

By: Representative Guice

To: Banking and Financial  
Services

## HOUSE BILL NO. 788

1 AN ACT TO REENACT SECTIONS 81-18-1, 81-18-3, 81-18-5,  
 2 81-18-7, 81-18-8, 81-18-9, 81-18-11, 81-18-13, 81-18-15, 81-18-17,  
 3 81-18-19, 81-18-21, 81-18-23, 81-18-25, 81-18-27, 81-18-29,  
 4 81-18-31, 81-18-33, 81-18-35, 81-18-36, 81-18-37, 81-18-39,  
 5 81-18-41, 81-18-43, 81-18-45, 81-18-47 AND 81-18-49, MISSISSIPPI  
 6 CODE OF 1972, WHICH CREATE THE MISSISSIPPI MORTGAGE CONSUMER  
 7 PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-3, MISSISSIPPI  
 8 CODE OF 1972, TO DEFINE THE TERMS "BRANCH" AND "RESIDENTIAL  
 9 IMMOVABLE PROPERTY" AND TO REVISE THE DEFINITION OF THE TERM "LOAN  
 10 ORIGINATOR"; TO AMEND REENACTED SECTION 81-18-5, MISSISSIPPI CODE  
 11 OF 1972, TO REVISE THE EXEMPTIONS TO THE MORTGAGE CONSUMER  
 12 PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-15, MISSISSIPPI  
 13 CODE OF 1972, TO PROVIDE THAT AN APPLICATION FEE IS NOT REFUNDABLE  
 14 IF THE APPLICATION IS WITHDRAWN OR DENIED; TO AMEND REENACTED  
 15 SECTION 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT  
 16 OF THE EXAMINATION FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF  
 17 BANKING AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A  
 18 MORTGAGE COMPANY; TO AMEND REENACTED SECTION 81-18-23, MISSISSIPPI  
 19 CODE OF 1972, TO REVISE THE TIME PERIOD FOR FILING ANNUAL REPORTS  
 20 AND TO REQUIRE NOTIFICATION TO THE COMMISSIONER OF CERTAIN EVENTS  
 21 THAT MAY IMPACT THE LICENSEE; TO AMEND REENACTED SECTION 81-18-25,  
 22 MISSISSIPPI CODE OF 1972, TO REQUIRE A LOCATION TO BE LICENSED AS  
 23 A MORTGAGE COMPANY INSTEAD OF A BRANCH IN CERTAIN INSTANCES; TO  
 24 AMEND REENACTED SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO  
 25 AUTHORIZE THE COMMISSIONER TO MAKE PUBLIC ANY FINAL ADMINISTRATIVE  
 26 ACTION IMPOSED AGAINST A LICENSEE OR EXEMPT REGISTRANT FOR  
 27 VIOLATIONS OF THE CHAPTER; TO AMEND SECTION 81-18-51, MISSISSIPPI  
 28 CODE OF 1972, TO EXTEND THE REPEALER ON THE MORTGAGE CONSUMER  
 29 PROTECTION LAW; AND FOR RELATED PURPOSES.

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

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

33 81-18-1. This chapter shall be known and cited as the  
 34 Mississippi Mortgage Consumer Protection Law.

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

37 81-18-3. For purposes of this chapter, the following terms  
 38 shall have the following meanings:

39 (a) "Borrower" means a person who submits an  
 40 application for a loan secured by a first or subordinate mortgage

41 or deed of trust on a single- to four-family home to be occupied  
42 by a natural person.

43 (b) "Branch" means a location of a company in or  
44 outside of the state that conducts business as a mortgage company  
45 on Mississippi land. A location shall be considered a branch in  
46 any of the following:

47 (i) If the location is used on any type of  
48 advertisement;

49 (ii) If any type of record, loan file or  
50 application of the company is located at the location, with the  
51 exception of unstaffed storage facilities; or

52 (iii) If a Mississippi consumer is received at the  
53 location or is directed to deliver any information by any means to  
54 the location.

55 (c) "Commissioner" means the Commissioner of the  
56 Mississippi Department of Banking and Consumer Finance.

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

61 (e) "Control" means the direct or indirect possession  
62 of the power to direct or cause the direction of the management  
63 and policies of a person, whether through the ownership of voting  
64 securities, by contract or otherwise, and shall include  
65 "controlling," "controlled by," and "under common control with."

66 (f) "Department" means the Department of Banking and  
67 Consumer Finance of the State of Mississippi.

68 (g) "Executive officer" means the chief executive  
69 officer, the president, the principal financial officer, the  
70 principal operating officer, each vice president with  
71 responsibility involving policy-making functions for a significant  
72 aspect of a person's business, the secretary, the treasurer, or  
73 any other person performing similar managerial or supervisory

74 functions with respect to any organization whether incorporated or  
75 unincorporated.

76           (h) "License" means a license to act as a mortgage  
77 company issued by the department under this chapter.

78           (i) "Licensee" means a person or entity who is required  
79 to be licensed as a mortgage company under this chapter.

