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AMENDMENT No. 1 PROPOSED TO

House Bill NO. 1522

By Senator(s) Committee

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

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

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

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

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

110 (d) "Control" means the direct or indirect possession
111 of the power to direct or cause the direction of the management

112 and policies of a person, whether through the ownership of voting
113 securities, by contract or otherwise, and shall include
114 "controlling," "controlled by," and "under common control with."

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

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

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

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

129 (i) "Loan originator" means an individual who is an
130 employee * * * of a single mortgage company whose conduct of the
131 mortgage business is the responsibility of the licensee, and whose
132 job responsibilities include direct contact with borrowers during
133 the loan origination process, which may include soliciting,
134 negotiating, acquiring, arranging or making mortgage loans for
135 others, obtaining personal or financial information, assisting
136 with the preparation of loan applications or other documents,
137 quoting loan rates or terms, or providing required disclosures.
138 The term does not include individuals whose job responsibilities
139 on behalf of a licensee are solely clerical in nature or sales
140 representatives of a licensed Mississippi manufactured housing
141 operation who transmits information concerning a sale via mail,
142 courier service, or electronically to a licensed mortgage company
143 or registered originator.

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

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

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

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

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

167 (o) "Principal" means a natural person who, directly or
168 indirectly, owns or controls an ownership interest of twenty-five
169 percent (25%) or more in a corporation or any other form of
170 business organization, regardless of whether the natural person
171 owns or controls the ownership interest through one or more
172 natural persons or one or more proxies, powers of attorney,
173 nominees, corporations, associations, limited liability companies,
174 partnerships, trusts, joint-stock companies, other entities or
175 devises, or any combination thereof.

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

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

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

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

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

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

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

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

204 (ii) The name and address of the parent financial
205 institution;

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

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

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

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

216 The notification statement must be filed before beginning to

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

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

231 * * *

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

240 * * *

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

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

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

252 (g) Any * * * person who is employed by and
253 representing a Mississippi manufactured housing operation and who
254 makes a mortgage loan * * * for an investment or on a whole loan
255 basis in not more than twelve (12) Mississippi residential
256 mortgage loans, or who contracts for no more than twelve (12)
257 Mississippi residential loan transactions, over the licensing
258 period provided in this chapter, including those acting as
259 originators. The twelve (12) transactions are cumulative to any
260 combination of operations owned or controlled by any one
261 individual, sole proprietorship, corporation, limited liability
262 company, partnership, trust or any other group of individuals,
263 however, organized. However, within thirty (30) days of loan
264 closure, the person shall submit to the commissioner a fee of Ten
265 Dollars (\$10.00), which is not chargeable to the consumer, and
266 written notification containing such loan information as required
267 by the commissioner, seeking approval to engage in a residential
268 mortgage transaction without first complying with the licensing
269 provisions of this chapter. Any person who enters into more than
270 twelve (12) of those transactions in the licensing period provided
271 in this chapter must be licensed according to the procedures
272 prescribed in this chapter. The fees paid for exemption during a
273 licensing period will be deducted from the cost of an initial
274 license.

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

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

280 (j) The United States of America, the State of
281 Mississippi or any other state, and any agency, division or
282 corporate instrumentality thereof including, but not limited to,
283 the Mississippi Home Corporation, Rural Economic Community
284 Development (RECD), Habitat for Humanity, the Federal National
285 Mortgage Association (FNMA), the Federal Home Loan Mortgage
286 Company (FHLMC), the Government National Mortgage Association

287 (GNMA), the United States Department of Housing and Urban
288 Development (HUD), the Federal Housing Administration (FHA), the
289 Department of Veterans Affairs (VA), the Farmers Home
290 Administration (FmHA), and the Federal Land Banks and Production
291 Credit Associations.

