

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2674

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 NONPROFIT CORPORATIONS MUST BE EXEMPT
17 FROM FEDERAL TAXATION IN ORDER TO BE EXEMPT FROM THIS LAW; TO
18 DELETE THE EXEMPTION FROM THIS LAW FOR EMPLOYEES AND EXCLUSIVE
19 AGENTS OF LICENSEES OR EXEMPTED PERSONS; TO PROVIDE THAT EXEMPT
20 LOAN ORIGINATORS FOR MORTGAGE COMPANIES WILL BE SUBJECT TO CERTAIN
21 PROVISIONS OF THIS LAW; TO CODIFY NEW SECTION 81-18-8, MISSISSIPPI
22 CODE OF 1972, TO PROVIDE THAT MUNICIPALITIES AND COUNTIES MAY
23 ENACT ORDINANCES THAT ARE IN COMPLIANCE WITH, BUT NOT MORE
24 RESTRICTIVE THAN, THE PROVISIONS OF THIS LAW; TO AMEND REENACTED
25 SECTION 81-18-9, MISSISSIPPI CODE OF 1972, TO REQUIRE
26 FINGERPRINTING OF ALL SHAREHOLDERS OWNING A CERTAIN PERCENTAGE OF
27 THE CORPORATION; TO DELETE THE EXEMPTION FROM THE FINGERPRINTING
28 REQUIREMENT FOR CERTAIN CORPORATIONS; TO AMEND REENACTED SECTION
29 81-18-11, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
30 "MORTGAGE LENDER"; TO AMEND REENACTED SECTION 81-18-13,
31 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A LICENSE WILL NOT BE
32 ISSUED TO ANY PERSON WHO HAS BEEN CONVICTED OF ANY FELONY, ANY
33 MISDEMEANOR INVOLVING FRAUD, OR CERTAIN SPECIFIED CRIMES; TO AMEND
34 REENACTED SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT
35 A LICENSEE FROM OPENING CERTAIN BRANCH OFFICES WITHOUT PRIOR
36 APPROVAL OF THE DEPARTMENT OF BANKING; TO AMEND REENACTED SECTION
37 81-18-19, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PERSON MAY
38 ACQUIRE TWENTY-FIVE PERCENT OR MORE OF A LICENSEE UNLESS THE
39 PERSON FIRST FILES AN APPLICATION; TO AMEND REENACTED SECTION
40 81-18-21, MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSEES TO KEEP
41 THEIR ACCOUNTS AND RECORDS IN SECURE LOCATIONS; TO AMEND REENACTED
42 SECTION 81-18-25, MISSISSIPPI CODE OF 1972, TO DELETE THE
43 REQUIREMENT THAT A LICENSEE MUST MAINTAIN AND TRANSACT BUSINESS
44 FROM A PRINCIPAL PLACE OF BUSINESS IN THE STATE; TO PROVIDE THAT
45 THE BUSINESS SIGNS OF LICENSEES MUST CONTAIN THE WORDS
46 "MISSISSIPPI SUPERVISED MORTGAGE COMPANY"; TO AMEND REENACTED
47 SECTION 81-18-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY
48 MORTGAGE COMPANY THAT CONTRACTS TO RECEIVE FROM A BORROWER A
49 MORTGAGE BROKERAGE FEE UPON OBTAINING A COMMITMENT MUST DISCLOSE
50 CERTAIN INFORMATION IN THE MORTGAGE BROKERAGE AGREEMENT; TO
51 PROHIBIT LICENSEES FROM PAYING TO ANY PERSON NOT LICENSED OR
52 EXEMPT FROM THIS LAW ANY COMMISSION, BONUS OR FEE IN CONNECTION



