

By: Representative Guice

To: Banking and Financial  
ServicesHOUSE BILL NO. 788  
(As Passed the House)

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 DEFINITIONS OF THE TERMS  
 10 "LOAN ORIGINATOR" AND "MORTGAGE COMPANY"; TO AMEND REENACTED  
 11 SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO REVISE THE  
 12 EXEMPTIONS TO THE MORTGAGE CONSUMER PROTECTION LAW; TO PROVIDE  
 13 THAT CERTAIN ENTITIES EXEMPT FROM LICENSURE MUST REGISTER AND  
 14 OBTAIN A REGISTRATION CERTIFICATE FROM THE DEPARTMENT OF BANKING  
 15 AND CONSUMER FINANCE; TO AMEND REENACTED SECTION 81-18-15,  
 16 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPLICATION FEE IS  
 17 NOT REFUNDABLE IF THE APPLICATION IS WITHDRAWN OR DENIED; TO AMEND  
 18 REENACTED SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO REQUIRE  
 19 BRANCH OFFICES HOLDING BRANCH LICENSES TO RENEW THAT LICENSE  
 20 BEFORE A CERTAIN DATE; TO AMEND REENACTED SECTION 81-18-21,  
 21 MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE EXAMINATION  
 22 FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING AND  
 23 CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE COMPANY;  
 24 TO AMEND REENACTED SECTION 81-18-23, MISSISSIPPI CODE OF 1972, TO  
 25 REVISE THE TIME PERIOD FOR FILING ANNUAL REPORTS AND TO REQUIRE  
 26 NOTIFICATION TO THE COMMISSIONER OF CERTAIN EVENTS THAT MAY IMPACT  
 27 THE MORTGAGE COMPANY; TO AMEND REENACTED SECTION 81-18-25,  
 28 MISSISSIPPI CODE OF 1972, TO REQUIRE A LOCATION TO BE LICENSED AS  
 29 A MORTGAGE COMPANY INSTEAD OF A BRANCH IN CERTAIN INSTANCES; TO  
 30 AMEND REENACTED SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO  
 31 AUTHORIZE THE COMMISSIONER TO MAKE PUBLIC ANY FINAL ADMINISTRATIVE  
 32 ACTION IMPOSED AGAINST A LICENSEE OR EXEMPT REGISTRANT FOR  
 33 VIOLATIONS OF THE CHAPTER; TO AMEND REENACTED SECTIONS 81-18-7,  
 34 81-18-19, 81-18-27, 81-18-31 AND 81-18-33, MISSISSIPPI CODE OF  
 35 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND SECTION  
 36 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE  
 37 MORTGAGE CONSUMER PROTECTION LAW; AND FOR RELATED PURPOSES.

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

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

41 81-18-1. This chapter shall be known and cited as the  
 42 Mississippi Mortgage Consumer Protection Law.

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

45           81-18-3. For purposes of this chapter, the following terms  
46 shall have the following meanings:

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

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

55                   (i) If the location is used on any type of  
56 advertisement;

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

60                   (iii) If a Mississippi consumer is received at the  
61 location or is directed to deliver any information by any means to  
62 the location.

63           (c) "Commissioner" means the Commissioner of the  
64 Mississippi Department of Banking and Consumer Finance.

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

69           (e) "Control" means the direct or indirect possession  
70 of the power to direct or cause the direction of the management  
71 and policies of a person, whether through the ownership of voting  
72 securities, by contract or otherwise, and shall include  
73 "controlling," "controlled by," and "under common control with."

74           (f) "Department" means the Department of Banking and  
75 Consumer Finance of the State of Mississippi.

76           (g) "Executive officer" means the chief executive  
77 officer, the president, the principal financial officer, the

78 principal operating officer, each vice president with  
79 responsibility involving policy-making functions for a significant  
80 aspect of a person's business, the secretary, the treasurer, or  
81 any other person performing similar managerial or supervisory  
82 functions with respect to any organization whether incorporated or  
83 unincorporated.

