

By: Representative Guice

To: Banking and Financial  
Services

## HOUSE BILL NO. 681

1 AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-49,  
2 MISSISSIPPI CODE OF 1972, KNOWN AS THE MISSISSIPPI MORTGAGE  
3 CONSUMER PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-3,  
4 MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND  
5 REENACTED SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO DELETE THE  
6 EXEMPTION FOR ANY PERSON WHO IS A WHOLESALE LENDER OR WHO IS  
7 REGISTERED BY CERTAIN FEDERAL AGENCIES; TO AMEND REENACTED SECTION  
8 81-18-7, MISSISSIPPI CODE OF 1972, TO DELETE THE REFERENCES TO  
9 "NATURAL PERSON" AND TO "REGISTRATION"; TO AMEND REENACTED SECTION  
10 81-18-9, MISSISSIPPI CODE OF 1972, TO REVISE THE APPLICATION  
11 REQUIREMENTS FOR LICENSE; TO AMEND REENACTED SECTION 81-18-11,  
12 MISSISSIPPI CODE OF 1972, TO DELETE THE CLASSIFICATION OF  
13 "CORRESPONDENT LENDER" IN REGARD TO THE MINIMUM AMOUNT OF SURETY  
14 BOND; TO AMEND REENACTED SECTION 81-18-13, MISSISSIPPI CODE OF  
15 1972, TO AUTHORIZE A DESIGNATED THIRD PARTY TO CONDUCT BACKGROUND  
16 INVESTIGATIONS OF APPLICANTS AND TO REVISE THE LICENSING CRITERIA  
17 WITH REGARD TO PRIOR CRIMINAL CONVICTIONS; TO AMEND REENACTED  
18 SECTION 81-18-15, MISSISSIPPI CODE OF 1972, TO CHANGE THE ANNUAL  
19 RENEWAL DATE AND TO REVISE THE CONTINUING EDUCATION REQUIREMENT;  
20 TO AMEND REENACTED SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO  
21 REQUIRE THE ORIGINAL LICENSE TO BE POSTED IN EACH PLACE OF  
22 BUSINESS AND TO REQUIRE THE FILING OF A LOAN ORIGINATOR  
23 APPLICATION; TO AMEND REENACTED SECTION 81-18-21, MISSISSIPPI CODE  
24 OF 1972, TO REQUIRE APPROVAL BEFORE A LICENSEE MAY STORE FILES AT  
25 AN OFF-SITE SECURE LOCATION; TO AMEND REENACTED SECTION 81-18-23,  
26 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND REENACTED  
27 SECTION 81-18-25, MISSISSIPPI CODE OF 1972, TO REVISE REQUIREMENTS  
28 FOR OFFICES WHERE THERE IS NO ZONING IN THE REQUESTED LOCATION; TO  
29 AMEND REENACTED SECTION 81-18-27, MISSISSIPPI CODE OF 1972, TO  
30 REVISE THE PROHIBITED ACTS OF MORTGAGE COMPANIES; TO AMEND  
31 REENACTED SECTION 81-18-28, MISSISSIPPI CODE OF 1972, IN  
32 CONFORMITY; TO AMEND REENACTED SECTION 81-18-29, MISSISSIPPI CODE  
33 OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING TO ESTABLISH BY  
34 RULE SUCH REQUIREMENTS AS ARE NECESSARY FOR THE STATE TO  
35 PARTICIPATE IN A MULTISTATE AUTOMATED LICENSING SYSTEM; TO AMEND  
36 REENACTED SECTION 81-18-31, MISSISSIPPI CODE OF 1972, TO REQUIRE  
37 INDIVIDUAL BORROWER FILES TO CONTAIN A FINAL SIGNED UNIFORM  
38 RESIDENTIAL LOAN APPLICATION; TO AMEND REENACTED SECTION 81-18-33,  
39 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED CONTENTS OF  
40 INDIVIDUAL BORROWER FILES OF A LICENSEE; TO AMEND REENACTED  
41 SECTION 81-18-35, MISSISSIPPI CODE OF 1972, TO REQUIRE THE NAME OF  
42 CO-APPLICANT IN THE JOURNAL OF MORTGAGE TRANSACTIONS; TO AMEND  
43 REENACTED SECTIONS 81-18-36 AND 81-18-37, MISSISSIPPI CODE OF  
44 1972, IN CONFORMITY; TO AMEND SECTION 81-18-41, MISSISSIPPI CODE  
45 OF 1972, TO PROVIDE THAT A SUSPENDED LICENSEE MAY CONTINUE  
46 SERVICING CONTRACTS ONLY FOR A REASONABLE TRANSITION PERIOD AS  
47 DETERMINED BY THE COMMISSIONER; TO AMEND SECTION 81-18-43,  
48 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION  
49 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER; TO  
50 CREATE A NEW SECTION TO CREATE THE CRIMINAL OFFENSE OF RESIDENTIAL  
51 MORTGAGE FRAUD AND PRESCRIBE THE PENALTIES THEREFOR; AND FOR  
52 RELATED PURPOSES.

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

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

56 81-18-1. This chapter shall be known and cited as the  
57 Mississippi Mortgage Consumer Protection Law.

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

60 81-18-3. For purposes of this chapter, the following terms  
61 shall have the following meanings:

62 (a) "Application" means the submission of a borrower's  
63 financial information in anticipation of a credit decision,  
64 whether written or computer-generated. If the submission does not  
65 state or identify a specific property, the submission is an  
66 application for a prequalification and not an application for a  
67 federally related mortgage loan. The later addition of an  
68 identified property to the submission converts the submission to  
69 an application for a federally related mortgage loan.

70 (b) "Borrower" means a person who submits an  
71 application for a loan secured by a first or subordinate mortgage  
72 or deed of trust on a single- to four-family home to be occupied  
73 by a \* \* \* person.

74 (c) "Branch" means a location of a company in or  
75 outside of the state that conducts business as a mortgage broker  
76 or mortgage lender. A location shall be considered a branch in  
77 any of the following:

78 (i) If the location is used on any type of  
79 advertisement;

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

83 (iii) If a \* \* \* consumer is received at the  
84 location or is directed to deliver any information by any means to  
85 the location in regards to Mississippi residential property.

86           (d) "Commissioner" means the Commissioner of the  
87 Mississippi Department of Banking and Consumer Finance.

88           (e) "Commitment" means a statement by a lender required  
89 to be licensed \* \* \* under this chapter that sets forth the terms  
90 and conditions upon which the lender is willing to make a  
91 particular mortgage loan to a particular borrower.

92           (f) "Company" means a licensed mortgage broker or  
93 mortgage lender under this chapter.

94           (g) "Control" means the direct or indirect possession  
95 of the power to direct or cause the direction of the management  
96 and policies of a person, whether through the ownership of voting  
97 securities, by contract or otherwise, and shall include  
98 "controlling," "controlled by," and "under common control with."

99           (h) "Department" means the Department of Banking and  
100 Consumer Finance of the State of Mississippi.

101           (i) "Executive officer" means the chief executive  
102 officer, the president, the principal financial officer, the  
103 principal operating officer, each vice president with  
104 responsibility involving policy-making functions for a significant  
105 aspect of a person's business, the secretary, the treasurer, or  
106 any other person performing similar managerial or supervisory  
107 functions with respect to any organization whether incorporated or  
108 unincorporated.

109           (j) "License" means a license to act as a mortgage  
110 broker or mortgage lender issued by the department under this  
111 chapter.

112           (k) "Licensee" means a person \* \* \* who is required to  
113 be licensed as a mortgage broker or mortgage lender under this  
114 chapter.

115           (l) "Loan originator" means an individual who is an  
116 employee of a \* \* \* mortgage broker or mortgage lender working  
117 from one (1) licensed location, whose conduct of the mortgage  
118 business is the responsibility of the company, and whose job

119 responsibilities include direct contact with borrowers during the  
120 loan origination process, which may include soliciting,  
121 negotiating, acquiring, arranging or making mortgage loans for  
122 others, obtaining personal or financial information, assisting  
123 with the preparation of loan applications or other documents,  
124 quoting loan rates or terms, or providing required disclosures.  
125 This individual must work for a licensed \* \* \* company and work  
126 from the licensed location with the department. However, an owner  
127 of a minimum of ten percent (10%) of a licensed company or the  
128 named principal officer on file with the department, which are  
129 registered loan originators with the department, may work from any  
130 licensed location of the licensed company on a temporary basis, in  
131 the capacity of a loan originator as described in this chapter.  
132 The term does not include individuals whose job responsibilities  
133 on behalf of a company are solely clerical in nature, which is  
134 defined as normal office procedures, not including any duties  
135 listed in the definition of "loan originator," or sales  
136 representatives of a licensed Mississippi manufactured housing  
137 operation who transmits information concerning a sale via mail,  
138 courier service, or electronically to a licensee or registered  
139 originator.