80           (j) "Loan originator" means an individual who is an  
81 employee of a single mortgage company whose conduct of the  
82 mortgage business is the responsibility of the company, and whose  
83 job responsibilities include direct contact with borrowers during  
84 the loan origination process, which may include soliciting,  
85 negotiating, acquiring, arranging or making mortgage loans for  
86 others, obtaining personal or financial information, assisting  
87 with the preparation of loan applications or other documents,  
88 quoting loan rates or terms, or providing required disclosures.  
89 This individual must work for a licensed or exempt company and  
90 work from the registered location with the department. The term  
91 does not include individuals whose job responsibilities on behalf  
92 of a company are solely clerical in nature or sales  
93 representatives of a licensed Mississippi manufactured housing  
94 operation who transmits information concerning a sale via mail,  
95 courier service, or electronically to a licensed mortgage company  
96 or registered originator.

97           (k) "Make a mortgage loan" means to advance funds,  
98 offer to advance funds or make a commitment to advance funds to a  
99 borrower.

100           (l) "Misrepresent" means to make a false statement of a  
101 substantive fact or to engage in, with intent to deceive or  
102 mislead, any conduct that leads to a false belief that is material  
103 to the transaction.

104           (m) "Mortgage company" means any person or entity who  
105 directly, indirectly or by electronic activity, solicits, places

106 or negotiates mortgage loans for others, or offers to solicit,  
107 place or negotiate mortgage loans for others.

108         (n) "Mortgage loan" means a loan or agreement to extend  
109 credit made to a natural person, which loan is secured by a deed  
110 to secure debt, security deed, mortgage, security instrument, deed  
111 of trust or other document representing a security interest or  
112 loan upon any interest in a lot intended for residential purposes,  
113 or single- to four-family residential property located in  
114 Mississippi, regardless of where made, including the renewal or  
115 refinancing of any loan.

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

119         (p) "Principal" means a natural person who, directly or  
120 indirectly, owns or controls an ownership interest of twenty-five  
121 percent (25%) or more in a corporation or any other form of  
122 business organization, regardless of whether the natural person  
123 owns or controls the ownership interest through one or more  
124 natural persons or one or more proxies, powers of attorney,  
125 nominees, corporations, associations, limited liability companies,  
126 partnerships, trusts, joint-stock companies, other entities or  
127 devises, or any combination thereof.

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

134         (r) "Registrant" means any person required to register  
135 under Section 81-18-5(m).

136         (s) "Residential immovable property" means property  
137 such as, but not limited to, vinyl siding, roofs, pools, spas,  
138 appliances, windows, home additions, landscaping, fencing, etc.

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

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

147           (v) "Wholesale lender" means any person or entity who  
148 makes a mortgage loan, or purchases or services mortgage loans,  
149 utilizing the services of a person exempted, licensed or  
150 registered under this chapter.

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

153           81-18-5. The following persons are not subject to the  
154 provisions of this chapter, unless otherwise provided in this  
155 chapter:

156           (a) Any person authorized to engage in business as a  
157 bank holding company or as a financial holding company, or any  
158 wholly owned subsidiary thereof; however, the wholly owned  
159 subsidiary must file a notification statement that includes the  
160 following information:

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

163                   (ii) The name and address of the parent financial  
164 institution;

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

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

170                   (v) A statement signed by the president or chief  
171 executive officer of the entity stating that the entity will

172 receive and process consumer inquiries and complaints promptly,  
173 fairly, and in compliance with all applicable laws; and

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

175 The notification statement must be filed before beginning to  
176 conduct a mortgage business in this state and must be updated by  
177 the entity as the information changes. Any entity that fails to  
178 file the notification statement or keep the information current  
179 will be immediately subject to the licensing requirements of  
180 Section 81-18-9. This notification statement must be renewed  
181 annually as of September 30 of each year with a renewal fee of One  
182 Hundred Dollars (\$100.00).

183 (b) Any person authorized to engage in business as a  
184 bank, credit card bank, savings bank, savings institution, savings  
185 and loan association, building and loan association, trust company  
186 or credit union under the laws of the United States, any state or  
187 territory of the United States, or the District of Columbia, the  
188 deposits of which are federally insured, or any wholly owned  
189 subsidiary thereof.

190 (c) Any person who is a wholesale lender as defined in  
191 Section 81-18-3(t) or who is registered by \* \* \* the Federal  
192 National Mortgage Association, \* \* \* the Federal Home Loan  
193 Mortgage Corporation, the Government National Mortgage Association  
194 or the United States Department of Housing and Urban Development;  
195 provided, however, that persons who qualify for an exemption under  
196 this paragraph shall be subject to Sections 81-18-11, 81-18-13,  
197 81-18-21, 81-18-23, 81-18-25, 81-18-27, 81-18-31, 81-18-35,  
198 81-18-39 and 81-18-43. Upon the request of the commissioner, such  
199 persons shall submit copies of any reports as required by the  
200 aforementioned governmental entity to which the person is subject  
201 for licensing, supervision or auditing. The department shall have  
202 the authority to investigate all consumer complaints concerning  
203 Mississippi residential property. To qualify for an exemption,  
204 the applicant shall register for an exemption certificate with the