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

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

88         (j) "Loan originator" means an individual who is an  
89 employee of a single mortgage company whose conduct of the  
90 mortgage business is the responsibility of the company, and whose  
91 job responsibilities include direct contact with borrowers during  
92 the loan origination process, which may include soliciting,  
93 negotiating, acquiring, arranging or making mortgage loans for  
94 others, obtaining personal or financial information, assisting  
95 with the preparation of loan applications or other documents,  
96 quoting loan rates or terms, or providing required disclosures.  
97 This individual must work for a licensed or registered company and  
98 work from the registered location with the department. The term  
99 does not include individuals whose job responsibilities on behalf  
100 of a company are solely clerical in nature, which is defined as  
101 normal office procedures, not including any duties listed in the  
102 definition of "loan originator," or sales representatives of a  
103 licensed Mississippi manufactured housing operation who transmits  
104 information concerning a sale via mail, courier service, or  
105 electronically to a licensed mortgage company or registered  
106 originator.

107         (k) "Make a mortgage loan" means to advance funds,  
108 offer to advance funds or make a commitment to advance funds to a  
109 borrower.

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

114           (m) "Mortgage company" means any person or entity who  
115 directly, indirectly or by electronic activity, solicits, places  
116 or negotiates mortgage loans for others, or offers to solicit,  
117 place or negotiate mortgage loans for others. Unless indicated  
118 otherwise, the use of the word "company" in this chapter means  
119 "mortgage company" as defined in this paragraph (m).

120           (n) "Mortgage loan" means a loan or agreement to extend  
121 credit made to a natural person, which loan is secured by a deed  
122 to secure debt, security deed, mortgage, security instrument, deed  
123 of trust or other document representing a security interest or  
124 loan upon any interest in a lot intended for residential purposes,  
125 or single- to four-family residential property located in  
126 Mississippi, regardless of where made, including the renewal or  
127 refinancing of any loan.

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

131           (p) "Principal" means a natural person who, directly or  
132 indirectly, owns or controls an ownership interest of twenty-five  
133 percent (25%) or more in a corporation or any other form of  
134 business organization, regardless of whether the natural person  
135 owns or controls the ownership interest through one or more  
136 natural persons or one or more proxies, powers of attorney,  
137 nominees, corporations, associations, limited liability companies,  
138 partnerships, trusts, joint-stock companies, other entities or  
139 devises, or any combination thereof.

140           (q) "Records" or "documents" means any item in hard  
141 copy or produced in a format of storage commonly described as  
142 electronic, imaged, magnetic, microphotographic or otherwise, and

143 any reproduction so made shall have the same force and effect as  
144 the original thereof and be admitted in evidence equally with the  
145 original.

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

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

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

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

159           (v) "Wholesale lender" means any person or entity who  
160 makes a mortgage loan, or purchases or services mortgage loans,  
161 utilizing the services of a person exempted, licensed or  
162 registered under this chapter.

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

165           81-18-5. The following persons are not subject to the  
166 provisions of this chapter, unless otherwise provided in this  
167 chapter:

168           (a) Any person authorized to engage in business as a  
169 bank holding company or as a financial holding company, or any  
170 wholly owned subsidiary thereof; however, the wholly owned  
171 subsidiary must file a notification statement that includes the  
172 following information:

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

175 (ii) The name and address of the parent financial  
176 institution;

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

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

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

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

187 The notification statement must be filed before beginning to  
188 conduct a mortgage business in this state and must be updated by  
189 the entity as the information changes. Any entity that fails to  
190 file the notification statement or keep the information current  
191 will be immediately subject to the licensing requirements of  
192 Section 81-18-9. This notification statement must be renewed  
193 annually as of September 30 of each year with a renewal fee of One  
194 Hundred Dollars (\$100.00).