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

296 * * *

297 (l) * * * Loan originators for licensed mortgage
298 companies as defined under Section 81-18-3 are exempt from the
299 licensing requirements of this chapter except for Sections
300 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall register with
301 the department as a loan originator. Any natural person required
302 to register under this paragraph (l) shall register initially with
303 the department and thereafter file an application for renewal of
304 registration with the department on or before September 30 of each
305 year providing the department with such information as the
306 department may prescribe by regulation, including, but not limited
307 to, the business addresses where the person engages in any
308 business activities covered by this chapter and a telephone number
309 that customers may use to contact the person. This initial
310 registration of a loan originator shall be accompanied by a fee of
311 One Hundred Dollars (\$100.00). Annual renewals of this
312 registration shall require a fee of Fifty Dollars (\$50.00). No
313 person required to register under this paragraph (l) shall
314 transact business in this state directly or indirectly as a
315 mortgage company or mortgage lender unless that person is
316 registered with the department.

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

319 81-18-7. (1) On and after the effective date of this
320 chapter, no person or natural person shall transact business in
321 this state, directly or indirectly, as a mortgage company unless

322 he or she is licensed as a mortgage company by the department or
323 is a person exempted from the licensing requirements under Section
324 81-18-5.

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

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

339 **SECTION 5.** The following shall be codified as Section
340 81-18-8, Mississippi Code of 1972:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

421 (iv) All loan originators.

422 * * *

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

425 81-18-11. (1) For purposes of Section 81-18-9, the
426 definitions of the classes of companies and their respective

427 minimum amounts of surety bonds will be:

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

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

445 (c) "Mortgage lender" shall be defined as any company
446 that makes a mortgage loan, using its own funds, for others or for
447 compensation or gain, with the expectation of retaining servicing
448 rights to those loans, or in the expectation of gain, either
449 directly or indirectly, sells or offers to sell a mortgage loan to
450 an investor in the secondary market or only services mortgage
451 loans in the secondary market. The amount of the surety bond for
452 a mortgage lender shall be One Hundred Fifty Thousand Dollars
453 (\$150,000.00).

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

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

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

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

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

480 (4) The department shall not issue a license or registration
481 certificate if it finds that the applicant, or any person who is a
482 director, officer, partner or principal of the applicant, has been
483 convicted within ten (10) years of the application for license or
484 registration of: (a) a felony * * * in any jurisdiction; or * * *
485 (b) a crime that, if committed within this state, would constitute
486 a felony * * * under the laws of this state; or (c) a misdemeanor
487 in any jurisdiction in which fraud is an essential element,
488 including, but not limited to, forgery, bribery, embezzlement or
489 making a fraudulent or false statement. For the purposes of this
490 act, a person shall be deemed to have been convicted of a crime if
491 the person has pleaded guilty to a crime before a court or federal
492 magistrate, or plea of nolo contendere, or has been found guilty
493 of a crime by the decision or judgment of a court or federal
494 magistrate or by the verdict of a jury, irrespective of the
495 pronouncement of sentence or the suspension of a sentence, unless
496 the plea of guilty, or the decision, judgment or verdict, has been

497 set aside, reversed or otherwise abrogated by lawful judicial
498 process, or unless the person convicted of the crime has received
499 a pardon from the President of the United States or the Governor
500 or other pardoning authority in the jurisdiction where the
501 conviction was obtained.

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

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

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

530 (8) A person shall not be indemnified for any act covered by
531 this act or for any fine or penalty incurred under this act as a

532 result of any violation of this act or regulations adopted under
533 this act, due to the legal form, corporate structure, or choice of
534 organization of the person including, but not limited to, a
535 limited liability corporation.

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

538 81-18-15. (1) Each license shall remain in full force and
539 effect until relinquished, suspended, revoked or expired. With
540 each initial application for a license, the applicant shall pay to
541 the commissioner a license fee of Seven Hundred Fifty Dollars
542 (\$750.00), and on or before August 31 of each year thereafter, an
543 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).

544 If the annual renewal fee remains unpaid thirty (30) days after
545 August 31, the license shall expire, but not before September 30
546 of any year for which the annual renewal fee has been paid. If
547 any person engages in business as provided for in this act without
548 paying the license fee provided for in this subsection before
549 commencing business or before the expiration of the person's
550 current license, as the case may be, then the person shall be
551 liable for the full amount of the license fee, plus a penalty in
552 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
553 that the person has engaged in such business without a license or
554 after the expiration of a license. All licensing fees and
555 penalties shall be paid into the Consumer Finance Fund of the
556 department.