205 department and pay an initial fee of Three Hundred Dollars  
206 (\$300.00). With each application for renewal of the exemption  
207 certificate, the applicant shall pay a renewal fee of One Hundred  
208 Fifty Dollars (\$150.00) and provide the department with evidence  
209 that the applicant is still licensed, supervised or audited by the  
210 governmental entity. If the renewal fee remains unpaid for thirty  
211 (30) days after August 31, the registration shall expire, but not  
212 before September 30 of any year for which the annual renewal fee  
213 has been paid. If any person engages in business without paying  
214 the fees provided for in this paragraph before commencing business  
215 or before the expiration of the person's current registration, as  
216 the case may be, then the person shall be liable for the full  
217 amount of the registration fee, plus a penalty in an amount not to  
218 exceed Twenty-five Dollars (\$25.00) for each day that the person  
219 has engaged in business without an exemption certificate or after  
220 the expiration of an exemption certificate. All registration fees  
221 and penalties shall be paid into the Consumer Finance Fund of the  
222 department. If the exempt company has a physical branch location  
223 in Mississippi, then this location must be registered with the  
224 department as a branch in accordance with Sections 81-18-17 and  
225 81-18-25.

226 (d) Any lender holding a license under the Small Loan  
227 Regulatory Law (Section 75-67-101 et seq.) and the Small Loan  
228 Privilege Tax Law (Section 75-67-201 et seq.).

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

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

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

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

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

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



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

282           (l) Nonprofit corporations exempt from federal taxation  
283 under Section 501(c) of the Internal Revenue Code making mortgage  
284 loans to promote home ownership or home improvements for the  
285 disadvantaged.

286           (m) Loan originators \* \* \* as defined under Section  
287 81-18-3(i) are exempt from the licensing requirements of this  
288 chapter except for Sections 81-18-9(3)(d), 81-18-13 and  
289 81-18-15(3), but shall register with the department as a loan  
290 originator. Any natural person required to register under this  
291 paragraph (m) shall register initially with the department and  
292 thereafter file an application for renewal of registration with  
293 the department on or before September 30 of each year providing  
294 the department with such information as the department may  
295 prescribe by regulation, including, but not limited to, the  
296 business addresses where the person engages in any business  
297 activities covered by this chapter and a telephone number that  
298 customers may use to contact the person. This initial  
299 registration of a loan originator shall be accompanied by a fee of  
300 One Hundred Dollars (\$100.00). Annual renewals of this  
301 registration shall require a fee of Fifty Dollars (\$50.00). No  
302 person required to register under this paragraph (m) shall

303 transact business in this state directly or indirectly as a  
304 mortgage company or mortgage lender unless that person is  
305 registered with the department.

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

308 81-18-7. (1) On and after the effective date of this  
309 chapter, no person or natural person shall transact business in  
310 this state, directly or indirectly, as a mortgage company unless  
311 he or she is licensed as a mortgage company by the department or  
312 is a person exempted from the licensing requirements under Section  
313 81-18-5.

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

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

328 **SECTION 5.** Section 81-18-8, Mississippi Code of 1972, is  
329 reenacted as follows:

330 81-18-8. Municipalities and counties in this state may enact  
331 ordinances that are in compliance with, but not more restrictive  
332 than, the provisions of this chapter. Any order, ordinance or  
333 regulation existing on July 1, 2002, or enacted on or after July  
334 1, 2002, that conflicts with this provision shall be null and  
335 void.

336           **SECTION 6.** Section 81-18-9, Mississippi Code of 1972, is  
337 reenacted as follows:

338           81-18-9. (1) An application for a license under this  
339 chapter shall be made in writing and in the form as the department  
340 may prescribe.

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

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

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

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

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

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

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

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

366           (i) Copies of business licenses issued by  
367 governmental agencies.

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

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

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

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

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

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

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

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

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

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

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

406 (iii) The chief executive officer of a  
407 corporation, or his designee, which supervises the Mississippi  
408 location(s) and any shareholders owning twenty-five percent (25%)  
409 or more of the outstanding shares of the corporation; and

410 (iv) All loan originators.

411 **SECTION 7.** Section 81-18-11, Mississippi Code of 1972, is  
412 reenacted as follows:

413 81-18-11. (1) For purposes of Section 81-18-9, the  
414 definitions of the classes of companies and their respective  
415 minimum amounts of surety bonds will be:

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

425 (b) "Mortgage broker" shall be defined as any company  
426 that directly solicits, processes, places or negotiates mortgage  
427 loans for others and that does not close mortgage loans in the  
428 company name, does not use its own funds, or who closes mortgage  
429 loans in the name of the company, and sells, assigns or transfers  
430 the loan to others within forty-eight (48) hours of the closing.

431 The amount of the surety bond for mortgage brokers shall be  
432 Twenty-five Thousand Dollars (\$25,000.00).

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

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

449 **SECTION 8.** Section 81-18-13, Mississippi Code of 1972, is  
450 reenacted as follows:

451 81-18-13. (1) Upon receipt of an application for licensure  
452 or registration, which shall include the required set of  
453 fingerprints from any local law enforcement agency, the department  
454 shall conduct such an investigation as it deems necessary to  
455 determine that the applicant and its officers, directors and  
456 principals are of good character and ethical reputation; that the  
457 applicant demonstrates reasonable financial responsibility; and  
458 that the applicant has reasonable policies and procedures to  
459 receive and process customer grievances and inquiries promptly and  
460 fairly.

461 (2) The department shall not license an applicant unless it  
462 is satisfied that the applicant will operate its mortgage company

463 activities in compliance with the laws, rules and regulations of  
464 this state and the United States.

