

By: Representative Guice

To: Banks and Banking

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1522

1 AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-49,  
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI MORTGAGE  
3 CONSUMER PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-3,  
4 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITIONS OF "LOAN  
5 ORIGINATOR," "MORTGAGE COMPANY" AND "PRINCIPAL"; TO AMEND  
6 REENACTED SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO REQUIRE  
7 WHOLLY OWNED SUBSIDIARIES OF HOLDING COMPANIES THAT ARE EXEMPT  
8 FROM THIS LAW TO FILE A NOTIFICATION STATEMENT CONTAINING CERTAIN  
9 INFORMATION AND PAY A FEE; TO PROVIDE THAT FINANCIAL INSTITUTIONS  
10 THAT ARE EXEMPT FROM THIS LAW ARE THOSE WITH FEDERALLY INSURED  
11 DEPOSITS; TO DELETE THE EXEMPTION FROM THIS LAW FOR APPROVED  
12 MORTGAGEES, SELLERS, SERVICERS OR ISSUERS OF CERTAIN FEDERAL  
13 AGENCIES AND INSTRUMENTALITIES; TO DELETE THE EXEMPTION FROM THIS  
14 LAW FOR CERTAIN PERSONS WHO FUND MORTGAGE LOANS THAT HAVE BEEN  
15 ORIGINATED AND PROCESSED BY A LICENSED OR EXEMPT PERSON OR  
16 COMPANY; TO PROVIDE THAT PERSONS EMPLOYED BY A MISSISSIPPI  
17 MANUFACTURED HOUSING OPERATION WHO MAKE NOT MORE THAN TWELVE  
18 RESIDENTIAL MORTGAGE LOANS OVER A LICENSING PERIOD ARE EXEMPT FROM  
19 THIS LAW; TO PROVIDE THAT THOSE EXEMPT PERSONS MUST PAY A FEE AND  
20 NOTIFY THE COMMISSIONER TO OBTAIN THE EXEMPTION; TO PROVIDE THAT  
21 NONPROFIT CORPORATIONS MUST BE EXEMPT FROM FEDERAL TAXATION IN  
22 ORDER TO BE EXEMPT FROM THIS LAW; TO DELETE THE EXEMPTION FROM  
23 THIS LAW FOR EMPLOYEES AND EXCLUSIVE AGENTS OF LICENSEES OR  
24 EXEMPTED PERSONS; TO PROVIDE THAT EXEMPT LOAN ORIGINATORS FOR  
25 MORTGAGE COMPANIES WILL BE SUBJECT TO CERTAIN PROVISIONS OF THIS  
26 LAW; TO CODIFY NEW SECTION 81-18-8, MISSISSIPPI CODE OF 1972, TO  
27 PROVIDE THAT MUNICIPALITIES AND COUNTIES MAY ENACT ORDINANCES THAT  
28 ARE IN COMPLIANCE WITH, BUT NOT MORE RESTRICTIVE THAN, THE  
29 PROVISIONS OF THIS LAW; TO AMEND REENACTED SECTION 81-18-9,  
30 MISSISSIPPI CODE OF 1972, TO REQUIRE FINGERPRINTING OF ALL  
31 SHAREHOLDERS OWNING A CERTAIN PERCENTAGE OF THE CORPORATION; TO  
32 DELETE THE EXEMPTION FROM THE FINGERPRINTING REQUIREMENT FOR  
33 CERTAIN CORPORATIONS; TO AMEND REENACTED SECTION 81-18-11,  
34 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "MORTGAGE  
35 LENDER"; TO AMEND REENACTED SECTION 81-18-13, MISSISSIPPI CODE OF  
36 1972, TO PROVIDE THAT A LICENSE WILL NOT BE ISSUED TO ANY PERSON  
37 WHO HAS BEEN CONVICTED OF ANY FELONY, ANY MISDEMEANOR INVOLVING  
38 FRAUD, OR CERTAIN SPECIFIED CRIMES; TO AMEND REENACTED SECTION  
39 81-18-15, MISSISSIPPI CODE OF 1972, TO SPECIFY THE REQUIRED  
40 CONTINUING EDUCATION FOR MANUFACTURED HOUSING LICENSEES OR  
41 ORIGINATORS; TO AMEND REENACTED SECTION 81-18-17, MISSISSIPPI CODE  
42 OF 1972, TO PROHIBIT A LICENSEE FROM OPENING CERTAIN BRANCH  
43 OFFICES WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF BANKING; TO  
44 AMEND REENACTED SECTION 81-18-19, MISSISSIPPI CODE OF 1972, TO  
45 PROVIDE THAT NO PERSON MAY ACQUIRE TWENTY-FIVE PERCENT OR MORE OF  
46 A LICENSEE UNLESS THE PERSON FIRST FILES AN APPLICATION; TO AMEND  
47 REENACTED SECTION 81-18-21, MISSISSIPPI CODE OF 1972, TO REQUIRE  
48 LICENSEES TO KEEP THEIR ACCOUNTS AND RECORDS IN SECURE LOCATIONS;  
49 TO AMEND REENACTED SECTION 81-18-25, MISSISSIPPI CODE OF 1972, TO  
50 DELETE THE REQUIREMENT THAT A LICENSEE MUST MAINTAIN AND TRANSACT  
51 BUSINESS FROM A PRINCIPAL PLACE OF BUSINESS IN THE STATE; TO  
52 PROVIDE THAT THE BUSINESS SIGNS OF LICENSEES MUST CONTAIN THE



