AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-49, MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-19, MISSISSIPPI CODE OF 1972, TO CORRECT A TYPOGRAPHICAL ERROR; TO AMEND SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; AND FOR RELATED PURPOSES.

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

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

81-18-1. This chapter shall be known and cited as the Mississippi Mortgage Consumer Protection Law.

SECTION 2. Section 81-18-3, Mississippi Code of 1972, is reenacted as follows:

81-18-3. For purposes of this chapter, the following terms shall have the following meanings:

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

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

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

(d) "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting
securities, by contract or otherwise, and shall include
"controlling," "controlled by" and "under common control with."
(e) "Department" means the Department of Banking and
Consumer Finance of the State of Mississippi.
(f) "Executive officer" means the chief executive
officer, the president, the principal financial officer, the
principal operating officer, each vice president with
responsibility involving policy-making functions for a significant
aspect of a person's business, the secretary, the treasurer, or
any other person performing similar managerial or supervisory
functions with respect to any organization whether incorporated or
unincorporated.
(g) "License" means a license to act as a mortgage
company issued by the department under this chapter.
(h) "Licensee" means a person or entity who is required
to be licensed as a mortgage company under this chapter.
(i) "Loan originator" means an individual who is an
employee or exclusive agent of a licensed mortgage company and who
directly or indirectly solicits, places or negotiates mortgage
loans for others, or offers to solicit, place or negotiate
mortgage loans for others.
(j) "Make a mortgage loan" means to advance funds,
offer to advance funds or make a commitment to advance funds to a
borrower.
(k) "Misrepresent" means to make a false statement of a
substantive fact or to engage in, with intent to deceive or
mislead, any conduct that leads to a false belief that is material
to the transaction.
(l) "Mortgage company" means any person or entity who
directly, indirectly or by electronic activity, solicits, places
or negotiates mortgage loans for others, or offers to solicit,
place or negotiate mortgage loans for others.
(m) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust or other document representing a security interest or loan upon any interest in a lot intended for residential purposes, or single- to four-family residential property located in Mississippi, regardless of where made, including the renewal or refinancing of any loan.

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

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

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

(q) "Registrant" means any person required to register under Section 81-18-5(n).

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

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

SECTION 3. Section 81-18-5, Mississippi Code of 1972, is reenacted as follows:

81-18-5. The following persons are not subject to the provisions of this chapter, unless otherwise provided in this chapter:

(a) Any person authorized to engage in business as a bank holding company, or any subsidiary thereof; or any person authorized to engage in business as a financial holding company, bank, credit card bank, savings bank, savings institution, savings and loan association, building and loan association, trust company or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, or any subsidiary or affiliate thereof.

(b) Approved mortgagees, sellers, servicers or issuers of the United States Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association (FNMA or "Fannie Mae"), the Federal Home Mortgage Company (FHLMC or "Freddie Mac"), the Government National Mortgage Association (GNMA or "Ginnie Mae"), when the mortgagees have been approved as a seller, servicer, mortgagee or issuer or when they have satisfied requirements to qualify for automatic authority; however, if these mortgagees/lenders close or fund any other type of mortgage loans not subject to examination or review by any of the above agencies, they will be subject to Sections 81-18-11, 81-18-21, 81-18-27, 81-18-35 and 81-18-43 as it pertains to those loans, unless otherwise exempted under paragraph (a) of this section.

(c) Any lender holding a license under the Small Loan Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or affiliate thereof, and making real estate loans under that law are
exempt from this chapter. However, those lenders holding a license under the Small Loan Regulatory Law and making real estate loans outside that law shall be subject to the entire provisions of this chapter, unless otherwise exempted under paragraph (a) of this section.

(d) Any person who funds a mortgage loan which has been originated and processed by a licensee, by a mortgage company licensed under this chapter or by a person who is exempt under this section and who meets all of the following:

(i) Does not maintain a place of business in this state in connection with funding mortgage loans;

(ii) Does not directly solicit borrowers in this state for the purpose of making mortgage loans; and

(iii) Does not participate in the negotiation of mortgage loans.

(e) Any attorney licensed to practice law in Mississippi who provides mortgage loan services incidental to the practice of law and who is not a principal of a mortgage company as defined under this chapter.