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

467 (4) The department shall not issue a license or registration  
468 certificate if it finds that the applicant, or any person who is a  
469 director, officer, partner or principal of the applicant, has been  
470 convicted within ten (10) years of the application for license or  
471 registration of: (a) a felony in any jurisdiction; or (b) a crime  
472 that, if committed within this state, would constitute a felony  
473 under the laws of this state; or (c) a misdemeanor in any  
474 jurisdiction in which fraud is an essential element, including,  
475 but not limited to, forgery, bribery, embezzlement or making a  
476 fraudulent or false statement. For the purposes of this chapter,  
477 a person shall be deemed to have been convicted of a crime if the  
478 person has pleaded guilty to a crime before a court or federal  
479 magistrate, or plea of nolo contendere, or has been found guilty  
480 of a crime by the decision or judgment of a court or federal  
481 magistrate or by the verdict of a jury, irrespective of the  
482 pronouncement of sentence or the suspension of a sentence, unless  
483 the plea of guilty, or the decision, judgment or verdict, has been  
484 set aside, reversed or otherwise abrogated by lawful judicial  
485 process, or unless the person convicted of the crime has received  
486 a pardon from the President of the United States or the Governor  
487 or other pardoning authority in the jurisdiction where the  
488 conviction was obtained.

489 (5) In order to determine the applicant's suitability for a  
490 license, the commissioner shall forward the fingerprints submitted  
491 with the application to the Department of Public Safety; and if no  
492 disqualifying record is identified at the state level, the  
493 fingerprints shall be forwarded by the Department of Public Safety  
494 to the FBI for a national criminal history record check. All  
495 conviction data received by the department shall be used by the

496 department for the exclusive purpose of carrying out the  
497 responsibilities of this chapter, may not be a public record,  
498 shall be privileged, and may not be disclosed to any other person  
499 or agency, except to any person or agency that otherwise has a  
500 legal right to inspect the file. All records shall be maintained  
501 by the department according to law. As used in this section  
502 "conviction data" means a record of a finding or verdict of guilty  
503 or plea of guilty or plea of nolo contendere with regard to any  
504 crime regardless of whether an appeal of the conviction has been  
505 sought.

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

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

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

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

526 81-18-15. (1) Each license shall remain in full force and  
527 effect until relinquished, suspended, revoked or expired. With  
528 each initial application for a license, the applicant shall pay to



529 the commissioner a license fee of Seven Hundred Fifty Dollars  
530 (\$750.00), and on or before August 31 of each year thereafter, an  
531 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).  
532 If the annual renewal fee remains unpaid thirty (30) days after  
533 August 31, the license shall expire, but not before September 30  
534 of any year for which the annual renewal fee has been paid. If  
535 any person engages in business as provided for in this chapter  
536 without paying the license fee provided for in this subsection  
537 before commencing business or before the expiration of the  
538 person's current license, as the case may be, then the person  
539 shall be liable for the full amount of the license fee, plus a  
540 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)  
541 for each day that the person has engaged in such business without  
542 a license or after the expiration of a license. All licensing  
543 fees and penalties shall be paid into the Consumer Finance Fund of  
544 the department. If the application is withdrawn or denied, the  
545 application fee is not refundable.

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

554 (3) Each application for licensing renewal or registration  
555 renewal shall include evidence of the satisfactory completion of  
556 at least twelve (12) hours of approved continuing education in  
557 primary and subordinated financing transactions by the officers  
558 and principals who are or will be actively engaged in the daily  
559 operation of a mortgage company in the State of Mississippi and  
560 registered originators. For purposes of this subsection (3),  
561 approved courses shall be those as approved by the Mississippi

562 Mortgage Bankers Association, the Education Committee of the  
563 National Association of Mortgage Brokers or the Mississippi  
564 Association of Mortgage Brokers, who shall submit to the  
565 department a listing of approved schools, courses, programs and  
566 special training sessions. However, each application for  
567 licensing renewal or registration renewal of manufactured housing  
568 licensees or originators shall include evidence of the  
569 satisfactory completion of at least twelve (12) hours of  
570 continuing education, of which eight (8) hours must be approved by  
571 the Commissioner of Insurance and four (4) hours consisting of  
572 courses in primary and subordinated financing transactions must be  
573 approved by the Mississippi Manufactured Housing Association,  
574 which shall submit to the department a listing of those approved  
575 schools, courses, programs and special training sessions. A  
576 manufactured housing licensee or originator may submit evidence of  
577 completion of courses that have been approved by the Mississippi  
578 Mortgage Bankers Association, the Education Committee of the  
579 National Association of Mortgage Brokers or the Mississippi  
580 Association of Mortgage Brokers to satisfy the four-hour  
581 requirement of courses in primary and subordinated financing  
582 transactions.

583       **SECTION 10.** Section 81-18-17, Mississippi Code of 1972, is  
584 reenacted as follows:

585       81-18-17. (1) Each license issued under this chapter shall  
586 state the address of the licensee's principal place of business  
587 and the name of the licensee.

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

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

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

593       (5) Each licensee shall notify the department, in writing,  
594 of any change in the address of its principal place of business or

595 of any additional location of business or any change of officer,  
596 director or principal of the licensee within thirty (30) days of  
597 the change.