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

565 (3) Each application for licensing renewal or registration
566 renewal shall include evidence of the satisfactory completion of

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

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

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

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

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

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

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

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

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

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

636 (2) Upon the filing and investigation of an application, the

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

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

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

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

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

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

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

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

670 81-18-21. (1) Any person required to be licensed under this
671 chapter shall maintain in its offices, or such other location as

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

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

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

707 without a license or registration as required under this chapter.

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

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

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

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

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

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

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

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

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

744 81-18-25. * * *

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

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

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

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

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

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

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

770 81-18-27. (1) No person required to be licensed or
771 registered under this chapter shall:

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

776 (b) Misrepresent to or conceal from an applicant for a

777 mortgage loan or mortgagor, material facts, terms or conditions of
778 a transaction to which the mortgage company is a party.

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

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

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

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

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

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

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

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

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

811 (iii) That the person has made a significant

812 proportion of loans foreclosed under similar circumstances;

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

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

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

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

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

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

845 4. A fee not to exceed one percent (1%) of
846 the principal amount of a loan * * *, provided that a binding

847 commitment for the loan has been obtained for the prospective
848 borrower.

849 (ii) Notwithstanding the provisions of this
850 chapter, any mortgage company that contracts to receive from a
851 borrower a mortgage commitment fee under (j)(i)4 of this
852 subsection upon obtaining a bona fide commitment shall accurately
853 disclose in the mortgage brokerage agreement:

854 1. The gross loan amount;

855 2. In the case of a fixed-rate mortgage, the
856 note rate;

857 3. In the case of an adjustable-rate
858 mortgage:

859 a. The initial loan rate;

860 b. The length of time for which the
861 initial note rate is effective;

862 c. The frequency of changes;

863 d. The limitation upon those changes
864 including adjustment to adjustment cap and life cap;

865 e. Whether the loan has any potential
866 for negative amortization;

867 f. Identification of the margin-interest
868 rate differential; and

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

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

878 5. The lien priority of the new proposed
879 mortgage;

880 6. The number of calendar days, which are
881 mutually agreed upon, within which the mortgage company shall

882 obtain a bona fide mortgage commitment; and

883 7. The following statement, in no less than
884 12-point boldface type immediately above the signature line for
885 the borrowers:

886 "You are entering into a contract with a mortgage company to
887 obtain a bona fide mortgage loan commitment under the same terms
888 and conditions as stated above or in a separate executed good
889 faith estimate form. If the mortgage company obtains a bona fide
890 commitment under the same terms and conditions, you will be
891 obligated to pay the third-party fees disclosed in the mortgage
892 broker agreement, including, but not limited to, a mortgage
893 commitment fee not to exceed one percent (1%), even if you choose
894 not to complete the loan transaction. If the provisions of this
895 section are not met, the mortgage commitment fee can only be
896 earned upon the funding of the mortgage loan. The borrower may
897 contact the Department of Banking and Consumer Finance, Jackson,
898 Mississippi, regarding any complaints that the borrower may have
899 against the mortgage company or loan originator. The telephone
900 number of the department as set by rule of the department is:
901 [insert telephone number]."

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

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

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

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

917 81-18-29. The department shall promulgate those rules and
918 regulations, not inconsistent with law, necessary for the
919 enforcement of this chapter.

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

922 81-18-31. The department shall promulgate regulations
923 governing the advertising of mortgage loans, including, but not
924 limited to, the following requirements:

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

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

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

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

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

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

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

950 (e) That no licensee shall advertise its services in
951 Mississippi in any media disseminated primarily in this state,

952 whether print or electronic, without the words "Mississippi
953 Licensed Mortgage Company or "Mississippi Supervised Mortgage
954 Company."