(f) A real estate company or licensed real estate salesperson or broker who is actively engaged in the real estate business and who does not receive any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage for others.

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

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

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

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

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

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

(m) A natural person who is an employee or an exclusive agent of a licensed mortgage company or any person exempted from the licensing requirements of this chapter when acting within the scope of employment or exclusive agency with the licensee or exempted person.

(n) Employees or exclusive agents serving as loan originators for licensed mortgage companies as defined under Section 81-18-3 are exempt from the licensing requirements of this chapter but shall register with the department as a loan originator. Any natural person required to register under this paragraph (n) shall register initially with the department and
thereafter file an application for renewal of registration with
the department on or before August 31 of each year providing the
department with such information as the department may prescribe
by regulation, including, but not limited to, the business
addresses where the person engages in any business activities
covered by this chapter and a telephone number that customers may
use to contact the person. This initial registration of a loan
originator shall be accompanied by a fee of One Hundred Dollars
($100.00). Annual renewals of this registration shall require a
fee of Fifty Dollars ($50.00). No person required to register
under this paragraph (n) shall transact business in this state
directly or indirectly as a mortgage company or mortgage lender
unless that person is registered with the department.

SECTION 4. Section 81-18-7, Mississippi Code of 1972, is
reenacted as follows:

81-18-7. (1) On and after the effective date of this
chapter, no person or natural person shall transact business in
this state, directly or indirectly, as a mortgage company unless
he or she is licensed as a mortgage company by the department or
is a person exempted from the licensing requirements under Section
81-18-5.

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

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

SECTION 5. Section 81-18-9, Mississippi Code of 1972, is
reenacted as follows:

81-18-9. (1) An application for a license under this
chapter shall be made in writing and in the form as the department
may prescribe.

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

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

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

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

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

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

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

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

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

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

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

(h) In lieu of documentation of two (2) years' experience in mortgage lending by an applicant, documentation of passage of an examination covering mortgage lending, approved by the department.

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

(a) The license fee specified in Section 81-18-15;

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

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

(d) Except as provided in this paragraph (d), a set of fingerprints from any local law enforcement agency from the following applicants:
(i) All individuals operating as a sole proprietorship that plan to conduct a mortgage brokering or lending business in the State of Mississippi;

(ii) Partners in a partnership or principal owners of a limited liability company that are or will be actively engaged in the daily operation of a mortgage brokering or lending business in the State of Mississippi;

(iii) The chief executive officer of a corporation, or his designee, which supervises the Mississippi location(s) and any shareholders owning twenty-five percent (25%) or more of the outstanding shares of the corporation that are or will be actively engaged in the daily operation of a mortgage brokering or lending business in the State of Mississippi; and

(iv) All loan originators.

However, any corporation that is owned by or is an affiliate of a depository institution that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or any financial holding company that is registered under the Bank Holding Company Act or created under the Gramm-Leach-Bliley Financial Modernization Act of 1999, shall be exempt from the fingerprint requirement.

SECTION 6. Section 81-18-11, Mississippi Code of 1972, is reenacted as follows:

81-18-11. (1) For purposes of Section 81-18-9, the definitions of the classes of companies and their respective minimum amounts of surety bonds will be:

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

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

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

(2) All surety bonds shall be in favor, first, of the State
of Mississippi for the use, benefit and indemnity of any person
who suffers any damage or loss as a result of the mortgage
company's breach of contract or of any obligation arising from
contract or any violation of law, and, second, for the payment of
any civil penalties, criminal fines, or costs of investigation
and/or prosecution incurred by the State of Mississippi, including
local law enforcement agencies.

SECTION 7. Section 81-18-13, Mississippi Code of 1972, is
reenacted as follows:

81-18-13. (1) Upon receipt of an application for licensure
or registration, which shall include the required set of
fingerprints from any local law enforcement agency, the department
shall conduct such an investigation as it deems necessary to
determine that the applicant and its officers, directors and
principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the applicant has and maintains a place of business in this state.

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

(3) The department shall not license any mortgage company unless the applicant meets the requirements of Section 81-18-11.