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

616 **SECTION 11.** Section 81-18-19, Mississippi Code of 1972, is  
617 reenacted as follows:

618 81-18-19. (1) Except as provided in this section, no person  
619 shall acquire directly or indirectly twenty-five percent (25%) or  
620 more of the voting shares of a corporation or twenty-five percent  
621 (25%) or more of the ownership of any other entity licensed to  
622 conduct business under this chapter unless it first files an  
623 application in accordance with the requirements prescribed in  
624 Section 81-18-9.

625 (2) Upon the filing and investigation of an application, the  
626 department shall permit the applicant to acquire the interest in  
627 the licensee if it is satisfied and finds that the applicant and

628 its members, if applicable, its directors and officers, if a  
629 corporation, and any proposed new directors and officers have  
630 provided its surety bond and have the character, reputation and  
631 experience to warrant belief that the business will be operated  
632 fairly and in accordance with the law. If the application is  
633 denied, the department shall notify the applicant of the denial  
634 and the reasons for the denial.

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

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

641 (a) The acquisition of an interest in a licensee  
642 directly or indirectly including an acquisition by merger or  
643 consolidation by or with a person exempt from this chapter under  
644 Section 81-18-5.

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

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

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

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

659 81-18-21. (1) Any person required to be licensed under this  
660 chapter shall maintain in its offices, or such other location as

661 the department shall permit, the books, accounts and records  
662 necessary for the department to determine whether or not the  
663 person is complying with the provisions of this chapter and the  
664 rules and regulations adopted by the department under this  
665 chapter. These books, accounts and records shall be maintained  
666 apart and separate from any other business in which the person is  
667 involved and may represent historical data for three (3) years  
668 preceding the date of the last license application date forward.  
669 The books, accounts and records shall be kept in a secure location  
670 under conditions that will not lead to their damage or  
671 destruction. If the person wishes to keep the files in a location  
672 other than the location listed on the license or exemption  
673 certificate, then the person must submit a written request to the  
674 commissioner before he stores the files in the different location.

675 (2) To assure compliance with the provisions of this  
676 chapter, the department may examine the books and records of any  
677 licensee without notice during normal business hours. The  
678 commissioner shall charge the licensee an examination fee in an  
679 amount not less than Three Hundred Dollars (\$300.00) nor more than  
680 Six Hundred Dollars (\$600.00) for each office or location within  
681 the State of Mississippi, plus any actual expenses incurred while  
682 examining the licensee's records or books that are located outside  
683 the State of Mississippi. However, in no event shall a licensee  
684 be examined more than once in a two-year period unless for cause  
685 shown based upon consumer complaint and/or other exigent reasons  
686 as determined by the commissioner.

687 (3) The department, its designated officers and employees,  
688 or its duly authorized representatives, for the purposes of  
689 discovering violations of this chapter and for the purpose of  
690 determining whether any person or individual reasonably suspected  
691 by the commissioner of conducting business that requires a license  
692 or registration under this chapter, may investigate those persons  
693 and individuals and examine all relevant books, records and papers

694 employed by those persons or individuals in the transaction of  
695 business, and may summon witnesses and examine them under oath  
696 concerning matters as to the business of those persons, or other  
697 such matters as may be relevant to the discovery of violations of  
698 this chapter including, without limitation, the conduct of  
699 business without a license or registration as required under this  
700 chapter.

701 (4) The department, in its discretion, may disclose  
702 information concerning any violation of this chapter or any rule,  
703 regulation, or order under this chapter, provided the information  
704 is derived from a final order of the department.

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

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

716 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is  
717 reenacted and amended as follows:

718 81-18-23. (1) Each licensee shall annually, on or before  
719 January 31, file a written report with the department containing  
720 the December 31 information that the department may reasonably  
721 require concerning the licensee's business and operations during  
722 the preceding calendar year. The report shall be made in the form  
723 prescribed by the department.

724 (2) Any licensee who fails to file with the department by  
725 January 31 the report required by this section shall be subject to  
726 a late penalty of Ten Dollars (\$10.00) for each day after January

727 31 the report is delinquent, but in no event shall the aggregate  
728 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

735 (5) Within fifteen (15) days of the occurrence of any of the  
736 following events, a company shall file a written report with the  
737 commissioner describing the event and its expected impact on the  
738 activities of the licensee in this state:

739 (a) The filing for bankruptcy or reorganization by the  
740 licensee;

741 (b) The institution of revocation or suspension  
742 proceedings against the licensee by any state or governmental  
743 authority;

744 (c) Any felony indictment of the licensee or any of its  
745 director, executive officers, principals or loan originators; or

746 (d) Any felony conviction of the licensee or any of its  
747 directors, executive officers, principals or loan originators.

748 (6) If the owner or principal of a licensee or registered  
749 exempt company is involved in a civil action concerning the  
750 mortgage company, then he shall notify the commissioner in writing  
751 within sixty (60) days after the initial filing of the civil  
752 action.

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

755 81-18-25. (1) Each principal place of business and branch  
756 office in the state shall meet all of the following requirements:

757 (a) Be in compliance with local zoning ordinances and  
758 have posted any licenses required by local government agencies.

759 It is the responsibility of the licensee to meet local zoning  
760 ordinances and obtain the required occupational licenses.