53 WORDS "MISSISSIPPI LICENSED MORTGAGE COMPANY" OR "MISSISSIPPI  
54 SUPERVISED MORTGAGE COMPANY"; TO AMEND REENACTED SECTION 81-18-27,  
55 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY MORTGAGE COMPANY  
56 THAT CONTRACTS TO RECEIVE FROM A BORROWER A MORTGAGE BROKERAGE FEE  
57 UPON OBTAINING A COMMITMENT MUST DISCLOSE CERTAIN INFORMATION IN  
58 THE MORTGAGE BROKERAGE AGREEMENT; TO PROHIBIT LICENSEES FROM  
59 PAYING TO ANY PERSON NOT LICENSED OR EXEMPT FROM THIS LAW ANY  
60 COMMISSION, BONUS OR FEE IN CONNECTION WITH ARRANGING OR  
61 ORIGINATING A MORTGAGE LOAN FOR A BORROWER; TO PROHIBIT LICENSEES  
62 FROM REFUSING TO PROVIDE THE LOAN PAYOFF WITHIN THREE BUSINESS  
63 DAYS OF A REQUEST FROM A BORROWER OR THIRD PARTY; TO PROVIDE THAT  
64 A MORTGAGE COMPANY SHALL ONLY BROKER A RESIDENTIAL MORTGAGE LOAN  
65 TO A LICENSED MORTGAGE COMPANY OR TO A PERSON EXEMPT FROM THIS  
66 LAW; TO AMEND REENACTED SECTION 81-18-31, MISSISSIPPI CODE OF  
67 1972, TO PROHIBIT LICENSEES FROM ADVERTISING THEIR SERVICES  
68 WITHOUT THE WORDS "MISSISSIPPI LICENSED MORTGAGE COMPANY" OR  
69 "MISSISSIPPI SUPERVISED MORTGAGE COMPANY"; TO AMEND REENACTED  
70 SECTION 81-18-39, MISSISSIPPI CODE OF 1972, TO DELETE THE  
71 PROVISION FOR THE DEPARTMENT OF BANKING TO OBTAIN A COURT ORDER TO  
72 REQUIRE COMPLIANCE WITH THE DEPARTMENT'S ORDERS; TO PROVIDE THAT A  
73 LICENSEE WHO VIOLATES AN ORDER OF A DEPARTMENT IS SUBJECT TO A  
74 CIVIL PENALTY UPON DETERMINATION OF A VIOLATION BY THE  
75 COMMISSIONER OF BANKING, INSTEAD OF BY THE COURT; TO PROVIDE THAT  
76 IF A LICENSEE SEEKS JUDICIAL REVIEW OF THE ASSESSMENT OF A CIVIL  
77 PENALTY, THE COURT SHALL UPHOLD THE DEPARTMENT'S ORDER IF THE  
78 COURT DETERMINES THAT THE ORDER WAS PROPERLY ISSUED; TO AMEND  
79 REENACTED SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO INCREASE  
80 THE MAXIMUM AMOUNT OF A CIVIL PENALTY THAT THE COMMISSIONER MAY  
81 IMPOSE AGAINST A LICENSEE FOR VIOLATING THIS LAW; TO CODIFY NEW  
82 SECTION 81-18-36, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL  
83 MONIES PAID TO A MORTGAGE COMPANY FOR PAYMENT OF TAXES OR  
84 INSURANCE PREMIUMS ON PROPERTY SECURING ANY LOAN MADE OR SERVICED  
85 BY THE MORTGAGE COMPANY SHALL BE DEPOSITED IN A FEDERALLY-INSURED  
86 ACCOUNT AND KEPT SEPARATE FROM FUNDS BELONGING TO THE MORTGAGE  
87 COMPANY; TO AMEND SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO  
88 EXTEND THE DATE OF REPEAL ON THE MISSISSIPPI MORTGAGE CONSUMER  
89 PROTECTION LAW; AND FOR RELATED PURPOSES.

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

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

93 81-18-1. This chapter shall be known and cited as the  
94 Mississippi Mortgage Consumer Protection Law.

95 **SECTION 2.** Section 81-18-3, Mississippi Code of 1972, is  
96 reenacted and amended as follows:

97 81-18-3. For purposes of this chapter, the following terms  
98 shall have the following meanings:

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



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

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

109 (d) "Control" means the direct or indirect possession  
110 of the power to direct or cause the direction of the management  
111 and policies of a person, whether through the ownership of voting  
112 securities, by contract or otherwise, and shall include  
113 "controlling," "controlled by," and "under common control with."

114 (e) "Department" means the Department of Banking and  
115 Consumer Finance of the State of Mississippi.

116 (f) "Executive officer" means the chief executive  
117 officer, the president, the principal financial officer, the  
118 principal operating officer, each vice president with  
119 responsibility involving policy-making functions for a significant  
120 aspect of a person's business, the secretary, the treasurer, or  
121 any other person performing similar managerial or supervisory  
122 functions with respect to any organization whether incorporated or  
123 unincorporated.

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

126 (h) "Licensee" means a person or entity who is required  
127 to be licensed as a mortgage company under this chapter.

128 (i) "Loan originator" means an individual who is an  
129 employee \* \* \* of a single mortgage company whose conduct of the  
130 mortgage business is the responsibility of the licensee, and whose  
131 job responsibilities include direct contact with borrowers during  
132 the loan origination process, which may include soliciting,  
133 negotiating, acquiring, arranging or making mortgage loans for  
134 others, obtaining personal or financial information, assisting  
135 with the preparation of loan applications or other documents,



136 quoting loan rates or terms, or providing required disclosures.  
137 The term does not include individuals whose job responsibilities  
138 on behalf of a licensee are solely clerical in nature or sales  
139 representatives of a licensed Mississippi manufactured housing  
140 operation who transmits information concerning a sale via mail,  
141 courier service, or electronically to a licensed mortgage company  
142 or registered originator.

143 (j) "Make a mortgage loan" means to advance funds,  
144 offer to advance funds or make a commitment to advance funds to a  
145 borrower.

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

150 (l) "Mortgage company" means any person or entity who  
151 directly, indirectly or by electronic activity, solicits, places  
152 or negotiates mortgage loans for others, or offers to solicit,  
153 place or negotiate mortgage loans for others or who purchases  
154 and/or services mortgage loans.

155 (m) "Mortgage loan" means a loan or agreement to extend  
156 credit made to a natural person, which loan is secured by a deed  
157 to secure debt, security deed, mortgage, security instrument, deed  
158 of trust or other document representing a security interest or  
159 loan upon any interest in a lot intended for residential purposes,  
160 or single- to four-family residential property located in  
161 Mississippi, regardless of where made, including the renewal or  
162 refinancing of any loan.

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

166 (o) "Principal" means a natural person who, directly or  
167 indirectly, owns or controls an ownership interest of twenty-five  
168 percent (25%) or more in a corporation or any other form of



169 business organization, regardless of whether the natural person  
170 owns or controls the ownership interest through one or more  
171 natural persons or one or more proxies, powers of attorney,  
172 nominees, corporations, associations, limited liability companies,  
173 partnerships, trusts, joint-stock companies, other entities or  
174 devises, or any combination thereof.

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

181 (q) "Registrant" means any person required to register  
182 under Section 81-18-5(1).