(4) The department shall not issue a license or registration certificate if it finds that the applicant, or any person who is a director, officer, partner or principal of the applicant, has been convicted within ten (10) years of the application for license or registration of a felony involving moral turpitude in any jurisdiction or of a crime that, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this chapter, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the plea of guilty, or the decision, judgment or verdict, has been set aside, reversed or otherwise abrogated by lawful judicial process, or unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained.
(5) In order to determine the applicant's suitability for a license, the commissioner shall forward the fingerprints submitted with the application to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out the responsibilities of this chapter, may not be a public record, shall be privileged, and may not be disclosed to any other person or agency, except to any person or agency that otherwise has a legal right to inspect the file. All records shall be maintained by the department according to law. As used in this section "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime regardless of whether an appeal of the conviction has been sought.

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

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

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

**SECTION 8.** Section 81-18-15, Mississippi Code of 1972, is reenacted as follows:

81-18-15. (1) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before August 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid thirty (30) days after August 31, the license shall expire, but not before September 30 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

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

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

SECTION 9. Section 81-18-17, Mississippi Code of 1972, is reenacted as follows:

81-18-17. (1) Each license issued under this chapter shall state the address of the licensee's principal place of business in Mississippi and the name of the licensee.

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

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

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

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

(6) No licensee shall open a branch office without prior approval of the department. An application for any branch office shall be made in writing on a form prescribed by the department, which shall include at least evidence of compliance with subsection (1) of Section 81-18-25 as to that branch and shall be accompanied by payment of a nonrefundable application fee of One Hundred Dollars ($100.00). The application shall be approved
unless the department finds that the applicant has not conducted
business under this chapter in accordance with law. The
application shall be deemed approved if notice to the contrary has
not been mailed by the department to the applicant within thirty
(30) days of the date that the application is received by the
department. After approval, the applicant shall give written
notice to the department within ten (10) days of the commencement
of business at the branch office.

SECTION 10. Section 81-18-19, Mississippi Code of 1972, is
reenacted and amended as follows:

81-18-19. (1) Except as provided in this section, on and
after July 1, 2000, no person shall acquire directly or indirectly
ten percent (10%) or more of the voting shares of a corporation or
ten percent (10%) or more of the ownership of any other entity
licensed to conduct business under this chapter unless it first
does all of the following:

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

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

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

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

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

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

(a) The acquisition of an interest in a licensee
directly or indirectly including an acquisition by merger or
consolidation by or with a person exempt from Sections 81-18-1
through 81-18-51 under Section 81-18-5.

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

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

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

SECTION 11. Section 81-18-21, Mississippi Code of 1972, is
reenacted as follows:

81-18-21. (1) Any person required to be licensed under this
chapter shall maintain in its offices, or such other location as
the department shall permit, the books, accounts and records
necessary for the department to determine whether or not the
person is complying with the provisions of this chapter and the
rules and regulations adopted by the department under this
chapter. These books, accounts and records shall be maintained
apart and separate from any other business in which the person is
involved and may represent historical data for two (2) years
preceding the date of the last license application date forward.

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

(3) The department, its designated officers and employees,
or its duly authorized representatives, for the purposes of
discovering violations of this chapter and for the purpose of
determining whether any person or individual reasonably suspected
by the commissioner of conducting business that requires a license
or registration under this chapter, may investigate those persons
and individuals and examine all relevant books, records and papers
employed by those persons or individuals in the transaction of
business, and may summon witnesses and examine them under oath
concerning matters as to the business of those persons, or other
such matters as may be relevant to the discovery of violations of
this chapter including, without limitation, the conduct of
business without a license or registration as required under this
chapter.
(4) The department, in its discretion, may disclose information concerning any violation of this chapter or any rule, regulation or order under this chapter, provided the information is derived from a final order of the department.

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

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

SECTION 12. Section 81-18-23, Mississippi Code of 1972, is reenacted as follows:

81-18-23. (1) Each licensee shall annually, on or before April 1, file a written report with the department containing the information that the department may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the department.

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

(3) The department, in its discretion, may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.
(4) If a licensee fails to pay a penalty from which it has not been relieved, the department may maintain an action at law to recover the penalty.