53 WITH ARRANGING OR ORIGINATING A MORTGAGE LOAN FOR A BORROWER; TO
54 PROHIBIT LICENSEES FROM REFUSING TO PROVIDE THE LOAN PAYOFF WITHIN
55 THREE BUSINESS DAYS OF A REQUEST FROM A BORROWER OR THIRD PARTY;
56 TO PROVIDE THAT A MORTGAGE COMPANY SHALL ONLY BROKER A RESIDENTIAL
57 MORTGAGE LOAN TO A LICENSED MORTGAGE COMPANY OR TO A PERSON EXEMPT
58 FROM THIS LAW; TO AMEND REENACTED SECTION 81-18-31, MISSISSIPPI
59 CODE OF 1972, TO PROHIBIT LICENSEES FROM ADVERTISING THEIR
60 SERVICES WITHOUT THE WORDS "MISSISSIPPI SUPERVISED MORTGAGE
61 COMPANY"; TO AMEND REENACTED SECTION 81-18-39, MISSISSIPPI CODE OF
62 1972, TO DELETE THE PROVISION FOR THE DEPARTMENT OF BANKING TO
63 OBTAIN A COURT ORDER TO REQUIRE COMPLIANCE WITH THE DEPARTMENT'S
64 ORDERS; TO PROVIDE THAT A LICENSEE WHO VIOLATES AN ORDER OF A
65 DEPARTMENT IS SUBJECT TO A CIVIL PENALTY UPON DETERMINATION OF A
66 VIOLATION BY THE COMMISSIONER OF BANKING, INSTEAD OF BY THE COURT;
67 TO PROVIDE THAT IF A LICENSEE SEEKS JUDICIAL REVIEW OF THE
68 ASSESSMENT OF A CIVIL PENALTY, THE COURT SHALL UPHOLD THE
69 DEPARTMENT'S ORDER IF THE COURT DETERMINES THAT THE ORDER WAS
70 PROPERLY ISSUED; TO AMEND REENACTED SECTION 81-18-43, MISSISSIPPI
71 CODE OF 1972, TO INCREASE THE MAXIMUM AMOUNT OF A CIVIL PENALTY
72 THAT THE COMMISSIONER MAY IMPOSE AGAINST A LICENSEE FOR VIOLATING
73 THIS LAW; TO CODIFY NEW SECTION 81-18-36, MISSISSIPPI CODE OF
74 1972, TO PROVIDE THAT ALL MONIES PAID TO A MORTGAGE COMPANY FOR
75 PAYMENT OF TAXES OR INSURANCE PREMIUMS ON PROPERTY SECURING ANY
76 LOAN MADE OR SERVICED BY THE MORTGAGE COMPANY SHALL BE DEPOSITED
77 IN A FEDERALLY-INSURED ACCOUNT AND KEPT SEPARATE FROM FUNDS
78 BELONGING TO THE MORTGAGE COMPANY; TO AMEND SECTION 81-18-51,
79 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE
80 MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; AND FOR RELATED
81 PURPOSES.

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

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

85 81-18-1. This chapter shall be known and cited as the
86 Mississippi Mortgage Consumer Protection Law.

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

89 81-18-3. For purposes of this chapter, the following terms
90 shall have the following meanings:

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

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

97 (c) "Commitment" means a statement by a lender required
98 to be licensed or registered under this chapter that sets forth



99 the terms and conditions upon which the lender is willing to make
100 a particular mortgage loan to a particular borrower.

101 (d) "Control" means the direct or indirect possession
102 of the power to direct or cause the direction of the management
103 and policies of a person, whether through the ownership of voting
104 securities, by contract or otherwise, and shall include
105 "controlling," "controlled by," and "under common control with."

106 (e) "Department" means the Department of Banking and
107 Consumer Finance of the State of Mississippi.

108 (f) "Executive officer" means the chief executive
109 officer, the president, the principal financial officer, the
110 principal operating officer, each vice president with
111 responsibility involving policy-making functions for a significant
112 aspect of a person's business, the secretary, the treasurer, or
113 any other person performing similar managerial or supervisory
114 functions with respect to any organization whether incorporated or
115 unincorporated.

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

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

120 (i) "Loan originator" means an individual who is an
121 employee of a single mortgage company whose conduct of the
122 mortgage business is the responsibility of the licensee, and whose
123 job responsibilities include direct contact with borrowers during
124 the loan origination process, which may include soliciting,
125 negotiating, acquiring, arranging or making mortgage loans for
126 others, obtaining personal or financial information, assisting
127 with the preparation of loan applications or other documents,
128 quoting loan rates or terms, or providing required disclosures.
129 It does not include individuals whose job responsibilities on
130 behalf of a licensee are solely clerical in nature.



131 (j) "Make a mortgage loan" means to advance funds,
132 offer to advance funds or make a commitment to advance funds to a
133 borrower.

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

138 (l) "Mortgage company" means any person or entity who
139 directly, indirectly or by electronic activity, solicits, places
140 or negotiates mortgage loans for others, or offers to solicit,
141 place or negotiate mortgage loans for others or who purchases
142 and/or services mortgage loans.

143 (m) "Mortgage loan" means a loan or agreement to extend
144 credit made to a natural person, which loan is secured by a deed
145 to secure debt, security deed, mortgage, security instrument, deed
146 of trust or other document representing a security interest or
147 loan upon any interest in a lot intended for residential purposes,
148 or single- to four-family residential property located in
149 Mississippi, regardless of where made, including the renewal or
150 refinancing of any loan.

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

154 (o) "Principal" means a natural person who, directly or
155 indirectly, owns or controls an ownership interest of twenty-five
156 percent (25%) or more in a corporation or any other form of
157 business organization, regardless of whether the natural person
158 owns or controls the ownership interest through one or more
159 natural persons or one or more proxies, powers of attorney,
160 nominees, corporations, associations, limited liability companies,
161 partnerships, trusts, joint-stock companies, other entities or
162 devises, or any combination thereof.