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

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

191 **SECTION 3.** Section 81-18-5, Mississippi Code of 1972, is  
192 reenacted and amended as follows:

193 81-18-5. The following persons are not subject to the  
194 provisions of this chapter, unless otherwise provided in this  
195 chapter:

196 (a) Any person authorized to engage in business as a  
197 bank holding company or as a financial holding company, or any  
198 wholly owned subsidiary thereof; however, the wholly owned  
199 subsidiary must file a notification statement that includes the  
200 following information:



- 201                    (i) The name or names under which business will be  
202 conducted in Mississippi;
- 203                    (ii) The name and address of the parent financial  
204 institution;
- 205                    (iii) The name, mailing address, telephone number,  
206 and fax number of the person or persons responsible for handling  
207 consumer inquiries and complaints;
- 208                    (iv) The name and address of the registered agent  
209 for service of process in Mississippi;
- 210                    (v) A statement signed by the president or chief  
211 executive officer of the entity stating that the entity will  
212 receive and process consumer inquiries and complaints promptly,  
213 fairly, and in compliance with all applicable laws; and
- 214                    (vi) A fee of One Hundred Dollars (\$100.00).

215            The notification statement must be filed before beginning to  
216 conduct a mortgage business in this state and must be updated by  
217 the entity as the information changes. Any entity that fails to  
218 file the notification statement or keep the information current  
219 will be immediately subject to the licensing requirements of  
220 Section 81-18-9. This notification statement must be renewed  
221 annually as of September 30 of each year with a renewal fee of One  
222 Hundred Dollars (\$100.00).

223            (b) Any person authorized to engage in business as  
224 a \* \* \* bank, credit card bank, savings bank, savings institution,  
225 savings and loan association, building and loan association, trust  
226 company or credit union under the laws of the United States, any  
227 state or territory of the United States, or the District of  
228 Columbia, the deposits of which are federally insured, or any  
229 wholly owned subsidiary \* \* \* thereof.

230            \* \* \*

231            (c) Any lender holding a license under the Small Loan  
232 Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or  
233 affiliate thereof, and making real estate loans under that law are



234 exempt from this chapter. However, those lenders holding a  
235 license under the Small Loan Regulatory Law and making real estate  
236 loans outside that law shall be subject to the entire provisions  
237 of this chapter, unless otherwise exempted under paragraph (a) or  
238 (b) of this section.

239 \* \* \*

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

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

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

251 (g) Any \* \* \* person who is employed by and  
252 representing a Mississippi manufactured housing operation and who  
253 makes a mortgage loan \* \* \* for an investment or on a whole loan  
254 basis in not more than twelve (12) Mississippi residential  
255 mortgage loans, or who contracts for no more than twelve (12)  
256 Mississippi residential loan transactions, over the licensing  
257 period provided in this chapter, including those acting as  
258 originators. The twelve (12) transactions are cumulative to any  
259 combination of operations owned or controlled by any one  
260 individual, sole proprietorship, corporation, limited liability  
261 company, partnership, trust or any other group of individuals,  
262 however, organized. However, within thirty (30) days of loan  
263 closure, the person shall submit to the commissioner a fee of Ten  
264 Dollars (\$10.00), which is not chargeable to the consumer, and  
265 written notification containing such loan information as required  
266 by the commissioner, seeking approval to engage in a residential



267 mortgage transaction without first complying with the licensing  
268 provisions of this chapter. Any person who enters into more than  
269 twelve (12) of those transactions in the licensing period provided  
270 in this chapter must be licensed according to the procedures  
271 prescribed in this chapter. The fees paid for exemption during a  
272 licensing period will be deducted from the cost of an initial  
273 license.

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

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

279           (j) The United States of America, the State of  
280 Mississippi or any other state, and any agency, division or  
281 corporate instrumentality thereof including, but not limited to,  
282 the Mississippi Home Corporation, Rural Economic Community  
283 Development (RECD), Habitat for Humanity, the Federal National  
284 Mortgage Association (FNMA), the Federal Home Loan Mortgage  
285 Company (FHLMC), the Government National Mortgage Association  
286 (GNMA), the United States Department of Housing and Urban  
287 Development (HUD), the Federal Housing Administration (FHA), the  
288 Department of Veterans Affairs (VA), the Farmers Home  
289 Administration (FmHA), and the Federal Land Banks and Production  
290 Credit Associations.

291           (k) \* \* \* Nonprofit corporations exempt from federal  
292 taxation under Section 501(c) of the Internal Revenue Code making  
293 mortgage loans to promote home ownership or home improvements for  
294 the disadvantaged.

295 \* \* \*

296           (1) \* \* \* Loan originators for licensed mortgage  
297 companies as defined under Section 81-18-3 are exempt from the  
298 licensing requirements of this chapter except for Sections  
299 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall register with





300 the department as a loan originator. Any natural person required  
301 to register under this paragraph (1) shall register initially with  
302 the department and thereafter file an application for renewal of  
303 registration with the department on or before September 30 of each  
304 year providing the department with such information as the  
305 department may prescribe by regulation, including, but not limited  
306 to, the business addresses where the person engages in any  
307 business activities covered by this chapter and a telephone number  
308 that customers may use to contact the person. This initial  
309 registration of a loan originator shall be accompanied by a fee of  
310 One Hundred Dollars (\$100.00). Annual renewals of this  
311 registration shall require a fee of Fifty Dollars (\$50.00). No  
312 person required to register under this paragraph (1) shall  
313 transact business in this state directly or indirectly as a  
314 mortgage company or mortgage lender unless that person is  
315 registered with the department.

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

318 81-18-7. (1) On and after the effective date of this  
319 chapter, no person or natural person shall transact business in  
320 this state, directly or indirectly, as a mortgage company unless  
321 he or she is licensed as a mortgage company by the department or  
322 is a person exempted from the licensing requirements under Section  
323 81-18-5.

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

328 (3) On and after the effective date of this chapter, every  
329 person who directly or indirectly controls a person who violates  
330 this section, including a general partner, executive officer,  
331 joint venturer, contractor, or director of the person, violates  
332 this section to the same extent as the person, unless the person



333 whose violation arises under this subsection shows by a  
334 preponderance of evidence the burden of proof that he or she did  
335 not know and, in the exercise of reasonable care, could not have  
336 known of the existence of the facts by reason of which the  
337 original violation is alleged to exist.