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

764 Stationary construction does not include the use of portable  
765 buildings.

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

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

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

778 (4) If one (1) of the following is correct, then that  
779 location shall be licensed as a mortgage company under this  
780 chapter and not as a branch:

781 (a) It is a separate entity operating as an independent  
782 business or mortgage operation which is not under the direct  
783 control, management supervision and responsibility of the  
784 licensee;

785 (b) The licensee or registered exempt company is not  
786 the lessee or owner of the branch and the branch is not under the  
787 direct and daily ownership, control, management and supervision of  
788 the licensee or registered exempt company;

789 (c) All assets and liabilities of the branch are not  
790 assets and liabilities of the licensee, and all income and  
791 expenses of the branch are income and expenses of the licensee and



792 properly accounted for in the financial records and tax returns of  
793 the licenses; or

794 (d) All practices, policies and procedures, including,  
795 but not limited to, those relating to employment and operations,  
796 are not originated and established by the license or registered  
797 exempt company and are not applied consistently to the main office  
798 and all branches.

799 **SECTION 15.** Section 81-18-27, Mississippi Code of 1972, is  
800 reenacted as follows:

801 81-18-27. (1) No person required to be licensed or  
802 registered under this chapter shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

846                   (v) That the person does business under a trade  
847 name that misrepresents or tends to misrepresent that the person  
848 is a bank, trust company, savings bank, savings and loan  
849 association, credit union, or insurance company.

850           (j) Charge or collect any direct payment, compensation  
851 or advance fee from a borrower unless and until a loan is actually  
852 found, obtained and closed for that borrower, and in no event  
853 shall that direct payment, compensation or advance fee exceed  
854 seven and ninety-five one-hundredths percent (7.95%) of the  
855 original principal amount of the loan, and any such direct  
856 payments, compensation or advance fees shall be included in all  
857 annual percentage rate (APR) calculations if required under

858 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
859 payment, compensation or advance fee as defined in this section  
860 shall not include:

861 (i) Any direct payment, compensation or advance  
862 fee collected by a licensed mortgage company to be paid to a  
863 nonrelated third party;

864 (ii) Any indirect payment to a licensed mortgage  
865 company by a lender if those fees are not required to be disclosed  
866 under the Real Estate Settlement Procedures Act (RESPA);

867 (iii) Any indirect payment or compensation by a  
868 lender to a licensed mortgage company required to be disclosed by  
869 the licensed mortgage company under RESPA, provided that the  
870 payment or compensation is disclosed to the borrower by the  
871 licensed mortgage company on a good faith estimate of costs, is  
872 included in the APR if required under Regulation Z of TILA, and is  
873 made pursuant to a written agreement between the licensed mortgage  
874 company and the borrower as may be required by Section 81-18-33;

875 or

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

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

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

889 (2) A mortgage company shall only broker a residential  
890 mortgage loan to a mortgage company licensed under this chapter or

891 to a person exempt from licensure under the provisions of this  
892 chapter.

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

895 81-18-29. The department shall promulgate those rules and  
896 regulations, not inconsistent with law, necessary for the  
897 enforcement of this chapter.

898 **SECTION 17.** Section 81-18-31, Mississippi Code of 1972, is  
899 reenacted as follows:

900 81-18-31. The department shall promulgate regulations  
901 governing the advertising of mortgage loans, including, but not  
902 limited to, the following requirements:

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

909 (b) That all licensees shall maintain a copy of all  
910 advertisements citing interest rates or payment amounts primarily  
911 disseminated in this state and shall attach to each advertisement  
912 documentation that provides corroboration of the availability of  
913 the interest rate and terms of loans and names the specific media  
914 sources by which the advertisements were distributed;

915 (c) That all published advertisements disseminated  
916 primarily in this state by a licensee shall contain the name and an  
917 office address of the licensee, which shall be the same as the  
918 name and address of the licensee on record with the department;

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

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

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

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

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

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

935 81-18-33. The individual borrower files of a mortgage  
936 company shall contain at least the following:

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

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

946 (ii) "As a borrower you are protected under the  
947 Mississippi Mortgage Consumer Protection Law."

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

950 Mississippi Department of Banking and  
951 Consumer Finance  
952 P.O. Box 23729  
953 Jackson, MS 39225-3729";

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

956 (c) A copy of the signed closing statement as required  
957 by HUD or documentation of denial or cancellation of the loan  
958 application;

959 (d) A copy of the good faith estimate of costs provided  
960 to the borrower;

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

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

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

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

971 81-18-35. Each licensee shall maintain a journal of mortgage  
972 transactions at the principal place of business as stated on its  
973 license, which shall include at least the following information:

974 (a) Name of applicant;

975 (b) Date of application; and

976 (c) Disposition of loan application, indicating date of  
977 loan funding, loan denial, withdrawal and name of lender if  
978 applicable.

979 **SECTION 20.** Section 81-18-36, Mississippi Code of 1972, is  
980 reenacted as follows:

981 81-18-36. (1) (a) All monies paid to a mortgage company  
982 for payment of taxes, loan commitment deposits, work completion  
983 deposits, appraisals, credit reports or insurance premiums on  
984 property that secures any loan made or serviced by the mortgage  
985 company shall be deposited in an account that is insured by the  
986 Federal Deposit Insurance Corporation or the National Credit Union  
987 Administration and shall be kept separate, distinct, and apart  
988 from funds belonging to the mortgage company.

