIPPI CODE OF  
 8 1972, WHICH RELATE TO DUTIES AND POWERS OF THE DEPARTMENT OF  
 9 BANKING AND CONSUMER FINANCE; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 81-1-54, Mississippi Code of 1972, is  
 12 amended as follows:

13 81-1-54. Sections 81-1-57 through 81-1-133, which create the  
 14 Department of Banking and Consumer Finance and prescribe its  
 15 duties and powers, shall stand repealed as of December 31, 2002.

16 SECTION 2. Section 81-1-57, Mississippi Code of 1972, is  
 17 reenacted as follows:

18 81-1-57. (1) For the purposes of this chapter, the  
 19 following words shall have the following meanings, unless the  
 20 context otherwise requires:

21 (a) "Department" shall mean the Department of Banking  
 22 and Consumer Finance established in Section 81-1-59.

23 (b) "Commissioner" shall mean the Commissioner of  
 24 Banking and Consumer Finance as provided for in Section 81-1-61.

25 (c) "Board" shall mean the State Board of Banking  
 26 Review established in Section 81-3-12.

27 (2) Wherever the following words appear in Title 81 of the  
 28 Mississippi Code of 1972, or in any other laws of the State of  
 29 Mississippi, they shall be construed to have the following  
 30 meanings:



31 (a) "Department of Bank Supervision" or "department,"  
32 when referring to the Department of Bank Supervision, shall be  
33 construed to mean the Department of Banking and Consumer Finance.

34 (b) "State Comptroller" or "comptroller," when  
35 referring to the office of State Comptroller of Banks, shall be  
36 construed to mean the Commissioner of Banking and Consumer  
37 Finance.

38 (c) "State Banking Board," "banking board" or "board,"  
39 when referring to the State Board of Banking Review or the State  
40 Banking Board, shall be construed to mean the State Board of  
41 Banking Review.

42 SECTION 3. Section 81-1-59, Mississippi Code of 1972, is  
43 reenacted as follows:

44 81-1-59. The Department of Banking and Consumer Finance is  
45 hereby created, and it is solely charged with the execution of all  
46 laws relating to corporations, carrying on a banking business in  
47 the State of Mississippi. The office of the Department of Banking  
48 and Consumer Finance shall be in the City of Jackson, Mississippi,  
49 and the Secretary of State shall provide suitable quarters  
50 therefor.

51 SECTION 4. Section 81-1-61, Mississippi Code of 1972, is  
52 reenacted as follows:

53 81-1-61. The management, control and direction of the  
54 department shall be vested in the Commissioner of Banking and  
55 Consumer Finance, who shall be directly responsible for the proper  
56 functioning of the department. The commissioner shall be a banker  
57 who possesses not less than ten (10) consecutive years of active  
58 banking experience of which five (5) years' experience were  
59 performed in a major policy-making function as an executive  
60 officer, or shall be a person who possesses fifteen (15) years of  
61 active experience as a state or federal financial institutions  
62 examiner. The commissioner shall have been active in such major  
63 policy-making function or actively employed by the state or



64 federal financial institutions regulatory authority within the  
65 previous five (5) years of his appointment. The commissioner  
66 shall be appointed by the Governor, with the advice and consent of  
67 the Senate, for a term of office of four (4) years, commencing on  
68 the day of appointment or on July 1 of the year in which the  
69 Governor is inaugurated, whichever comes first. The commissioner  
70 shall serve until his successor is appointed and qualified, but in  
71 no event shall he serve past the July 1 occurring after the end of  
72 the term of the Governor who appointed him, unless he shall be  
73 reappointed by the new Governor. If, for any cause, a vacancy  
74 occurs in the office of the commissioner, the Governor shall make  
75 the appointment for the unexpired term.

76 The commissioner shall be of good moral character, thoroughly  
77 understanding the theory and practice of banking, and must be a  
78 qualified elector of the State of Mississippi. The commissioner  
79 shall not be an officer, director or employee of any banking  
80 corporation during his entire term as commissioner, effective from  
81 the time of his appointment.

82 The commissioner may be removed by the Governor for good  
83 cause, but only after notice and a hearing.

84 SECTION 5. Section 81-1-63, Mississippi Code of 1972, is  
85 reenacted as follows:

86 81-1-63. The commissioner shall appoint a deputy  
87 commissioner, with the approval of the board, who shall perform  
88 such duties as may be required of him by the commissioner. If the  
89 office of the commissioner is vacant or if the commissioner is  
90 absent or unable to act, the deputy commissioner shall be the  
91 acting commissioner. The deputy commissioner shall have five (5)  
92 years' experience as a bank officer or employee, or three (3)  
93 years' experience as a bank president or managing officer of a  
94 bank, or five (5) years' experience as a state or federal bank  
95 examiner.



96           Copies of papers in the office of the department may be  
97 certified by the deputy commissioner, with the seal of the  
98 department affixed thereto, with like effect as though certified  
99 by the commissioner. The commissioner shall be responsible for  
100 all acts of the deputy commissioner, and may dismiss him at his  
101 pleasure, with the reasons therefor to be reported to the board  
102 within ten (10) days of the dismissal.

103           SECTION 6. Section 81-1-65, Mississippi Code of 1972, is  
104 reenacted as follows:

105           81-1-65. The commissioner shall employ such assistants, to  
106 be known as state banking examiners, as may be necessary for the  
107 efficient operation of the department, to aid him in the discharge  
108 of the duties and responsibilities imposed upon him by law. The  
109 minimum qualifications for such employment shall be possession of  
110 a bachelor's degree from a recognized college or university, or  
111 three (3) years' experience as a bank examiner, bank officer or  
112 employee, small loan company officer or employee, or other  
113 consumer finance officer or employee and such other qualifications  
114 set out for banking examiners in the plan for the state personnel  
115 system. However, notwithstanding any provisions to the contrary,  
116 any person who is serving as a state banking examiner in the  
117 former Department of Bank Supervision on March 21, 1980, shall be  
118 qualified to serve as a state banking examiner in the department.  
119 The state bank examiners shall not, directly or indirectly, be  
120 connected with any banking business in Mississippi or elsewhere  
121 during their respective terms of office, after four (4) months  
122 from the time of qualifying as an examiner.