338 **SECTION 5.** The following shall be codified as Section  
339 81-18-8, Mississippi Code of 1972:

340 81-18-8. Municipalities and counties in this state may enact  
341 ordinances that are in compliance with, but not more restrictive  
342 than, the provisions of this chapter. Any order, ordinance or  
343 regulation existing on July 1, 2002, or enacted on or after July  
344 1, 2002, that conflicts with this provision shall be null and  
345 void.

346 **SECTION 6.** Section 81-18-9, Mississippi Code of 1972, is  
347 reenacted and amended as follows:

348 81-18-9. (1) An application for a license under this  
349 chapter shall be made in writing and in the form as the department  
350 may prescribe.

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

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

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

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

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

364 (e) Documentation satisfactory to the department as to  
365 a certificate of existence of authority to transact business



366 lawfully in Mississippi, if an individual, sole proprietorship,  
367 limited liability company, partnership, trust or any other group  
368 of individuals, however organized.

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

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

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

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

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

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

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

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

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



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

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

406 (d) Except as provided in this paragraph (d), a set of  
407 fingerprints from any local law enforcement agency from the  
408 following applicants:

409 (i) All individuals operating as a sole  
410 proprietorship that plan to conduct a mortgage brokering or  
411 lending business in the State of Mississippi;

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

416 (iii) The chief executive officer of a  
417 corporation, or his designee, which supervises the Mississippi  
418 location(s) and any shareholders owning twenty-five percent (25%)  
419 or more of the outstanding shares of the corporation \* \* \*; and

420 (iv) All loan originators.

421 \* \* \*

422 **SECTION 7.** Section 81-18-11, Mississippi Code of 1972, is  
423 reenacted and amended as follows:

424 81-18-11. (1) For purposes of Section 81-18-9, the  
425 definitions of the classes of companies and their respective  
426 minimum amounts of surety bonds will be:

427 (a) "Correspondent lender" shall be defined as a  
428 company that directly or indirectly solicits, processes, places or  
429 negotiates mortgage loans for others, or offers to solicit,  
430 process, place or negotiate mortgage loans for others, that uses



431 its own funds for closing and may hold loans and may service those  
432 loans for a period of time not to exceed six (6) months before  
433 selling the loan in the secondary market. The amount of the  
434 surety bond for correspondent lenders shall be Fifty Thousand  
435 Dollars (\$50,000.00).

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

444 (c) "Mortgage lender" shall be defined as any company  
445 that makes a mortgage loan, using its own funds, for others or for  
446 compensation or gain, with the expectation of retaining servicing  
447 rights to those loans, or in the expectation of gain, either  
448 directly or indirectly, sells or offers to sell a mortgage loan to  
449 an investor in the secondary market or only services mortgage  
450 loans in the secondary market. The amount of the surety bond for  
451 a mortgage lender shall be One Hundred Fifty Thousand Dollars  
452 (\$150,000.00).

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

461 **SECTION 8.** Section 81-18-13, Mississippi Code of 1972, is  
462 reenacted and amended as follows:



463 81-18-13. (1) Upon receipt of an application for licensure  
464 or registration, which shall include the required set of  
465 fingerprints from any local law enforcement agency, the department  
466 shall conduct such an investigation as it deems necessary to  
467 determine that the applicant and its officers, directors and  
468 principals are of good character and ethical reputation; that the  
469 applicant demonstrates reasonable financial responsibility; and  
470 that the applicant has reasonable policies and procedures to  
471 receive and process customer grievances and inquiries promptly and  
472 fairly \* \* \*.

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

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

479 (4) The department shall not issue a license or registration  
480 certificate if it finds that the applicant, or any person who is a  
481 director, officer, partner, or principal of the applicant, has  
482 been convicted \* \* \* of a felony \* \* \* in any jurisdiction or of a  
483 crime that, if committed within this state, would constitute a  
484 felony \* \* \* under the laws of this state, or has been convicted  
485 of a misdemeanor in any jurisdiction in which fraud is an  
486 essential element, or has been convicted in any jurisdiction of  
487 check forgery, bribery, or embezzlement. For the purposes of this  
488 act, a person shall be deemed to have been convicted of a crime if  
489 the person has pleaded guilty to a crime before a court or federal  
490 magistrate, or plea of nolo contendere, or has been found guilty  
491 of a crime by the decision or judgment of a court or federal  
492 magistrate or by the verdict of a jury, irrespective of the  
493 pronouncement of sentence or the suspension of a sentence, unless  
494 the plea of guilty, or the decision, judgment or verdict, has been  
495 set aside, reversed or otherwise abrogated by lawful judicial



496 process, or unless the person convicted of the crime has received  
497 a pardon from the President of the United States or the Governor  
498 or other pardoning authority in the jurisdiction where the  
499 conviction was obtained.

500 (5) In order to determine the applicant's suitability for a  
501 license, the commissioner shall forward the fingerprints submitted  
502 with the application to the Department of Public Safety; and if no  
503 disqualifying record is identified at the state level, the  
504 fingerprints shall be forwarded by the Department of Public Safety  
505 to the FBI for a national criminal history record check. All  
506 conviction data received by the department shall be used by the  
507 department for the exclusive purpose of carrying out the  
508 responsibilities of this act, may not be a public record, shall be  
509 privileged, and may not be disclosed to any other person or  
510 agency, except to any person or agency that otherwise has a legal  
511 right to inspect the file. All records shall be maintained by the  
512 department according to law. As used in this section "conviction  
513 data" means a record of a finding or verdict of guilty or plea of  
514 guilty or plea of nolo contendere with regard to any crime  
515 regardless of whether an appeal of the conviction has been sought.

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

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



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

534           **SECTION 9.** Section 81-18-15, Mississippi Code of 1972, is  
535 reenacted and amended as follows:

536           81-18-15. (1) Each license shall remain in full force and  
537 effect until relinquished, suspended, revoked or expired. With  
538 each initial application for a license, the applicant shall pay to  
539 the commissioner a license fee of Seven Hundred Fifty Dollars  
540 (\$750.00), and on or before August 31 of each year thereafter, an  
541 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).  
542 If the annual renewal fee remains unpaid thirty (30) days after  
543 August 31, the license shall expire, but not before September 30  
544 of any year for which the annual renewal fee has been paid. If  
545 any person engages in business as provided for in this act without  
546 paying the license fee provided for in this subsection before  
547 commencing business or before the expiration of the person's  
548 current license, as the case may be, then the person shall be  
549 liable for the full amount of the license fee, plus a penalty in  
550 an amount not to exceed Twenty-five Dollars (\$25.00) for each day  
551 that the person has engaged in such business without a license or  
552 after the expiration of a license. All licensing fees and  
553 penalties shall be paid into the Consumer Finance Fund of the  
554 department.