140 (m) "Loan processor" means an employee of a licensed  
141 mortgage broker or mortgage lender or employee of a company who is  
142 exempt from licensure under this chapter and who performs under  
143 the direction of the company certain clerical duties that include,  
144 but are not limited to, ordering verifications of employment,  
145 ordering verifications of deposits, requesting mortgage payoffs,  
146 requesting other loan verifications, ordering appraisals and  
147 ordering inspections or engineering reports. These duties do not  
148 include any duties listed in the definition of the term "loan  
149 originator."

150 (n) "Lock-in agreement" means a written agreement  
151 stating the terms of the lock-in fee.

152           (o) "Lock-in fee" means a fee collected by a licensee  
153 to be paid to a lender to guarantee an interest rate or a certain  
154 number of points on a mortgage loan from the lender.

155           (p) "Make a mortgage loan" means to advance funds,  
156 offer to advance funds or make a commitment to advance funds to a  
157 borrower.

158           (q) "Misrepresent" means to make a false statement of a  
159 substantive fact or to engage in, with intent to deceive or  
160 mislead, any conduct that leads to a false belief that is material  
161 to the transaction.

162       \* \* \*

163           (r) "Mortgage broker" means any person who directly or  
164 indirectly or by electronic activity solicits, places or  
165 negotiates mortgage loans for others, or offers to solicit, place  
166 or negotiate mortgage loans for others that does not close  
167 mortgage loans in the company name, does not use its own funds, or  
168 who closes mortgage loans in the name of the company, and sells,  
169 assigns or transfers the loan to others within forty-eight (48)  
170 hours of the closing.

171           (s) "Mortgage lender" means any person who directly or  
172 indirectly or by electronic activity originates, makes, funds or  
173 purchases or offers to originate, make, or fund or purchase a  
174 residential mortgage loan or who services mortgage loans.

175           (t) "Mortgage lending process" means the process  
176 through which a person seeks or obtains a mortgage loan,  
177 including, but not limited to, solicitation, application,  
178 origination, negotiation of terms, third-party provider services,  
179 underwriting, signing and closing, and funding of the loan.  
180 Documents involved in the mortgage lending process include, but  
181 are not limited to, uniform residential loan applications or other  
182 loan applications, appraisal reports, HUD-1 settlement statements,  
183 supporting personal documentation for loan applications such as  
184 W-2 forms, verifications of income and employment, bank

185 statements, tax returns, payroll stubs and any required  
186 disclosures.

187 (u) "Mortgage loan" means a loan or agreement to extend  
188 credit made to a \* \* \* person, which loan is secured by a deed to  
189 secure debt, security deed, mortgage, security instrument, deed of  
190 trust or other document representing a security interest or loan  
191 upon any interest in a lot intended for residential purposes, or  
192 single- to four-family residential property located in  
193 Mississippi, regardless of where made, including the renewal or  
194 refinancing of any loan.

195 (v) "Multistate licensing system" means a system  
196 involving one or more states, the District of Columbia or the  
197 Commonwealth of Puerto Rico established to facilitate the sharing  
198 of regulatory information and the licensing and application  
199 processes, by electronic or other means, for mortgage brokers,  
200 mortgage lenders and mortgage loan originators.

201 (w) "Person" means any individual, sole proprietorship,  
202 corporation, limited liability company, partnership, trust or any  
203 other group of individuals, however organized.

204 (x) "Principal" means a \* \* \* person who, directly or  
205 indirectly, owns or controls an ownership interest of ten percent  
206 (10%) or more in a corporation or any other form of business  
207 organization, regardless of whether the \* \* \* person owns or  
208 controls the ownership interest through one or more \* \* \* persons  
209 or one or more proxies, powers of attorney, nominees,  
210 corporations, associations, limited liability companies,  
211 partnerships, trusts, joint-stock companies, other entities or  
212 devises, or any combination thereof.

213 (y) "Principal officer" means an owner or employee of a  
214 mortgage broker or mortgage lender who submits documentation of  
215 two (2) years' experience directly related to mortgage lending,  
216 who registers as a loan originator as defined in this chapter, and

217 who resides within one hundred twenty-five (125) miles of the  
218 licensed main office of the company.

219 (z) "Records" or "documents" means any item in hard  
220 copy or produced in a format of storage commonly described as  
221 electronic, imaged, magnetic, microphotographic or otherwise, and  
222 any reproduction so made shall have the same force and effect as  
223 the original thereof and be admitted in evidence equally with the  
224 original.

225 (aa) "Registrant" means any person required to register  
226 under Section 81-18-5(1).

227 (bb) "Residential immovable property" means property  
228 such as, but not limited to, vinyl siding, roofs, pools, spas,  
229 appliances, windows, home additions, landscaping, fencing, etc.

230 (cc) "Residential property" means improved real  
231 property or lot used or occupied, or intended to be used or  
232 occupied, as a residence by a \* \* \* person.

233 (dd) "Service a mortgage loan" means the collection or  
234 remittance for another, \* \* \* the right to collect or remit for  
235 another, or the collection of the company's own loan portfolio,  
236 whether or not the company originated, funded or purchased the  
237 loan in the secondary market, of payments of principal interest,  
238 trust items such as insurance and taxes, and any other payments  
239 pursuant to a mortgage loan.

240 \* \* \*

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

243 81-18-5. The following persons are not subject to the  
244 provisions of this chapter, unless otherwise provided in this  
245 chapter:

246 (a) Any person authorized to engage in business as a  
247 bank holding company or as a financial holding company, or any  
248 wholly owned subsidiary thereof; however, the wholly owned

249 subsidiary must file a notification statement that includes the  
250 following information:

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

253 (ii) The name and address of the parent financial  
254 institution;

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

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

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

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

265 The notification statement must be filed before beginning to  
266 conduct a mortgage business in this state and must be updated by  
267 the entity as the information changes. Any entity that fails to  
268 file the notification statement or keep the information current  
269 will be immediately subject to the licensing requirements of  
270 Section 81-18-9. This notification statement must be renewed  
271 annually as of September 30 of each year with a renewal fee of One  
272 Hundred Dollars (\$100.00).

273 (b) Any person authorized to engage in business as a  
274 bank, credit card bank, savings bank, savings institution, savings  
275 and loan association, building and loan association, trust company  
276 or credit union under the laws of the United States, any state or  
277 territory of the United States, or the District of Columbia, the  
278 deposits of which are federally insured, or any wholly owned  
279 subsidiary thereof.

280 \* \* \*



281           (c) Any lender holding a license under the Small Loan  
282 Regulatory Law (Section 75-67-101 et seq.) and the Small Loan  
283 Privilege Tax Law (Section 75-67-201 et seq.).

284           (d) Any attorney licensed to practice law in  
285 Mississippi who provides mortgage loan services incidental to the  
286 practice of law and who is not a principal of a \* \* \* company as  
287 defined under this chapter.

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

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

295           (g) Any person who is employed by and representing a  
296 Mississippi manufactured housing operation and who makes a  
297 mortgage loan for an investment or on a whole loan basis; any  
298 person who engages in owner-financing; or any person engaged in  
299 the financing of a consumer loan secured by a mortgage on  
300 residential immovable property in not more than twelve (12)  
301 Mississippi residential mortgage loans, or who contracts for no  
302 more than twelve (12) Mississippi residential loan transactions,  
303 over the licensing period provided in this chapter, including  
304 those acting as originators. The twelve (12) transactions are  
305 cumulative to any combination of operations owned or controlled by  
306 any one individual, sole proprietorship, corporation, limited  
307 liability company, partnership, trust or any other group of  
308 individuals, however organized. However, within thirty (30) days  
309 of loan closure, the person shall submit to the commissioner a fee  
310 of Ten Dollars (\$10.00), which is not chargeable to the consumer,  
311 and written notification containing such loan information as  
312 required by the commissioner, seeking approval to engage in a  
313 residential mortgage transaction without first complying with the

314 licensing provisions of this chapter. Any person who enters into  
315 more than twelve (12) of those transactions in the licensing  
316 period provided in this chapter must be licensed according to the  
317 procedures prescribed in this chapter. The fees paid for  
318 registration during a licensing period will be deducted from the  
319 cost of an initial license.

320         (h) Any \* \* \* person who purchases mortgage loans from  
321 a licensed mortgage broker or mortgage lender solely as an  
322 investment and who is not in the business of making or servicing  
323 mortgage loans.

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

326         (j) The United States of America, the State of  
327 Mississippi or any other state, and any agency, division or  
328 corporate instrumentality thereof including, but not limited to,  
329 the Mississippi Home Corporation, Rural Economic Community  
330 Development (RECD), Habitat for Humanity, the Federal National  
331 Mortgage Association (FNMA), the Federal Home Loan Mortgage  
332 Company (FHLMC), the Government National Mortgage Association  
333 (GNMA), the United States Department of Housing and Urban  
334 Development (HUD), the Federal Housing Administration (FHA), the  
335 Department of Veterans Affairs (VA), the Farmers Home  
336 Administration (FmHA), and the Federal Land Banks and Production  
337 Credit Associations.