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

957 81-18-33. The individual borrower files of a mortgage
958 company shall contain at least the following:

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

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

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

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

972 Mississippi Department of Banking and
973 Consumer Finance
974 P.O. Box 23729
975 Jackson, MS 39225-3729";

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

978 (c) A copy of the signed closing statement as required
979 by HUD or documentation of denial or cancellation of the loan
980 application;

981 (d) A copy of the good faith estimate of costs provided
982 to the borrower;

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

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

986 and

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

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

993 81-18-35. Each licensee shall maintain a journal of mortgage
994 transactions at the principal place of business as stated on its
995 license, which shall include at least the following information:

996 (a) Name of applicant;

997 (b) Date of application; and

998 (c) Disposition of loan application, indicating date of
999 loan funding, loan denial, withdrawal and name of lender if
1000 applicable.

1001 **SECTION 20.** The following shall be codified as Section
1002 81-18-36, Mississippi Code of 1972:

1003 81-18-36. (1) (a) All monies paid to a mortgage company
1004 for payment of taxes, loan commitment deposits, work completion
1005 deposits, appraisals, credit reports or insurance premiums on
1006 property that secures any loan made or serviced by the mortgage
1007 company shall be deposited in an account that is insured by the
1008 Federal Deposit Insurance Corporation or the National Credit Union
1009 Administration and shall be kept separate, distinct, and apart
1010 from funds belonging to the mortgage company.

1011 (b) The funds, when deposited, are to be designated as
1012 an "escrow account," or under some other appropriate name,
1013 indicating that the funds are not the funds of the mortgage
1014 company.

1015 (2) The mortgage company shall, upon reasonable notice,
1016 account to any debtor whose property secures a loan made by the
1017 mortgage company for any funds which that person has paid to the
1018 mortgage company for the payment of taxes or insurance premiums on
1019 the property in question.

1020 (3) The mortgage company shall, upon reasonable notice,
1021 account to the commissioner for all funds in the company's escrow

1022 account.

1023 (4) Escrow accounts are not subject to execution or
1024 attachment on any claim against the mortgage company.

1025 (5) It is unlawful for any mortgage company knowingly to
1026 keep or cause to be kept any funds or money in any bank or other
1027 financial institution under the heading of "escrow account" or any
1028 other name designating the funds or monies belonging to the
1029 debtors of the mortgage company, except actual funds paid to the
1030 mortgage company for the payment of taxes and insurance premiums
1031 on property securing loans made or serviced by the company.

1032 **SECTION 21.** Section 81-18-37, Mississippi Code of 1972,
1033 reenacted as follows:

1034 81-18-37. (1) The department may suspend or revoke any
1035 license or registration for any reason that would have been
1036 grounds for refusal to issue an original license or registration
1037 or for:

1038 (a) A violation of any provision of this chapter or any
1039 rule or regulation adopted under this chapter;

1040 (b) Failure of the licensee or registrant to pay,
1041 within thirty (30) days after it becomes final and nonappealable,
1042 a judgment recovered in any court within this state by a claimant
1043 or creditor in an action arising out of the licensee's or
1044 registrant's business in this state as a mortgage company.

1045 (2) Notice of the department's intention to enter an order
1046 denying an application for a license or registration under this
1047 chapter or of an order suspending or revoking a license or
1048 registration under this chapter shall be given to the applicant,
1049 licensee or registrant in writing, sent by registered or certified
1050 mail addressed to the principal place of business of the
1051 applicant, licensee or registrant. Within thirty (30) days of the
1052 date of the notice of intention to enter an order of denial,
1053 suspension or revocation under this chapter, the applicant,
1054 licensee or registrant may request in writing a hearing to contest
1055 the order. If a hearing is not requested in writing within thirty
1056 (30) days of the date of the notice of intention, the department

1057 shall enter a final order regarding the denial, suspension or
1058 revocation. Any final order of the department denying, suspending
1059 or revoking a license or registration shall state the grounds upon
1060 which it is based and shall be effective on the date of issuance.
1061 A copy of the final order shall be forwarded promptly by
1062 registered or certified mail addressed to the principal place of
1063 business of the applicant, licensee or registrant.

1064 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is
1065 reenacted and amended as follows:

1066 81-18-39. (1) For purposes of this section, the term
1067 "person" shall be construed to include any officer, director,
1068 employee, affiliate or other person participating in the conduct
1069 of the affairs of the person subject to the orders issued under
1070 this section.