555           (2) Any licensee making timely and proper application for a  
556 license renewal shall be permitted to continue to operate under  
557 its existing license until its application is approved or  
558 rejected, but shall not be released from or otherwise indemnified  
559 for any act covered by this chapter or for any penalty incurred  
560 under this chapter as a result of any violation of this chapter or





561 regulations adopted under this chapter, pending final approval or  
562 disapproval of the application for the license renewal.

563 (3) Each application for licensing renewal or registration  
564 renewal shall include evidence of the satisfactory completion of  
565 at least twelve (12) hours of approved continuing education in  
566 primary and subordinated financing transactions by the officers  
567 and principals who are or will be actively engaged in the daily  
568 operation of a mortgage company in the State of Mississippi and  
569 registered originators. For purposes of this subsection (3),  
570 approved courses shall be those as approved by the Mississippi  
571 Mortgage Bankers Association, the Education Committee of the  
572 National Association of Mortgage Brokers or the Mississippi  
573 Association of Mortgage Brokers, who shall submit to the  
574 department a listing of approved schools, courses, programs and  
575 special training sessions. However, each application for  
576 licensing renewal or registration renewal of manufactured housing  
577 licensees or originators shall include evidence of the  
578 satisfactory completion of at least twelve (12) hours of  
579 continuing education, of which eight (8) hours must be approved by  
580 the Commissioner of Insurance and four (4) hours consisting of  
581 courses in primary and subordinated financing transactions must be  
582 approved by the Mississippi Manufactured Housing Association,  
583 which shall submit to the department a listing of those approved  
584 schools, courses, programs and special training sessions. A  
585 manufactured housing licensee or originator may submit evidence of  
586 completion of courses that have been approved by the Mississippi  
587 Mortgage Brokers Association, the Education Committee of the  
588 National Association of Mortgage Brokers or the Mississippi  
589 Association of Mortgage Brokers to satisfy the four-hour  
590 requirement of courses in primary and subordinated financing  
591 transactions.

592 **SECTION 10.** Section 81-18-17, Mississippi Code of 1972, is  
593 reenacted and amended as follows:



594 81-18-17. (1) Each license issued under this act shall  
595 state the address of the licensee's principal place of  
596 business \* \* \* and the name of the licensee.

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

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

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

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

607 (6) No licensee shall open a branch office in this state or  
608 a branch office outside this state from which the licensee has  
609 direct contact with Mississippi consumers regarding origination or  
610 brokering Mississippi property, without prior approval of the  
611 department. An application for any branch office shall be made in  
612 writing on a form prescribed by the department, which shall  
613 include at least evidence of compliance with subsection (1) of  
614 Section 81-18-25 as to that branch and shall be accompanied by  
615 payment of a nonrefundable application fee of One Hundred Dollars  
616 (\$100.00). The application shall be approved unless the  
617 department finds that the applicant has not conducted business  
618 under this act in accordance with law. The application shall be  
619 deemed approved if notice to the contrary has not been mailed by  
620 the department to the applicant within thirty (30) days of the  
621 date that the application is received by the department. After  
622 approval, the applicant shall give written notice to the  
623 department within ten (10) days of the commencement of business at  
624 the branch office.

625 **SECTION 11.** Section 81-18-19, Mississippi Code of 1972, is  
626 reenacted and amended as follows:



627           81-18-19. (1) Except as provided in this section, \* \* \* no  
628 person shall acquire directly or indirectly twenty-five percent  
629 (25%) or more of the voting shares of a corporation or twenty-five  
630 percent (25%) or more of the ownership of any other entity  
631 licensed to conduct business under this chapter unless it  
632 first \* \* \* files an application in accordance with the  
633 requirements prescribed in Section 81-18-9.

634           (2) Upon the filing and investigation of an application, the  
635 department shall permit the applicant to acquire the interest in  
636 the licensee if it is satisfied and finds that the applicant and  
637 its members, if applicable, its directors and officers, if a  
638 corporation, and any proposed new directors and officers have  
639 provided its surety bond and have the character, reputation and  
640 experience to warrant belief that the business will be operated  
641 fairly and in accordance with the law. \* \* \* If the application  
642 is denied, the department shall notify the applicant of the denial  
643 and the reasons for the denial.

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

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

650               (a) The acquisition of an interest in a licensee  
651 directly or indirectly including an acquisition by merger or  
652 consolidation by or with a person exempt from this chapter under  
653 Section 81-18-5.

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



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

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

666           **SECTION 12.** Section 81-18-21, Mississippi Code of 1972, is  
667 reenacted and amended as follows:

668           81-18-21. (1) Any person required to be licensed under this  
669 chapter shall maintain in its offices, or such other location as  
670 the department shall permit, the books, accounts and records  
671 necessary for the department to determine whether or not the  
672 person is complying with the provisions of this chapter and the  
673 rules and regulations adopted by the department under this  
674 chapter. These books, accounts and records shall be maintained  
675 apart and separate from any other business in which the person is  
676 involved and may represent historical data for two (2) years  
677 preceding the date of the last license application date forward.  
678 The books, accounts, and records shall be kept in a secure  
679 location under conditions that will not lead to their damage or  
680 destruction.

681           (2) To assure compliance with the provisions of this  
682 chapter, the department may examine the books and records of any  
683 licensee without notice during normal business hours. The  
684 commissioner shall charge the licensee an examination fee in an  
685 amount not less than Two Hundred Dollars (\$200.00) nor more than  
686 Three Hundred Dollars (\$300.00) per examination of each office or  
687 location within the State of Mississippi, plus any actual expenses  
688 incurred while examining the licensee's records or books that are  
689 located outside the State of Mississippi. However, in no event  
690 shall a licensee be examined more than once in a two-year period



691 unless for cause shown based upon consumer complaint and/or other  
692 exigent reasons as determined by the commissioner.