338         (k) Nonprofit corporations exempt from federal taxation  
339 under Section 501(c) of the Internal Revenue Code making mortgage  
340 loans to promote home ownership or home improvements for the  
341 disadvantaged.

342         (l) Loan originators as defined under Section  
343 81-18-3(j) are exempt from the licensing requirements of this  
344 chapter except for Sections 81-18-9(3)(d), 81-18-13, 81-18-15(3),  
345 81-18-17, 81-18-37 and 81-18-43, but shall register with the  
346 department as a loan originator. Any \* \* \* person required to

347 register under this paragraph \* \* \* shall register initially with  
348 the department and thereafter file an application for renewal of  
349 registration with the department on or before December 31 of each  
350 year providing the department with such information as the  
351 department may prescribe by regulation, including, but not limited  
352 to, the business address where the person engages in any business  
353 activities covered by this chapter, proof of at least one (1) year  
354 of experience directly in mortgage lending within the two (2)  
355 years before to the date of application, the residential address  
356 of the applicant and a telephone number that customers may use to  
357 contact the person. If the person does not meet the experience  
358 requirement, then he or she may complete twenty-four (24) hours of  
359 education as approved by the Mississippi Association of Mortgage  
360 Brokers, the National Association of Mortgage Brokers, the  
361 Mortgage Bankers Association or the Mortgage Bankers Association  
362 of Mississippi for the experience waiver. If the experience did  
363 not occur within the State of Mississippi, then the department  
364 shall require the person to complete an education course of a  
365 minimum of two (2) hours covering the Mississippi Mortgage  
366 Consumer Protection Law. This initial registration of a loan  
367 originator shall be accompanied by a fee of One Hundred Dollars  
368 (\$100.00). Annual renewals of this registration shall require a  
369 fee of Fifty Dollars (\$50.00). No person required to register  
370 under this paragraph \* \* \* shall transact business in this state  
371 directly or indirectly as a loan originator unless that person is  
372 registered with the department. The loan originator shall display  
373 the current, original registration issued by the department in the  
374 licensed office in which he or she is assigned.

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

377 81-18-7. (1) On and after July 1, 2000, no person \* \* \*  
378 shall transact business in this state, directly or indirectly, as  
379 a mortgage broker or mortgage lender unless he or she is

380 licensed \* \* \* by the department or is a person exempted from the  
381 licensing requirements under Section 81-18-5.

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

386 (3) On and after July 1, 2000, every person who directly or  
387 indirectly controls a person who violates this section, including  
388 a general partner, executive officer, joint venturer, contractor,  
389 or director of the person, violates this section to the same  
390 extent as the person, unless the person whose violation arises  
391 under this subsection shows by a preponderance of evidence the  
392 burden of proof that he or she did not know and, in the exercise  
393 of reasonable care, could not have known of the existence of the  
394 facts by reason of which the original violation is alleged to  
395 exist.

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

398 81-18-8. Municipalities and counties in this state may enact  
399 ordinances that are in compliance with, but not more restrictive  
400 than, the provisions of this chapter. Any order, ordinance or  
401 regulation existing on July 1, 2002, or enacted on or after July  
402 1, 2002, that conflicts with this provision shall be null and  
403 void.

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

406 81-18-9. (1) An application for a license under this  
407 chapter shall be made in writing and in the form as the department  
408 may prescribe.

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

410 (a) The legal name, residence, and business address of  
411 the applicant and, if applicable the legal name, residence and

412 business address of every principal, together with the resume of  
413 the applicant and of every principal of the applicant.

414 (b) The legal name of the mortgage broker or mortgage  
415 lender in addition to the name under which the applicant will  
416 conduct business in the state, neither of which may be already  
417 assigned to a licensed mortgage broker or mortgage lender.

418 (c) The complete address of the applicant's main  
419 office, branch office(s) and any other locations at which the  
420 applicant will engage in any business activity covered by this  
421 chapter.

422 (d) A copy of the certificate of incorporation, if a  
423 Mississippi corporation.

424 (e) Documentation satisfactory to the department as to  
425 a certificate of existence of authority to transact business  
426 lawfully in Mississippi, if an individual, sole proprietorship,  
427 limited liability company, partnership, trust or any other group  
428 of individuals, however organized.

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

432 (g) Documentation of a minimum of two (2) years'  
433 experience directly in mortgage lending by a person named as the  
434 principal officer of the company. This experience shall have been  
435 within the previous four (4) years from the date of application.  
436 If the proof of experience is with a company that is located  
437 outside of Mississippi, then the principal officer shall be  
438 required to complete two (2) hours of approved courses on the  
439 Mississippi Mortgage Consumer Protection Law. The principal  
440 officer shall also register as a loan originator with the  
441 department. Evidence shall include, where applicable:

442 (i) Copies of business licenses issued by  
443 governmental agencies.

444 (ii) Written letters of employment history of the  
445 person filing the application for at least two (2) years before  
446 the date of the filing of an application including, but not  
447 limited to, job descriptions, length of employment, names,  
448 addresses and phone numbers for past employers.

449 (iii) A listing of wholesale lenders with whom the  
450 applicant has done business with in the past two (2) years either  
451 directly as a mortgage broker or mortgage lender or indirectly as  
452 an employee of a mortgage broker or mortgage lender.

453 (iv) Any other data and pertinent information as  
454 the department may require with respect to the applicant, its  
455 directors, principals, trustees, officers, members, contractors or  
456 agents. A resume alone shall not be sufficient proof of  
457 employment history.

458 \* \* \*

459 (3) The application shall be filed together with the  
460 following:

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

462 (b) A completed \* \* \* form signed by an owner, chief  
463 executive officer or named principal officer authorizing the  
464 department to obtain information from outside sources for each  
465 person, executive officer and employee;

466 (c) An original or certified copy of a surety bond in  
467 favor of the State of Mississippi for the use, benefit, and  
468 indemnity of any person who suffers any damage or loss as a result  
469 of the \* \* \* company's breach of contract or of any obligation  
470 arising therefrom or any violation of law; and

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

474 (i) All persons operating as a sole proprietorship  
475 that plan to conduct a mortgage brokering or lending business in  
476 the State of Mississippi;

477 (ii) Partners in a partnership or principal owners  
478 of a limited liability company that own at least ten percent (10%)  
479 of the voting shares of the company;

480 (iii) \* \* \* Any shareholders owning ten percent  
481 (10%) or more of the outstanding shares of the corporation; and

482 (iv) All loan originators.

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

485 81-18-11. (1) For purposes of Section 81-18-9, the  
486 definitions of the classes of companies and their respective  
487 minimum amounts of surety bonds will be:

488 \* \* \*

489 (a) "Mortgage broker" shall be defined as any person  
490 that directly solicits, processes, places or negotiates mortgage  
491 loans for others and that does not close mortgage loans in the  
492 company name, does not use its own funds, or who closes mortgage  
493 loans in the name of the company, and sells, assigns or transfers  
494 the loan to others within forty-eight (48) hours of the closing.  
495 The amount of the surety bond for mortgage brokers shall be  
496 Twenty-five Thousand Dollars (\$25,000.00).

497 (b) "Mortgage lender" shall be defined as any company  
498 that makes a mortgage loan, using its own funds, for others or for  
499 compensation or gain, with the expectation of retaining servicing  
500 rights to those loans, or in the expectation of gain, either  
501 directly or indirectly, sells or offers to sell a mortgage loan to  
502 an investor in the secondary market. This definition includes  
503 companies that utilize the services of a person exempted or  
504 licensed under this chapter to make a mortgage loan, or purchase  
505 or service a mortgage loan, or who services mortgage loans only,  
506 including loans in the company's own portfolio. The amount of the  
507 surety bond for a mortgage lender shall be One Hundred Fifty  
508 Thousand Dollars (\$150,000.00). However, any licensed company  
509 that was required by this chapter before July 1, 2007, to hold a

510 surety bond in the amount of Fifty Thousand Dollars (\$50,000.00)  
511 shall not be required to increase its bond until its 2007 license  
512 year renewal.

513 (2) All surety bonds shall be in favor, first, of the State  
514 of Mississippi for the use, benefit and indemnity of any person  
515 who suffers any damage or loss as a result of the \* \* \* company's  
516 breach of contract or of any obligation arising from contract or  
517 any violation of law, and, second, for the payment of any civil  
518 penalties, criminal fines, or costs of investigation and/or  
519 prosecution incurred by the State of Mississippi, including local  
520 law enforcement agencies.

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

523 81-18-13. (1) Upon receipt of an application for licensure  
524 or registration, which shall include the required set of  
525 fingerprints from any local law enforcement agency, the department  
526 or designated third party shall conduct such an investigation as  
527 it deems necessary to determine that the applicant and its  
528 officers, directors and principals are of good character and  
529 ethical reputation; that the applicant demonstrates reasonable  
530 financial responsibility; and that the applicant has reasonable  
531 policies and procedures to receive and process customer grievances  
532 and inquiries promptly and fairly.