1071 (2) If the department reasonably determines that a person
1072 required to be licensed or registered under this chapter has
1073 violated any law of this state or any order or regulation of the
1074 department, the department may issue a written order requiring the
1075 person to cease and desist from unlawful or unauthorized
1076 practices. In the case of an unlawful purchase of mortgage loans,
1077 the cease and desist order to a purchaser shall constitute the
1078 knowledge required under this section for any subsequent
1079 violations.

1080 * * *

1081 (3) Any person required to be licensed or registered under
1082 this chapter who has been deemed by the commissioner, after notice
1083 and hearing, to have violated the terms of any order properly
1084 issued by the department under this section shall be liable for a
1085 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1086 The department, in determining the amount of the penalty, shall
1087 take into account the appropriateness of the penalty relative to
1088 the size of the financial resources of the person, the good faith
1089 efforts of the person to comply with the order, the gravity of the
1090 violation, the history of previous violations by the person, and
1091 other factors or circumstances that contributed to the violation.

1092 The department may compromise, modify or refund any penalty that
1093 has been imposed under this section. Any person assessed a
1094 penalty as provided in this subsection shall have the right to
1095 request a hearing on the amount of the penalty within ten (10)
1096 days after receiving notification of the assessment. If no
1097 hearing is requested within ten (10) days of the receipt of the
1098 notice, the penalty shall be final except as to judicial review in
1099 the Chancery Court of the First Judicial District of Hinds County.
1100 Upon the filing of a petition for judicial review, the court
1101 shall issue an order to the licensee requiring the licensee to
1102 show cause why it should not be entered. If the court determines,
1103 after a hearing upon the merits or after failure of the person to
1104 appear when so ordered, that the order of the department was
1105 properly issued, it shall grant the relief sought by the
1106 department.

1107 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is
1108 reenacted as follows:

1109 81-18-41. Nothing in this chapter shall preclude a person
1110 whose license or registration has been suspended or revoked from
1111 continuing to service mortgage loans pursuant to servicing
1112 contracts in existence at the time of the suspension or
1113 revocation.

1114 **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is
1115 reenacted and amended as follows:

1116 81-18-43. (1) In addition to any other penalty that may be
1117 applicable, any licensee, individual required to be registered, or
1118 employee who willfully violates any provision of this chapter, or
1119 who willfully makes a false entry in any document specifically
1120 required by this chapter, shall be guilty of a misdemeanor and,
1121 upon conviction thereof, shall be punishable by a fine not in
1122 excess of One Thousand Dollars (\$1,000.00) per violation or false
1123 entry.

1124 (2) In addition to any other penalty that may be applicable,
1125 any licensee, individual required to be registered, or employee
1126 who fails to make a record of a mortgage transaction and

1127 subsequently sells or disposes of the mortgage from that
1128 transaction shall be punished as follows:

1129 (a) For a first offense, the licensee, individual
1130 required to be registered, or employee shall be guilty of a
1131 misdemeanor and, upon conviction thereof, shall be punishable by a
1132 fine not in excess of One Thousand Dollars (\$1,000.00) or by
1133 imprisonment in the county jail for not more than one (1) year, or
1134 both fine and imprisonment;

1135 (b) For a second or subsequent offense, the licensee,
1136 individual required to be registered, or employee shall be guilty
1137 of a felony and, upon conviction thereof, shall be punishable by a
1138 fine not in excess of Five Thousand Dollars (\$5,000.00) or by
1139 imprisonment in the custody of the State Department of Corrections
1140 for a term not less than one (1) year nor more than five (5)
1141 years, or by both fine and imprisonment.

1142 (3) Compliance with the criminal provisions of this act
1143 shall be enforced by the appropriate law enforcement agency, which
1144 may exercise for that purpose any authority conferred upon the
1145 agency by law.

1146 (4) When the commissioner has reasonable cause to believe
1147 that a person is violating any provision of this chapter, the
1148 commissioner, in addition to and without prejudice to the
1149 authority provided elsewhere in this chapter, may enter an order
1150 requiring the person to stop or to refrain from the violation.
1151 The commissioner may sue in any chancery court of the state having
1152 jurisdiction and venue to enjoin the person from engaging in or
1153 continuing the violation or from doing any act in furtherance of
1154 the violation. In such an action, the court may enter an order or
1155 judgment awarding a preliminary or permanent injunction.