195 (b) Any person authorized to engage in business as a  
196 bank, credit card bank, savings bank, savings institution, savings  
197 and loan association, building and loan association, trust company  
198 or credit union under the laws of the United States, any state or  
199 territory of the United States, or the District of Columbia, the  
200 deposits of which are federally insured, or any wholly owned  
201 subsidiary thereof.

202 (c) Any person who is a wholesale lender as defined in  
203 Section 81-18-3(v) or who is registered by \* \* \* the Federal  
204 National Mortgage Association, \* \* \* the Federal Home Loan  
205 Mortgage Corporation, the Government National Mortgage Association  
206 or the United States Department of Housing and Urban  
207 Development; \* \* \* however, \* \* \* persons who qualify for

208 registration under this paragraph shall be subject to Sections  
209 81-18-11, 81-18-13, 81-18-21, 81-18-23, 81-18-25, 81-18-27,  
210 81-18-31, 81-18-33, 81-18-35, 81-18-39 and 81-18-43. Upon the  
211 request of the commissioner, those persons shall submit copies of  
212 any reports as required by the aforementioned governmental entity  
213 to which the person is subject for licensing, supervision or  
214 auditing. The department shall have the authority to investigate  
215 all consumer complaints concerning Mississippi residential  
216 property. To qualify for registration, the applicant shall  
217 register for a registration certificate with the department and  
218 pay an initial fee of Three Hundred Dollars (\$300.00). With each  
219 application for renewal of the registration certificate, the  
220 applicant shall pay a renewal fee of One Hundred Fifty Dollars  
221 (\$150.00) and provide the department with evidence that the  
222 applicant is still licensed, supervised or audited by the  
223 governmental entity. If the renewal fee remains unpaid for thirty  
224 (30) days after August 31, the registration shall expire, but not  
225 before September 30 of any year for which the annual renewal fee  
226 has been paid. If any person engages in business without paying  
227 the fees provided for in this paragraph before commencing business  
228 or before the expiration of the person's current registration, as  
229 the case may be, then the person shall be liable for the full  
230 amount of the registration fee, plus a penalty in an amount not to  
231 exceed Twenty-five Dollars (\$25.00) for each day that the person  
232 has engaged in business without a registration certificate or  
233 after the expiration of a registration certificate. All  
234 registration fees and penalties shall be paid into the Consumer  
235 Finance Fund of the department. If the registered company has a  
236 physical branch location in Mississippi, then this location must  
237 be registered with the department as a branch in accordance with  
238 Sections 81-18-17 and 81-18-25.

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

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

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

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

253 (h) Any person who is employed by and representing a  
254 Mississippi manufactured housing operation and who makes a  
255 mortgage loan for an investment or on a whole loan basis; any  
256 person who engages in owner-financing; or any person engaged in  
257 the financing of a consumer loan secured by a mortgage on  
258 residential immovable property in not more than twelve (12)  
259 Mississippi residential mortgage loans, or who contracts for no  
260 more than twelve (12) Mississippi residential loan transactions,  
261 over the licensing period provided in this chapter, including  
262 those acting as originators. The twelve (12) transactions are  
263 cumulative to any combination of operations owned or controlled by  
264 any one individual, sole proprietorship, corporation, limited  
265 liability company, partnership, trust or any other group of  
266 individuals, however organized. However, within thirty (30) days  
267 of loan closure, the person shall submit to the commissioner a fee  
268 of Ten Dollars (\$10.00), which is not chargeable to the consumer,  
269 and written notification containing such loan information as  
270 required by the commissioner, seeking approval to engage in a  
271 residential mortgage transaction without first complying with the



272 licensing provisions of this chapter. Any person who enters into  
273 more than twelve (12) of those transactions in the licensing  
274 period provided in this chapter must be licensed according to the  
275 procedures prescribed in this chapter. The fees paid for  
276 registration during a licensing period will be deducted from the  
277 cost of an initial license.

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

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

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

295 (l) Nonprofit corporations exempt from federal taxation  
296 under Section 501(c) of the Internal Revenue Code making mortgage  
297 loans to promote home ownership or home improvements for the  
298 disadvantaged.

