

By: Representative Warren

To: Banking and Financial Services

HOUSE BILL NO. 690

1 AN ACT TO REENACT SECTIONS 81-18-1, 81-18-3, 81-18-5,
 2 81-18-7, 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, 81-18-37, 81-18-39, 81-18-41,
 5 81-18-43, 81-18-45, 81-18-47, 81-18-49, MISSISSIPPI CODE OF 1972,
 6 WHICH PROVIDE FOR THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION
 7 LAW; TO AMEND SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO
 8 EXTEND THE DATE OF REPEAL FOR THE REENACTED SECTIONS; AND FOR
 9 RELATED PURPOSES.

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

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

13 81-18-1. This chapter shall be known and cited as the
 14 Mississippi Mortgage Consumer Protection Law.

15 **SECTION 2.** Section 81-18-3, Mississippi Code of 1972, is
 16 reenacted as follows:

17 81-18-3. For purposes of this chapter, the following terms
 18 shall have the following meanings:

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

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

27 (i) If the location is used on any type of
 28 advertisement;

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

32 (iii) If a Mississippi consumer is received at the
33 location or is directed to deliver any information by any means to
34 the location.

35 (c) "Commissioner" means the Commissioner of the
36 Mississippi Department of Banking and Consumer Finance.

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

41 (e) "Control" means the direct or indirect possession
42 of the power to direct or cause the direction of the management
43 and policies of a person, whether through the ownership of voting
44 securities, by contract or otherwise, and shall include
45 "controlling," "controlled by," and "under common control with."

46 (f) "Department" means the Department of Banking and
47 Consumer Finance of the State of Mississippi.

48 (g) "Executive officer" means the chief executive
49 officer, the president, the principal financial officer, the
50 principal operating officer, each vice president with
51 responsibility involving policy-making functions for a significant
52 aspect of a person's business, the secretary, the treasurer, or
53 any other person performing similar managerial or supervisory
54 functions with respect to any organization whether incorporated or
55 unincorporated.

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

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

60 (j) "Loan originator" means an individual who is an
61 employee of a single mortgage company whose conduct of the

62 mortgage business is the responsibility of the company, and whose
63 job responsibilities include direct contact with borrowers during
64 the loan origination process, which may include soliciting,
65 negotiating, acquiring, arranging or making mortgage loans for
66 others, obtaining personal or financial information, assisting
67 with the preparation of loan applications or other documents,
68 quoting loan rates or terms, or providing required disclosures.
69 This individual must work for a licensed or registered company and
70 work from the registered location with the department. The term
71 does not include individuals whose job responsibilities on behalf
72 of a company are solely clerical in nature, which is defined as
73 normal office procedures, not including any duties listed in the
74 definition of "loan originator," or sales representatives of a
75 licensed Mississippi manufactured housing operation who transmits
76 information concerning a sale via mail, courier service, or
77 electronically to a licensed mortgage company or registered
78 originator.

79 (k) "Make a mortgage loan" means to advance funds,
80 offer to advance funds or make a commitment to advance funds to a
81 borrower.

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

86 (m) "Mortgage company" means any person or entity who
87 directly, indirectly or by electronic activity, solicits, places
88 or negotiates mortgage loans for others, or offers to solicit,
89 place or negotiate mortgage loans for others. Unless indicated
90 otherwise, the use of the word "company" in this chapter means
91 "mortgage company" as defined in this paragraph (m).

92 (n) "Mortgage loan" means a loan or agreement to extend
93 credit made to a natural person, which loan is secured by a deed
94 to secure debt, security deed, mortgage, security instrument, deed

95 of trust or other document representing a security interest or
96 loan upon any interest in a lot intended for residential purposes,
97 or single- to four-family residential property located in
98 Mississippi, regardless of where made, including the renewal or
99 refinancing of any loan.

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

103 (p) "Principal" means a natural person who, directly or
104 indirectly, owns or controls an ownership interest of twenty-five
105 percent (25%) or more in a corporation or any other form of
106 business organization, regardless of whether the natural person
107 owns or controls the ownership interest through one or more
108 natural persons or one or more proxies, powers of attorney,
109 nominees, corporations, associations, limited liability companies,
110 partnerships, trusts, joint-stock companies, other entities or
111 devises, or any combination thereof.