1156 (5) The commissioner may, after notice and hearing, impose a
1157 civil penalty against any licensee if the licensee, individual
1158 required to be registered, or employee is adjudged by the
1159 commissioner to be in violation of the provisions of this chapter.

1160 The civil penalty shall not exceed Five Thousand Dollars
1161 (\$5,000.00) per violation and shall be deposited into the Consumer

1162 Finance Fund of the department.

1163 (6) The state may enforce its rights under the surety bond
1164 as required in Section 81-18-11 as an available remedy for the
1165 collection of any civil penalties, criminal fines or costs of
1166 investigation and/or prosecution incurred.

1167 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is
1168 reenacted as follows:

1169 81-18-45. The commissioner may employ the necessary
1170 full-time employees above the number of permanent full-time
1171 employees authorized for the department for the fiscal year 2001,
1172 to carry out and enforce the provisions of this chapter. The
1173 commissioner also may expend the necessary funds and equip and
1174 provide necessary travel expenses for those employees.

1175 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is
1176 reenacted as follows:

1177 81-18-47. (1) A licensee under this chapter shall have no
1178 liability for any act or practice done or omitted in conformity
1179 with (a) any rule or regulation of the commissioner, or (b) any
1180 rule, regulation, interpretation or approval of any other state or
1181 federal agency or any opinion of the Attorney General,
1182 notwithstanding that after such act or omission has occurred the
1183 rule, regulation, interpretation, approval or opinion is amended,
1184 rescinded, or determined by judicial or other authority to be
1185 invalid for any reason.

1186 (2) A licensee under this chapter, acting in conformity with
1187 a written interpretation or approval by an official or employee of
1188 any state or federal agency or department, shall be presumed to
1189 have acted in accordance with applicable law, notwithstanding that
1190 after such act has occurred, the interpretation or approval is
1191 amended, rescinded, or determined by judicial or other authority
1192 to be incorrect or invalid for any reason.

1193 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is
1194 reenacted as follows:

1195 81-18-49. Notwithstanding any provisions of this chapter to
1196 the contrary, mortgage companies engaging in business on or before

1197 June 1, 2000, shall be duly licensed by the department after
1198 submitting not later than January 1, 2001, the required documents
1199 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1200 the expiration of the initial licenses for such mortgage
1201 companies, the department shall renew the licenses only if the
1202 mortgage companies satisfy all of the provisions of this chapter.

1203 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is
1204 amended as follows:

1205 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1206 repealed on July 2, 2002.

1207 **SECTION 29.** This act shall take effect and be in force from
1208 and after July 1, 2002.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 WITHIN TEN YEARS OF APPLICATION DATE OF ANY
38 FELONY, ANY MISDEMEANOR INVOLVING FRAUD, OR CERTAIN SPECIFIED
39 CRIMES; TO AMEND REENACTED SECTION 81-18-15, MISSISSIPPI CODE OF