299 (m) Loan originators \* \* \* as defined under Section  
300 81-18-3(j) are exempt from the licensing requirements of this  
301 chapter except for Sections 81-18-9(3)(d), 81-18-13 and  
302 81-18-15(3), but shall register with the department as a loan  
303 originator. Any natural person required to register under this  
304 paragraph (m) shall register initially with the department and

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

319 **SECTION 4.** Section 81-18-7, Mississippi Code of 1972, is  
320 reenacted and amended as follows:

321 81-18-7. (1) On and after July 1, 2000, no person or  
322 natural person shall transact business in this state, directly or  
323 indirectly, as a mortgage company unless he or she is licensed or  
324 registered as a mortgage company by the department or is a person  
325 exempted from the licensing requirements under Section 81-18-5.

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

330 (3) On and after July 1, 2000, every person who directly or  
331 indirectly controls a person who violates this section, including  
332 a general partner, executive officer, joint venturer, contractor,  
333 or director of the person, violates this section to the same  
334 extent as the person, unless the person whose violation arises  
335 under this subsection shows by a preponderance of evidence the  
336 burden of proof that he or she did not know and, in the exercise  
337 of reasonable care, could not have known of the existence of the

338 facts by reason of which the original violation is alleged to  
339 exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

422                 (iv) All loan originators.

423           **SECTION 7.** Section 81-18-11, Mississippi Code of 1972, is  
424 reenacted 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. The amount of the surety  
451 bond for a mortgage lender shall be One Hundred Fifty Thousand  
452 Dollars (\$150,000.00).

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

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

463 81-18-13. (1) Upon receipt of an application for licensure  
464 or registration, which shall include the required set of  
465 fingerprints from any local law enforcement agency, the department  
466 shall conduct such an investigation as it deems necessary to  
467 determine that the applicant and its officers, directors and

468 principals are of good character and ethical reputation; that the  
469 applicant demonstrates reasonable financial responsibility; and  
470 that the applicant has reasonable policies and procedures to  
471 receive and process customer grievances and inquiries promptly and  
472 fairly.

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

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

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

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

530 (8) A person shall not be indemnified for any act covered by  
531 this chapter or for any fine or penalty incurred under this  
532 chapter as a result of any violation of this chapter or  
533 regulations adopted under this chapter, due to the legal form,



534 corporate structure, or choice of organization of the person,  
535 including, but not limited to, a 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 chapter  
548 without paying the license fee provided for in this subsection  
549 before commencing business or before the expiration of the  
550 person's current license, as the case may be, then the person  
551 shall be liable for the full amount of the license fee, plus a  
552 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)  
553 for each day that the person has engaged in such business without  
554 a license or after the expiration of a license. All licensing  
555 fees and penalties shall be paid into the Consumer Finance Fund of  
556 the department. If the application is withdrawn or denied, the  
557 application fee is not refundable.

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

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

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

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

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

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

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

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

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

630 September 30. The license renewal shall be on a form prescribed  
631 by the department with a nonrefundable renewal application fee of  
632 Twenty-five Dollars (\$25.00).

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

635 81-18-19. (1) Except as provided in this section, no person  
636 shall acquire directly or indirectly twenty-five percent (25%) or  
637 more of the voting shares of a corporation or twenty-five percent  
638 (25%) or more of the ownership of any other entity licensed to  
639 conduct business under this chapter unless it first files an  
640 application in accordance with the requirements prescribed in  
641 Section 81-18-9.

642 (2) Upon the filing and investigation of an application, the  
643 department shall permit the applicant to acquire the interest in  
644 the licensee if it is satisfied and finds that the applicant and  
645 its members, if applicable, its directors and officers, if a  
646 corporation, and any proposed new directors and officers have  
647 provided its surety bond and have the character, reputation and  
648 experience to warrant belief that the business will be operated  
649 fairly and in accordance with the law. If the application is  
650 denied, the department shall notify the applicant of the denial  
651 and the reasons for the denial.