112 (q) "Records" or "documents" means any item in hard
113 copy or produced in a format of storage commonly described as
114 electronic, imaged, magnetic, microphotographic or otherwise, and
115 any reproduction so made shall have the same force and effect as
116 the original thereof and be admitted in evidence equally with the
117 original.

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

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

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

126 (u) "Service a mortgage loan" means the collection or
127 remittance for another, or the right to collect or remit for

128 another, of payments of principal interest, trust items such as
129 insurance and taxes, and any other payments pursuant to a mortgage
130 loan.

131 (v) "Wholesale lender" means any person or entity who
132 makes a mortgage loan, or purchases or services mortgage loans,
133 utilizing the services of a person exempted, licensed or
134 registered under this chapter.

135 **SECTION 3.** Section 81-18-5, Mississippi Code of 1972, is
136 reenacted as follows:

137 81-18-5. The following persons are not subject to the
138 provisions of this chapter, unless otherwise provided in this
139 chapter:

140 (a) Any person authorized to engage in business as a
141 bank holding company or as a financial holding company, or any
142 wholly owned subsidiary thereof; however, the wholly owned
143 subsidiary must file a notification statement that includes the
144 following information:

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

147 (ii) The name and address of the parent financial
148 institution;

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

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

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

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

159 The notification statement must be filed before beginning to
160 conduct a mortgage business in this state and must be updated by

161 the entity as the information changes. Any entity that fails to
162 file the notification statement or keep the information current
163 will be immediately subject to the licensing requirements of
164 Section 81-18-9. This notification statement must be renewed
165 annually as of September 30 of each year with a renewal fee of One
166 Hundred Dollars (\$100.00).

167 (b) Any person authorized to engage in business as a
168 bank, credit card bank, savings bank, savings institution, savings
169 and loan association, building and loan association, trust company
170 or credit union under the laws of the United States, any state or
171 territory of the United States, or the District of Columbia, the
172 deposits of which are federally insured, or any wholly owned
173 subsidiary thereof.

174 (c) Any person who is a wholesale lender as defined in
175 Section 81-18-3(v) or who is registered by the Federal National
176 Mortgage Association, the Federal Home Loan Mortgage Corporation,
177 the Government National Mortgage Association or the United States
178 Department of Housing and Urban Development; however, persons who
179 qualify for registration under this paragraph shall be subject to
180 Sections 81-18-11, 81-18-13, 81-18-21, 81-18-23, 81-18-25,
181 81-18-27, 81-18-31, 81-18-33, 81-18-35, 81-18-39 and 81-18-43.

182 Upon the request of the commissioner, those persons shall submit
183 copies of any reports as required by the aforementioned
184 governmental entity to which the person is subject for licensing,
185 supervision or auditing. The department shall have the authority
186 to investigate all consumer complaints concerning Mississippi
187 residential property. To qualify for registration, the applicant
188 shall register for a registration certificate with the department
189 and pay an initial fee of Three Hundred Dollars (\$300.00). With
190 each application for renewal of the registration certificate, the
191 applicant shall pay a renewal fee of One Hundred Fifty Dollars
192 (\$150.00) and provide the department with evidence that the
193 applicant is still licensed, supervised or audited by the

194 governmental entity. If the renewal fee remains unpaid for thirty
195 (30) days after August 31, the registration shall expire, but not
196 before September 30 of any year for which the annual renewal fee
197 has been paid. If any person engages in business without paying
198 the fees provided for in this paragraph before commencing business
199 or before the expiration of the person's current registration, as
200 the case may be, then the person shall be liable for the full
201 amount of the registration fee, plus a penalty in an amount not to
202 exceed Twenty-five Dollars (\$25.00) for each day that the person
203 has engaged in business without a registration certificate or
204 after the expiration of a registration certificate. All
205 registration fees and penalties shall be paid into the Consumer
206 Finance Fund of the department. If the registered company has a
207 physical branch location in Mississippi, then this location must
208 be registered with the department as a branch in accordance with
209 Sections 81-18-17 and 81-18-25.

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

213 (e) Any attorney licensed to practice law in
214 Mississippi who provides mortgage loan services incidental to the
215 practice of law and who is not a principal of a mortgage company
216 as defined under this chapter.