533 (2) The department shall not license an applicant unless it  
534 is satisfied that the applicant will operate its mortgage \* \* \*  
535 activities in compliance with the laws, rules and regulations of  
536 this state and the United States.

537 (3) The department shall not license any mortgage broker or  
538 mortgage lender unless the applicant meets the requirements of  
539 Section 81-18-11.

540 (4) The department shall not issue a license or  
541 registration \* \* \* if it finds that the applicant, or any person  
542 who is a director, officer, partner or principal officer of the



543 applicant, has been convicted \* \* \* of: (a) a felony in any  
544 jurisdiction; or (b) a crime that, if committed within this state,  
545 would constitute a felony under the laws of this state; or (c) a  
546 misdemeanor in any jurisdiction in which fraud is an essential  
547 element, including, but not limited to, forgery, bribery,  
548 embezzlement or making a fraudulent or false statement. The  
549 department may renew the existing license or registration of any  
550 such applicant or person who holds a license or registration on  
551 July 1, 2007. However, any person submitting an initial  
552 application for license or registration with a different company  
553 after July 1, 2007, in which the background check discloses a  
554 felony or a misdemeanor as described in this section shall be  
555 denied licensure or registration by the department. For the  
556 purposes of this chapter, a person shall be deemed to have been  
557 convicted of a crime if the person has pleaded guilty to a crime  
558 before a court or federal magistrate, or plea of nolo contendere,  
559 or has been found guilty of a crime by the decision or judgment of  
560 a court or federal magistrate or by the verdict of a jury,  
561 irrespective of the pronouncement of sentence or the suspension of  
562 a sentence, unless the plea of guilty, or the decision, judgment  
563 or verdict, has been set aside, reversed or otherwise abrogated by  
564 lawful judicial process, or unless the person convicted of the  
565 crime has received a pardon from the President of the United  
566 States or the Governor or other pardoning authority in the  
567 jurisdiction where the conviction was obtained.

568 (5) In order to determine the applicant's suitability for a  
569 license, the commissioner or a designated third party shall  
570 forward the fingerprints submitted with the application to the  
571 Department of Public Safety; and if no disqualifying record is  
572 identified at the state level, the fingerprints shall be forwarded  
573 by the Department of Public Safety or a designated third party to  
574 the FBI for a national criminal history record check. All  
575 conviction data received by the department shall be used by the

576 department for the exclusive purpose of carrying out the  
577 responsibilities of this chapter, may not be a public record,  
578 shall be privileged, and may not be disclosed to any other person  
579 or agency, except to any person or agency that otherwise has a  
580 legal right to inspect the file. All records shall be maintained  
581 by the department according to law, except as provided in the  
582 uniform multistate administration of an automated licensing system  
583 for mortgage brokers, mortgage lenders and loan originators. As  
584 used in this section "conviction data" means a record of a finding  
585 or verdict of guilty or plea of guilty or plea of nolo contendere  
586 with regard to any crime regardless of whether an appeal of the  
587 conviction has been sought.

588 (6) The department shall deny a license or  
589 registration \* \* \* or otherwise restrict a license or  
590 registration \* \* \* if it finds that the applicant, or any person  
591 who is a director, officer, partner, affiliate, contractor or  
592 principal of the applicant, has had any professional license  
593 denied, revoked or suspended by any state within two (2) years of  
594 the date of the application.

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

600 (8) A person shall not be indemnified for any act covered by  
601 this chapter or for any fine or penalty incurred under this  
602 chapter as a result of any violation of this chapter or  
603 regulations adopted under this chapter, due to the legal form,  
604 corporate structure, or choice of organization of the person,  
605 including, but not limited to, a limited liability corporation.

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

608           81-18-15. (1) Each license shall remain in full force and  
609 effect until relinquished, suspended, revoked or expired. With  
610 each initial application for a license to operate as a mortgage  
611 broker or mortgage lender, the applicant shall pay to the  
612 commissioner a license fee of Seven Hundred Fifty Dollars  
613 (\$750.00), and on or before December 31 of each year thereafter,  
614 an annual renewal fee of Four Hundred Seventy-five Dollars  
615 (\$475.00). If the annual renewal fee remains unpaid \* \* \*, the  
616 license shall expire, but not before December 31 of any year for  
617 which the annual renewal fee has been paid. If any person engages  
618 in business as provided for in this chapter without paying the  
619 license fee provided for in this subsection before commencing  
620 business or before the expiration of the person's current license,  
621 as the case may be, then the person shall be liable for the full  
622 amount of the license fee, plus a penalty in an amount not to  
623 exceed Twenty-five Dollars (\$25.00) for each day that the person  
624 has engaged in such business without a license or after the  
625 expiration of a license. All licensing fees and penalties shall  
626 be paid into the Consumer Finance Fund of the department. If the  
627 application is withdrawn or denied, the application fee is not  
628 refundable.

629           (2) Any licensee making timely and proper application for a  
630 license renewal shall be permitted to continue to operate under  
631 its existing license until its application is approved or  
632 rejected, but shall not be released from or otherwise indemnified  
633 for any act covered by this chapter or for any penalty incurred  
634 under this chapter as a result of any violation of this chapter or  
635 regulations adopted under this chapter, pending final approval or  
636 disapproval of the application for the license renewal.

637           (3) Each application for licensing renewal or registration  
638 renewal shall include evidence of the satisfactory completion of  
639 at least twelve (12) hours of approved continuing education in  
640 primary and subordinated financing transactions by the principal

641 officer on file with the department and registered loan  
642 originators. Two (2) of the twelve (12) hours shall consist of  
643 instruction on the Mississippi Mortgage Consumer Protection Law  
644 and shall be approved by the department once the course is  
645 approved by the Mississippi Association of Mortgage Brokers, the  
646 National Association of Mortgage Brokers, the Mortgage Bankers  
647 Association or the Mortgage Bankers Association of Mississippi.  
648 For purposes of this subsection (3), approved courses shall be  
649 those as approved by the \* \* \* Mortgage Bankers Association,  
650 the \* \* \* National Association of Mortgage Brokers, the  
651 Mississippi Association of Mortgage Brokers or the Mortgage  
652 Bankers Association of Mississippi, who shall submit to the  
653 department a listing of approved schools, courses, programs and  
654 special training sessions. However, each application for  
655 licensing renewal or registration renewal of manufactured housing  
656 licensees or originators shall include evidence of the  
657 satisfactory completion of at least twelve (12) hours of  
658 continuing education, of which eight (8) hours must be approved by  
659 the Commissioner of Insurance and four (4) hours consisting of  
660 courses in primary and subordinated financing transactions must be  
661 approved by the Mississippi Manufactured Housing Association,  
662 which shall submit to the department a listing of those approved  
663 schools, courses, programs and special training sessions. A  
664 manufactured housing licensee or loan originator may submit  
665 evidence of completion of courses that have been approved by  
666 the \* \* \* Mortgage Bankers Association, the \* \* \* National  
667 Association of Mortgage Brokers, the Mississippi Association of  
668 Mortgage Brokers or the Mortgage Bankers Association of  
669 Mississippi to satisfy the four-hour requirement of courses in  
670 primary and subordinated financing transactions.

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

673           81-18-17. (1) Each license or registration issued under  
674 this chapter shall state the address of the licensee's principal  
675 place of business, the registrant's assigned licensed location and  
676 the name of the licensee or registrant.

677           (2) A licensee or registrant shall post the original license  
678 or original registration in a conspicuous place in the assigned  
679 place of business of the licensee.

680           (3) A license or registration may not be transferred or  
681 assigned.

682           (4) No licensee or registrant shall transact business under  
683 any name other than that designated in the license or  
684 registration.

685           (5) Each licensee shall notify the department, in writing,  
686 of any change in the address of its principal place of business or  
687 registered loan originator or of any additional location of  
688 business or any change of officer, director or principal of the  
689 licensee, or registered loan originator within thirty (30) days of  
690 the change.

691           (6) No licensee shall open a branch office in this state or  
692 a branch office outside this state from which the licensee has  
693 direct contact with \* \* \* consumers regarding origination or  
694 brokering Mississippi residential property, without prior approval  
695 of the department. An application for any branch office shall be  
696 made in writing on a form prescribed by the department, which  
697 shall include at least evidence of compliance with subsection (1)  
698 of Section 81-18-25 as to that branch and shall be accompanied by  
699 payment of a nonrefundable application fee of One Hundred Dollars  
700 (\$100.00) and at least one (1) loan originator application  
701 registered at that branch office. The application shall be  
702 approved unless the department finds that the applicant has not  
703 conducted business under this chapter in accordance with law. The  
704 application shall be deemed approved if notice to the contrary has  
705 not been mailed by the department to the applicant within thirty

706 (30) days of the date that the complete application is received by  
707 the department. After approval, the applicant shall give written  
708 notice to the department within ten (10) days of the commencement  
709 of business at the branch office. Each branch office that  
710 currently holds a branch license shall renew that branch license  
711 before the expiration date of the main company license, on or  
712 before December 31. The license renewal shall be on a form  
713 prescribed by the department with a nonrefundable renewal  
714 application fee of Twenty-five Dollars (\$25.00).