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

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

658 (a) The acquisition of an interest in a licensee  
659 directly or indirectly including an acquisition by merger or  
660 consolidation by or with a person registered under this chapter or  
661 exempt from this chapter under Section 81-18-5.

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

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

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

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

676 81-18-21. (1) Any person required to be licensed under this  
677 chapter shall maintain in its offices, or such other location as  
678 the department shall permit, the books, accounts and records  
679 necessary for the department to determine whether or not the  
680 person is complying with the provisions of this chapter and the  
681 rules and regulations adopted by the department under this  
682 chapter. These books, accounts and records shall be maintained  
683 apart and separate from any other business in which the person is  
684 involved and may represent historical data for three (3) years  
685 preceding the date of the last license application date forward.  
686 The books, accounts and records shall be kept in a secure location  
687 under conditions that will not lead to their damage or  
688 destruction. If the mortgage company wishes to keep the files in  
689 a location other than the location listed on the license or  
690 registration certificate, then the company first must submit a  
691 written request on a form designated by the department and gain  
692 written approval from the commissioner before storing the files in  
693 a different location.

694           (2) To assure compliance with the provisions of this  
695 chapter, the department may examine the books and records of any  
696 licensee without notice during normal business hours. The  
697 commissioner shall charge the licensee an examination fee in an  
698 amount not less than Three Hundred Dollars (\$300.00) nor more than  
699 Six Hundred Dollars (\$600.00) for each office or location within  
700 the State of Mississippi, plus any actual expenses incurred while  
701 examining the licensee's records or books that are located outside  
702 the State of Mississippi. However, in no event shall a licensee  
703 be examined more than once in a two-year period unless for cause  
704 shown based upon consumer complaint and/or other exigent reasons  
705 as determined by the commissioner.

706           (3) The department, its designated officers and employees,  
707 or its duly authorized representatives, for the purposes of  
708 discovering violations of this chapter and for the purpose of  
709 determining whether any person or individual reasonably suspected  
710 by the commissioner of conducting business that requires a license  
711 or registration under this chapter, may investigate those persons  
712 and individuals and examine all relevant books, records and papers  
713 employed by those persons or individuals in the transaction of  
714 business, and may summon witnesses and examine them under oath  
715 concerning matters as to the business of those persons, or other  
716 such matters as may be relevant to the discovery of violations of  
717 this chapter including, without limitation, the conduct of  
718 business without a license or registration as required under this  
719 chapter.

720           (4) The department, in its discretion, may disclose  
721 information concerning any violation of this chapter or any rule,  
722 regulation, or order under this chapter, provided the information  
723 is derived from a final order of the department.

724           (5) Examinations and investigations conducted under this  
725 chapter and information obtained by the department, except as

726 provided in subsection (4) of this section, in the course of its  
727 duties under this chapter are confidential.

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

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

737 81-18-23. (1) Each company shall annually, on or before  
738 January 31, file a written report with the department containing  
739 the December 31 information that the department may reasonably  
740 require concerning the company's business and operations during  
741 the preceding calendar year. The report shall be made in the form  
742 prescribed by the department.

743 (2) Any company that fails to file with the department by  
744 January 31 the report required by this section shall be subject to  
745 a late penalty of Ten Dollars (\$10.00) for each day after January  
746 31 the report is delinquent, but in no event shall the aggregate  
747 of late penalties exceed Two Hundred Dollars (\$200.00).

748 (3) The department, in its discretion, may relieve any  
749 company from the payment of any penalty, in whole or in part, for  
750 good cause.

751 (4) If a company fails to pay a penalty from which it has  
752 not been relieved, the department may maintain an action at law to  
753 recover the penalty.