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

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

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

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

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

181 81-18-5. The following persons are not subject to the
182 provisions of this chapter, unless otherwise provided in this
183 chapter:

184 (a) Any person authorized to engage in business as a
185 bank holding company or as a financial holding company, or any
186 wholly owned subsidiary thereof; however, the wholly owned
187 subsidiary must file a notification statement that includes the
188 following information:

189 (i) The name or names under which business will be
190 conducted in Mississippi;

191 (ii) The name and address of the parent financial
192 institution;

193 (iii) The name, mailing address, telephone number,
194 and fax number of the person or persons responsible for handling
195 consumer inquiries and complaints;



196 (iv) The name and address of the registered agent
197 for service of process in Mississippi;

198 (v) A statement signed by the president or chief
199 executive officer of the entity stating that the entity will
200 receive and process consumer inquiries and complaints promptly,
201 fairly, and in compliance with all applicable laws; and

202 (vi) A fee of One Hundred Dollars (\$100.00).

203 The notification statement must be filed before beginning to
204 conduct a mortgage business in this state and must be updated by
205 the entity as the information changes. Any entity that fails to
206 file the notification statement or keep the information current
207 will be immediately subject to the licensing requirements of
208 Section 81-18-9. This notification statement must be renewed
209 annually as of September 30 of each year with a renewal fee of One
210 Hundred Dollars (\$100.00).

211 (b) Any person authorized to engage in business as
212 a * * * bank, credit card bank, savings bank, savings institution,
213 savings and loan association, building and loan association, trust
214 company or credit union under the laws of the United States, any
215 state or territory of the United States, or the District of
216 Columbia, the deposits of which are federally insured, or any
217 wholly owned subsidiary * * * thereof.

218 * * *

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

227 * * *



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

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

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

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

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

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

253 (j) The United States of America, the State of
254 Mississippi or any other state, and any agency, division or
255 corporate instrumentality thereof including, but not limited to,
256 the Mississippi Home Corporation, Rural Economic Community
257 Development (RECD), Habitat for Humanity, the Federal National
258 Mortgage Association (FNMA), the Federal Home Loan Mortgage
259 Company (FHLMC), the Government National Mortgage Association
260 (GNMA), the United States Department of Housing and Urban



261 Development (HUD), the Federal Housing Administration (FHA), the
262 Department of Veterans Affairs (VA), the Farmers Home
263 Administration (FmHA), and the Federal Land Banks and Production
264 Credit Associations.

265 (k) * * * Nonprofit corporations exempt from federal
266 taxation under Section 501(c) of the Internal Revenue Code making
267 mortgage loans to promote home ownership or home improvements for
268 the disadvantaged.

269 * * *

270 (1) * * * Loan originators for licensed mortgage
271 companies as defined under Section 81-18-3 are exempt from the
272 licensing requirements of this chapter except for Sections
273 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall register with
274 the department as a loan originator. Any natural person required
275 to register under this paragraph (1) shall register initially with
276 the department and thereafter file an application for renewal of
277 registration with the department on or before September 30 of each
278 year providing the department with such information as the
279 department may prescribe by regulation, including, but not limited
280 to, the business addresses where the person engages in any
281 business activities covered by this chapter and a telephone number
282 that customers may use to contact the person. This initial
283 registration of a loan originator shall be accompanied by a fee of
284 One Hundred Dollars (\$100.00). Annual renewals of this
285 registration shall require a fee of Fifty Dollars (\$50.00). No
286 person required to register under this paragraph (1) shall
287 transact business in this state directly or indirectly as a
288 mortgage company or mortgage lender unless that person is
289 registered with the department.

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

292 81-18-7. (1) On and after the effective date of this
293 chapter, no person or natural person shall transact business in



294 this state, directly or indirectly, as a mortgage company unless
295 he or she is licensed as a mortgage company by the department or
296 is a person exempted from the licensing requirements under Section
297 81-18-5.

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

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

312 **SECTION 5.** The following shall be codified as Section
313 81-18-8, Mississippi Code of 1972:

314 81-18-8. Municipalities and counties in this state may enact
315 ordinances that are in compliance with, but not more restrictive
316 than, the provisions of this chapter. Any order, ordinance or
317 regulation existing on July 1, 2002, or enacted on or after July
318 1, 2002, that conflicts with this provision shall be null and
319 void.

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

322 81-18-9. (1) An application for a license under this
323 chapter shall be made in writing and in the form as the department
324 may prescribe.

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



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

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

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

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

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

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

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

350 (i) Copies of business licenses issued by
351 governmental agencies.

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

357 (iii) A listing of wholesale lenders with whom the
358 applicant has done business with in the past two (2) years either



359 directly as a mortgage company or indirectly as an employee of a
360 mortgage company.