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

717 81-18-19. (1) Except as provided in this section, no person  
718 shall acquire directly or indirectly twenty-five percent (25%) or  
719 more of the voting shares of a corporation or twenty-five percent  
720 (25%) or more of the ownership of any other entity licensed to  
721 conduct business under this chapter unless it first files an  
722 application in accordance with the requirements prescribed in  
723 Section 81-18-9.

724 (2) Upon the filing and investigation of an application, the  
725 department shall permit the applicant to acquire the interest in  
726 the licensee if it is satisfied and finds that the applicant and  
727 its members, if applicable, its directors and officers, if a  
728 corporation, and any proposed new directors and officers have  
729 provided its surety bond and have the character, reputation and  
730 experience to warrant belief that the business will be operated  
731 fairly and in accordance with the law. If the application is  
732 denied, the department shall notify the applicant of the denial  
733 and the reasons for the denial.

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

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

740 (a) The acquisition of an interest in a licensee  
741 directly or indirectly including an acquisition by merger or  
742 consolidation by or with a person registered under this chapter or  
743 exempt from this chapter under Section 81-18-5.

744 (b) The acquisition of an interest in a licensee  
745 directly or indirectly including an acquisition by merger or  
746 consolidation by or with a person affiliated through common  
747 ownership with the licensee.

748 (c) The acquisition of an interest in a licensee by a  
749 person by bequest, device, gift or survivorship or by operation of  
750 law.

751 (5) A person acquiring an interest in a licensee in a  
752 transaction that is requesting exemption from filing an  
753 application for approval of the application shall send a written  
754 request to the department for an exemption within thirty (30) days  
755 before the closing of the transaction.

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

758 81-18-21. (1) Any person required to be licensed under this  
759 chapter shall maintain in its offices, or such other location as  
760 the department shall permit, the books, accounts and records  
761 necessary for the department to determine whether or not the  
762 person is complying with the provisions of this chapter and the  
763 rules and regulations adopted by the department under this  
764 chapter. These books, accounts and records shall be maintained  
765 apart and separate from any other business in which the person is  
766 involved and may represent historical data for three (3) years  
767 preceding the date of the last license application date forward.  
768 The books, accounts and records shall be kept in a secure location  
769 under conditions that will not lead to their damage or  
770 destruction. If the licensee wishes to keep the files in a

771 location other than the location listed on the license \* \* \*, then  
772 the licensee first must submit a written request on a form  
773 designated by the department and gain written approval from the  
774 commissioner before storing the files at an off-site secure  
775 location.

776 (2) To assure compliance with the provisions of this  
777 chapter, the department may examine the books and records of any  
778 licensee without notice during normal business hours. The  
779 commissioner shall charge the licensee an examination fee in an  
780 amount not less than Three Hundred Dollars (\$300.00) nor more than  
781 Six Hundred Dollars (\$600.00) for each office or location within  
782 the State of Mississippi, plus any actual expenses incurred while  
783 examining the licensee's records or books that are located outside  
784 the State of Mississippi. However, in no event shall a licensee  
785 be examined more than once in a two-year period unless for cause  
786 shown based upon consumer complaint and/or other exigent reasons  
787 as determined by the commissioner.

788 (3) The department, its designated officers and employees,  
789 or its duly authorized representatives, for the purposes of  
790 discovering violations of this chapter and for the purpose of  
791 determining whether any person or individual reasonably suspected  
792 by the commissioner of conducting business that requires a license  
793 or registration under this chapter, may investigate those persons  
794 and individuals and examine all relevant books, records and papers  
795 employed by those persons or individuals in the transaction of  
796 business, and may summon witnesses and examine them under oath  
797 concerning matters as to the business of those persons, or other  
798 such matters as may be relevant to the discovery of violations of  
799 this chapter including, without limitation, the conduct of  
800 business without a license or registration as required under this  
801 chapter.

802 (4) The department, in its discretion, may disclose  
803 information concerning any violation of this chapter or any rule,



804 regulation, or order under this chapter, provided the information  
805 is derived from a final order of the department.

806 (5) Examinations and investigations conducted under this  
807 chapter and information obtained by the department, except as  
808 provided in subsection (4) of this section, in the course of its  
809 duties under this chapter are confidential.

810 (6) In the absence of malice, fraud or bad faith a person is  
811 not subject to civil liability arising from the filing of a  
812 complaint with the department, furnishing other information  
813 required by this chapter, information required by the department  
814 under the authority granted in this chapter, or information  
815 voluntarily given to the department related to allegations that a  
816 licensee or prospective licensee has violated this chapter.

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

819 81-18-23. (1) Each company shall annually, on or before  
820 January 31, file a written report with the department containing  
821 the December 31 information that the department may reasonably  
822 require concerning the company's business and operations during  
823 the preceding calendar year. The report shall be made in the form  
824 prescribed by the department.

825 (2) Any company that fails to file with the department by  
826 January 31 the report required by this section shall be subject to  
827 a late penalty of Ten Dollars (\$10.00) for each day after January  
828 31 the report is delinquent, but in no event shall the aggregate  
829 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

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

840 (a) The filing for bankruptcy or reorganization by the  
841 company;

842 (b) The institution of revocation or suspension  
843 proceedings against the company by any state or governmental  
844 authority;

845 (c) Any felony indictment of the company or any of its  
846 directors, executive officers, principal officers or loan  
847 originators; or

848 (d) Any felony conviction of the company or any of its  
849 directors, executive officers, principal officers or loan  
850 originators.

851 (6) If the owner, principal officer of a company or  
852 registered loan originator is involved in a civil action  
853 concerning the company, then he shall notify the commissioner in  
854 writing within sixty (60) days after the initial filing of the  
855 civil action.

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

858 81-18-25. (1) Each principal place of business and branch  
859 office in the state shall meet all of the following requirements:

860 (a) Be in compliance with local zoning ordinances and  
861 have posted any licenses required by local government agencies.  
862 It is the responsibility of the licensee to meet local zoning  
863 ordinances and obtain the required occupational licenses; however,  
864 zoning cannot be residential. If there is no zoning in the area,  
865 then the person shall submit to the department a letter from the  
866 city or county stating that there is no zoning.

867 (b) Consist of at least one (1) secure enclosed room or  
868 secure building of stationary construction in which negotiations

869 of mortgage loan transactions may be conducted in privacy.  
870 Stationary construction does not include the use of portable  
871 buildings. If there is no zoning in the requested location, then  
872 the person shall utilize an enclosed room with a dedicated outside  
873 door.

874 (c) Display a permanent sign outside the place of  
875 business readily visible to the general public, unless the display  
876 of sign violates local zoning ordinances or restrictive covenants.  
877 The sign must contain the name of the licensee and the words  
878 "Licensed by the Mississippi Department of Banking and Consumer  
879 Finance."

880 (2) Each licensee shall prominently display the original  
881 license at the principal place of business and each branch office.

882 (3) Each person registered under this chapter shall  
883 prominently display his or her original registration in the office  
884 where the person is employed.

885 (4) If one (1) of the following is correct, then that  
886 location shall be licensed as a mortgage broker or mortgage lender  
887 under this chapter and not as a branch:

888 (a) It is a separate entity operating as an independent  
889 business or mortgage operation which is not under the direct  
890 control, management supervision and responsibility of the  
891 licensee;

892 (b) The licensee \* \* \* is not the lessee or owner of  
893 the branch and the branch is not under the direct and daily  
894 ownership, control, management and supervision of the  
895 licensee \* \* \*;

896 (c) All assets and liabilities of the branch are not  
897 assets and liabilities of the licensee, and all income and  
898 expenses of the branch are income and expenses of the licensee and  
899 properly accounted for in the financial records and tax returns of  
900 the licensee; or

901           (d) All practices, policies and procedures, including,  
902 but not limited to, those relating to employment and operations,  
903 are not originated and established by the licensee or registered  
904 company and are not applied consistently to the main office and  
905 all branches.

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

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

912           81-18-27. (1) No person required to be licensed or  
913 registered under this chapter shall:

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

918           (b) Misrepresent to or conceal from an applicant for a  
919 mortgage loan or mortgagor, material facts, terms or conditions of  
920 a transaction to which the licensee is a party.

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

923           (d) Improperly refuse to issue a satisfaction of a  
924 mortgage loan.