989           (b) The funds, when deposited, are to be designated as  
990 an "escrow account," or under some other appropriate name,  
991 indicating that the funds are not the funds of the mortgage  
992 company.

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

998           (3) The mortgage company shall, upon reasonable notice,  
999 account to the commissioner for all funds in the company's escrow  
1000 account.

1001           (4) Escrow accounts are not subject to execution or  
1002 attachment on any claim against the mortgage company.

1003           (5) It is unlawful for any mortgage company knowingly to  
1004 keep or cause to be kept any funds or money in any bank or other  
1005 financial institution under the heading of "escrow account" or any  
1006 other name designating the funds or monies belonging to the  
1007 debtors of the mortgage company, except actual funds paid to the  
1008 mortgage company for the payment of taxes and insurance premiums  
1009 on property securing loans made or serviced by the company.

1010           **SECTION 21.** Section 81-18-37, Mississippi Code of 1972, is  
1011 reenacted as follows:

1012           81-18-37. (1) The department may suspend or revoke any  
1013 license or registration for any reason that would have been  
1014 grounds for refusal to issue an original license or registration  
1015 or for:

1016           (a) A violation of any provision of this chapter or any  
1017 rule or regulation adopted under this chapter;

1018           (b) Failure of the licensee or registrant to pay,  
1019 within thirty (30) days after it becomes final and nonappealable,  
1020 a judgment recovered in any court within this state by a claimant

1021 or creditor in an action arising out of the licensee's or  
1022 registrant's business in this state as a mortgage company.

1023 (2) Notice of the department's intention to enter an order  
1024 denying an application for a license or registration under this  
1025 chapter or of an order suspending or revoking a license or  
1026 registration under this chapter shall be given to the applicant,  
1027 licensee or registrant in writing, sent by registered or certified  
1028 mail addressed to the principal place of business of the  
1029 applicant, licensee or registrant. Within thirty (30) days of the  
1030 date of the notice of intention to enter an order of denial,  
1031 suspension or revocation under this chapter, the applicant,  
1032 licensee or registrant may request in writing a hearing to contest  
1033 the order. If a hearing is not requested in writing within thirty  
1034 (30) days of the date of the notice of intention, the department  
1035 shall enter a final order regarding the denial, suspension or  
1036 revocation. Any final order of the department denying, suspending  
1037 or revoking a license or registration shall state the grounds upon  
1038 which it is based and shall be effective on the date of issuance.  
1039 A copy of the final order shall be forwarded promptly by  
1040 registered or certified mail addressed to the principal place of  
1041 business of the applicant, licensee or registrant.

1042 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is  
1043 reenacted as follows:

1044 81-18-39. (1) For purposes of this section, the term  
1045 "person" shall be construed to include any officer, director,  
1046 employee, affiliate or other person participating in the conduct  
1047 of the affairs of the person subject to the orders issued under  
1048 this section.

1049 (2) If the department reasonably determines that a person  
1050 required to be licensed or registered under this chapter has  
1051 violated any law of this state or any order or regulation of the  
1052 department, the department may issue a written order requiring the  
1053 person to cease and desist from unlawful or unauthorized



1054 practices. In the case of an unlawful purchase of mortgage loans,  
1055 the cease and desist order to a purchaser shall constitute the  
1056 knowledge required under this section for any subsequent  
1057 violations.

1058 (3) Any person required to be licensed or registered under  
1059 this chapter who has been deemed by the commissioner, after notice  
1060 and hearing, to have violated the terms of any order properly  
1061 issued by the department under this section shall be liable for a  
1062 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).  
1063 The department, in determining the amount of the penalty, shall  
1064 take into account the appropriateness of the penalty relative to  
1065 the size of the financial resources of the person, the good faith  
1066 efforts of the person to comply with the order, the gravity of the  
1067 violation, the history of previous violations by the person, and  
1068 other factors or circumstances that contributed to the violation.  
1069 The department may compromise, modify or refund any penalty that  
1070 has been imposed under this section. Any person assessed a  
1071 penalty as provided in this subsection shall have the right to  
1072 request a hearing on the amount of the penalty within ten (10)  
1073 days after receiving notification of the assessment. If no  
1074 hearing is requested within ten (10) days of the receipt of the  
1075 notice, the penalty shall be final except as to judicial review in  
1076 the Chancery Court of the First Judicial District of Hinds County.  
1077 Upon the filing of a petition for judicial review, the court shall  
1078 issue an order to the licensee requiring the licensee to show  
1079 cause why it should not be entered. If the court determines,  
1080 after a hearing upon the merits or after failure of the person to  
1081 appear when so ordered, that the order of the department was  
1082 properly issued, it shall grant the penalty sought by the  
1083 department.

1084 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is  
1085 reenacted as follows:

1086           81-18-41. Nothing in this chapter shall preclude a person  
1087 whose license or registration has been suspended or revoked from  
1088 continuing to service mortgage loans pursuant to servicing  
1089 contracts in existence at the time of the suspension or  
1090 revocation.