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

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

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

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

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

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

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

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

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

390 (iii) The chief executive officer of a
391 corporation, or his designee, which supervises the Mississippi



392 location(s) and any shareholders owning twenty-five percent (25%)
393 or more of the outstanding shares of the corporation * * *; and
394 (iv) All loan originators.

395 * * *

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

398 81-18-11. (1) For purposes of Section 81-18-9, the
399 definitions of the classes of companies and their respective
400 minimum amounts of surety bonds will be:

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

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

418 (c) "Mortgage lender" shall be defined as any company
419 that makes a mortgage loan, using its own funds, for others or for
420 compensation or gain, with the expectation of retaining servicing
421 rights to those loans, or in the expectation of gain, either
422 directly or indirectly, sells or offers to sell a mortgage loan to
423 an investor in the secondary market or only services mortgage
424 loans in the secondary market. The amount of the surety bond for



425 a mortgage lender shall be One Hundred Fifty Thousand Dollars
426 (\$150,000.00).

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

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

437 81-18-13. (1) Upon receipt of an application for licensure
438 or registration, which shall include the required set of
439 fingerprints from any local law enforcement agency, the department
440 shall conduct such an investigation as it deems necessary to
441 determine that the applicant and its officers, directors and
442 principals are of good character and ethical reputation; that the
443 applicant demonstrates reasonable financial responsibility; and
444 that the applicant has reasonable policies and procedures to
445 receive and process customer grievances and inquiries promptly and
446 fairly * * *.

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

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

453 (4) The department shall not issue a license or registration
454 certificate if it finds that the applicant, or any person who is a
455 director, officer, partner, or principal of the applicant, has
456 been convicted * * * of a felony * * * in any jurisdiction or of a
457 crime that, if committed within this state, would constitute a



458 felony * * * under the laws of this state, or has been convicted
459 of a misdemeanor in any jurisdiction in which fraud is an
460 essential element, or has been convicted in any jurisdiction of
461 check forgery, bribery, or embezzlement. For the purposes of this
462 act, a person shall be deemed to have been convicted of a crime if
463 the person has pleaded guilty to a crime before a court or federal
464 magistrate, or plea of nolo contendere, or has been found guilty
465 of a crime by the decision or judgment of a court or federal
466 magistrate or by the verdict of a jury, irrespective of the
467 pronouncement of sentence or the suspension of a sentence, unless
468 the plea of guilty, or the decision, judgment or verdict, has been
469 set aside, reversed or otherwise abrogated by lawful judicial
470 process, or unless the person convicted of the crime has received
471 a pardon from the President of the United States or the Governor
472 or other pardoning authority in the jurisdiction where the
473 conviction was obtained.

474 (5) In order to determine the applicant's suitability for a
475 license, the commissioner shall forward the fingerprints submitted
476 with the application to the Department of Public Safety; and if no
477 disqualifying record is identified at the state level, the
478 fingerprints shall be forwarded by the Department of Public Safety
479 to the FBI for a national criminal history record check. All
480 conviction data received by the department shall be used by the
481 department for the exclusive purpose of carrying out the
482 responsibilities of this act, may not be a public record, shall be
483 privileged, and may not be disclosed to any other person or
484 agency, except to any person or agency that otherwise has a legal
485 right to inspect the file. All records shall be maintained by the
486 department according to law. As used in this section "conviction
487 data" means a record of a finding or verdict of guilty or plea of
488 guilty or plea of nolo contendere with regard to any crime
489 regardless of whether an appeal of the conviction has been sought.



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

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

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

508 **SECTION 9.** Section 81-18-15, Mississippi Code of 1972, is
509 reenacted as follows:

510 81-18-15. (1) Each license shall remain in full force and
511 effect until relinquished, suspended, revoked or expired. With
512 each initial application for a license, the applicant shall pay to
513 the commissioner a license fee of Seven Hundred Fifty Dollars
514 (\$750.00), and on or before August 31 of each year thereafter, an
515 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
516 If the annual renewal fee remains unpaid thirty (30) days after
517 August 31, the license shall expire, but not before September 30
518 of any year for which the annual renewal fee has been paid. If
519 any person engages in business as provided for in this act without
520 paying the license fee provided for in this subsection before
521 commencing business or before the expiration of the person's
522 current license, as the case may be, then the person shall be



523 liable for the full amount of the license fee, plus a penalty in
524 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
525 that the person has engaged in such business without a license or
526 after the expiration of a license. All licensing fees and
527 penalties shall be paid into the Consumer Finance Fund of the
528 department.

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

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

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

552 81-18-17. (1) Each license issued under this act shall
553 state the address of the licensee's principal place of
554 business * * * and the name of the licensee.