40 1972, TO SPECIFY THE REQUIRED CONTINUING EDUCATION FOR
41 MANUFACTURED HOUSING LICENSEES OR ORIGINATORS; TO AMEND REENACTED
42 SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT A LICENSEE
43 FROM OPENING CERTAIN BRANCH OFFICES WITHOUT PRIOR APPROVAL OF THE
44 DEPARTMENT OF BANKING; TO AMEND REENACTED SECTION 81-18-19,
45 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PERSON MAY ACQUIRE
46 TWENTY-FIVE PERCENT OR MORE OF A LICENSEE UNLESS THE PERSON FIRST
47 FILES AN APPLICATION; TO AMEND REENACTED SECTION 81-18-21,
48 MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSEES TO KEEP THEIR
49 ACCOUNTS AND RECORDS IN SECURE LOCATIONS; TO AMEND REENACTED
50 SECTION 81-18-25, MISSISSIPPI CODE OF 1972, TO DELETE THE
51 REQUIREMENT THAT A LICENSEE MUST MAINTAIN AND TRANSACT BUSINESS
52 FROM A PRINCIPAL PLACE OF BUSINESS IN THE STATE; TO PROVIDE THAT
53 THE BUSINESS SIGNS OF LICENSEES MUST CONTAIN THE WORDS
54 "MISSISSIPPI LICENSED MORTGAGE COMPANY" OR "MISSISSIPPI SUPERVISED
55 MORTGAGE COMPANY"; TO AMEND REENACTED SECTION 81-18-27,
56 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY MORTGAGE COMPANY
57 THAT CONTRACTS TO RECEIVE FROM A BORROWER A MORTGAGE COMMITMENT
58 FEE UPON OBTAINING A COMMITMENT MUST DISCLOSE CERTAIN INFORMATION
59 IN THE MORTGAGE BROKERAGE AGREEMENT; TO PROHIBIT LICENSEES FROM
60 PAYING TO ANY PERSON NOT LICENSED OR EXEMPT FROM THIS LAW ANY
61 COMMISSION, BONUS OR FEE IN CONNECTION WITH ARRANGING OR
62 ORIGINATING A MORTGAGE LOAN FOR A BORROWER; TO PROHIBIT LICENSEES
63 FROM REFUSING TO PROVIDE THE LOAN PAYOFF WITHIN THREE BUSINESS
64 DAYS OF A REQUEST FROM A BORROWER OR THIRD PARTY; TO PROVIDE THAT
65 A MORTGAGE COMPANY SHALL ONLY BROKER A RESIDENTIAL MORTGAGE LOAN
66 TO A LICENSED MORTGAGE COMPANY OR TO A PERSON EXEMPT FROM THIS
67 LAW; TO AMEND REENACTED SECTION 81-18-31, MISSISSIPPI CODE OF
68 1972, TO PROHIBIT LICENSEES FROM ADVERTISING THEIR SERVICES
69 WITHOUT THE WORDS "MISSISSIPPI LICENSED MORTGAGE COMPANY" OR
70 "MISSISSIPPI SUPERVISED MORTGAGE COMPANY"; TO AMEND REENACTED
71 SECTION 81-18-39, MISSISSIPPI CODE OF 1972, TO DELETE THE
72 PROVISION FOR THE DEPARTMENT OF BANKING TO OBTAIN A COURT ORDER TO
73 REQUIRE COMPLIANCE WITH THE DEPARTMENT'S ORDERS; TO PROVIDE THAT A
74 LICENSEE WHO VIOLATES AN ORDER OF A DEPARTMENT IS SUBJECT TO A
75 CIVIL PENALTY UPON DETERMINATION OF A VIOLATION BY THE
76 COMMISSIONER OF BANKING, INSTEAD OF BY THE COURT; TO PROVIDE THAT
77 IF A LICENSEE SEEKS JUDICIAL REVIEW OF THE ASSESSMENT OF A CIVIL
78 PENALTY, THE COURT SHALL UPHOLD THE DEPARTMENT'S ORDER IF THE
79 COURT DETERMINES THAT THE ORDER WAS PROPERLY ISSUED; TO AMEND
80 REENACTED SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO INCREASE
81 THE MAXIMUM AMOUNT OF A CIVIL PENALTY THAT THE COMMISSIONER MAY
82 IMPOSE AGAINST A LICENSEE FOR VIOLATING THIS LAW; TO CODIFY NEW
83 SECTION 81-18-36, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL
84 MONIES PAID TO A MORTGAGE COMPANY FOR PAYMENT OF TAXES OR
85 INSURANCE PREMIUMS ON PROPERTY SECURING ANY LOAN MADE OR SERVICED
86 BY THE MORTGAGE COMPANY SHALL BE DEPOSITED IN A FEDERALLY-INSURED
87 ACCOUNT AND KEPT SEPARATE FROM FUNDS BELONGING TO THE MORTGAGE
88 COMPANY; TO AMEND SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO
89 EXTEND THE DATE OF REPEAL ON THE MISSISSIPPI MORTGAGE CONSUMER
90 PROTECTION LAW; AND FOR RELATED PURPOSES.