754 (5) Within fifteen (15) days of the occurrence of any of the  
755 following events, a company shall file a written report with the  
756 commissioner describing the event and its expected impact on the  
757 activities of the company in this state:

758           (a) The filing for bankruptcy or reorganization by the  
759 company;

760           (b) The institution of revocation or suspension  
761 proceedings against the company by any state or governmental  
762 authority;

763           (c) Any felony indictment of the company or any of its  
764 directors, executive officers, principals or loan originators; or

765           (d) Any felony conviction of the company or any of its  
766 directors, executive officers, principals or loan originators.

767           (6) If the owner or principal of a company is involved in a  
768 civil action concerning the company, then he shall notify the  
769 commissioner in writing within sixty (60) days after the initial  
770 filing of the civil action.

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

773           81-18-25. (1) Each principal place of business and branch  
774 office in the state shall meet all of the following requirements:

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

779           (b) Consist of at least one (1) secure enclosed room or  
780 secure building of stationary construction in which negotiations  
781 of mortgage loan transactions may be conducted in privacy.  
782 Stationary construction does not include the use of portable  
783 buildings.

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



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

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

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

799 (a) It is a separate entity operating as an independent  
800 business or mortgage operation which is not under the direct  
801 control, management supervision and responsibility of the  
802 licensee;

803 (b) The licensee or registered company is not the  
804 lessee or owner of the branch and the branch is not under the  
805 direct and daily ownership, control, management and supervision of  
806 the licensee or registered company;

807 (c) All assets and liabilities of the branch are not  
808 assets and liabilities of the licensee, and all income and  
809 expenses of the branch are income and expenses of the licensee and  
810 properly accounted for in the financial records and tax returns of  
811 the licensee; or

812 (d) All practices, policies and procedures, including,  
813 but not limited to, those relating to employment and operations,  
814 are not originated and established by the licensee or registered  
815 company and are not applied consistently to the main office and  
816 all branches.

817 Nothing in this subsection (4) shall affect or change, or be  
818 construed as affecting or changing, the existing statutory law and  
819 common law on agency, principal and agent, independent  
820 contractors, and parent and subsidiary companies.

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

823           81-18-27. (1) No person required to be licensed or  
824 registered under this chapter shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

868                   (v) That the person does business under a trade  
869 name that misrepresents or tends to misrepresent that the person  
870 is a bank, trust company, savings bank, savings and loan  
871 association, credit union, or insurance company.

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

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

886                   (ii) Any indirect payment to a licensed mortgage  
887 company by a lender if those fees are not required to be disclosed

888 under the Real Estate Settlement Procedures Act (RESPA);

889 (iii) Any indirect payment or compensation by a  
890 lender to a licensed mortgage company required to be disclosed by  
891 the licensed mortgage company under RESPA, provided that the  
892 payment or compensation is disclosed to the borrower by the  
893 licensed mortgage company on a good faith estimate of costs, is  
894 included in the APR if required under Regulation Z of TILA, and is  
895 made pursuant to a written agreement between the licensed mortgage  
896 company and the borrower as may be required by Section 81-18-33;  
897 or

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

902 (k) Pay to any person not licensed or registered 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 (1) 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 or registered under  
913 this chapter or to a person exempt from licensure under the  
914 provisions of this 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 chapter may not be false, misleading or deceptive. No person  
927 whose activities are regulated under this chapter may advertise in  
928 any 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 licensee 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 Registered Mortgage  
954 Company."

955 **SECTION 18.** Section 81-18-33, Mississippi Code of 1972, is  
956 reenacted and amended 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 following statements:

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

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

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

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

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

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

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

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

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

984 and

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

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

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

994                   (a) Name of applicant;

995                   (b) Date of application; and

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

999           **SECTION 20.** Section 81-18-36, Mississippi Code of 1972, is  
1000 reenacted as follows:

1001           81-18-36. (1) (a) All monies paid to a mortgage company  
1002 for payment of taxes, loan commitment deposits, work completion  
1003 deposits, appraisals, credit reports or insurance premiums on  
1004 property that secures any loan made or serviced by the mortgage  
1005 company shall be deposited in an account that is insured by the  
1006 Federal Deposit Insurance Corporation or the National Credit Union  
1007 Administration and shall be kept separate, distinct, and apart  
1008 from funds belonging to the mortgage company.