693 (3) The department, its designated officers and employees,  
694 or its duly authorized representatives, for the purposes of  
695 discovering violations of this chapter and for the purpose of  
696 determining whether any person or individual reasonably suspected  
697 by the commissioner of conducting business that requires a license  
698 or registration under this chapter, may investigate those persons  
699 and individuals and examine all relevant books, records and papers  
700 employed by those persons or individuals in the transaction of  
701 business, and may summon witnesses and examine them under oath  
702 concerning matters as to the business of those persons, or other  
703 such matters as may be relevant to the discovery of violations of  
704 this act including, without limitation, the conduct of business  
705 without a license or registration as required under this chapter.

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

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

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

721 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is  
722 reenacted as follows:



723           81-18-23. (1) Each licensee shall annually, on or before  
724 April 1, file a written report with the department containing the  
725 information that the department may reasonably require concerning  
726 the licensee's business and operations during the preceding  
727 calendar year. The report shall be made in the form prescribed by  
728 the department.

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

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

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

740           **SECTION 14.** Section 81-18-25, Mississippi Code of 1972, is  
741 reenacted and amended as follows:

742           81-18-25. \* \* \*

743           (1) Each principal place of business and branch office in  
744 the state \* \* \* shall meet all of the following requirements:

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

749           (b) Consist of at least one (1) secure enclosed room or  
750 secure building of stationary construction in which negotiations  
751 of mortgage loan transactions may be conducted in privacy.  
752 Stationary construction does not include the use of portable  
753 buildings.

754           (c) Display a permanent sign outside the place of  
755 business readily visible to the general public, unless the display



756 of sign violates local zoning ordinances or restrictive covenants.  
757 The sign must contain the name of the licensee and the words  
758 "Mississippi Licensed Mortgage Company or "Mississippi Supervised  
759 Mortgage Company."

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

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

766       **SECTION 15.** Section 81-18-27, Mississippi Code of 1972, is  
767 reenacted and amended as follows:

768       81-18-27. (1) No person required to be licensed or  
769 registered under this chapter shall:

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

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

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

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

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



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

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

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

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

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

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

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

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

813 (v) That the person does business under a trade  
814 name that misrepresents or tends to misrepresent that the person  
815 is a bank, trust company, savings bank, savings and loan  
816 association, credit union, or insurance company.

817 (j) (i) Charge or collect any direct payment,  
818 compensation or advance fee from a borrower unless and until a  
819 loan is actually found, obtained and closed for that borrower, and  
820 in no event shall that direct payment, compensation or advance fee





821 exceed seven and ninety-five one-hundredths percent (7.95%) of the  
822 original principal amount of the loan, and any such direct  
823 payments, compensation or advance fees shall be included in all  
824 annual percentage rate (APR) calculations if required under  
825 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
826 payment, compensation or advance fee as defined in this section  
827 shall not include:

828           1. Any direct payment, compensation or  
829 advance fee collected by a licensed mortgage company to be paid to  
830 a nonrelated third party;

831           2. Any indirect payment to a licensed  
832 mortgage company by a lender if those fees are not required to be  
833 disclosed under the Real Estate Settlement Procedures Act (RESPA);

834           3. Any indirect payment or compensation by a  
835 lender to a licensed mortgage company required to be disclosed by  
836 the licensed mortgage company under RESPA, provided that the  
837 payment or compensation is disclosed to the borrower by the  
838 licensed mortgage company on a good faith estimate of costs, is  
839 included in the APR if required under Regulation Z of TILA, and is  
840 made pursuant to a written agreement between the licensed mortgage  
841 company and the borrower as may be required by Section 81-18-33;  
842 or

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

847           (ii) Notwithstanding the provisions of this  
848 chapter, any mortgage company that contracts to receive from a  
849 borrower a mortgage brokerage fee upon obtaining a bona fide  
850 commitment shall accurately disclose in the mortgage brokerage  
851 agreement:

852           1. The gross loan amount;



853 2. In the case of a fixed-rate mortgage, the  
854 note rate;

855 3. In the case of an adjustable-rate  
856 mortgage:

857 a. The initial loan rate;  
858 b. The length of time for which the  
859 initial note rate is effective;

860 c. The frequency of changes;  
861 d. The limitation upon those changes  
862 including adjustment to adjustment cap and life cap;

863 e. Whether the loan has any potential  
864 for negative amortization;

865 f. Identification of the margin-interest  
866 rate differential; and

867 g. Identification of a nationally  
868 recognized index, which index must be free from control of the  
869 mortgage broker, correspondent lender, and mortgage lender;

870 4. The estimated net proceeds to be paid  
871 directly to the borrower. Estimated net proceeds means the cash  
872 to be received by the borrower after payment of any fees, charges,  
873 debts, liens, or encumbrances to perfect the lien of the new  
874 mortgage and establish the agreed-upon priority of the new  
875 mortgage;

876 5. The lien priority of the new proposed  
877 mortgage;

878 6. The number of calendar days, which are  
879 mutually agreed upon, within which the mortgage company shall  
880 obtain a bona fide mortgage commitment; and

881 7. The following statement, in no less than  
882 12-point boldface type immediately above the signature line for  
883 the borrowers:

884 "You are entering into a contract with a mortgage company to  
885 obtain a bona fide mortgage loan commitment under the same terms



886 and conditions as stated above or in a separate executed good  
887 faith estimate form. If the mortgage company obtains a bona fide  
888 commitment under the same terms and conditions, you will be  
889 obligated to pay the mortgage company fees, including, but not  
890 limited to, a mortgage brokerage fee, even if you choose not to  
891 complete the loan transaction. If the provisions of this section  
892 are not met, the mortgage brokerage fee can only be earned upon  
893 the funding of the mortgage loan. The borrower may contact the  
894 Department of Banking and Consumer Finance, Jackson, Mississippi,  
895 regarding any complaints that the borrower may have against the  
896 mortgage company or loan originator. The telephone number of the  
897 department as set by rule of the department is: [insert telephone  
898 number]."

899 (k) Pay to any person not licensed or not exempt under  
900 the provisions of this chapter any commission, bonus or fee in  
901 connection with arranging for or originating a mortgage loan for a  
902 borrower, except that a registered loan originator may be paid a  
903 bonus, commission, or fee by his or her licensed employer.

904 (1) Refuse to provide the loan payoff within three (3)  
905 business days of an oral or written request from a borrower or  
906 third party. Proof of authorization of the borrower shall be  
907 submitted for a third-party request.

908 (2) A mortgage company shall only broker a residential  
909 mortgage loan to a mortgage company licensed under this chapter or  
910 to a person exempt from licensure under the provisions of this  
911 chapter.