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

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

224 (h) Any person who is employed by and representing a
225 Mississippi manufactured housing operation and who makes a
226 mortgage loan for an investment or on a whole loan basis; any

227 person who engages in owner-financing; or any person engaged in
228 the financing of a consumer loan secured by a mortgage on
229 residential immovable property in not more than twelve (12)
230 Mississippi residential mortgage loans, or who contracts for no
231 more than twelve (12) Mississippi residential loan transactions,
232 over the licensing period provided in this chapter, including
233 those acting as originators. The twelve (12) transactions are
234 cumulative to any combination of operations owned or controlled by
235 any one individual, sole proprietorship, corporation, limited
236 liability company, partnership, trust or any other group of
237 individuals, however organized. However, within thirty (30) days
238 of loan closure, the person shall submit to the commissioner a fee
239 of Ten Dollars (\$10.00), which is not chargeable to the consumer,
240 and written notification containing such loan information as
241 required by the commissioner, seeking approval to engage in a
242 residential mortgage transaction without first complying with the
243 licensing provisions of this chapter. Any person who enters into
244 more than twelve (12) of those transactions in the licensing
245 period provided in this chapter must be licensed according to the
246 procedures prescribed in this chapter. The fees paid for
247 registration during a licensing period will be deducted from the
248 cost of an initial license.

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

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

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

260 Company (FHLMC), the Government National Mortgage Association
261 (GNMA), the United States Department of Housing and Urban
262 Development (HUD), the Federal Housing Administration (FHA), the
263 Department of Veterans Affairs (VA), the Farmers Home
264 Administration (FmHA), and the Federal Land Banks and Production
265 Credit Associations.

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

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

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

292 81-18-7. (1) On and after July 1, 2000, no person or
293 natural person shall transact business in this state, directly or
294 indirectly, as a mortgage company unless he or she is licensed or
295 registered as a mortgage company by the department or is a person
296 exempted from the licensing requirements under Section 81-18-5.

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

301 (3) On and after July 1, 2000, every person who directly or
302 indirectly controls a person who violates this section, including
303 a general partner, executive officer, joint venturer, contractor,
304 or director of the person, violates this section to the same
305 extent as the person, unless the person whose violation arises
306 under this subsection shows by a preponderance of evidence the
307 burden of proof that he or she did not know and, in the exercise
308 of reasonable care, could not have known of the existence of the
309 facts by reason of which the original violation is alleged to
310 exist.

311 **SECTION 5.** Section 81-18-9, Mississippi Code of 1972, is
312 reenacted as follows:

313 81-18-9. (1) An application for a license under this
314 chapter shall be made in writing and in the form as the department
315 may prescribe.

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

317 (a) The legal name, residence, and business address of
318 the applicant and, if applicable the legal name, residence and
319 business address of every principal, together with the resume of
320 the applicant and of every principal of the applicant.

321 (b) The name under which the applicant will conduct
322 business in the state.

323 (c) The complete address of the applicant's initial
324 registered office, branch office(s) and any other locations at

325 which the applicant will engage in any business activity covered
326 by this chapter.

327 (d) A copy of the certificate of incorporation, if a
328 Mississippi corporation.

329 (e) Documentation satisfactory to the department as to
330 a certificate of existence of authority to transact business
331 lawfully in Mississippi, if an individual, sole proprietorship,
332 limited liability company, partnership, trust or any other group
333 of individuals, however organized.

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

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

341 (i) Copies of business licenses issued by
342 governmental agencies.

343 (ii) Written letters of employment history of the
344 person filing the application for at least two (2) years before
345 the date of the filing of an application including, but not
346 limited to, job descriptions, length of employment, names,
347 addresses and phone numbers for past employers.

348 (iii) A listing of wholesale lenders with whom the
349 applicant has done business with in the past two (2) years either
350 directly as a mortgage company or indirectly as an employee of a
351 mortgage company.

352 (iv) Any other data and pertinent information as
353 the department may require with respect to the applicant, its
354 directors, principals, trustees, officers, members, contractors or
355 agents.

356 (h) In lieu of documentation of two (2) years
357 experience in mortgage lending by an applicant, documentation of

358 passage of an examination covering mortgage lending, approved by
359 the department.

360 (3) The application shall be filed together with the
361 following:

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

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

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

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

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

377 (ii) Partners in a partnership or principal owners
378 of a limited liability company that are or will be actively
379 engaged in the daily operation of a mortgage brokering or lending
380 business in the State of Mississippi;

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

385 (iv) All loan originators.