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

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

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

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

565 (6) No licensee shall open a branch office in this state or
566 a branch office outside this state from which the licensee has
567 direct contact with Mississippi consumers regarding origination or
568 brokering Mississippi property, without prior approval of the
569 department. An application for any branch office shall be made in
570 writing on a form prescribed by the department, which shall
571 include at least evidence of compliance with subsection (1) of
572 Section 81-18-25 as to that branch and shall be accompanied by
573 payment of a nonrefundable application fee of One Hundred Dollars
574 (\$100.00). The application shall be approved unless the
575 department finds that the applicant has not conducted business
576 under this act in accordance with law. The application shall be
577 deemed approved if notice to the contrary has not been mailed by
578 the department to the applicant within thirty (30) days of the
579 date that the application is received by the department. After
580 approval, the applicant shall give written notice to the
581 department within ten (10) days of the commencement of business at
582 the branch office.

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

585 81-18-19. (1) Except as provided in this section, * * * no
586 person shall acquire directly or indirectly twenty-five percent
587 (25%) or more of the voting shares of a corporation or twenty-five



588 percent (25%) or more of the ownership of any other entity
589 licensed to conduct business under this chapter unless it
590 first * * * files an application in accordance with the
591 requirements prescribed in Section 81-18-9.

592 (2) Upon the filing and investigation of an application, the
593 department shall permit the applicant to acquire the interest in
594 the licensee if it is satisfied and finds that the applicant and
595 its members, if applicable, its directors and officers, if a
596 corporation, and any proposed new directors and officers have
597 provided its surety bond and have the character, reputation and
598 experience to warrant belief that the business will be operated
599 fairly and in accordance with the law. * * * If the application
600 is denied, the department shall notify the applicant of the denial
601 and the reasons for the denial.

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

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

608 (a) The acquisition of an interest in a licensee
609 directly or indirectly including an acquisition by merger or
610 consolidation by or with a person exempt from this chapter under
611 Section 81-18-5.

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

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

619 (5) A person acquiring an interest in a licensee in a
620 transaction that is requesting exemption from filing an



621 application for approval of the application shall send a written
622 request to the department for an exemption within thirty (30) days
623 before the closing of the transaction.

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

626 81-18-21. (1) Any person required to be licensed under this
627 chapter shall maintain in its offices, or such other location as
628 the department shall permit, the books, accounts and records
629 necessary for the department to determine whether or not the
630 person is complying with the provisions of this chapter and the
631 rules and regulations adopted by the department under this
632 chapter. These books, accounts and records shall be maintained
633 apart and separate from any other business in which the person is
634 involved and may represent historical data for two (2) years
635 preceding the date of the last license application date forward.
636 The books, accounts, and records shall be kept in a secure
637 location under conditions that will not lead to their damage or
638 destruction.

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

651 (3) The department, its designated officers and employees,
652 or its duly authorized representatives, for the purposes of
653 discovering violations of this chapter and for the purpose of



654 determining whether any person or individual reasonably suspected
655 by the commissioner of conducting business that requires a license
656 or registration under this chapter, may investigate those persons
657 and individuals and examine all relevant books, records and papers
658 employed by those persons or individuals in the transaction of
659 business, and may summon witnesses and examine them under oath
660 concerning matters as to the business of those persons, or other
661 such matters as may be relevant to the discovery of violations of
662 this act including, without limitation, the conduct of business
663 without a license or registration as required under this chapter.

664 (4) The department, in its discretion, may disclose
665 information concerning any violation of this chapter or any rule,
666 regulation, or order under this chapter, provided the information
667 is derived from a final order of the department.

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

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

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

681 81-18-23. (1) Each licensee shall annually, on or before
682 April 1, file a written report with the department containing the
683 information that the department may reasonably require concerning
684 the licensee's business and operations during the preceding
685 calendar year. The report shall be made in the form prescribed by
686 the department.



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

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

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

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

700 81-18-25. * * *

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

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

707 (b) Consist of at least one (1) secure enclosed room or
708 secure building of stationary construction in which negotiations
709 of mortgage loan transactions may be conducted in privacy.
710 Stationary construction does not include the use of portable
711 buildings.

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

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



720 (3) Each person registered under this act shall prominently
721 display his or her registration in the office where the person is
722 employed.

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

725 81-18-27. (1) No person required to be licensed or
726 registered under this chapter shall:

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

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

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

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

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

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

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

751 (h) Induce, require, or otherwise permit the applicant
752 for a mortgage loan or mortgagor to sign a security deed, note, or



753 other pertinent financial disclosure documents with any blank
754 spaces to be filled in after it has been signed, except blank
755 spaces relating to recording or other incidental information not
756 available at the time of signing.

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

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

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

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

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

770 (v) That the person does business under a trade
771 name that misrepresents or tends to misrepresent that the person
772 is a bank, trust company, savings bank, savings and loan
773 association, credit union, or insurance company.