1091           **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is  
1092 reenacted and amended as follows:

1093           81-18-43. (1) In addition to any other penalty that may be  
1094 applicable, any licensee, individual required to be registered, or  
1095 employee who willfully violates any provision of this chapter, or  
1096 who willfully makes a false entry in any document specifically  
1097 required by this chapter, shall be guilty of a misdemeanor and,  
1098 upon conviction thereof, shall be punishable by a fine not in  
1099 excess of One Thousand Dollars (\$1,000.00) per violation or false  
1100 entry.

1101           (2) In addition to any other penalty that may be applicable,  
1102 any licensee, individual required to be registered, or employee  
1103 who fails to make a record of a mortgage transaction and  
1104 subsequently sells or disposes of the mortgage from that  
1105 transaction shall be punished as follows:

1106           (a) For a first offense, the licensee, individual  
1107 required to be registered, or employee shall be guilty of a  
1108 misdemeanor and, upon conviction thereof, shall be punishable by a  
1109 fine not in excess of One Thousand Dollars (\$1,000.00) or by  
1110 imprisonment in the county jail for not more than one (1) year, or  
1111 both fine and imprisonment;

1112           (b) For a second or subsequent offense, the licensee,  
1113 individual required to be registered, or employee shall be guilty  
1114 of a felony and, upon conviction thereof, shall be punishable by a  
1115 fine not in excess of Five Thousand Dollars (\$5,000.00) or by  
1116 imprisonment in the custody of the State Department of Corrections  
1117 for a term not less than one (1) year nor more than five (5)  
1118 years, or by both fine and imprisonment.

1119 (3) Compliance with the criminal provisions of this section  
1120 shall be enforced by the appropriate law enforcement agency, which  
1121 may exercise for that purpose any authority conferred upon the  
1122 agency by law.

1123 (4) When the commissioner has reasonable cause to believe  
1124 that a person is violating any provision of this chapter, the  
1125 commissioner, in addition to and without prejudice to the  
1126 authority provided elsewhere in this chapter, may enter an order  
1127 requiring the person to stop or to refrain from the violation.  
1128 The commissioner may sue in any chancery court of the state having  
1129 jurisdiction and venue to enjoin the person from engaging in or  
1130 continuing the violation or from doing any act in furtherance of  
1131 the violation. In such an action, the court may enter an order or  
1132 judgment awarding a preliminary or permanent injunction.

1133 (5) The commissioner may, after notice and hearing, impose a  
1134 civil penalty against any licensee if the licensee, individual  
1135 required to be registered, or employee is adjudged by the  
1136 commissioner to be in violation of the provisions of this chapter.  
1137 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
1138 per violation and shall be deposited into the Consumer Finance  
1139 Fund of the department.

1140 (6) The commissioner may make public any final  
1141 administrative action imposed against a licensee or exempt  
1142 registrant for a violation of this chapter, including cease and  
1143 desist orders, civil monetary penalties, license suspensions,  
1144 revocations or application denials.

1145 (7) The state may enforce its rights under the surety bond  
1146 as required in Section 81-18-11 as an available remedy for the  
1147 collection of any civil penalties, criminal fines or costs of  
1148 investigation and/or prosecution incurred.

1149 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is  
1150 reenacted as follows:

1151           81-18-45. The commissioner may employ the necessary  
1152 full-time employees above the number of permanent full-time  
1153 employees authorized for the department for the fiscal year 2001,  
1154 to carry out and enforce the provisions of this chapter. The  
1155 commissioner also may expend the necessary funds and equip and  
1156 provide necessary travel expenses for those employees.

1157           **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is  
1158 reenacted as follows:

1159           81-18-47. (1) A licensee under this chapter shall have no  
1160 liability for any act or practice done or omitted in conformity  
1161 with (a) any rule or regulation of the commissioner, or (b) any  
1162 rule, regulation, interpretation or approval of any other state or  
1163 federal agency or any opinion of the Attorney General,  
1164 notwithstanding that after such act or omission has occurred the  
1165 rule, regulation, interpretation, approval or opinion is amended,  
1166 rescinded, or determined by judicial or other authority to be  
1167 invalid for any reason.

1168           (2) A licensee under this chapter, acting in conformity with  
1169 a written interpretation or approval by an official or employee of  
1170 any state or federal agency or department, shall be presumed to  
1171 have acted in accordance with applicable law, notwithstanding that  
1172 after such act has occurred, the interpretation or approval is  
1173 amended, rescinded, or determined by judicial or other authority  
1174 to be incorrect or invalid for any reason.

1175           **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is  
1176 reenacted as follows:

1177           81-18-49. Notwithstanding any provisions of this chapter to  
1178 the contrary, mortgage companies engaging in business on or before  
1179 June 1, 2000, shall be duly licensed by the department after  
1180 submitting not later than January 1, 2001, the required documents  
1181 and fees provided in Sections 81-18-9 and 81-18-15. However, upon  
1182 the expiration of the initial licenses for such mortgage

1183 companies, the department shall renew the licenses only if the  
1184 mortgage companies satisfy all of the provisions of this chapter.

1185         **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is  
1186 amended as follows:

1187         81-18-51. Sections 81-18-1 through 81-18-49 shall stand  
1188 repealed on July 1, 2007.

1189         **SECTION 29.** This act shall take effect and be in force from  
1190 and after its passage.