386 **SECTION 6.** Section 81-18-11, Mississippi Code of 1972, is
387 reenacted as follows:

388 81-18-11. (1) For purposes of Section 81-18-9, the
389 definitions of the classes of companies and their respective
390 minimum amounts of surety bonds will be:

391 (a) "Correspondent lender" shall be defined as a
392 company that directly or indirectly solicits, processes, places or
393 negotiates mortgage loans for others, or offers to solicit,
394 process, place or negotiate mortgage loans for others, that uses
395 its own funds for closing and may hold loans and may service those
396 loans for a period of time not to exceed six (6) months before
397 selling the loan in the secondary market. The amount of the
398 surety bond for correspondent lenders shall be Fifty Thousand
399 Dollars (\$50,000.00).

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

408 (c) "Mortgage lender" shall be defined as any company
409 that makes a mortgage loan, using its own funds, for others or for
410 compensation or gain, with the expectation of retaining servicing
411 rights to those loans, or in the expectation of gain, either
412 directly or indirectly, sells or offers to sell a mortgage loan to
413 an investor in the secondary market. The amount of the surety
414 bond for a mortgage lender shall be One Hundred Fifty Thousand
415 Dollars (\$150,000.00).

416 (2) All surety bonds shall be in favor, first, of the State
417 of Mississippi for the use, benefit and indemnity of any person
418 who suffers any damage or loss as a result of the mortgage
419 company's breach of contract or of any obligation arising from
420 contract or any violation of law, and, second, for the payment of
421 any civil penalties, criminal fines, or costs of investigation
422 and/or prosecution incurred by the State of Mississippi, including
423 local law enforcement agencies.

424 **SECTION 7.** Section 81-18-13, Mississippi Code of 1972, is
425 reenacted as follows:

426 81-18-13. (1) Upon receipt of an application for licensure
427 or registration, which shall include the required set of
428 fingerprints from any local law enforcement agency, the department
429 shall conduct such an investigation as it deems necessary to
430 determine that the applicant and its officers, directors and
431 principals are of good character and ethical reputation; that the
432 applicant demonstrates reasonable financial responsibility; and
433 that the applicant has reasonable policies and procedures to
434 receive and process customer grievances and inquiries promptly and
435 fairly.

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

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

442 (4) The department shall not issue a license or registration
443 certificate if it finds that the applicant, or any person who is a
444 director, officer, partner or principal of the applicant, has been
445 convicted within ten (10) years of the application for license or
446 registration of: (a) a felony in any jurisdiction; or (b) a crime
447 that, if committed within this state, would constitute a felony
448 under the laws of this state; or (c) a misdemeanor in any
449 jurisdiction in which fraud is an essential element, including,
450 but not limited to, forgery, bribery, embezzlement or making a
451 fraudulent or false statement. For the purposes of this chapter,
452 a person shall be deemed to have been convicted of a crime if the
453 person has pleaded guilty to a crime before a court or federal
454 magistrate, or plea of nolo contendere, or has been found guilty
455 of a crime by the decision or judgment of a court or federal
456 magistrate or by the verdict of a jury, irrespective of the

457 pronouncement of sentence or the suspension of a sentence, unless
458 the plea of guilty, or the decision, judgment or verdict, has been
459 set aside, reversed or otherwise abrogated by lawful judicial
460 process, or unless the person convicted of the crime has received
461 a pardon from the President of the United States or the Governor
462 or other pardoning authority in the jurisdiction where the
463 conviction was obtained.

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

481 (6) The department shall deny a license or registration
482 certificate or otherwise restrict a license or registration
483 certificate if it finds that the applicant, or any person who is a
484 director, officer, partner, affiliate, contractor or principal of
485 the applicant, has had any professional license denied, revoked or
486 suspended by any state within two (2) years of the date of the
487 application.

488 (7) Within fifteen (15) days after receipt of a completed
489 application, final verification from the Department of Public

490 Safety and/or FBI, and payment of licensing fees prescribed by
491 this chapter, the department shall either grant or deny the
492 request for license.

493 (8) A person shall not be indemnified for any act covered by
494 this chapter or for any fine or penalty incurred under this
495 chapter as a result of any violation of this chapter or
496 regulations adopted under this chapter, due to the legal form,
497 corporate structure, or choice of organization of the person,
498 including, but not limited to, a limited liability corporation.