925           (e) Fail to account for or deliver to any person any  
926 personal property obtained in connection with a mortgage loan,  
927 such as money, funds, deposits, checks, drafts, mortgages or other  
928 documents or things of value that have come into the possession of  
929 the licensee and that are not the property of the licensee, or  
930 that the licensee is not by law or at equity entitled to retain.

931           (f) Engage in any transaction, practice, or course of  
932 business that is not in good faith, or that operates a fraud upon  
933 any person in connection with the making of or purchase or sale of

934 any mortgage loan, including the use of white-out on any document  
935 associated with the mortgage loan.

936 (g) Engage in any fraudulent residential mortgage  
937 underwriting practices.

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

944 (i) Make, directly or indirectly, any residential  
945 mortgage loan with the intent to foreclose on the borrower's  
946 property. For purposes of this paragraph, there is a presumption  
947 that a person has made a residential mortgage loan with the intent  
948 to foreclose on the borrower's property if all of the following  
949 circumstances are proven:

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

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

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

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

957 (v) That the person does business under a trade  
958 name that misrepresents or tends to misrepresent that the person  
959 is a bank, trust company, savings bank, savings and loan  
960 association, credit union, or insurance company.

961 (j) Charge or collect any direct payment, compensation  
962 or advance fee from a borrower unless and until a loan is actually  
963 found, obtained and closed for that borrower, and in no event  
964 shall that direct payment, compensation or advance fee exceed  
965 seven and ninety-five one-hundredths percent (7.95%) of the  
966 original principal amount of the loan, and any such direct

967 payments, compensation or advance fees shall be included in all  
968 annual percentage rate (APR) calculations if required under  
969 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
970 payment, compensation or advance fee as defined in this section  
971 shall not include:

972 (i) Any direct payment, compensation or advance  
973 fee collected by a licensed mortgage broker or mortgage lender to  
974 be paid to a nonrelated third party;

975 (ii) Any indirect payment to a licensed mortgage  
976 broker or mortgage lender by a lender if those fees are not  
977 required to be disclosed under the Real Estate Settlement  
978 Procedures Act (RESPA);

979 (iii) Any indirect payment or compensation by a  
980 lender to a licensee required to be disclosed by the licensee  
981 under RESPA, provided that the payment or compensation is  
982 disclosed to the borrower by the licensee on a good faith estimate  
983 of costs, is included in the APR if required under Regulation Z of  
984 TILA, and is made pursuant to a written agreement between the  
985 licensee and the borrower as may be required by Section 81-18-33;

986 (iv) A fee not to exceed one percent (1%) of the  
987 principal amount of a loan for construction, provided that a  
988 binding commitment for the loan has been obtained for the  
989 prospective borrower; or

990 (v) An advance fee, known as a lock-in fee,  
991 collected by a licensee to be paid to a lender to lock in an  
992 interest rate and/or a certain number of points on a mortgage loan  
993 from the lender as provided in Section 81-18-28.

994 (k) Pay to any person not licensed or registered under  
995 the provisions of this chapter any commission, bonus or fee in  
996 connection with arranging for or originating a mortgage loan for a  
997 borrower, except that a registered loan originator may be paid a  
998 bonus, commission, or fee by his or her licensed employer.

999 (1) Refuse to provide the loan payoff within three (3)  
1000 business days of an oral or written request from a borrower or  
1001 third party. Proof of authorization of the borrower shall be  
1002 submitted for a third-party request.

1003 (m) Knowingly withhold, extract, remove, mutilate,  
1004 destroy or conceal any books, records, computer records or other  
1005 information which are required by law to be disclosed.

1006 (2) A licensed mortgage broker or mortgage lender shall only  
1007 broker a residential mortgage loan to a mortgage broker or  
1008 mortgage lender licensed \* \* \* under this chapter or to a person  
1009 exempt from licensure under the provisions of this chapter.

1010 (3) No nonbanking entity may use any sign or handwritten or  
1011 printed paper indicating that it is a bank, savings bank, trust  
1012 company or place of banking. No entity may use the word "bank,"  
1013 "savings bank," "banking," "banker" or "trust company," or the  
1014 equivalent or plural of any of these words, in connection with any  
1015 business other than that of banking. This subsection does not  
1016 prohibit a person from acting in a trust capacity.

1017 (4) No person shall use the name or logo of any banking  
1018 entity in connection with the sale, offering for sale, or  
1019 advertising of any financial product or service without the  
1020 express written consent of the banking entity.

1021 **SECTION 16.** Section 81-18-28, Mississippi Code of 1972, is  
1022 reenacted and amended as follows:

1023 81-18-28. (1) A licensed mortgage broker or mortgage lender  
1024 may enter into lock-in agreements and collect a lock-in fee from a  
1025 borrower on the lender's behalf. The lock-in fee shall not exceed  
1026 the following:

1027 (a) No fee may be collected to lock in for sixty (60)  
1028 days or less;

1029 (b) One percent (1%) of the principal amount of the  
1030 loan to lock in for more than sixty (60) days, but not to exceed  
1031 one hundred eighty (180) days;

1032 (c) One and one-half percent (1-1/2%) of the principal  
1033 amount of the loan to lock in for more than one hundred eighty  
1034 (180) days, but not to exceed two hundred seventy (270) days; or

1035 (d) Two percent (2%) of the principal amount of the  
1036 loan to lock in for more than two hundred seventy (270) days.

1037 (2) Before the collection of a lock-in fee, the applicant  
1038 must be provided a copy of the lock-in fee agreement. This  
1039 agreement shall contain at least the following:

1040 (a) Identification of the property that is being  
1041 purchased with the loan;

1042 (b) The principal amount and term of the loan;

1043 (c) The initial interest rate and/or points, whether  
1044 the interest rate is fixed or variable, and if variable, the index  
1045 and margin, or the method by which an interest rate change for the  
1046 mortgage loan will be calculated;

1047 (d) The amount of the lock-in fee, whether the fee is  
1048 refundable or nonrefundable, the time by which the lock-in fee  
1049 must be paid to the lender, and if the fee is refundable, the  
1050 terms and conditions necessary to obtain the refund; and

1051 (e) The length of the lock-in period that the agreement  
1052 covers.

1053 **SECTION 17.** Section 81-18-29, Mississippi Code of 1972, is  
1054 reenacted and amended as follows:

1055 81-18-29. (1) The commissioner shall promulgate those rules  
1056 and regulations, not inconsistent with law, necessary for the  
1057 enforcement of this chapter.

1058 (2) The Legislature finds that a uniform multistate  
1059 administration of a multistate licensing system for mortgage  
1060 brokers, mortgage lenders and mortgage loan originators is  
1061 consistent with both the public interest and the purposes of this  
1062 chapter; therefore, for the sole purpose of participating in the  
1063 establishment and implementation of a multistate licensing system  
1064 for mortgage brokers, mortgage lenders and mortgage loan



1065 originators, the commissioner may establish by regulation such new  
1066 requirements as are necessary for the State of Mississippi to  
1067 participate in a multistate licensing system upon the  
1068 commissioner's finding that each new requirement is consistent  
1069 with both the public interest and the purposes of this chapter.  
1070 These new requirements shall include criminal background checks by  
1071 the FBI and the Mississippi Department of Public Safety.

1072         **SECTION 18.** Section 81-18-31, Mississippi Code of 1972, is  
1073 reenacted and amended as follows:

1074         81-18-31. The department shall promulgate regulations  
1075 governing the advertising of mortgage loans, including, but not  
1076 limited to, the following requirements:

1077             (a) That all advertisements for loans regulated under  
1078 this chapter may not be false, misleading or deceptive. No person  
1079 whose activities are regulated under this chapter may advertise in  
1080 any manner so as to indicate or imply that its interest rates or  
1081 charges for loans are "recommended," "approved," "set" or  
1082 "established" by the State of Mississippi;

1083             (b) That all licensees shall maintain a copy of all  
1084 advertisements citing interest rates or payment amounts primarily  
1085 disseminated in this state and shall attach to each advertisement  
1086 documentation that provides corroboration of the availability of  
1087 the interest rate and terms of loans and names the specific media  
1088 sources by which the advertisements were distributed;

1089             (c) That all published advertisements disseminated  
1090 primarily in this state by a licensee shall contain the name and an  
1091 office address of the licensee, which shall be the same as the  
1092 name and address of the licensee on record with the department;

1093             (d) That an advertisement containing either a quoted  
1094 interest rate or monthly payment amount must include:

1095                 (i) The interest rate of the mortgage, a statement  
1096 as to whether the rate is fixed or adjustable, and the adjustment  
1097 index and frequency of adjustments;

1098 (ii) The term in years or months to fully repay  
1099 the mortgage;

1100 (iii) The APR as computed under federal  
1101 guidelines; and

1102 (e) That no licensee shall advertise its services in  
1103 Mississippi in any media disseminated primarily in this state,  
1104 whether print or electronic, without the words "Licensed by the  
1105 Mississippi Department of Banking and Consumer Finance."