1009                   (b) The funds, when deposited, are to be designated as  
1010 an "escrow account," or under some other appropriate name,  
1011 indicating that the funds are not the funds of the mortgage  
1012 company.

1013           (2) The mortgage company shall, upon reasonable notice,  
1014 account to any debtor whose property secures a loan made by the  
1015 mortgage company for any funds which that person has paid to the  
1016 mortgage company for the payment of taxes or insurance premiums on  
1017 the property in question.

1018 (3) The mortgage company shall, upon reasonable notice,  
1019 account to the commissioner for all funds in the company's escrow  
1020 account.

1021 (4) Escrow accounts are not subject to execution or  
1022 attachment on any claim against the mortgage company.

1023 (5) It is unlawful for any mortgage company knowingly to  
1024 keep or cause to be kept any funds or money in any bank or other  
1025 financial institution under the heading of "escrow account" or any  
1026 other name designating the funds or monies belonging to the  
1027 debtors of the mortgage company, except actual funds paid to the  
1028 mortgage company for the payment of taxes and insurance premiums  
1029 on property securing loans made or serviced by the company.

1030 **SECTION 21.** Section 81-18-37, Mississippi Code of 1972, is  
1031 reenacted as follows:

1032 81-18-37. (1) The department may suspend or revoke any  
1033 license or registration for any reason that would have been  
1034 grounds for refusal to issue an original license or registration  
1035 or for:

1036 (a) A violation of any provision of this chapter or any  
1037 rule or regulation adopted under this chapter;

1038 (b) Failure of the licensee or registrant to pay,  
1039 within thirty (30) days after it becomes final and nonappealable,  
1040 a judgment recovered in any court within this state by a claimant  
1041 or creditor in an action arising out of the licensee's or  
1042 registrant's business in this state as a mortgage company.

1043 (2) Notice of the department's intention to enter an order  
1044 denying an application for a license or registration under this  
1045 chapter or of an order suspending or revoking a license or  
1046 registration under this chapter shall be given to the applicant,  
1047 licensee or registrant in writing, sent by registered or certified  
1048 mail addressed to the principal place of business of the  
1049 applicant, licensee or registrant. Within thirty (30) days of the  
1050 date of the notice of intention to enter an order of denial,



1051 suspension or revocation under this chapter, the applicant,  
1052 licensee or registrant may request in writing a hearing to contest  
1053 the order. If a hearing is not requested in writing within thirty  
1054 (30) days of the date of the notice of intention, the department  
1055 shall enter a final order regarding the denial, suspension or  
1056 revocation. Any final order of the department denying, suspending  
1057 or revoking a license or registration shall state the grounds upon  
1058 which it is based and shall be effective on the date of issuance.  
1059 A copy of the final order shall be forwarded promptly by  
1060 registered or certified mail addressed to the principal place of  
1061 business of the applicant, licensee or registrant.

1062 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is  
1063 reenacted as follows:

1064 81-18-39. (1) For purposes of this section, the term  
1065 "person" shall be construed to include any officer, director,  
1066 employee, affiliate or other person participating in the conduct  
1067 of the affairs of the person subject to the orders issued under  
1068 this section.

1069 (2) If the department reasonably determines that a person  
1070 required to be licensed or registered under this chapter has  
1071 violated any law of this state or any order or regulation of the  
1072 department, the department may issue a written order requiring the  
1073 person to cease and desist from unlawful or unauthorized  
1074 practices. In the case of an unlawful purchase of mortgage loans,  
1075 the cease and desist order to a purchaser shall constitute the  
1076 knowledge required under this section for any subsequent  
1077 violations.