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



785 1. Any direct payment, compensation or
786 advance fee collected by a licensed mortgage company to be paid to
787 a nonrelated third party;

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

791 3. Any indirect payment or compensation by a
792 lender to a licensed mortgage company required to be disclosed by
793 the licensed mortgage company under RESPA, provided that the
794 payment or compensation is disclosed to the borrower by the
795 licensed mortgage company on a good faith estimate of costs, is
796 included in the APR if required under Regulation Z of TILA, and is
797 made pursuant to a written agreement between the licensed mortgage
798 company and the borrower as may be required by Section 81-18-33;
799 or

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

804 (ii) Notwithstanding the provisions of this
805 chapter, any mortgage company that contracts to receive from a
806 borrower a mortgage brokerage fee upon obtaining a bona fide
807 commitment shall accurately disclose in the mortgage brokerage
808 agreement:

809 1. The gross loan amount;

810 2. In the case of a fixed-rate mortgage, the
811 note rate;

812 3. In the case of an adjustable-rate
813 mortgage:

814 a. The initial loan rate;

815 b. The length of time for which the
816 initial note rate is effective;

817 c. The frequency of changes;



818 d. The limitation upon those changes
819 including adjustment to adjustment cap and life cap;
820 e. Whether the loan has any potential
821 for negative amortization;
822 f. Identification of the margin-interest
823 rate differential; and
824 g. Identification of a nationally
825 recognized index, which index must be free from control of the
826 mortgage broker, correspondent lender, and mortgage lender;
827 4. The estimated net proceeds to be paid
828 directly to the borrower. Estimated net proceeds means the cash
829 to be received by the borrower after payment of any fees, charges,
830 debts, liens, or encumbrances to perfect the lien of the new
831 mortgage and establish the agreed-upon priority of the new
832 mortgage;
833 5. The lien priority of the new proposed
834 mortgage;
835 6. The number of calendar days, which are
836 mutually agreed upon, within which the mortgage company shall
837 obtain a bona fide mortgage commitment; and
838 7. The following statement, in no less than
839 12-point boldface type immediately above the signature line for
840 the borrowers:
841 "You are entering into a contract with a mortgage company to
842 obtain a bona fide mortgage loan commitment under the same terms
843 and conditions as stated above or in a separate executed good
844 faith estimate form. If the mortgage company obtains a bona fide
845 commitment under the same terms and conditions, you will be
846 obligated to pay the mortgage company fees, including, but not
847 limited to, a mortgage brokerage fee, even if you choose not to
848 complete the loan transaction. If the provisions of this section
849 are not met, the mortgage brokerage fee can only be earned upon
850 the funding of the mortgage loan. The borrower may contact the



851 Department of Banking and Consumer Finance, Jackson, Mississippi,
852 regarding any complaints that the borrower may have against the
853 mortgage company or loan originator. The telephone number of the
854 department as set by rule of the department is: [insert telephone
855 number]."

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

861 (l) Refuse to provide the loan payoff within three (3)
862 business days of an oral or written request from a borrower or
863 third party. Proof of authorization of the borrower shall be
864 submitted for a third-party request.

865 (2) A mortgage company shall only broker a residential
866 mortgage loan to a mortgage company licensed under this chapter or
867 to a person exempt from licensure under the provisions of this
868 chapter.

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

871 81-18-29. The department shall promulgate those rules and
872 regulations, not inconsistent with law, necessary for the
873 enforcement of this chapter.

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

876 81-18-31. The department shall promulgate regulations
877 governing the advertising of mortgage loans, including, but not
878 limited to, the following requirements:

879 (a) That all advertisements for loans regulated under
880 this act may not be false, misleading or deceptive. No person
881 whose activities are regulated under this act may advertise in any
882 manner so as to indicate or imply that its interest rates or



883 charges for loans are "recommended," "approved," "set" or
884 "established" by the State of Mississippi;

885 (b) That all licensees shall maintain a copy of all
886 advertisements citing interest rates or payment amounts primarily
887 disseminated in this state and shall attach to each advertisement
888 documentation that provides corroboration of the availability of
889 the interest rate and terms of loans and names the specific media
890 sources by which the advertisements were distributed;

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

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

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

900 (ii) The term in years or months to fully repay
901 the mortgage; * * *

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

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

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

910 81-18-33. The individual borrower files of a mortgage
911 company shall contain at least the following:

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



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

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

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

925 Mississippi Department of Banking and
926 Consumer Finance
927 P.O. Box 23729
928 Jackson, MS 39225-3729";

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

931 (c) A copy of the signed closing statement as required
932 by HUD or documentation of denial or cancellation of the loan
933 application;

934 (d) A copy of the good faith estimate of costs provided
935 to the borrower;

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

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

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

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

946 81-18-35. Each licensee shall maintain a journal of mortgage
947 transactions at the principal place of business as stated on its
948 license, which shall include at least the following information:



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

954 **SECTION 20.** The following shall be codified as Section
955 81-18-36, Mississippi Code of 1972:

956 81-18-36. (1) (a) All monies paid to a mortgage company
957 for payment of taxes, loan commitment deposits, work completion
958 deposits, appraisals, credit reports or insurance premiums on
959 property that secures any loan made or serviced by the mortgage
960 company shall be deposited in an account that is insured by the
961 Federal Deposit Insurance Corporation or the National Credit Union
962 Administration and shall be kept separate, distinct, and apart
963 from funds belonging to the mortgage company.