1106 **SECTION 19.** Section 81-18-33, Mississippi Code of 1972, is  
1107 reenacted and amended as follows:

1108 81-18-33. The individual borrower files of a licensee shall  
1109 contain at least the following:

1110 (a) A mortgage origination agreement provided to the  
1111 borrower containing at least the following statements:

1112 (i) "As required by Mississippi Law, (licensed  
1113 company name) has secured a bond issued by (name of insurance  
1114 company), a surety company authorized to do business in this  
1115 state. A certified copy of this bond is filed with the  
1116 Mississippi Commissioner of Banking and Consumer Finance."

1117 (ii) "As a borrower you are protected under the  
1118 Mississippi Mortgage Consumer Protection Law."

1119 (iii) "Complaints against a licensee may be made  
1120 by contacting the:

1121 Mississippi Department of Banking and  
1122 Consumer Finance  
1123 P.O. Box 23729  
1124 Jackson, MS 39225-3729";

1125 (b) A copy of the original loan application signed and  
1126 dated by the licensee;

1127 (c) A copy of the signed closing statement as required  
1128 by HUD or documentation of denial or cancellation of the loan  
1129 application;

1130 (d) A copy of the good faith estimate of costs provided  
1131 to the borrower;

1132 (e) A copy of the appraisal or statement of value if  
1133 procured as a part of the loan application process;

1134 (f) A copy of a loan lock-in agreement provided by the  
1135 lender; \* \* \*

1136 (g) A copy of the disclosures required under Regulation  
1137 Z of the federal Truth In Lending Act and other disclosures as  
1138 required under federal regulations and evidence that those  
1139 disclosures have been properly and timely made to the borrower;  
1140 and

1141 (h) A copy of the final signed Uniform Residential Loan  
1142 Application.

1143 **SECTION 20.** Section 81-18-35, Mississippi Code of 1972, is  
1144 reenacted and amended as follows:

1145 81-18-35. Each licensee shall maintain a journal of mortgage  
1146 transactions at the principal place of business as stated on its  
1147 license, which shall include at least the following information:

1148 (a) Name of applicant and co-applicant, if applicable;

1149 (b) Date of application; and

1150 (c) Disposition of loan application, indicating date of  
1151 loan funding, loan denial, withdrawal and name of lender if  
1152 applicable.

1153 **SECTION 21.** Section 81-18-36, Mississippi Code of 1972, is  
1154 reenacted and amended as follows:

1155 81-18-36. (1) (a) All monies paid to a licensee for  
1156 payment of taxes, loan commitment deposits, work completion  
1157 deposits, appraisals, credit reports or insurance premiums on  
1158 property that secures any loan made or serviced by the licensee  
1159 shall be deposited in an account that is insured by the Federal  
1160 Deposit Insurance Corporation or the National Credit Union  
1161 Administration and shall be kept separate, distinct, and apart  
1162 from funds belonging to the licensee.

1163           (b) The funds, when deposited, are to be designated as  
1164 an "escrow account," or under some other appropriate name,  
1165 indicating that the funds are not the funds of the licensee.

1166           (2) The licensee shall, upon reasonable notice, account to  
1167 any debtor whose property secures a loan made by the licensee for  
1168 any funds which that person has paid to the licensee for the  
1169 payment of taxes or insurance premiums on the property in  
1170 question.

1171           (3) The licensee shall, upon reasonable notice, account to  
1172 the commissioner for all funds in the company's escrow account.

1173           (4) Escrow accounts are not subject to execution or  
1174 attachment on any claim against the licensee.

1175           (5) It is unlawful for any licensee knowingly to keep or  
1176 cause to be kept any funds or money in any bank or other financial  
1177 institution under the heading of "escrow account" or any other  
1178 name designating the funds or monies belonging to the debtors of  
1179 the licensee, except actual funds paid to the licensee for the  
1180 payment of taxes and insurance premiums on property securing loans  
1181 made or serviced by the company.

1182           **SECTION 22.** Section 81-18-37, Mississippi Code of 1972, is  
1183 reenacted and amended as follows:

1184           81-18-37. (1) The department may suspend or revoke any  
1185 license or registration for any reason that would have been  
1186 grounds for refusal to issue an original license or registration  
1187 or for:

1188           (a) A violation of any provision of this chapter or any  
1189 rule or regulation adopted under this chapter;

1190           (b) Failure of the licensee or registrant to pay,  
1191 within thirty (30) days after it becomes final and nonappealable,  
1192 a judgment recovered in any court within this state by a claimant  
1193 or creditor in an action arising out of the licensee's or  
1194 registrant's business in this state as a mortgage broker or  
1195 mortgage lender.

1196           (2) Notice of the department's intention to enter an order  
1197 denying an application for a license or registration under this  
1198 chapter or of an order suspending or revoking a license or  
1199 registration under this chapter shall be given to the applicant,  
1200 licensee or registrant in writing, sent by registered or certified  
1201 mail addressed to the principal place of business of the  
1202 applicant, licensee or registrant. Within thirty (30) days of the  
1203 date of the notice of intention to enter an order of denial,  
1204 suspension or revocation under this chapter, the applicant,  
1205 licensee or registrant may request in writing a hearing to contest  
1206 the order. If a hearing is not requested in writing within thirty  
1207 (30) days of the date of the notice of intention, the department  
1208 shall enter a final order regarding the denial, suspension or  
1209 revocation. Any final order of the department denying, suspending  
1210 or revoking a license or registration shall state the grounds upon  
1211 which it is based and shall be effective on the date of issuance.  
1212 A copy of the final order shall be forwarded promptly by  
1213 registered or certified mail addressed to the principal place of  
1214 business of the applicant, licensee or registrant.

1215           **SECTION 23.** Section 81-18-39, Mississippi Code of 1972, is  
1216 reenacted as follows:

1217           81-18-39. (1) For purposes of this section, the term  
1218 "person" shall be construed to include any officer, director,  
1219 employee, affiliate or other person participating in the conduct  
1220 of the affairs of the person subject to the orders issued under  
1221 this section.

1222           (2) If the department reasonably determines that a person  
1223 required to be licensed or registered under this chapter has  
1224 violated any law of this state or any order or regulation of the  
1225 department, the department may issue a written order requiring the  
1226 person to cease and desist from unlawful or unauthorized  
1227 practices. In the case of an unlawful purchase of mortgage loans,  
1228 the cease and desist order to a purchaser shall constitute the

1229 knowledge required under this section for any subsequent  
1230 violations.

1231 (3) Any person required to be licensed or registered under  
1232 this chapter who has been deemed by the commissioner, after notice  
1233 and hearing, to have violated the terms of any order properly  
1234 issued by the department under this section shall be liable for a  
1235 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).  
1236 The department, in determining the amount of the penalty, shall  
1237 take into account the appropriateness of the penalty relative to  
1238 the size of the financial resources of the person, the good faith  
1239 efforts of the person to comply with the order, the gravity of the  
1240 violation, the history of previous violations by the person, and  
1241 other factors or circumstances that contributed to the violation.  
1242 The department may compromise, modify or refund any penalty that  
1243 has been imposed under this section. Any person assessed a  
1244 penalty as provided in this subsection shall have the right to  
1245 request a hearing on the amount of the penalty within ten (10)  
1246 days after receiving notification of the assessment. If no  
1247 hearing is requested within ten (10) days of the receipt of the  
1248 notice, the penalty shall be final except as to judicial review in  
1249 the Chancery Court of the First Judicial District of Hinds County.  
1250 Upon the filing of a petition for judicial review, the court shall  
1251 issue an order to the licensee requiring the licensee to show  
1252 cause why it should not be entered. If the court determines,  
1253 after a hearing upon the merits or after failure of the person to  
1254 appear when so ordered, that the order of the department was  
1255 properly issued, it shall grant the penalty sought by the  
1256 department.

1257 **SECTION 24.** Section 81-18-41, Mississippi Code of 1972, is  
1258 reenacted and amended as follows:

1259 81-18-41. Nothing in this chapter shall preclude a person  
1260 whose license \* \* \* has been suspended or revoked from continuing  
1261 to service mortgage loans pursuant to servicing contracts in

1262 existence at the time of the suspension or revocation for a  
1263 reasonable transition period, as determined by the commissioner,  
1264 after the date of the entry of the final decision in the case  
1265 suspending or revoking the license.

1266         **SECTION 25.** Section 81-18-43, Mississippi Code of 1972, is  
1267 reenacted and amended as follows:

1268         81-18-43. (1) In addition to any other penalty that may be  
1269 applicable, any licensee, person required to be registered, or  
1270 employee who willfully violates any provision of this chapter, or  
1271 who willfully makes a false entry in any document specifically  
1272 required by this chapter, shall be guilty of a misdemeanor and,  
1273 upon conviction thereof, shall be punishable by a fine not in  
1274 excess of One Thousand Dollars (\$1,000.00) per violation or false  
1275 entry.