499 **SECTION 8.** Section 81-18-15, Mississippi Code of 1972, is
500 reenacted as follows:

501 81-18-15. (1) Each license shall remain in full force and
502 effect until relinquished, suspended, revoked or expired. With
503 each initial application for a license, the applicant shall pay to
504 the commissioner a license fee of Seven Hundred Fifty Dollars
505 (\$750.00), and on or before August 31 of each year thereafter, an
506 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
507 If the annual renewal fee remains unpaid thirty (30) days after
508 August 31, the license shall expire, but not before September 30
509 of any year for which the annual renewal fee has been paid. If
510 any person engages in business as provided for in this chapter
511 without paying the license fee provided for in this subsection
512 before commencing business or before the expiration of the
513 person's current license, as the case may be, then the person
514 shall be liable for the full amount of the license fee, plus a
515 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
516 for each day that the person has engaged in such business without
517 a license or after the expiration of a license. All licensing
518 fees and penalties shall be paid into the Consumer Finance Fund of
519 the department. If the application is withdrawn or denied, the
520 application fee is not refundable.

521 (2) Any licensee making timely and proper application for a
522 license renewal shall be permitted to continue to operate under

523 its existing license until its application is approved or
524 rejected, but shall not be released from or otherwise indemnified
525 for any act covered by this chapter or for any penalty incurred
526 under this chapter as a result of any violation of this chapter or
527 regulations adopted under this chapter, pending final approval or
528 disapproval of the application for the license renewal.

529 (3) Each application for licensing renewal or registration
530 renewal shall include evidence of the satisfactory completion of
531 at least twelve (12) hours of approved continuing education in
532 primary and subordinated financing transactions by the officers
533 and principals who are or will be actively engaged in the daily
534 operation of a mortgage company in the State of Mississippi and
535 registered originators. For purposes of this subsection (3),
536 approved courses shall be those as approved by the Mississippi
537 Mortgage Bankers Association, the Education Committee of the
538 National Association of Mortgage Brokers or the Mississippi
539 Association of Mortgage Brokers, who shall submit to the
540 department a listing of approved schools, courses, programs and
541 special training sessions. However, each application for
542 licensing renewal or registration renewal of manufactured housing
543 licensees or originators shall include evidence of the
544 satisfactory completion of at least twelve (12) hours of
545 continuing education, of which eight (8) hours must be approved by
546 the Commissioner of Insurance and four (4) hours consisting of
547 courses in primary and subordinated financing transactions must be
548 approved by the Mississippi Manufactured Housing Association,
549 which shall submit to the department a listing of those approved
550 schools, courses, programs and special training sessions. A
551 manufactured housing licensee or originator may submit evidence of
552 completion of courses that have been approved by the Mississippi
553 Mortgage Bankers Association, the Education Committee of the
554 National Association of Mortgage Brokers or the Mississippi
555 Association of Mortgage Brokers to satisfy the four-hour

556 requirement of courses in primary and subordinated financing
557 transactions.

558 **SECTION 9.** Section 81-18-17, Mississippi Code of 1972, is
559 reenacted as follows:

560 81-18-17. (1) Each license issued under this chapter shall
561 state the address of the licensee's principal place of business
562 and the name of the licensee.

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

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

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

568 (5) Each licensee shall notify the department, in writing,
569 of any change in the address of its principal place of business or
570 of any additional location of business or any change of officer,
571 director or principal of the licensee within thirty (30) days of
572 the change.

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

589 department within ten (10) days of the commencement of business at
590 the branch office. Each branch office that currently holds a
591 branch license shall renew that branch license before the
592 expiration date of the main company license, on or before
593 September 30. The license renewal shall be on a form prescribed
594 by the department with a nonrefundable renewal application fee of
595 Twenty-five Dollars (\$25.00).

596 **SECTION 10.** Section 81-18-19, Mississippi Code of 1972, is
597 reenacted as follows:

598 81-18-19. (1) Except as provided in this section, no person
599 shall acquire directly or indirectly twenty-five percent (25%) or
600 more of the voting shares of a corporation or twenty-five percent
601 (25%) or more of the ownership of any other entity licensed to
602 conduct business under this chapter unless it first files an
603 application in accordance with the requirements prescribed in
604 Section 81-18-9.