SECTION 13. Section 81-18-25, Mississippi Code of 1972, is reenacted as follows:

81-18-25. (1) Each licensee shall maintain and transact business from a principal place of business in the state.

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

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

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

(c) Display a permanent sign outside the place of business readily visible to the general public, unless the display of sign violates local zoning ordinances or restrictive covenants. The sign must contain the name of the licensee and the words "Mississippi Licensed Mortgage Company."

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

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

SECTION 14. Section 81-18-27, Mississippi Code of 1972, is reenacted as follows:

81-18-27. No person required to be licensed or registered under this chapter shall:

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

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

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

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

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

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

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

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

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

(i) Lack of substantial benefit to the borrower;
(ii) The probability that full payment of the loan cannot be made by the borrower;
(iii) That the person has made a significant proportion of loans foreclosed under similar circumstances;
(iv) That the person has provided an extension of credit or collected a mortgage debt by extortion;
(v) That the person does business under a trade name that misrepresents or tends to misrepresent that the person is a bank, trust company, savings bank, savings and loan association, credit union or insurance company.

(j) Charge or collect any direct payment, compensation or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall that direct payment, compensation or advance fee exceed seven and ninety-five one-hundredths percent (7.95%) of the original principal amount of the loan, and any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations if required under Regulation Z of the federal Truth in Lending Act (TILA). A direct payment, compensation or advance fee as defined in this section shall not include:

(i) Any direct payment, compensation or advance fee collected by a licensed mortgage company to be paid to a nonrelated third party;
(ii) Any indirect payment to a licensed mortgage company by a lender if those fees are not required to be disclosed under the Real Estate Settlement Procedures Act (RESPA);
(iii) Any indirect payment or compensation by a lender to a licensed mortgage company required to be disclosed by the licensed mortgage company under RESPA, provided that the

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payment or compensation is disclosed to the borrower by the licensed mortgage company on a good faith estimate of costs, is included in the APR if required under Regulation Z of TILA, and is made pursuant to a written agreement between the licensed mortgage company and the borrower as may be required by Section 81-18-33; or

(iv) A fee not to exceed one percent (1%) of the principal amount of a loan for construction, provided that a binding commitment for the loan has been obtained for the prospective borrower.

SECTION 15. Section 81-18-29, Mississippi Code of 1972, is reenacted as follows:

81-18-29. The department shall promulgate those rules and regulations, not inconsistent with law, necessary for the enforcement of this chapter.

SECTION 16. Section 81-18-31, Mississippi Code of 1972, is reenacted as follows:

81-18-31. The department shall promulgate regulations governing the advertising of mortgage loans, including, but not limited to, the following requirements:

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

(b) That all licensees shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in this state and shall attach to each advertisement documentation that provides corroboration of the availability of the interest rate and terms of loans and names the specific media sources by which the advertisements were distributed;
(c) That all published advertisements disseminated primarily in this state by a license shall contain the name and an office address of the licensee, which shall be the same as the name and address of the licensee on record with the department;

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

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

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

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

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

SECTION 17. Section 81-18-33, Mississippi Code of 1972, is reenacted as follows:

81-18-33. The individual borrower files of a mortgage company shall contain at least the following:

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

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

(ii) "As a borrower you are protected under the Mississippi Mortgage Consumer Protection Act."
“Complaints against a mortgage company may be made by contacting the:

Mississippi Department of Banking and Consumer Finance
P.O. Box 23729
Jackson, MS 39225-3729”;

(b) A copy of the original loan application signed and dated by the mortgage company;
(c) A copy of the signed closing statement as required by HUD or documentation of denial or cancellation of the loan application;
(d) A copy of the good faith estimate of costs provided to the borrower;
(e) A copy of the appraisal or statement of value if procured as a part of the loan application process;
(f) Evidence of a loan lock-in provided by the lender; and
(g) A copy of the disclosures required under Regulation Z of the federal Truth In Lending Act and other disclosures as required under federal regulations and evidence that those disclosures have been properly and timely made to the borrower.

SECTION 18. Section 81-18-35, Mississippi Code of 1972, is reenacted as follows:

81-18-35. Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on its license, which shall include at least the following information:

(a) Name of applicant;
(b) Date of application; and
(c) Disposition of loan application, indicating date of loan funding, loan denial, withdrawal and name of lender if applicable.

SECTION 19. Section 81-18-37, Mississippi Code of 1972, is reenacted as follows:
814 81-18-37. (1) The department may suspend or revoke any
815 license or registration for any reason that would have been
816 grounds for refusal to issue an original license or registration
817 or for:
818 (a) A violation of any provision of this chapter or any
819 rule or regulation adopted under this chapter;
820 (b) Failure of the licensee or registrant to pay,
821 within thirty (30) days after it becomes final and nonappealable,
822 a judgment recovered in any court within this state by a claimant
823 or creditor in an action arising out of the licensee's or
824 registrant's business in this state as a mortgage company.
825 (2) Notice of the department's intention to enter an order
826 denying an application for a license or registration under this
827 chapter or of an order suspending or revoking a license or
828 registration under this chapter shall be given to the applicant,
829 licensee or registrant in writing, sent by registered or certified
830 mail addressed to the principal place of business of the
831 applicant, licensee or registrant. Within thirty (30) days of the
832 date of the notice of intention to enter an order of denial,
833 suspension or revocation under this chapter, the applicant,
834 licensee or registrant may request in writing a hearing to contest
835 the order. If a hearing is not requested in writing within thirty
836 (30) days of the date of the notice of intention, the department
837 shall enter a final order regarding the denial, suspension or
838 revocation. Any final order of the department denying, suspending
839 or revoking a license or registration shall state the grounds upon
840 which it is based and shall be effective on the date of issuance.
841 A copy of the final order shall be forwarded promptly by
842 registered or certified mail addressed to the principal place of
843 business of the applicant, licensee or registrant.

SECTION 20. Section 81-18-39, Mississippi Code of 1972, is
844 reenacted as follows:
81-18-39. (1) For purposes of this section, the term "person" shall be construed to include any officer, director, employee, affiliate or other person participating in the conduct of the affairs of the person subject to the orders issued under this section.

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

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

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

SECTION 21. Section 81-18-41, Mississippi Code of 1972, is
reenacted as follows:

81-18-41. Nothing in this chapter shall preclude a person
whose license or registration has been suspended or revoked from
continuing to service mortgage loans pursuant to servicing
contracts in existence at the time of the suspension or
revocation.

SECTION 22. Section 81-18-43, Mississippi Code of 1972, is
reenacted as follows:

81-18-43. (1) In addition to any other penalty that may be
applicable, any licensee, individual required to be registered, or
employee who willfully violates any provision of this chapter, or
who willfully makes a false entry in any document specifically
required by this chapter, shall be guilty of a misdemeanor and,
upon conviction thereof, shall be punishable by a fine not in
excess of One Thousand Dollars ($1,000.00) per violation or false
entry.

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

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

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

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

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

(5) The commissioner may, after notice and hearing, impose a
civil penalty against any licensee if the licensee, individual
required to be registered, or employee is adjudged by the
commisso
The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the department.

(6) The state may enforce its rights under the surety bond as required in Section 81-18-11 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred.

SECTION 23. Section 81-18-45, Mississippi Code of 1972, is reenacted as follows:

81-18-45. The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for the fiscal year 2001, to carry out and enforce the provisions of this chapter. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SECTION 24. Section 81-18-47, Mississippi Code of 1972, is reenacted as follows:

81-18-47. (1) A licensee under this chapter shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this chapter, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.
SECTION 25. Section 81-18-49, Mississippi Code of 1972, is reenacted as follows:

81-18-49. Notwithstanding any provisions of this chapter to the contrary, mortgage companies engaging in business on or before June 1, 2000, shall be duly licensed by the department after submitting not later than January 1, 2001, the required documents and fees provided in Sections 81-18-9 and 81-18-15. However, upon the expiration of the initial licenses for such mortgage companies, the department shall renew the licenses only if the mortgage companies satisfy all of the provisions of this chapter.

SECTION 26. Section 81-18-51, Mississippi Code of 1972, is amended as follows:


SECTION 27. This act shall take effect and be in force from and after July 1, 2002.