912 **SECTION 16.** Section 81-18-29, Mississippi Code of 1972, is  
913 reenacted as follows:

914 81-18-29. The department shall promulgate those rules and  
915 regulations, not inconsistent with law, necessary for the  
916 enforcement of this chapter.

917 **SECTION 17.** Section 81-18-31, Mississippi Code of 1972, is  
918 reenacted and amended as follows:



919 81-18-31. The department shall promulgate regulations  
920 governing the advertising of mortgage loans, including, but not  
921 limited to, the following requirements:

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

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

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

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

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

943 (ii) The term in years or months to fully repay  
944 the mortgage; \* \* \*

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

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



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

954           81-18-33. The individual borrower files of a mortgage  
955 company shall contain at least the following:

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

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

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

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

969                               Mississippi Department of Banking and  
970                               Consumer Finance  
971                               P.O. Box 23729  
972                               Jackson, MS 39225-3729";

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

975           (c) A copy of the signed closing statement as required  
976 by HUD or documentation of denial or cancellation of the loan  
977 application;

978           (d) A copy of the good faith estimate of costs provided  
979 to the borrower;

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

982           (f) Evidence of a loan lock-in provided by the lender;

983 and



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

988 **SECTION 19.** Section 81-18-35, Mississippi Code of 1972, is  
989 reenacted as follows:

990 81-18-35. Each licensee shall maintain a journal of mortgage  
991 transactions at the principal place of business as stated on its  
992 license, which shall include at least the following information:

993 (a) Name of applicant;

994 (b) Date of application; and

995 (c) Disposition of loan application, indicating date of  
996 loan funding, loan denial, withdrawal and name of lender if  
997 applicable.

998 **SECTION 20.** The following shall be codified as Section  
999 81-18-36, Mississippi Code of 1972:

1000 81-18-36. (1) (a) All monies paid to a mortgage company  
1001 for payment of taxes, loan commitment deposits, work completion  
1002 deposits, appraisals, credit reports or insurance premiums on  
1003 property that secures any loan made or serviced by the mortgage  
1004 company shall be deposited in an account that is insured by the  
1005 Federal Deposit Insurance Corporation or the National Credit Union  
1006 Administration and shall be kept separate, distinct, and apart  
1007 from funds belonging to the mortgage company.

1008 (b) The funds, when deposited, are to be designated as  
1009 an "escrow account," or under some other appropriate name,  
1010 indicating that the funds are not the funds of the mortgage  
1011 company.

1012 (2) The mortgage company shall, upon reasonable notice,  
1013 account to any debtor whose property secures a loan made by the  
1014 mortgage company for any funds which that person has paid to the  
1015 mortgage company for the payment of taxes or insurance premiums on  
1016 the property in question.



1017 (3) The mortgage company shall, upon reasonable notice,  
1018 account to the commissioner for all funds in the company's escrow  
1019 account.

1020 (4) Escrow accounts are not subject to execution or  
1021 attachment on any claim against the mortgage company.

1022 (5) It is unlawful for any mortgage company knowingly to  
1023 keep or cause to be kept any funds or money in any bank or other  
1024 financial institution under the heading of "escrow account" or any  
1025 other name designating the funds or monies belonging to the  
1026 debtors of the mortgage company, except actual funds paid to the  
1027 mortgage company for the payment of taxes and insurance premiums  
1028 on property securing loans made or serviced by the company.

1029 **SECTION 21.** Section 81-18-37, Mississippi Code of 1972,  
1030 reenacted as follows:

1031 81-18-37. (1) The department may suspend or revoke any  
1032 license or registration for any reason that would have been  
1033 grounds for refusal to issue an original license or registration  
1034 or for:

1035 (a) A violation of any provision of this chapter or any  
1036 rule or regulation adopted under this chapter;

1037 (b) Failure of the licensee or registrant to pay,  
1038 within thirty (30) days after it becomes final and nonappealable,  
1039 a judgment recovered in any court within this state by a claimant  
1040 or creditor in an action arising out of the licensee's or  
1041 registrant's business in this state as a mortgage company.

1042 (2) Notice of the department's intention to enter an order  
1043 denying an application for a license or registration under this  
1044 chapter or of an order suspending or revoking a license or  
1045 registration under this chapter shall be given to the applicant,  
1046 licensee or registrant in writing, sent by registered or certified  
1047 mail addressed to the principal place of business of the  
1048 applicant, licensee or registrant. Within thirty (30) days of the  
1049 date of the notice of intention to enter an order of denial,



1050 suspension or revocation under this chapter, the applicant,  
1051 licensee or registrant may request in writing a hearing to contest  
1052 the order. If a hearing is not requested in writing within thirty  
1053 (30) days of the date of the notice of intention, the department  
1054 shall enter a final order regarding the denial, suspension or  
1055 revocation. Any final order of the department denying, suspending  
1056 or revoking a license or registration shall state the grounds upon  
1057 which it is based and shall be effective on the date of issuance.  
1058 A copy of the final order shall be forwarded promptly by  
1059 registered or certified mail addressed to the principal place of  
1060 business of the applicant, licensee or registrant.

1061 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is  
1062 reenacted and amended as follows:

1063 81-18-39. (1) For purposes of this section, the term  
1064 "person" shall be construed to include any officer, director,  
1065 employee, affiliate or other person participating in the conduct  
1066 of the affairs of the person subject to the orders issued under  
1067 this section.

1068 (2) If the department reasonably determines that a person  
1069 required to be licensed or registered under this chapter has  
1070 violated any law of this state or any order or regulation of the  
1071 department, the department may issue a written order requiring the  
1072 person to cease and desist from unlawful or unauthorized  
1073 practices. In the case of an unlawful purchase of mortgage loans,  
1074 the cease and desist order to a purchaser shall constitute the  
1075 knowledge required under this section for any subsequent  
1076 violations.

1077 \* \* \*

1078 (3) Any person required to be licensed or registered under  
1079 this chapter who has been deemed by the commissioner, after notice  
1080 and hearing, to have violated the terms of any order properly  
1081 issued by the department under this section shall be liable for a  
1082 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).