1276         (2) In addition to any other penalty that may be applicable,  
1277 any licensee, person required to be registered, or employee who  
1278 fails to make a record of a mortgage transaction and subsequently  
1279 sells or disposes of the mortgage from that transaction shall be  
1280 punished as follows:

1281             (a) For a first offense, the licensee, person required  
1282 to be registered, or employee shall be guilty of a misdemeanor  
1283 and, upon conviction thereof, shall be punishable by a fine not in  
1284 excess of One Thousand Dollars (\$1,000.00) or by imprisonment in  
1285 the county jail for not more than one (1) year, or both fine and  
1286 imprisonment;

1287             (b) For a second or subsequent offense, the licensee,  
1288 person required to be registered, or employee shall be guilty of a  
1289 felony and, upon conviction thereof, shall be punishable by a fine  
1290 not in excess of Five Thousand Dollars (\$5,000.00) or by  
1291 imprisonment in the custody of the State Department of Corrections  
1292 for a term not less than one (1) year nor more than five (5)  
1293 years, or by both fine and imprisonment.

1294 (3) Compliance with the criminal provisions of this section  
1295 shall be enforced by the appropriate law enforcement agency, which  
1296 may exercise for that purpose any authority conferred upon the  
1297 agency by law.

1298 (4) When the commissioner has reasonable cause to believe  
1299 that a person is violating any provision of this chapter, the  
1300 commissioner, in addition to and without prejudice to the  
1301 authority provided elsewhere in this chapter, may enter an order  
1302 requiring the person to stop or to refrain from the violation.  
1303 The commissioner may sue in any chancery court of the state having  
1304 jurisdiction and venue to enjoin the person from engaging in or  
1305 continuing the violation or from doing any act in furtherance of  
1306 the violation. In such an action, the court may enter an order or  
1307 judgment awarding a preliminary or permanent injunction.

1308 (5) The commissioner may, after notice and hearing, impose a  
1309 civil penalty against any licensee if the licensee, person  
1310 required to be registered, or employee is adjudged by the  
1311 commissioner to be in violation of the provisions of this chapter.  
1312 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
1313 per violation and shall be deposited into the Consumer Finance  
1314 Fund of the department.

1315 (6) The commissioner may make public any final  
1316 administrative action imposed against a licensee or registrant for  
1317 a violation of this chapter, including cease and desist orders,  
1318 civil monetary penalties, license suspensions, revocations or  
1319 application denials.

1320 (7) The state may enforce its rights under the surety bond  
1321 as required in Section 81-18-11 as an available remedy for the  
1322 collection of any civil penalties, criminal fines or costs of  
1323 investigation and/or prosecution incurred.

1324 **SECTION 26.** Section 81-18-45, Mississippi Code of 1972, is  
1325 reenacted as follows:



1326           81-18-45. The commissioner may employ the necessary  
1327 full-time employees above the number of permanent full-time  
1328 employees authorized for the department for the fiscal year 2001,  
1329 to carry out and enforce the provisions of this chapter. The  
1330 commissioner also may expend the necessary funds and equip and  
1331 provide necessary travel expenses for those employees.

1332           **SECTION 27.** Section 81-18-47, Mississippi Code of 1972, is  
1333 reenacted as follows:

1334           81-18-47. (1) A licensee under this chapter shall have no  
1335 liability for any act or practice done or omitted in conformity  
1336 with (a) any rule or regulation of the commissioner, or (b) any  
1337 rule, regulation, interpretation or approval of any other state or  
1338 federal agency or any opinion of the Attorney General,  
1339 notwithstanding that after such act or omission has occurred the  
1340 rule, regulation, interpretation, approval or opinion is amended,  
1341 rescinded, or determined by judicial or other authority to be  
1342 invalid for any reason.

1343           (2) A licensee under this chapter, acting in conformity with  
1344 a written interpretation or approval by an official or employee of  
1345 any state or federal agency or department, shall be presumed to  
1346 have acted in accordance with applicable law, notwithstanding that  
1347 after such act has occurred, the interpretation or approval is  
1348 amended, rescinded, or determined by judicial or other authority  
1349 to be incorrect or invalid for any reason.

1350           **SECTION 28.** Section 81-18-49, Mississippi Code of 1972, is  
1351 reenacted as follows:

1352           81-18-49. Notwithstanding any provisions of this chapter to  
1353 the contrary, mortgage companies engaging in business on or before  
1354 June 1, 2000, shall be duly licensed by the department after  
1355 submitting not later than January 1, 2001, the required documents  
1356 and fees provided in Sections 81-18-9 and 81-18-15. However, upon  
1357 the expiration of the initial licenses for such mortgage

1358 companies, the department shall renew the licenses only if the  
1359 mortgage companies satisfy all of the provisions of this chapter.

1360 **SECTION 29.** Section 81-18-51, Mississippi Code of 1972, is  
1361 amended as follows:

1362 81-18-51. Sections 81-18-1 through 81-18-49 shall stand  
1363 repealed on July 1, 2012.

1364 **SECTION 30.** (1) A person commits the offense of residential  
1365 mortgage fraud when, with the intent to defraud such person, he:

1366 (a) Knowingly makes any deliberate misstatement,  
1367 misrepresentation or omission during the mortgage lending process  
1368 with the intention that it be relied on by a licensed mortgage  
1369 broker or mortgage lender, borrower or any other party to the  
1370 mortgage lending process;

1371 (b) Knowingly uses or facilitates the use of any  
1372 deliberate misstatement, misrepresentation or omission, knowing  
1373 the same to contain a misstatement, misrepresentation or omission,  
1374 during the mortgage lending process with the intention that it be  
1375 relied on by a company, borrower, or any other party to the  
1376 mortgage lending process;

1377 (c) Receives any proceeds or any other funds in  
1378 connection with a residential mortgage closing that the person  
1379 knew resulted from a violation of paragraph (a) or (b) of this  
1380 subsection;

1381 (d) Conspires to violate any of the provisions of  
1382 paragraph (a), (b) or (c) of this subsection; or

1383 (e) Files or causes to be filed with the chancery clerk  
1384 of any county of this state any deed of trust that the person  
1385 knows to contain a deliberate misstatement, misrepresentation or  
1386 omission.

1387 (2) An offense of residential mortgage fraud shall not be  
1388 predicated solely upon information lawfully disclosed under  
1389 federal disclosure laws, regulations and interpretations related  
1390 to the mortgage lending process.

1391           (3) For the purposes of venue under this section, any  
1392 violation of this section shall be considered to have been  
1393 committed:

1394           (a) In the county in which the residential property for  
1395 which a mortgage loan is being sought is located;

1396           (b) In any county in which any act was performed in  
1397 furtherance of this violation;

1398           (c) In any county in which any person alleged to have  
1399 violated this chapter had control or possession of any proceeds of  
1400 this violation;

1401           (d) If a closing occurred, in any county in which the  
1402 closing occurred; or

1403           (e) In any county in which a document containing a  
1404 deliberate misstatement, misrepresentation or omission is filed  
1405 with the chancery clerk.

1406           (4) District attorneys and the Attorney General shall have  
1407 the authority to conduct the criminal investigation of all cases  
1408 of residential mortgage fraud under this section.

1409           (5) (a) Any person violating this section shall be guilty  
1410 of a felony and, upon conviction, shall be punished by  
1411 imprisonment for not less than one (1) year nor more than ten (10)  
1412 years, by a fine not to exceed Five Thousand Dollars (\$5,000.00),  
1413 or both.

1414           (b) If a violation of this section involves engaging or  
1415 participating in a pattern of residential mortgage fraud or a  
1416 conspiracy or endeavor to engage or participate in a pattern of  
1417 residential mortgage fraud, the violation shall be punishable by  
1418 imprisonment for not less than three (3) years nor more than  
1419 twenty (20) years, by a fine not to exceed One Hundred Thousand  
1420 Dollars (\$100,000.00), or both.

1421           (c) Each residential property transaction subject to a  
1422 violation of this section shall constitute a separate offense and  
1423 shall not merge with any other crimes set forth in this section.

1424           (6) All real and personal property of every kind used or  
1425 intended for use in the course of, derived from, or realized  
1426 through a violation of this section shall be subject to forfeiture  
1427 to the state. Forfeiture shall be had by the same procedure as  
1428 outlined in Sections 97-43-9 and 97-43-11. District attorneys and  
1429 the Attorney General may commence forfeiture proceedings under  
1430 this section.

1431           (7) For purposes of this section, the term "pattern of  
1432 residential mortgage fraud" means one or more misstatements,  
1433 misrepresentations or omissions made during the mortgage lending  
1434 process that involve two (2) or more residential properties which  
1435 have the same or similar intents, results, accomplices, victims or  
1436 methods of commission or otherwise are interrelated by  
1437 distinguishing characteristics.

1438           **SECTION 31.** This act shall take effect and be in force from  
1439 and after July 1, 2007.