964 (b) The funds, when deposited, are to be designated as
965 an "escrow account," or under some other appropriate name,
966 indicating that the funds are not the funds of the mortgage
967 company.

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

973 (3) The mortgage company shall, upon reasonable notice,
974 account to the commissioner for all funds in the company's escrow
975 account.

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

978 (5) It is unlawful for any mortgage company knowingly to
979 keep or cause to be kept any funds or money in any bank or other
980 financial institution under the heading of "escrow account" or any
981 other name designating the funds or monies belonging to the



982 debtors of the mortgage company, except actual funds paid to the
983 mortgage company for the payment of taxes and insurance premiums
984 on property securing loans made or serviced by the company.

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

987 81-18-37. (1) The department may suspend or revoke any
988 license or registration for any reason that would have been
989 grounds for refusal to issue an original license or registration
990 or for:

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

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

998 (2) Notice of the department's intention to enter an order
999 denying an application for a license or registration under this
1000 chapter or of an order suspending or revoking a license or
1001 registration under this chapter shall be given to the applicant,
1002 licensee or registrant in writing, sent by registered or certified
1003 mail addressed to the principal place of business of the
1004 applicant, licensee or registrant. Within thirty (30) days of the
1005 date of the notice of intention to enter an order of denial,
1006 suspension or revocation under this chapter, the applicant,
1007 licensee or registrant may request in writing a hearing to contest
1008 the order. If a hearing is not requested in writing within thirty
1009 (30) days of the date of the notice of intention, the department
1010 shall enter a final order regarding the denial, suspension or
1011 revocation. Any final order of the department denying, suspending
1012 or revoking a license or registration shall state the grounds upon
1013 which it is based and shall be effective on the date of issuance.
1014 A copy of the final order shall be forwarded promptly by



1015 registered or certified mail addressed to the principal place of
1016 business of the applicant, licensee or registrant.

1017 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is
1018 reenacted and amended as follows:

1019 81-18-39. (1) For purposes of this section, the term
1020 "person" shall be construed to include any officer, director,
1021 employee, affiliate or other person participating in the conduct
1022 of the affairs of the person subject to the orders issued under
1023 this section.

1024 (2) If the department reasonably determines that a person
1025 required to be licensed or registered under this chapter has
1026 violated any law of this state or any order or regulation of the
1027 department, the department may issue a written order requiring the
1028 person to cease and desist from unlawful or unauthorized
1029 practices. In the case of an unlawful purchase of mortgage loans,
1030 the cease and desist order to a purchaser shall constitute the
1031 knowledge required under this section for any subsequent
1032 violations.

1033 * * *

1034 (3) Any person required to be licensed or registered under
1035 this chapter who has been deemed by the commissioner, after notice
1036 and hearing, to have violated the terms of any order properly
1037 issued by the department under this section shall be liable for a
1038 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1039 The department, in determining the amount of the penalty, shall
1040 take into account the appropriateness of the penalty relative to
1041 the size of the financial resources of the person, the good faith
1042 efforts of the person to comply with the order, the gravity of the
1043 violation, the history of previous violations by the person, and
1044 other factors or circumstances that contributed to the violation.
1045 The department may compromise, modify or refund any penalty that
1046 has been imposed under this section. Any person assessed a
1047 penalty as provided in this subsection shall have the right to



1048 request a hearing on the amount of the penalty within ten (10)
1049 days after receiving notification of the assessment. If no
1050 hearing is requested within ten (10) days of the receipt of the
1051 notice, the penalty shall be final except as to judicial review in
1052 the Chancery Court of the First Judicial District of Hinds County.
1053 Upon the filing of a petition for judicial review, the court shall
1054 issue an order to the licensee requiring the licensee to show
1055 cause why it should not be entered. If the court determines,
1056 after a hearing upon the merits or after failure of the person to
1057 appear when so ordered, that the order of the department was
1058 properly issued, it shall grant the relief sought by the
1059 department.

1060 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is
1061 reenacted as follows:

1062 81-18-41. Nothing in this chapter shall preclude a person
1063 whose license or registration has been suspended or revoked from
1064 continuing to service mortgage loans pursuant to servicing
1065 contracts in existence at the time of the suspension or
1066 revocation.