1083 The department, in determining the amount of the penalty, shall  
1084 take into account the appropriateness of the penalty relative to  
1085 the size of the financial resources of the person, the good faith  
1086 efforts of the person to comply with the order, the gravity of the  
1087 violation, the history of previous violations by the person, and  
1088 other factors or circumstances that contributed to the violation.  
1089 The department may compromise, modify or refund any penalty that  
1090 has been imposed under this section. Any person assessed a  
1091 penalty as provided in this subsection shall have the right to  
1092 request a hearing on the amount of the penalty within ten (10)  
1093 days after receiving notification of the assessment. If no  
1094 hearing is requested within ten (10) days of the receipt of the  
1095 notice, the penalty shall be final except as to judicial review in  
1096 the Chancery Court of the First Judicial District of Hinds County.  
1097 Upon the filing of a petition for judicial review, the court shall  
1098 issue an order to the licensee requiring the licensee to show  
1099 cause why it should not be entered. If the court determines,  
1100 after a hearing upon the merits or after failure of the person to  
1101 appear when so ordered, that the order of the department was  
1102 properly issued, it shall grant the relief sought by the  
1103 department.

1104 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is  
1105 reenacted as follows:

1106 81-18-41. Nothing in this chapter shall preclude a person  
1107 whose license or registration has been suspended or revoked from  
1108 continuing to service mortgage loans pursuant to servicing  
1109 contracts in existence at the time of the suspension or  
1110 revocation.

1111 **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is  
1112 reenacted and amended as follows:

1113 81-18-43. (1) In addition to any other penalty that may be  
1114 applicable, any licensee, individual required to be registered, or  
1115 employee who willfully violates any provision of this chapter, or



1116 who willfully makes a false entry in any document specifically  
1117 required by this chapter, shall be guilty of a misdemeanor and,  
1118 upon conviction thereof, shall be punishable by a fine not in  
1119 excess of One Thousand Dollars (\$1,000.00) per violation or false  
1120 entry.

1121 (2) In addition to any other penalty that may be applicable,  
1122 any licensee, individual required to be registered, or employee  
1123 who fails to make a record of a mortgage transaction and  
1124 subsequently sells or disposes of the mortgage from that  
1125 transaction shall be punished as follows:

1126 (a) For a first offense, the licensee, individual  
1127 required to be registered, or employee shall be guilty of a  
1128 misdemeanor and, upon conviction thereof, shall be punishable by a  
1129 fine not in excess of One Thousand Dollars (\$1,000.00) or by  
1130 imprisonment in the county jail for not more than one (1) year, or  
1131 both fine and imprisonment;

1132 (b) For a second or subsequent offense, the licensee,  
1133 individual required to be registered, or employee shall be guilty  
1134 of a felony and, upon conviction thereof, shall be punishable by a  
1135 fine not in excess of Five Thousand Dollars (\$5,000.00) or by  
1136 imprisonment in the custody of the State Department of Corrections  
1137 for a term not less than one (1) year nor more than five (5)  
1138 years, or by both fine and imprisonment.

1139 (3) Compliance with the criminal provisions of this act  
1140 shall be enforced by the appropriate law enforcement agency, which  
1141 may exercise for that purpose any authority conferred upon the  
1142 agency by law.

1143 (4) When the commissioner has reasonable cause to believe  
1144 that a person is violating any provision of this chapter, the  
1145 commissioner, in addition to and without prejudice to the  
1146 authority provided elsewhere in this chapter, may enter an order  
1147 requiring the person to stop or to refrain from the violation.  
1148 The commissioner may sue in any chancery court of the state having



1149 jurisdiction and venue to enjoin the person from engaging in or  
1150 continuing the violation or from doing any act in furtherance of  
1151 the violation. In such an action, the court may enter an order or  
1152 judgment awarding a preliminary or permanent injunction.

1153 (5) The commissioner may, after notice and hearing, impose a  
1154 civil penalty against any licensee if the licensee, individual  
1155 required to be registered, or employee is adjudged by the  
1156 commissioner to be in violation of the provisions of this chapter.  
1157 The civil penalty shall not exceed Five Thousand Dollars  
1158 (\$5,000.00) per violation and shall be deposited into the Consumer  
1159 Finance Fund of the department.

1160 (6) The state may enforce its rights under the surety bond  
1161 as required in Section 81-18-11 as an available remedy for the  
1162 collection of any civil penalties, criminal fines or costs of  
1163 investigation and/or prosecution incurred.

1164 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is  
1165 reenacted as follows:

1166 81-18-45. The commissioner may employ the necessary  
1167 full-time employees above the number of permanent full-time  
1168 employees authorized for the department for the fiscal year 2001,  
1169 to carry out and enforce the provisions of this chapter. The  
1170 commissioner also may expend the necessary funds and equip and  
1171 provide necessary travel expenses for those employees.

1172 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is  
1173 reenacted as follows:

1174 81-18-47. (1) A licensee under this chapter shall have no  
1175 liability for any act or practice done or omitted in conformity  
1176 with (a) any rule or regulation of the commissioner, or (b) any  
1177 rule, regulation, interpretation or approval of any other state or  
1178 federal agency or any opinion of the Attorney General,  
1179 notwithstanding that after such act or omission has occurred the  
1180 rule, regulation, interpretation, approval or opinion is amended,



1181 rescinded, or determined by judicial or other authority to be  
1182 invalid for any reason.

1183 (2) A licensee under this chapter, acting in conformity with  
1184 a written interpretation or approval by an official or employee of  
1185 any state or federal agency or department, shall be presumed to  
1186 have acted in accordance with applicable law, notwithstanding that  
1187 after such act has occurred, the interpretation or approval is  
1188 amended, rescinded, or determined by judicial or other authority  
1189 to be incorrect or invalid for any reason.

1190 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is  
1191 reenacted as follows:

1192 81-18-49. Notwithstanding any provisions of this chapter to  
1193 the contrary, mortgage companies engaging in business on or before  
1194 June 1, 2000, shall be duly licensed by the department after  
1195 submitting not later than January 1, 2001, the required documents  
1196 and fees provided in Sections 81-18-9 and 81-18-15. However, upon  
1197 the expiration of the initial licenses for such mortgage  
1198 companies, the department shall renew the licenses only if the  
1199 mortgage companies satisfy all of the provisions of this chapter.

1200 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is  
1201 amended as follows:

1202 81-18-51. Sections 81-18-1 through 81-18-49 shall stand  
1203 repealed on July 1, 2007.

1204 **SECTION 29.** This act shall take effect and be in force from  
1205 and after July 1, 2002.