123           The commissioner may employ such additional employees as may  
124 be necessary to carry out those duties and responsibilities  
125 imposed upon him by law, who shall possess such qualifications set  
126 out for their particular position in the plan for the state  
127 personnel system.



128 No examiner or other employee related by consanguinity or  
129 affinity to the commissioner within the third degree computed  
130 according to the civil law shall be employed by him.

131 The examiners and all other persons employed by the  
132 commissioner under the provisions of this section shall be  
133 compensated as provided in the compensation plan for the state  
134 personnel system, unless otherwise provided by law. The  
135 compensation for such employees shall be payable monthly out of  
136 the funds of the department.

137 The commissioner shall be responsible for all acts of the  
138 examiners and the other employees. Any examiner or other employee  
139 may be dismissed only in accordance with the laws, rules and  
140 regulations applicable to the state personnel system.

141 SECTION 7. Section 81-1-67, Mississippi Code of 1972, is  
142 reenacted as follows:

143 81-1-67. The commissioner and the deputy commissioner each  
144 shall, before entering upon the discharge of their respective  
145 duties, take and subscribe the constitutional oath of office and  
146 shall execute to the State of Mississippi a bond in the sum of  
147 Fifty Thousand Dollars (\$50,000.00) with a surety company  
148 authorized to do business in this state, to be delivered to and  
149 approved by the Treasurer of the State of Mississippi.

150 The state bank examiners shall, before entering upon the  
151 discharge of their duties, take and subscribe the constitutional  
152 oath of office and shall execute to the State of Mississippi a  
153 bond in the sum of Twenty Thousand Dollars (\$20,000.00) with a  
154 surety company authorized to do business in this state, to be  
155 delivered to and approved by the Treasurer of the State of  
156 Mississippi.

157 These bonds shall, by the terms thereof, be payable to the  
158 state, and shall be liable to the state in actions brought by the  
159 Attorney General on behalf of the state, and shall also be liable  
160 in actions brought by anyone aggrieved by breach thereof. The



161 bonds shall be conditioned for the faithful and impartial  
162 performance of the duties of the particular office for which the  
163 bond was given, for the faithful and proper handling and  
164 accounting for all funds, and for the payment of all damages and  
165 costs which may accrue under provisions of law.

166 SECTION 8. Section 81-1-69, Mississippi Code of 1972, is  
167 reenacted as follows:

168 81-1-69. The salaries of the commissioner and the deputy  
169 commissioner shall be fixed by the Legislature, and shall be  
170 payable monthly out of the funds of the department.

171 SECTION 9. Section 81-1-71, Mississippi Code of 1972, is  
172 reenacted as follows:

173 81-1-71. The commissioner, all examiners and any employee  
174 required to travel shall be allowed expenses incident to the  
175 discharge of their official duties while away from their places of  
176 residence, and mileage for each mile necessarily traveled in the  
177 discharge of their official duties, as provided in Section  
178 25-3-41. Such expenses shall be paid out of the department funds  
179 upon vouchers approved by the commissioner, and each voucher for  
180 expenses shall be accompanied by an itemized statement of the  
181 same.

182 The State Department of Audit shall make an annual audit of  
183 the books and records having to do with receipts and expenditures  
184 of funds of the department. The chief inspector shall file a copy  
185 of his report with the commissioner and the Governor, and insofar  
186 as is practicable, the commissioner shall incorporate the exhibits  
187 and schedules of receipts and disbursements for each year in his  
188 annual report to the Legislature.

189 SECTION 10. Section 81-1-73, Mississippi Code of 1972, is  
190 reenacted as follows:

191 81-1-73. The department shall have a seal which shall be in  
192 the form of a circle with the image of an eagle, with thirteen  
193 (13) stars over the head, in the center, and about the margin at



194 the bottom shall appear the words "State of Mississippi"; and  
195 about the margin at the top shall appear the words "Department of  
196 Banking and Consumer Finance."

197 Every certificate and other official paper executed by the  
198 department under authority of law and sealed with the seal of  
199 office shall be used as evidence in all courts, investigations and  
200 proceedings authorized by law, and may be recorded in the same  
201 manner and with like effect as a deed. All copies of papers in  
202 the office of the department, certified by the commissioner, or  
203 certified by an examiner of the department, and bearing the seal  
204 shall be accepted in all matters equally and with like effect as  
205 the original. No original papers, except with the consent of the  
206 commissioner, shall at any time be removed from the files of the  
207 department, and for every purpose, a copy of such original,  
208 certified as above set out, is hereby made the equivalent of such  
209 original.

210 SECTION 11. Section 81-1-75, Mississippi Code of 1972, is  
211 reenacted as follows:

212 81-1-75. The department shall be supplied with all necessary  
213 office furniture, fixtures and equipment, which shall be purchased  
214 by the commissioner and paid for out of the department maintenance  
215 fund on voucher signed by the commissioner. All necessary  
216 postage, stationery, expressage, books, telephone and telegraph  
217 messages, printing expenses and all premiums on bonds and all  
218 other office expenses of the department shall be allowed and paid  
219 for in the same manner as the office equipment and fixtures.

220 SECTION 12. Section 81-1-77, Mississippi Code of 1972, is  
221 reenacted as follows:

222 81-1-77. No officer or employee of the department shall be  
223 permitted to borrow money from any state bank directly or  
224 indirectly or to indorse any note to any state bank. Any such  
225 officer or employee who borrows any money from any state bank or  
226 indorses any note to any state bank and any officer or employee of



227 any state bank who makes any such loan to any officer or employee  
228 of the department or accepts the indorsement of any officer or  
229 employee of the department on any note to any state bank shall be  
230 guilty of a misdemeanor and, upon conviction of such offense,  
231 shall be imprisoned for not more than six (6) months in the county  
232 jail, or fined not more than One Thousand Dollars (\$1,000.00), or  
233 both. Each renewal of any loan or indorsement forbidden by this  
234 section shall constitute a separate offense.

235 SECTION 13. Section 81-1-79, Mississippi Code of 1972, is  
236 reenacted as follows:

237 81-1-79. The Attorney General shall advise the department on  
238 all legal matters. However, in case of litigation involving the  
239 department, or in the event of necessity for legal assistance in  
240 connection with the administration of the department, the  
241 commissioner may, with the consent and approval of the Attorney  
242 General, employ special counsel to assist in handling the same.

243 SECTION 14. Section 81-1-81, Mississippi Code of 1972, is  
244 reenacted as follows:

245 81-1-81. It shall be the duty of the commissioner to  
246 apportion the work of examining banks among the examiners in such  
247 a way that each bank, under the provisions of law, shall be  
248 examined at least once during an eighteen-month period and more  
249 often, if necessary, in the discretion of the commissioner, at  
250 irregular intervals and without prior notice. However, neither  
251 the commissioner nor any examiner shall examine one (1) bank twice  
252 in succession unless the commissioner, for cause, so determines.  
253 In the event the commissioner's office, because of work load or  
254 other good sufficient cause, is unable to conduct an examination  
255 of a bank as provided for in this section, the commissioner is  
256 hereby authorized to accept the examination of any state bank  
257 performed by the Federal Deposit Insurance Corporation or the  
258 Federal Reserve Bank in lieu of the examination provided for in  
259 this section. However, in no case shall the commissioner be





260 authorized to accept any such examination of any state bank  
261 performed by either the Federal Deposit Insurance Corporation or  
262 the Federal Reserve Bank for any two (2) consecutive  
263 eighteen-month periods.

264 SECTION 15. Section 81-1-83, Mississippi Code of 1972, is  
265 reenacted as follows:

266 81-1-83. At each examination, the commissioner or an  
267 examiner may examine the cash, bills, collaterals and securities,  
268 books of account, the condition and affairs of the bank, the mode  
269 of conducting and managing the affairs of the bank, the action of  
270 its directors, and the investment of the funds of the bank. The  
271 commissioner or an examiner shall have power to examine the  
272 directors and all other persons under oath as to the value of all  
273 collaterals, securities and other assets of the bank. Any officer  
274 of a bank refusing to the commissioner or examiner any of the  
275 papers, securities, the books of account or cash of a bank shall  
276 subject such bank to liquidation as provided by law.

277 The commissioner or an examiner may call for statements from  
278 all correspondent banks and all other persons or corporations  
279 showing a balance on the books of the bank at each examination.

280 The commissioner, examiners, or any other employee of the  
281 department shall not reproduce a copy of any information in the  
282 possession of any bank pertaining to the names of the stockholders  
283 of such bank or the amount of shares owned by such stockholders,  
284 nor shall the commissioner, examiners or any other employee of the  
285 department remove such stockholder information from the confines  
286 of the bank, any provision contained herein to the contrary  
287 notwithstanding.

288 SECTION 16. Section 81-1-85, Mississippi Code of 1972, is  
289 reenacted as follows:

290 81-1-85. The commissioner or an examiner shall have the  
291 authority to issue subpoenas for witnesses and compel their  
292 attendance before him in any and all matters connected with the



293 duties of his office, and for failure to attend or testify,  
294 witnesses may be fined by him for contempt. He may invoke the  
295 process of the appropriate chancery court to compel such testimony  
296 and the production of all necessary papers, and orders therefor  
297 may be had either in termtime or vacation upon two (2) days'  
298 notice to the opposite party.

299         Sheriffs, constables and marshals holding commissions in this  
300 state shall serve, and be entitled to regular fees for serving  
301 such subpoenas. For failing to execute or return such process  
302 they shall be liable for the same penalties prescribed by law for  
303 failure to execute any like process issued by the courts of this  
304 state.

305         The commissioner or an examiner shall have the authority to  
306 administer oaths and to examine under oath the officers, agents,  
307 clerks, employees and stockholders of any bank, or any other  
308 person touching the matters into which he is directed to examine  
309 by law. Any person who willfully makes any false statement under  
310 oath in such examination shall be deemed guilty of perjury, and  
311 upon conviction thereof shall be punished as provided by law. If  
312 any officer, agent, clerk or stockholder of any bank, when under  
313 oath, willfully misrepresents in any manner to the commissioner,  
314 an examiner, or his assistant, the condition of the bank, or any  
315 of its property, or purposely misleads the commissioner or any  
316 examiner, or makes false statements regarding the condition of the  
317 bank, or any part of its business, such person shall be deemed  
318 guilty of a misdemeanor and upon conviction thereof in any court  
319 of competent jurisdiction, shall be fined not less than One  
320 Thousand Dollars (\$1,000.00) nor more than Two Thousand Five  
321 Hundred Dollars (\$2,500.00) or imprisoned in the county jail not  
322 less than six (6) months nor more than one (1) year, or by both  
323 such fine and imprisonment.

324         SECTION 17. Section 81-1-87, Mississippi Code of 1972, is  
325 reenacted as follows:



326           81-1-87. The commissioner or an examiner, in all cases where  
327 the testimony of witnesses is to be preserved, shall have the  
328 right to have the case taken down and transcribed by a  
329 stenographer, and the stenographer so employed shall be duly  
330 sworn. The stenographer's certificate that the transcript of such  
331 evidence is correct, together with the official certificate of the  
332 commissioner or examiner that he has read the same and that it is,  
333 in his opinion, correct, shall entitle such transcript, or a  
334 certified copy thereof, to be received in evidence as relevant,  
335 material and competent. Such stenographer shall be paid at the  
336 same rates as that then currently in effect for similar duties  
337 performed by the chancery court reporter for the county in which  
338 the testimony of the witnesses is to be taken and preserved. The  
339 stenographer shall be paid out of the department maintenance fund  
340 on voucher approved by the commissioner or examiner employing such  
341 stenographer, accompanied with an itemized statement of services  
342 rendered.

343           SECTION 18. Section 81-1-89, Mississippi Code of 1972, is  
344 reenacted as follows:

345           81-1-89. The commissioner, examiners and all employees of  
346 the department shall keep as records of their office proper books  
347 showing all acts, matters and things done by them. None of them  
348 shall disclose to any person, official or otherwise, except when  
349 required in legal proceedings, any fact or information obtained in  
350 the course of the performance of their duties, except so far as it  
351 may be incumbent upon them under the law, to report to the  
352 commissioner, or to make public records and publish the same. The  
353 commissioner may provide to members of the public the information  
354 authorized under Section 81-1-100 without being in violation of  
355 this section.

356           SECTION 19. Section 81-1-91, Mississippi Code of 1972, is  
357 reenacted as follows:



358           81-1-91. In all bank examinations no bank shall be allowed  
359 credit in excess of its sound value for a note or security of  
360 which the principal and interest is over twelve (12) months past  
361 due; nor for any bond in excess of the real value thereof; nor for  
362 any stock of its own held more than twelve (12) months; nor for  
363 any unsecured overdrafts that may have existed for a greater  
364 period than thirty (30) days next preceding it, except that the  
365 period shall be ninety (90) days for unsecured overdrafts upon  
366 which interest is being charged if the bank has a written policy  
367 authorizing such overdrafts for not more than ninety (90) days.  
368 Only such overdrafts shall be considered as secure as are advanced  
369 against products or actual existing values evidenced by warehouse  
370 receipts or bills of lading, against bills of exchange drawn in  
371 good faith against actual existing values, or against funds on  
372 deposit by the depositor whose account is overdrawn, and who has  
373 pledged those funds as security for such overdraft, and in making  
374 up the statement of the condition of such bank any such item shall  
375 be charged off (but if desired a note shall be appended giving  
376 details thereof). But the discretion of the commissioner or  
377 examiner may be exercised in cases of estates in litigation or  
378 administration, and in pending suits, if the security affected  
379 thereby is ample, in the opinion of the commissioner or examiner  
380 making such examination.

381           SECTION 20. Section 81-1-93, Mississippi Code of 1972, is  
382 reenacted as follows:

383           81-1-93. The commissioner may make special examinations or  
384 render special services to banks, either at the request of banks  
385 desiring same, or at his own instance. The commissioner shall  
386 have discretion to decide whether any examinations or services are  
387 sufficiently urgent, out of routine, or extraordinary to be  
388 denominated special examinations or services. When any special  
389 examination or services are rendered and so denominated by the  
390 commissioner he shall charge the bank so examined or served the



391 cost based on the average daily cost of all examiners of the  
392 department plus actual and necessary expenses. The bank so  
393 receiving such special examination or services shall pay the per  
394 diem and expenses of each appointed examiner performing the work  
395 to the commissioner, who in turn will pay the amount into the  
396 department maintenance fund and disburse to the examiner directly  
397 the amount of his services. An examiner who is on the state  
398 payroll may perform such services but the funds so derived from  
399 his services shall be paid into the department maintenance fund,  
400 and no examiner shall be allowed to draw from a salary and  
401 expenses from both the bank and the state.

402 SECTION 21. Section 81-1-95, Mississippi Code of 1972, is  
403 reenacted as follows:

404 81-1-95. If, upon the completion of any examination, the  
405 commissioner or an examiner finds that the last public statement  
406 of the bank is materially wrong, or that the condition of the bank  
407 has materially changed since the last public statement, he may  
408 order the bank to publish a new statement based upon the findings  
409 of his examination. For failure to promptly publish such  
410 statement, the bank shall be liable for a penalty of Five Hundred  
411 Dollars (\$500.00) for which suit shall be brought by the  
412 commissioner for the use of the department if not paid within ten  
413 (10) days.

414 SECTION 22. Section 81-1-97, Mississippi Code of 1972, is  
415 reenacted as follows:

416 81-1-97. The commissioner shall call upon each state bank  
417 for the reports required in this section. Such calls shall be  
418 made by the commissioner in writing by letter or other similar  
419 means of written communications for the same dates and as often as  
420 calls are issued by the Comptroller of the Currency for the United  
421 States for reports from national banks. The commissioner shall  
422 prescribe the forms for such reports. The reports shall be sworn  
423 to by either the president, vice president or cashier of the bank



424 making them, attested by not less than two (2) of the board of  
425 directors, and shall exhibit in detail, under appropriate heads,  
426 the total resources and total liabilities of the bank on the day  
427 specified by the commissioner. Banks shall transmit to the  
428 department such call reports within a time limitation established  
429 by regulation by the commissioner; however, such time limitation  
430 cannot exceed that set by the Federal Deposit Insurance  
431 Corporation for state insured banks. For any failure or delay in  
432 furnishing this report, the president, vice president or cashier  
433 of any such bank, so in default, and the members of the board of  
434 directors of the bank refusing to attest the report, shall be  
435 subject to an administrative fine, which may be imposed by the  
436 commissioner, of Fifty Dollars (\$50.00) a day for each day while  
437 in such default.

438 SECTION 23. Section 81-1-99, Mississippi Code of 1972, is  
439 reenacted as follows:

440 81-1-99. A copy of the call reports of any bank shall be  
441 furnished to any person or corporation requesting the same for a  
442 reasonable fee prescribed by the commissioner, which shall be  
443 collected by the commissioner and shall be paid into the  
444 department maintenance fund. If the commissioner fails or refuses  
445 to furnish copies of the report when so requested and tendered the  
446 proper fee; or if he fails to account for any such fees received  
447 by him; or if any person other than the commissioner, deputy  
448 commissioner, an examiner, or assistant furnishes any copy of such  
449 bank report to anyone, whether for a consideration or without  
450 consideration, such person shall be guilty of a misdemeanor and  
451 shall be fined not less than Fifty Dollars (\$50.00) or be  
452 imprisoned not more than one (1) month in the county jail, or  
453 both. However, this section shall not be construed to prevent any  
454 officer of the bank from furnishing to anyone a statement of such  
455 bank.



456 SECTION 24. Section 81-1-100, Mississippi Code of 1972, is  
457 reenacted as follows:

458 81-1-100. (1) The commissioner shall obtain each year from  
459 the appropriate federal financial supervisory agency or agencies  
460 the public sections of the written evaluations prepared pursuant  
461 to 12 USCS Section 2906 of the Community Reinvestment Act, as  
462 amended (12 USCS Section 2901 et seq.), of each state bank and  
463 national bank located in Mississippi and each bank holding company  
464 that controls any bank located in Mississippi. Once each year the  
465 commissioner shall publish in some newspaper having a general  
466 circulation in the state a statement that the public section of  
467 the written evaluation prepared pursuant to 12 USCS Section 2906  
468 of the Community Reinvestment Act, as amended (12 USCS Section  
469 2901 et seq.), of each such bank and bank holding company is  
470 maintained in the office of the commissioner and will be made  
471 available for inspection to any person upon request during  
472 business hours, and that copies of all or part of any evaluation  
473 will be furnished to any person upon request for a reasonable  
474 copying fee prescribed by the commissioner.

475 (2) For the purposes of this section, the term "appropriate  
476 federal financial supervisory agency" shall have the same meaning  
477 as the definition in 12 USCS Section 2902.

478 SECTION 25. Section 81-1-101, Mississippi Code of 1972, is  
479 reenacted as follows:

480 81-1-101. Any officer, director, cashier, agent, clerk or  
481 stockholder of any bank, other than a national bank, doing  
482 business in the State of Mississippi, who willfully and knowingly  
483 subscribes to or makes any false report or any false statement or  
484 entry in the books of such bank, or who knowingly subscribes or  
485 exhibits any false writing or paper with the intent to deceive any  
486 person as to the condition of such bank shall be fined not more  
487 than One Thousand Dollars (\$1,000.00) or imprisoned in the  
488 Penitentiary not more than three (3) years, or both.



489 SECTION 26. Section 81-1-103, Mississippi Code of 1972, is  
490 reenacted as follows:

491 81-1-103. If the commissioner receives notice from the  
492 United States or any agency or instrumentality thereof having  
493 authority to issue cease and desist, removal or suspension orders  
494 to state-chartered banks supervised by the department, of its  
495 intention to issue any such cease and desist, removal or  
496 suspension order to any state-chartered bank, then the  
497 commissioner is hereby authorized and empowered to investigate the  
498 act, cause or basis asserted for the issuance of such proposed  
499 order.

500 If such investigation shall disclose, in the opinion and  
501 judgment of the commissioner, that the act, cause or basis  
502 complained of has occurred, and that it is detrimental to the  
503 safety and welfare of the depositors or stockholders of the bank  
504 and contrary to the public interest, and if the act, cause or  
505 basis complained of shall not be remedied immediately, then the  
506 commissioner may give notice to the board of directors of the bank  
507 of the charges together with his concurrence or exceptions thereto  
508 and the remedies for the same. Failure of the board of directors  
509 to comply with the requirements of the commissioner within thirty  
510 (30) days from the date of notice shall render the board of  
511 directors in default thereupon. Thereafter the commissioner may  
512 remove any officer, director or other person responsible for the  
513 noncompliance, or he may notify the appropriate federal agency or  
514 instrumentality to proceed under the federal statute or  
515 regulation.

516 SECTION 27. Section 81-1-105, Mississippi Code of 1972, is  
517 reenacted as follows:

518 81-1-105. The commissioner may be enjoined in chancery court  
519 by any bank for abuse or misuse of any discretion or duty imposed  
520 upon him by the provisions of Title 81 of the Mississippi Code of  
521 1972, or any other laws of the state.





522 SECTION 28. Section 81-1-107, Mississippi Code of 1972, is  
523 reenacted as follows:

524 81-1-107. Every bank organized under the laws of this state  
525 engaging in the business of a commercial bank, trust company or  
526 any combination thereof, is assessed for each year the sum of  
527 Seventy-five Dollars (\$75.00) and every such corporation whose  
528 total assets exceed One Hundred Thousand Dollars (\$100,000.00)  
529 shall further pay in addition to the minimum assessment of  
530 Seventy-five Dollars (\$75.00), Fifty Cents (50¢) for each One  
531 Thousand Dollars (\$1,000.00) or fraction thereof of assets in  
532 excess of One Hundred Thousand Dollars (\$100,000.00). All money  
533 accruing from such assessment shall be used for the maintenance of  
534 the department.

535 The commissioner shall, during the month of January in each  
536 year, or as soon thereafter as practicable, prepare a statement of  
537 the assessments due under this section based upon the total assets  
538 of each such corporation, as shown by its last report, which shall  
539 be paid as called for by the commissioner. He shall send to each  
540 such corporation a statement of the amount due by it, which shall  
541 specify how the same shall be payable. The assessment shall be  
542 due and payable in accordance with the statement so furnished and  
543 the installments thereof shall be paid within ten (10) days after  
544 the date fixed for their payment. Such assessment shall  
545 constitute a lien on the assets of each bank until paid. Any such  
546 corporation failing to make payment within ten (10) days as herein  
547 provided shall be liable to a penalty of ten percent (10%) of the  
548 amount in default for each day thereafter. All assessments and  
549 penalties provided in this section shall be payable to the  
550 commissioner and when collected by him shall be delivered to the  
551 State Treasurer to be placed to the credit of the maintenance fund  
552 of the department. The commissioner shall give a receipt for all  
553 money received by him and shall take a receipt from the State  
554 Treasurer for all money delivered to him. In making any call for



555 the assessment levied by this section the commissioner shall  
556 estimate the cost of maintaining the department for the current  
557 year, and if the assessments hereby levied shall appear to produce  
558 more than such estimate, he shall reduce accordingly the Fifty  
559 Cents (504) per One Thousand Dollars (\$1,000.00) of assets  
560 assessment provided in this section. The cash balance remaining  
561 in the maintenance fund of the department at the end of any one  
562 (1) fiscal year shall be credited to and reduce the assessments of  
563 the following fiscal year on a pro rata basis.

564 SECTION 29. Section 81-1-109, Mississippi Code of 1972, is  
565 reenacted as follows:

566 81-1-109. All moneys paid out of the department maintenance  
567 fund shall be paid by the Treasurer upon warrants issued by the  
568 State Fiscal Officer, which warrants shall be issued by the State  
569 Fiscal Officer upon a voucher approved by the commissioner except  
570 in the payment of salaries and expenses, and warrants shall be  
571 issued by the State Fiscal Officer therefor upon a voucher  
572 approved by the Governor.

573 SECTION 30. Section 81-1-111, Mississippi Code of 1972, is  
574 reenacted as follows:

575 81-1-111. For the purpose of carrying into effect the  
576 provisions of Title 81 of the Mississippi Code of 1972, the  
577 commissioner shall provide the necessary forms. All reports  
578 received by the commissioner shall be preserved by him in the  
579 department. The State Treasurer is authorized to provide forms  
580 and record books for the office of the commissioner, and such  
581 forms and record books shall be paid for upon order of the  
582 commissioner out of the department maintenance fund.

583 SECTION 31. Section 81-1-113, Mississippi Code of 1972, is  
584 reenacted as follows:

585 81-1-113. The commissioner shall make a full report as  
586 required by law of other state officers, to the Legislature at  
587 each regular session thereof, of the proceedings in and work of



588 the department and of all charters issued and all banks closed for  
589 insolvency or voluntarily liquidated. He shall submit with each  
590 report such recommendations with reference to the department as he  
591 may consider appropriate. The report shall show fully,  
592 separately, and in detail the work done and the expenses incurred  
593 by the commissioner and each examiner.

594 SECTION 32. Section 81-1-115, Mississippi Code of 1972, is  
595 reenacted as follows:

596 81-1-115. (1) The department shall charge and collect for:

597 (a) Filing articles of incorporation of banking  
598 corporations and credit unions, and issuing a certificate of  
599 incorporation, a minimum fee of Five Hundred Dollars (\$500.00) up  
600 to a maximum fee of Two Thousand Five Hundred Dollars (\$2,500.00),  
601 as fixed by the commissioner.

602 (b) Filing articles of merger when the resulting bank  
603 or credit union is a state bank or credit union, a minimum fee of  
604 Five Hundred Dollars (\$500.00) up to a maximum fee of Two Thousand  
605 Five Hundred Dollars (\$2,500.00), as fixed by the commissioner.

606 (c) Filing an application for conversion from a  
607 national bank, state or federal thrift, or credit union to a state  
608 bank or credit union, a minimum fee of Five Hundred Dollars  
609 (\$500.00) up to a maximum fee of Two Thousand Five Hundred Dollars  
610 (\$2,500.00), as fixed by the commissioner.

611 (d) Filing an application for a branch bank or credit  
612 union, a minimum fee of Two Hundred Fifty Dollars (\$250.00) up to  
613 a maximum fee of One Thousand Five Hundred Dollars (\$1,500.00), as  
614 fixed by the commissioner.

615 (e) Filing an application for a Loan Production Office  
616 (LPO), a minimum fee of Fifty Dollars (\$50.00) up to a maximum fee  
617 of Five Hundred Dollars (\$500.00), as fixed by the commissioner.

618 (f) Filing an application for an electronic terminal, a  
619 minimum fee of Two Hundred Fifty Dollars (\$250.00) up to a maximum



620 fee of One Thousand Five Hundred Dollars (\$1,500.00), as fixed by  
621 the commissioner.

622 (g) Filing an application to establish out-of-state  
623 branch offices by in-state banks and credit unions, a minimum fee  
624 of Five Hundred Dollars (\$500.00) up to a maximum fee of One  
625 Thousand Five Hundred Dollars (\$1,500.00), as fixed by the  
626 commissioner.

627 (h) Filing an application to establish in-state branch  
628 offices by an out-of-state bank or credit union, a minimum fee of  
629 Five Hundred Dollars (\$500.00) up to a maximum fee of One Thousand  
630 Five Hundred Dollars (\$1,500.00), as fixed by the commissioner.

631 (i) Filing an application to establish a branch of a  
632 foreign bank, a minimum fee of Five Hundred Dollars (\$500.00) up  
633 to a maximum fee of Two Thousand Five Hundred Dollars (\$2,500.00),  
634 as fixed by the commissioner.

635 (2) The commissioner shall publish a schedule of fees  
636 applicable to all banks within his jurisdiction.

637 SECTION 33. Section 81-1-117, Mississippi Code of 1972, is  
638 reenacted as follows:

639 81-1-117. Upon March 21, 1980, the Department of Bank  
640 Supervision and the office of State Comptroller, as created by  
641 Section 81-1-1, and the State Banking Board, as created by Section  
642 81-3-13, are hereby abolished. The functions, duties and  
643 responsibilities of the Department of Bank Supervision, the office  
644 of State Comptroller and the State Banking Board shall be assumed  
645 by the Department of Banking and Consumer Finance, the  
646 Commissioner of Banking and Consumer Finance, and the State Board  
647 of Banking Review, respectively, as provided in this chapter. All  
648 assets, funds, contractual rights and obligations, records,  
649 equipment and property rights which are now vested in the  
650 Department of Bank Supervision, the office of State Comptroller  
651 and the State Banking Board are hereby vested in the Department of  
652 Banking and Consumer Finance, the Commissioner of Banking and



653 Consumer Finance, and the State Board of Banking Review,  
654 respectively.

655 SECTION 34. Section 81-1-119, Mississippi Code of 1972, is  
656 brought forward as follows:

657 81-1-119. (1) If any person or state bank is engaging in,  
658 or has engaged in, or is about to engage in, any unsafe or unsound  
659 practice, or unfair and discriminatory practice, in conducting the  
660 bank's business, or violation of any other law, rule, regulation,  
661 order or condition imposed in writing by the commissioner, the  
662 commissioner may issue a notice of charges to such person or  
663 institution. A notice of charges shall specify the acts alleged  
664 to sustain a cease and desist order, and state the time and place  
665 at which a hearing shall be held. A hearing before the  
666 commissioner on the charges shall be held no earlier than seven  
667 (7) days, and no later than fifteen (15) days, after issuance of  
668 the notice. The charged institution is entitled to a further  
669 extension of seven (7) days upon filing a request with the  
670 commissioner. The commissioner may also issue a notice of charges  
671 if he has reasonable grounds to believe that any person or bank is  
672 about to engage in any unsafe or unsound business practice, or any  
673 violation of this chapter, or any other law, rule, regulation or  
674 order. If, by a preponderance of the evidence, it is shown that  
675 any person or bank is engaged in, or has been engaged in, or is  
676 about to engage in, any unsafe or unsound business practice, or  
677 unfair and discriminatory practice or any violation of this  
678 chapter, or any other law, rule, regulation or order, a cease and  
679 desist order shall be issued which shall be permanently binding  
680 upon the person or institution until terminated by the  
681 commissioner.

682 (2) If any person or state bank is engaging in, has engaged  
683 in, or is about to engage in any unsafe or unsound practice, or  
684 unfair and discriminatory practice, in conducting the bank's  
685 business, or any violation of any law, rules, regulation, order or



686 condition imposed in writing by the commissioner, and the  
687 commissioner has determined that immediate corrective action is  
688 required, the commissioner may issue a temporary cease and desist  
689 order without prior notice. A temporary cease and desist order  
690 shall be effective immediately upon issuance for a period of  
691 fifteen (15) days, and may be extended once for a period of  
692 fifteen (15) days. Such an order shall state its duration on its  
693 face and the words "Temporary Cease and Desist Order." A hearing  
694 before the commissioner shall be held within the time that the  
695 order remains effective, at which time a temporary order may be  
696 dissolved or made permanent.

697 SECTION 35. Section 81-1-121, Mississippi Code of 1972, is  
698 brought forward as follows:

699 81-1-121. (1) Except as otherwise provided, any bank which  
700 is found to have violated any provision of Chapters 1 through 9,  
701 Title 81, Mississippi Code of 1972, may be ordered to pay a civil  
702 penalty not to exceed Twenty Thousand Dollars (\$20,000.00). Any  
703 bank which is found to have violated or failed to comply with any  
704 cease and desist order issued under the authority of this chapter  
705 may be ordered to pay a civil penalty not to exceed Twenty  
706 Thousand Dollars (\$20,000.00) for each day that the violation or  
707 failure to comply continues.

708 (2) To enforce the provisions of this section, the  
709 commissioner is authorized to assess such penalty and to appear in  
710 a court of competent jurisdiction and to move the court to order  
711 payment of the penalty. Prior to the assessment of the penalty, a  
712 hearing shall be held by the commissioner.

713 (3) Nothing in this section shall prevent anyone damaged by  
714 a state bank from bringing a separate cause of action in a court  
715 of competent jurisdiction.

716 SECTION 36. Section 81-1-123, Mississippi Code of 1972, is  
717 brought forward as follows:



718           81-1-123. (1) Any person, whether a director, officer or  
719 employee, who is found to have violated any provision of Chapters  
720 1 through 9, Title 81, Mississippi Code of 1972, whether  
721 willfully, or as a result of gross negligence, gross incompetency  
722 or recklessness, may be ordered to pay a civil penalty not to  
723 exceed Five Thousand Dollars (\$5,000.00) per violation. Any  
724 person who is found to have violated or failed to comply with any  
725 cease and desist order issued under the authority of this chapter  
726 may be ordered to pay a civil penalty not to exceed Five Thousand  
727 Dollars (\$5,000.00) per violation for each day that the violation  
728 or failure to comply continues.

729           (2) To enforce the provisions of this section, the  
730 commissioner is authorized to assess such penalty, to appear in a  
731 court of competent jurisdiction and to move the court to order  
732 payment of the penalty. Prior to the assessment of the penalty, a  
733 hearing shall be held by the commissioner.

734           (3) Nothing in this section shall prevent anyone damaged by  
735 a director, officer or employee of a state bank from bringing a  
736 separate cause of action in a court of competent jurisdiction.

737           SECTION 37. Section 81-1-125, Mississippi Code of 1972, is  
738 brought forward as follows:

739           81-1-125. (1) Whenever the commissioner determines that a  
740 solvent bank is conducting its business in an unsafe or unsound  
741 manner, or in any fashion which threatens the financial integrity  
742 or sound operation of the bank, the commissioner may serve a  
743 notice of charges on the bank, requiring it to show why it should  
744 not be placed under supervisory control. Such notice of charges  
745 shall specify the grounds for supervisory control, and set the  
746 time and place for a hearing. A hearing before the commissioner  
747 pursuant to such notice shall be held within fifteen (15) days  
748 after issuance of the notice of charges.

749           (2) If, after the hearing provided above, the commissioner  
750 determines that supervisory control of the bank is necessary to



751 protect the bank's members, customers, stockholders or creditors,  
752 or the general public, the commissioner shall issue an order  
753 taking supervisory control of the bank.

754 (3) If the order taking supervisory control becomes final,  
755 the commissioner may appoint an agent to supervise and monitor the  
756 operations of the bank during the period of supervisory control.  
757 During the period of supervisory control, the bank shall act in  
758 accordance with such instructions as may be given by the  
759 commissioner, directly or through his supervisory agent, and shall  
760 not fail to act, except when to do so would violate an outstanding  
761 cease and desist order.

762 (4) Within one hundred eighty (180) days of the date the  
763 order taking supervisory control becomes final, the commissioner  
764 shall issue an order approving a plan for the termination of  
765 supervisory control. The plan may provide for:

- 766 (a) The issuance by the bank of capital stock;  
767 (b) The appointment of one or more officers and/or  
768 directors;  
769 (c) The reorganization, merger or consolidation of the  
770 bank;  
771 (d) The dissolution and liquidation of the bank;  
772 (e) Other such measures as determined by the  
773 commissioner.

774 The order approving the plan shall not take effect until  
775 thirty (30) days after issuance during which time period an appeal  
776 may be filed in a court of competent jurisdiction.

777 (5) All costs of this proceeding shall be paid by the bank.

778 (6) For the purpose of this section, an order shall be  
779 deemed final if:

- 780 (a) No appeal is filed within the specific time allowed  
781 for the appeal; or  
782 (b) All judicial appeals are exhausted.





783 (7) If a bank is insolvent, the provisions of Chapter 9 of  
784 Title 81, Mississippi Code of 1972, shall apply.

785 SECTION 38. Section 81-1-127, Mississippi Code of 1972, is  
786 brought forward as follows:

787 81-1-127. (1) If, in the commissioner's opinion, any  
788 director, officer or employee of any bank has participated in, or  
789 consented to, any violation of any law, rule, regulation or order,  
790 or any unsafe or unsound business practice in the operation of any  
791 bank, or any insider loan not specifically authorized by law, or  
792 any repeated violation of, or failure to comply with, any bank's  
793 bylaws, the commissioner may serve a written notice of charges  
794 upon such director, officer or employee and the bank, stating his  
795 intent to remove such director, officer or employee. Such notice  
796 shall specify the alleged conduct of such director, officer or  
797 employee and shall state the place for a hearing before the  
798 commissioner. A hearing shall be held no earlier than fifteen  
799 (15) days, but no later than thirty (30) days, after the notice of  
800 charges is served. If, after the hearing, the commissioner  
801 determines that the charges asserted have been proven by a  
802 preponderance of the evidence, the commissioner may issue an order  
803 removing the director, officer or employee in question. Such an  
804 order shall be effective upon issuance and may include the entire  
805 board of directors or all of the officers of the bank.

806 (2) If it is determined that any director, officer or  
807 employee of any bank has knowingly participated in, or consented  
808 to, any violation of any law, rule, regulation or order, or  
809 engaged in any unsafe or unsound business practice in the  
810 operation of any bank, or any repeated violation of, or failure to  
811 comply with, any bank's bylaws, and that as a result, a situation  
812 exists requiring immediate corrective action, the commissioner may  
813 issue an order temporarily removing such person or persons pending  
814 a hearing. Such an order shall state its duration on its face and  
815 the words "Temporary Order of Removal" and shall be effective upon



816 issuance for a period of fifteen (15) days. Such order may be  
817 extended once for a period of fifteen (15) days. A hearing must  
818 be held within ten (10) days of the expiration of a temporary  
819 order, or any extension thereof, at which time a temporary order  
820 may be dissolved or converted to a permanent order.

821 (3) Any removal pursuant to subsection (1) or (2) of this  
822 section shall be effective in all respects as if such removal has  
823 been made by the board of directors and the members or  
824 stockholders of the bank in question.

825 (4) Without the prior written approval of the commissioner,  
826 no director, officer or employee permanently removed pursuant to  
827 this section shall be eligible to be elected, reelected or  
828 appointed to any position as a director, officer or employee of  
829 that bank, nor shall such director, officer or employee be  
830 eligible to be elected to or retain a position as a director,  
831 officer or employee of any other state bank.

832 SECTION 39. Section 81-1-129, Mississippi Code of 1972, is  
833 brought forward as follows:

834 81-1-129. Any person or state bank against whom a cease and  
835 desist order is issued or a fine is imposed may have such order or  
836 fine reviewed by a court of competent jurisdiction. Except as  
837 otherwise provided, an appeal may be made only within thirty (30)  
838 days of the issuance of the order or the imposition of the fine,  
839 whichever is later.

840 SECTION 40. Section 81-1-131, Mississippi Code of 1972, is  
841 brought forward as follows:

842 81-1-131. No person who is fined or penalized for a  
843 violation of any criminal provision of this chapter shall be  
844 reimbursed or indemnified in any fashion by the bank for such fine  
845 or penalty.

846 SECTION 41. Section 81-1-133, Mississippi Code of 1972, is  
847 brought forward as follows:



848           81-1-133. All penalties, fines and remedies provided by this  
849 chapter shall be cumulative.

850           SECTION 42. The Legislature recommends that all sections  
851 which are reenacted or brought forward but not amended in this  
852 act, and which appear in the main volume of the Mississippi Code  
853 of 1972, shall not be reprinted in the supplement, but that an  
854 editor's note shall appear in the supplement in the proper place  
855 to explain that the section reenacted or brought forward and the  
856 language as it appears in the main volume was unaffected by the  
857 legislation and consequently has not been reprinted in the  
858 supplement.

859           SECTION 43. This act shall take effect and be in force from  
860 and after July 1, 2001.