1067 **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is
1068 reenacted and amended as follows:

1069 81-18-43. (1) In addition to any other penalty that may be
1070 applicable, any licensee, individual required to be registered, or
1071 employee who willfully violates any provision of this chapter, or
1072 who willfully makes a false entry in any document specifically
1073 required by this chapter, shall be guilty of a misdemeanor and,
1074 upon conviction thereof, shall be punishable by a fine not in
1075 excess of One Thousand Dollars (\$1,000.00) per violation or false
1076 entry.

1077 (2) In addition to any other penalty that may be applicable,
1078 any licensee, individual required to be registered, or employee
1079 who fails to make a record of a mortgage transaction and



1080 subsequently sells or disposes of the mortgage from that
1081 transaction shall be punished as follows:

1082 (a) For a first offense, the licensee, individual
1083 required to be registered, or employee shall be guilty of a
1084 misdemeanor and, upon conviction thereof, shall be punishable by a
1085 fine not in excess of One Thousand Dollars (\$1,000.00) or by
1086 imprisonment in the county jail for not more than one (1) year, or
1087 both fine and imprisonment;

1088 (b) For a second or subsequent offense, the licensee,
1089 individual required to be registered, or employee shall be guilty
1090 of a felony and, upon conviction thereof, shall be punishable by a
1091 fine not in excess of Five Thousand Dollars (\$5,000.00) or by
1092 imprisonment in the custody of the State Department of Corrections
1093 for a term not less than one (1) year nor more than five (5)
1094 years, or by both fine and imprisonment.

1095 (3) Compliance with the criminal provisions of this act
1096 shall be enforced by the appropriate law enforcement agency, which
1097 may exercise for that purpose any authority conferred upon the
1098 agency by law.

1099 (4) When the commissioner has reasonable cause to believe
1100 that a person is violating any provision of this chapter, the
1101 commissioner, in addition to and without prejudice to the
1102 authority provided elsewhere in this chapter, may enter an order
1103 requiring the person to stop or to refrain from the violation.
1104 The commissioner may sue in any chancery court of the state having
1105 jurisdiction and venue to enjoin the person from engaging in or
1106 continuing the violation or from doing any act in furtherance of
1107 the violation. In such an action, the court may enter an order or
1108 judgment awarding a preliminary or permanent injunction.

1109 (5) The commissioner may, after notice and hearing, impose a
1110 civil penalty against any licensee if the licensee, individual
1111 required to be registered, or employee is adjudged by the
1112 commissioner to be in violation of the provisions of this chapter.



1113 The civil penalty shall not exceed Five Thousand Dollars
1114 (\$5,000.00) per violation and shall be deposited into the Consumer
1115 Finance Fund of the department.

1116 (6) The state may enforce its rights under the surety bond
1117 as required in Section 81-18-11 as an available remedy for the
1118 collection of any civil penalties, criminal fines or costs of
1119 investigation and/or prosecution incurred.

1120 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is
1121 reenacted as follows:

1122 81-18-45. The commissioner may employ the necessary
1123 full-time employees above the number of permanent full-time
1124 employees authorized for the department for the fiscal year 2001,
1125 to carry out and enforce the provisions of this chapter. The
1126 commissioner also may expend the necessary funds and equip and
1127 provide necessary travel expenses for those employees.

1128 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is
1129 reenacted as follows:

1130 81-18-47. (1) A licensee under this chapter shall have no
1131 liability for any act or practice done or omitted in conformity
1132 with (a) any rule or regulation of the commissioner, or (b) any
1133 rule, regulation, interpretation or approval of any other state or
1134 federal agency or any opinion of the Attorney General,
1135 notwithstanding that after such act or omission has occurred the
1136 rule, regulation, interpretation, approval or opinion is amended,
1137 rescinded, or determined by judicial or other authority to be
1138 invalid for any reason.

1139 (2) A licensee under this chapter, acting in conformity with
1140 a written interpretation or approval by an official or employee of
1141 any state or federal agency or department, shall be presumed to
1142 have acted in accordance with applicable law, notwithstanding that
1143 after such act has occurred, the interpretation or approval is
1144 amended, rescinded, or determined by judicial or other authority
1145 to be incorrect or invalid for any reason.



1146 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is
1147 reenacted as follows:

1148 81-18-49. Notwithstanding any provisions of this chapter to
1149 the contrary, mortgage companies engaging in business on or before
1150 June 1, 2000, shall be duly licensed by the department after
1151 submitting not later than January 1, 2001, the required documents
1152 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1153 the expiration of the initial licenses for such mortgage
1154 companies, the department shall renew the licenses only if the
1155 mortgage companies satisfy all of the provisions of this chapter.

1156 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is
1157 amended as follows:

1158 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1159 repealed on July 1, 2007.

1160 **SECTION 29.** This act shall take effect and be in force from
1161 and after July 1, 2002.