1078 (3) Any person required to be licensed or registered under  
1079 this chapter who has been deemed by the commissioner, after notice  
1080 and hearing, to have violated the terms of any order properly  
1081 issued by the department under this section shall be liable for a  
1082 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).  
1083 The department, in determining the amount of the penalty, shall

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

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

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

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

1113       81-18-43. (1) In addition to any other penalty that may be  
1114 applicable, any licensee, individual required to be registered, or  
1115 employee who willfully violates any provision of this chapter, or  
1116 who willfully makes a false entry in any document specifically

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

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

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

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

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

1143 (4) When the commissioner has reasonable cause to believe  
1144 that a person is violating any provision of this chapter, the  
1145 commissioner, in addition to and without prejudice to the  
1146 authority provided elsewhere in this chapter, may enter an order  
1147 requiring the person to stop or to refrain from the violation.  
1148 The commissioner may sue in any chancery court of the state having  
1149 jurisdiction and venue to enjoin the person from engaging in or

1150 continuing the violation or from doing any act in furtherance of  
1151 the violation. In such an action, the court may enter an order or  
1152 judgment awarding a preliminary or permanent injunction.

1153 (5) The commissioner may, after notice and hearing, impose a  
1154 civil penalty against any licensee if the licensee, individual  
1155 required to be registered, or employee is adjudged by the  
1156 commissioner to be in violation of the provisions of this chapter.  
1157 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
1158 per violation and shall be deposited into the Consumer Finance  
1159 Fund of the department.

1160 (6) The commissioner may make public any final  
1161 administrative action imposed against a licensee or registrant for  
1162 a violation of this chapter, including cease and desist orders,  
1163 civil monetary penalties, license suspensions, revocations or  
1164 application denials.

1165 (7) The state may enforce its rights under the surety bond  
1166 as required in Section 81-18-11 as an available remedy for the  
1167 collection of any civil penalties, criminal fines or costs of  
1168 investigation and/or prosecution incurred.

1169 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is  
1170 reenacted as follows:

1171 81-18-45. The commissioner may employ the necessary  
1172 full-time employees above the number of permanent full-time  
1173 employees authorized for the department for the fiscal year 2001,  
1174 to carry out and enforce the provisions of this chapter. The  
1175 commissioner also may expend the necessary funds and equip and  
1176 provide necessary travel expenses for those employees.

1177 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is  
1178 reenacted as follows:

1179 81-18-47. (1) A licensee under this chapter shall have no  
1180 liability for any act or practice done or omitted in conformity  
1181 with (a) any rule or regulation of the commissioner, or (b) any  
1182 rule, regulation, interpretation or approval of any other state or

1183 federal agency or any opinion of the Attorney General,  
1184 notwithstanding that after such act or omission has occurred the  
1185 rule, regulation, interpretation, approval or opinion is amended,  
1186 rescinded, or determined by judicial or other authority to be  
1187 invalid for any reason.

1188 (2) A licensee under this chapter, acting in conformity with  
1189 a written interpretation or approval by an official or employee of  
1190 any state or federal agency or department, shall be presumed to  
1191 have acted in accordance with applicable law, notwithstanding that  
1192 after such act has occurred, the interpretation or approval is  
1193 amended, rescinded, or determined by judicial or other authority  
1194 to be incorrect or invalid for any reason.

1195 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is  
1196 reenacted as follows:

1197 81-18-49. Notwithstanding any provisions of this chapter to  
1198 the contrary, mortgage companies engaging in business on or before  
1199 June 1, 2000, shall be duly licensed by the department after  
1200 submitting not later than January 1, 2001, the required documents  
1201 and fees provided in Sections 81-18-9 and 81-18-15. However, upon  
1202 the expiration of the initial licenses for such mortgage  
1203 companies, the department shall renew the licenses only if the  
1204 mortgage companies satisfy all of the provisions of this chapter.

1205 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is  
1206 amended as follows:

1207 81-18-51. Sections 81-18-1 through 81-18-49 shall stand  
1208 repealed on July 1, 2007.

1209 **SECTION 29.** This act shall take effect and be in force from  
1210 and after its passage.