605 (2) Upon the filing and investigation of an application, the
606 department shall permit the applicant to acquire the interest in
607 the licensee if it is satisfied and finds that the applicant and
608 its members, if applicable, its directors and officers, if a
609 corporation, and any proposed new directors and officers have
610 provided its surety bond and have the character, reputation and
611 experience to warrant belief that the business will be operated
612 fairly and in accordance with the law. If the application is
613 denied, the department shall notify the applicant of the denial
614 and the reasons for the denial.

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

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

621 (a) The acquisition of an interest in a licensee
622 directly or indirectly including an acquisition by merger or
623 consolidation by or with a person registered under this chapter or
624 exempt from this chapter under Section 81-18-5.

625 (b) The acquisition of an interest in a licensee
626 directly or indirectly including an acquisition by merger or
627 consolidation by or with a person affiliated through common
628 ownership with the licensee.

629 (c) The acquisition of an interest in a licensee by a
630 person by bequest, device, gift or survivorship or by operation of
631 law.

632 (5) A person acquiring an interest in a licensee in a
633 transaction that is requesting exemption from filing an
634 application for approval of the application shall send a written
635 request to the department for an exemption within thirty (30) days
636 before the closing of the transaction.

637 **SECTION 11.** Section 81-18-21, Mississippi Code of 1972, is
638 reenacted as follows:

639 81-18-21. (1) Any person required to be licensed under this
640 chapter shall maintain in its offices, or such other location as
641 the department shall permit, the books, accounts and records
642 necessary for the department to determine whether or not the
643 person is complying with the provisions of this chapter and the
644 rules and regulations adopted by the department under this
645 chapter. These books, accounts and records shall be maintained
646 apart and separate from any other business in which the person is
647 involved and may represent historical data for three (3) years
648 preceding the date of the last license application date forward.
649 The books, accounts and records shall be kept in a secure location
650 under conditions that will not lead to their damage or
651 destruction. If the mortgage company wishes to keep the files in
652 a location other than the location listed on the license or
653 registration certificate, then the company first must submit a

654 written request on a form designated by the department and gain
655 written approval from the commissioner before storing the files in
656 a different location.

657 (2) To assure compliance with the provisions of this
658 chapter, the department may examine the books and records of any
659 licensee without notice during normal business hours. The
660 commissioner shall charge the licensee an examination fee in an
661 amount not less than Three Hundred Dollars (\$300.00) nor more than
662 Six Hundred Dollars (\$600.00) for each office or location within
663 the State of Mississippi, plus any actual expenses incurred while
664 examining the licensee's records or books that are located outside
665 the State of Mississippi. However, in no event shall a licensee
666 be examined more than once in a two-year period unless for cause
667 shown based upon consumer complaint and/or other exigent reasons
668 as determined by the commissioner.

669 (3) The department, its designated officers and employees,
670 or its duly authorized representatives, for the purposes of
671 discovering violations of this chapter and for the purpose of
672 determining whether any person or individual reasonably suspected
673 by the commissioner of conducting business that requires a license
674 or registration under this chapter, may investigate those persons
675 and individuals and examine all relevant books, records and papers
676 employed by those persons or individuals in the transaction of
677 business, and may summon witnesses and examine them under oath
678 concerning matters as to the business of those persons, or other
679 such matters as may be relevant to the discovery of violations of
680 this chapter including, without limitation, the conduct of
681 business without a license or registration as required under this
682 chapter.

683 (4) The department, in its discretion, may disclose
684 information concerning any violation of this chapter or any rule,
685 regulation, or order under this chapter, provided the information
686 is derived from a final order of the department.

687 (5) Examinations and investigations conducted under this
688 chapter and information obtained by the department, except as
689 provided in subsection (4) of this section, in the course of its
690 duties under this chapter are confidential.

691 (6) In the absence of malice, fraud or bad faith a person is
692 not subject to civil liability arising from the filing of a
693 complaint with the department, furnishing other information
694 required by this chapter, information required by the department
695 under the authority granted in this chapter, or information
696 voluntarily given to the department related to allegations that a
697 licensee or prospective licensee has violated this chapter.

698 **SECTION 12.** Section 81-18-23, Mississippi Code of 1972, is
699 reenacted as follows:

700 81-18-23. (1) Each company shall annually, on or before
701 January 31, file a written report with the department containing
702 the December 31 information that the department may reasonably
703 require concerning the company's business and operations during
704 the preceding calendar year. The report shall be made in the form
705 prescribed by the department.

706 (2) