

By: Senator(s) Mettetal

To: Business and Financial  
Institutions

SENATE BILL NO. 2721

1 AN ACT TO REPEAL SECTION 81-1-54, MISSISSIPPI CODE OF 1972,  
2 WHICH REPEALS THE CODE SECTIONS THAT CREATE THE DEPARTMENT OF  
3 BANKING AND CONSUMER FINANCE AND PRESCRIBE ITS DUTIES AND POWERS;  
4 TO REENACT SECTIONS 81-1-57 THROUGH 81-1-117, MISSISSIPPI CODE OF  
5 1972, WHICH CREATE THE DEPARTMENT OF BANKING AND CONSUMER FINANCE  
6 AND PRESCRIBE ITS DUTIES AND POWERS; TO BRING FORWARD SECTIONS  
7 81-1-119 THROUGH 81-1-133, MISSISSIPPI CODE OF 1972, WHICH RELATE  
8 TO DUTIES AND POWERS OF THE DEPARTMENT OF BANKING AND CONSUMER  
9 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, which  
12 repeals the provisions of law that create the Department of  
13 Banking and Consumer Finance and prescribe its duties and powers,  
14 is hereby repealed.

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

17 81-1-57. (1) For the purposes of this chapter, the  
18 following words shall have the following meanings, unless the  
19 context otherwise requires:

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

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

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

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

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

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

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

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

43 81-1-59. The Department of Banking and Consumer Finance is  
44 hereby created, and it is solely charged with the execution of all  
45 laws relating to corporations, carrying on a banking business in  
46 the State of Mississippi. The office of the Department of Banking  
47 and Consumer Finance shall be in the City of Jackson, Mississippi,  
48 and the Secretary of State shall provide suitable quarters  
49 therefor.

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

52 81-1-61. The management, control and direction of the  
53 department shall be vested in the Commissioner of Banking and  
54 Consumer Finance, who shall be directly responsible for the proper  
55 functioning of the department. The commissioner shall be a banker  
56 who possesses not less than ten (10) consecutive years of active  
57 banking experience of which five (5) years' experience were  
58 performed in a major policy-making function as an executive  
59 officer, or shall be a person who possesses fifteen (15) years of  
60 active experience as a state or federal financial institutions  
61 examiner. The commissioner shall have been active in such major  
62 policy-making function or actively employed by the state or

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

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

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

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

85 81-1-63. The commissioner shall appoint a deputy  
86 commissioner, with the approval of the board, who shall perform  
87 such duties as may be required of him by the commissioner. If the  
88 office of the commissioner is vacant or if the commissioner is  
89 absent or unable to act, the deputy commissioner shall be the  
90 acting commissioner. The deputy commissioner shall have five (5)  
91 years' experience as a bank officer or employee, or three (3)  
92 years' experience as a bank president or managing officer of a  
93 bank, or five (5) years' experience as a state or federal bank  
94 examiner.

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

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

104           81-1-65. The commissioner shall employ such assistants, to  
105 be known as state banking examiners, as may be necessary for the  
106 efficient operation of the department, to aid him in the discharge  
107 of the duties and responsibilities imposed upon him by law. The  
108 minimum qualifications for such employment shall be possession of  
109 a bachelor's degree from a recognized college or university, or  
110 three (3) years' experience as a bank examiner, bank officer or  
111 employee, small loan company officer or employee, or other  
112 consumer finance officer or employee and such other qualifications  
113 set out for banking examiners in the plan for the state personnel  
114 system. However, notwithstanding any provisions to the contrary,  
115 any person who is serving as a state banking examiner in the  
116 former Department of Bank Supervision on March 21, 1980, shall be  
117 qualified to serve as a state banking examiner in the department.  
118 The state bank examiners shall not, directly or indirectly, be  
119 connected with any banking business in Mississippi or elsewhere  
120 during their respective terms of office, after four (4) months  
121 from the time of qualifying as an examiner.

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

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

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

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

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

142 81-1-67. The commissioner and the deputy commissioner each  
143 shall, before entering upon the discharge of their respective  
144 duties, take and subscribe the constitutional oath of office and  
145 shall execute to the State of Mississippi a bond in the sum of  
146 Fifty Thousand Dollars (\$50,000.00) with a surety company  
147 authorized to do business in this state, to be delivered to and  
148 approved by the Treasurer of the State of Mississippi.

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

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

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

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

167 81-1-69. The salaries of the commissioner and the deputy  
168 commissioner shall be fixed by the Legislature, and shall be  
169 payable monthly out of the funds of the department.

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

172 81-1-71. The commissioner, all examiners and any employee  
173 required to travel shall be allowed expenses incident to the  
174 discharge of their official duties while away from their places of  
175 residence, and mileage for each mile necessarily traveled in the  
176 discharge of their official duties, as provided in Section  
177 25-3-41. Such expenses shall be paid out of the department funds  
178 upon vouchers approved by the commissioner, and each voucher for  
179 expenses shall be accompanied by an itemized statement of the  
180 same.

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

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

190 81-1-73. The department shall have a seal which shall be in  
191 the form of a circle with the image of an eagle, with thirteen  
192 (13) stars over the head, in the center, and about the margin at

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

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

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

211 81-1-75. The department shall be supplied with all necessary  
212 office furniture, fixtures and equipment, which shall be purchased  
213 by the commissioner and paid for out of the department maintenance  
214 fund on voucher signed by the commissioner. All necessary  
215 postage, stationery, expressage, books, telephone and telegraph  
216 messages, printing expenses and all premiums on bonds and all  
217 other office expenses of the department shall be allowed and paid  
218 for in the same manner as the office equipment and fixtures.

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

221 81-1-77. No officer or employee of the department shall be  
222 permitted to borrow money from any state bank directly or  
223 indirectly or to indorse any note to any state bank. Any such  
224 officer or employee who borrows any money from any state bank or  
225 endorses any note to any state bank and any officer or employee of

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

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

236 81-1-79. The Attorney General shall advise the department on  
237 all legal matters. However, in case of litigation involving the  
238 department, or in the event of necessity for legal assistance in  
239 connection with the administration of the department, the  
240 commissioner may, with the consent and approval of the Attorney  
241 General, employ special counsel to assist in handling the same.

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

244 81-1-81. It shall be the duty of the commissioner to  
245 apportion the work of examining banks among the examiners in such  
246 a way that each bank, under the provisions of law, shall be  
247 examined at least once during an eighteen-month period and more  
248 often, if necessary, in the discretion of the commissioner, at  
249 irregular intervals and without prior notice. However, neither  
250 the commissioner nor any examiner shall examine one (1) bank twice  
251 in succession unless the commissioner, for cause, so determines.  
252 In the event the commissioner's office, because of work load or  
253 other good sufficient cause, is unable to conduct an examination  
254 of a bank as provided for in this section, the commissioner is  
255 hereby authorized to accept the examination of any state bank  
256 performed by the Federal Deposit Insurance Corporation or the  
257 Federal Reserve Bank in lieu of the examination provided for in  
258 this section. However, in no case shall the commissioner be



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

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

265 81-1-83. At each examination, the commissioner or an  
266 examiner may examine the cash, bills, collaterals and securities,  
267 books of account, the condition and affairs of the bank, the mode  
268 of conducting and managing the affairs of the bank, the action of  
269 its directors, and the investment of the funds of the bank. The  
270 commissioner or an examiner shall have power to examine the  
271 directors and all other persons under oath as to the value of all  
272 collaterals, securities and other assets of the bank. Any officer  
273 of a bank refusing to the commissioner or examiner any of the  
274 papers, securities, the books of account or cash of a bank shall  
275 subject such bank to liquidation as provided by law.

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

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

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

289 81-1-85. The commissioner or an examiner shall have the  
290 authority to issue subpoenas for witnesses and compel their  
291 attendance before him in any and all matters connected with the

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

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

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

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

325           81-1-87. The commissioner or an examiner, in all cases where  
326 the testimony of witnesses is to be preserved, shall have the  
327 right to have the case taken down and transcribed by a  
328 stenographer, and the stenographer so employed shall be duly  
329 sworn. The stenographer's certificate that the transcript of such  
330 evidence is correct, together with the official certificate of the  
331 commissioner or examiner that he has read the same and that it is,  
332 in his opinion, correct, shall entitle such transcript, or a  
333 certified copy thereof, to be received in evidence as relevant,  
334 material and competent. Such stenographer shall be paid at the  
335 same rates as that then currently in effect for similar duties  
336 performed by the chancery court reporter for the county in which  
337 the testimony of the witnesses is to be taken and preserved. The  
338 stenographer shall be paid out of the department maintenance fund  
339 on voucher approved by the commissioner or examiner employing such  
340 stenographer, accompanied with an itemized statement of services  
341 rendered.

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

344           81-1-89. The commissioner, examiners and all employees of  
345 the department shall keep as records of their office proper books  
346 showing all acts, matters and things done by them. None of them  
347 shall disclose to any person, official or otherwise, except when  
348 required in legal proceedings, any fact or information obtained in  
349 the course of the performance of their duties, except so far as it  
350 may be incumbent upon them under the law, to report to the  
351 commissioner, or to make public records and publish the same. The  
352 commissioner may provide to members of the public the information  
353 authorized under Section 81-1-100 without being in violation of  
354 this section.

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

357           81-1-91. In all bank examinations no bank shall be allowed  
358 credit in excess of its sound value for a note or security of  
359 which the principal and interest is over twelve (12) months past  
360 due; nor for any bond in excess of the real value thereof; nor for  
361 any stock of its own held more than twelve (12) months; nor for  
362 any unsecured overdrafts that may have existed for a greater  
363 period than thirty (30) days next preceding it, except that the  
364 period shall be ninety (90) days for unsecured overdrafts upon  
365 which interest is being charged if the bank has a written policy  
366 authorizing such overdrafts for not more than ninety (90) days.  
367 Only such overdrafts shall be considered as secure as are advanced  
368 against products or actual existing values evidenced by warehouse  
369 receipts or bills of lading, against bills of exchange drawn in  
370 good faith against actual existing values, or against funds on  
371 deposit by the depositor whose account is overdrawn, and who has  
372 pledged those funds as security for such overdraft, and in making  
373 up the statement of the condition of such bank any such item shall  
374 be charged off (but if desired a note shall be appended giving  
375 details thereof). But the discretion of the commissioner or  
376 examiner may be exercised in cases of estates in litigation or  
377 administration, and in pending suits, if the security affected  
378 thereby is ample, in the opinion of the commissioner or examiner  
379 making such examination.

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

382           81-1-93. The commissioner may make special examinations or  
383 render special services to banks, either at the request of banks  
384 desiring same, or at his own instance. The commissioner shall  
385 have discretion to decide whether any examinations or services are  
386 sufficiently urgent, out of routine, or extraordinary to be  
387 denominated special examinations or services. When any special  
388 examination or services are rendered and so denominated by the  
389 commissioner he shall charge the bank so examined or served the

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

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

403 81-1-95. If, upon the completion of any examination, the  
404 commissioner or an examiner finds that the last public statement  
405 of the bank is materially wrong, or that the condition of the bank  
406 has materially changed since the last public statement, he may  
407 order the bank to publish a new statement based upon the findings  
408 of his examination. For failure to promptly publish such  
409 statement, the bank shall be liable for a penalty of Five Hundred  
410 Dollars (\$500.00) for which suit shall be brought by the  
411 commissioner for the use of the department if not paid within ten  
412 (10) days.

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

415 81-1-97. The commissioner shall call upon each state bank  
416 for the reports required in this section. Such calls shall be  
417 made by the commissioner in writing by letter or other similar  
418 means of written communications for the same dates and as often as  
419 calls are issued by the Comptroller of the Currency for the United  
420 States for reports from national banks. The commissioner shall  
421 prescribe the forms for such reports. The reports shall be sworn  
422 to by either the president, vice president or cashier of the bank

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

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

439 81-1-99. A copy of the call reports of any bank shall be  
440 furnished to any person or corporation requesting the same for a  
441 reasonable fee prescribed by the commissioner, which shall be  
442 collected by the commissioner and shall be paid into the  
443 department maintenance fund. If the commissioner fails or refuses  
444 to furnish copies of the report when so requested and tendered the  
445 proper fee; or if he fails to account for any such fees received  
446 by him; or if any person other than the commissioner, deputy  
447 commissioner, an examiner, or assistant furnishes any copy of such  
448 bank report to anyone, whether for a consideration or without  
449 consideration, such person shall be guilty of a misdemeanor and  
450 shall be fined not less than Fifty Dollars (\$50.00) or be  
451 imprisoned not more than one (1) month in the county jail, or  
452 both. However, this section shall not be construed to prevent any  
453 officer of the bank from furnishing to anyone a statement of such  
454 bank.

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

457 81-1-100. (1) The commissioner shall obtain each year from  
458 the appropriate federal financial supervisory agency or agencies  
459 the public sections of the written evaluations prepared pursuant  
460 to 12 USCS Section 2906 of the Community Reinvestment Act, as  
461 amended (12 USCS Section 2901 et seq.), of each state bank and  
462 national bank located in Mississippi and each bank holding company  
463 that controls any bank located in Mississippi. Once each year the  
464 commissioner shall publish in some newspaper having a general  
465 circulation in the state a statement that the public section of  
466 the written evaluation prepared pursuant to 12 USCS Section 2906  
467 of the Community Reinvestment Act, as amended (12 USCS Section  
468 2901 et seq.), of each such bank and bank holding company is  
469 maintained in the office of the commissioner and will be made  
470 available for inspection to any person upon request during  
471 business hours, and that copies of all or part of any evaluation  
472 will be furnished to any person upon request for a reasonable  
473 copying fee prescribed by the commissioner.

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

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

479 81-1-101. Any officer, director, cashier, agent, clerk or  
480 stockholder of any bank, other than a national bank, doing  
481 business in the State of Mississippi, who willfully and knowingly  
482 subscribes to or makes any false report or any false statement or  
483 entry in the books of such bank, or who knowingly subscribes or  
484 exhibits any false writing or paper with the intent to deceive any  
485 person as to the condition of such bank shall be fined not more  
486 than One Thousand Dollars (\$1,000.00) or imprisoned in the  
487 Penitentiary not more than three (3) years, or both.

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

490 81-1-103. If the commissioner receives notice from the  
491 United States or any agency or instrumentality thereof having  
492 authority to issue cease and desist, removal or suspension orders  
493 to state-chartered banks supervised by the department, of its  
494 intention to issue any such cease and desist, removal or  
495 suspension order to any state-chartered bank, then the  
496 commissioner is hereby authorized and empowered to investigate the  
497 act, cause or basis asserted for the issuance of such proposed  
498 order.

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

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

517 81-1-105. The commissioner may be enjoined in chancery court  
518 by any bank for abuse or misuse of any discretion or duty imposed  
519 upon him by the provisions of Title 81 of the Mississippi Code of  
520 1972, or any other laws of the state.



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

523 81-1-107. Every bank organized under the laws of this state  
524 engaging in the business of a commercial bank, trust company or  
525 any combination thereof, is assessed for each year the sum of  
526 Seventy-five Dollars (\$75.00) and every such corporation whose  
527 total assets exceed One Hundred Thousand Dollars (\$100,000.00)  
528 shall further pay in addition to the minimum assessment of  
529 Seventy-five Dollars (\$75.00), Fifty Cents (50¢) for each One  
530 Thousand Dollars (\$1,000.00) or fraction thereof of assets in  
531 excess of One Hundred Thousand Dollars (\$100,000.00). All money  
532 accruing from such assessment shall be used for the maintenance of  
533 the department.

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

554 the assessment levied by this section the commissioner shall  
555 estimate the cost of maintaining the department for the current  
556 year, and if the assessments hereby levied shall appear to produce  
557 more than such estimate, he shall reduce accordingly the Fifty  
558 Cents (50¢) per One Thousand Dollars (\$1,000.00) of assets  
559 assessment provided in this section. The cash balance remaining  
560 in the maintenance fund of the department at the end of any one  
561 (1) fiscal year shall be credited to and reduce the assessments of  
562 the following fiscal year on a pro rata basis.

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

565 81-1-109. All moneys paid out of the department maintenance  
566 fund shall be paid by the Treasurer upon warrants issued by the  
567 State Fiscal Officer, which warrants shall be issued by the State  
568 Fiscal Officer upon a voucher approved by the commissioner except  
569 in the payment of salaries and expenses, and warrants shall be  
570 issued by the State Fiscal Officer therefor upon a voucher  
571 approved by the Governor.

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

574 81-1-111. For the purpose of carrying into effect the  
575 provisions of Title 81 of the Mississippi Code of 1972, the  
576 commissioner shall provide the necessary forms. All reports  
577 received by the commissioner shall be preserved by him in the  
578 department. The State Treasurer is authorized to provide forms  
579 and record books for the office of the commissioner, and such  
580 forms and record books shall be paid for upon order of the  
581 commissioner out of the department maintenance fund.

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

584 81-1-113. The commissioner shall make a full report as  
585 required by law of other state officers, to the Legislature at  
586 each regular session thereof, of the proceedings in and work of

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

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

595 81-1-115. (1) The department shall charge and collect for:

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

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

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

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

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

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

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

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

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

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

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

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

638 81-1-117. Upon March 21, 1980, the Department of Bank  
639 Supervision and the office of State Comptroller, as created by  
640 Section 81-1-1, and the State Banking Board, as created by Section  
641 81-3-13, are hereby abolished. The functions, duties and  
642 responsibilities of the Department of Bank Supervision, the office  
643 of State Comptroller and the State Banking Board shall be assumed  
644 by the Department of Banking and Consumer Finance, the  
645 Commissioner of Banking and Consumer Finance, and the State Board  
646 of Banking Review, respectively, as provided in this chapter. All  
647 assets, funds, contractual rights and obligations, records,  
648 equipment and property rights which are now vested in the  
649 Department of Bank Supervision, the office of State Comptroller  
650 and the State Banking Board are hereby vested in the Department of  
651 Banking and Consumer Finance, the Commissioner of Banking and

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

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

656 81-1-119. (1) If any person or state bank is engaging in,  
657 or has engaged in, or is about to engage in, any unsafe or unsound  
658 practice, or unfair and discriminatory practice, in conducting the  
659 bank's business, or violation of any other law, rule, regulation,  
660 order or condition imposed in writing by the commissioner, the  
661 commissioner may issue a notice of charges to such person or  
662 institution. A notice of charges shall specify the acts alleged  
663 to sustain a cease and desist order, and state the time and place  
664 at which a hearing shall be held. A hearing before the  
665 commissioner on the charges shall be held no earlier than seven  
666 (7) days, and no later than fifteen (15) days, after issuance of  
667 the notice. The charged institution is entitled to a further  
668 extension of seven (7) days upon filing a request with the  
669 commissioner. The commissioner may also issue a notice of charges  
670 if he has reasonable grounds to believe that any person or bank is  
671 about to engage in any unsafe or unsound business practice, or any  
672 violation of this chapter, or any other law, rule, regulation or  
673 order. If, by a preponderance of the evidence, it is shown that  
674 any person or bank is engaged in, or has been engaged in, or is  
675 about to engage in, any unsafe or unsound business practice, or  
676 unfair and discriminatory practice or any violation of this  
677 chapter, or any other law, rule, regulation or order, a cease and  
678 desist order shall be issued which shall be permanently binding  
679 upon the person or institution until terminated by the  
680 commissioner.

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

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

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

698 81-1-121. (1) Except as otherwise provided, any bank which  
699 is found to have violated any provision of Chapters 1 through 9,  
700 Title 81, Mississippi Code of 1972, may be ordered to pay a civil  
701 penalty not to exceed Twenty Thousand Dollars (\$20,000.00). Any  
702 bank which is found to have violated or failed to comply with any  
703 cease and desist order issued under the authority of this chapter  
704 may be ordered to pay a civil penalty not to exceed Twenty  
705 Thousand Dollars (\$20,000.00) for each day that the violation or  
706 failure to comply continues.

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

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

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

717           81-1-123. (1) Any person, whether a director, officer or  
718 employee, who is found to have violated any provision of Chapters  
719 1 through 9, Title 81, Mississippi Code of 1972, whether  
720 willfully, or as a result of gross negligence, gross incompetency  
721 or recklessness, may be ordered to pay a civil penalty not to  
722 exceed Five Thousand Dollars (\$5,000.00) per violation. Any  
723 person who is found to have violated or failed to comply with any  
724 cease and desist order issued under the authority of this chapter  
725 may be ordered to pay a civil penalty not to exceed Five Thousand  
726 Dollars (\$5,000.00) per violation for each day that the violation  
727 or failure to comply continues.

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

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

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

738           81-1-125. (1) Whenever the commissioner determines that a  
739 solvent bank is conducting its business in an unsafe or unsound  
740 manner, or in any fashion which threatens the financial integrity  
741 or sound operation of the bank, the commissioner may serve a  
742 notice of charges on the bank, requiring it to show why it should  
743 not be placed under supervisory control. Such notice of charges  
744 shall specify the grounds for supervisory control, and set the  
745 time and place for a hearing. A hearing before the commissioner  
746 pursuant to such notice shall be held within fifteen (15) days  
747 after issuance of the notice of charges.

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

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

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

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

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

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

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

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

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



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

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

786 81-1-127. (1) If, in the commissioner's opinion, any  
787 director, officer or employee of any bank has participated in, or  
788 consented to, any violation of any law, rule, regulation or order,  
789 or any unsafe or unsound business practice in the operation of any  
790 bank, or any insider loan not specifically authorized by law, or  
791 any repeated violation of, or failure to comply with, any bank's  
792 bylaws, the commissioner may serve a written notice of charges  
793 upon such director, officer or employee and the bank, stating his  
794 intent to remove such director, officer or employee. Such notice  
795 shall specify the alleged conduct of such director, officer or  
796 employee and shall state the place for a hearing before the  
797 commissioner. A hearing shall be held no earlier than fifteen  
798 (15) days, but no later than thirty (30) days, after the notice of  
799 charges is served. If, after the hearing, the commissioner  
800 determines that the charges asserted have been proven by a  
801 preponderance of the evidence, the commissioner may issue an order  
802 removing the director, officer or employee in question. Such an  
803 order shall be effective upon issuance and may include the entire  
804 board of directors or all of the officers of the bank.

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

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

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

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

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

833 81-1-129. Any person or state bank against whom a cease and  
834 desist order is issued or a fine is imposed may have such order or  
835 fine reviewed by a court of competent jurisdiction. Except as  
836 otherwise provided, an appeal may be made only within thirty (30)  
837 days of the issuance of the order or the imposition of the fine,  
838 whichever is later.

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

841 81-1-131. No person who is fined or penalized for a  
842 violation of any criminal provision of this chapter shall be  
843 reimbursed or indemnified in any fashion by the bank for such fine  
844 or penalty.

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

847           81-1-133. All penalties, fines and remedies provided by this  
848 chapter shall be cumulative.

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

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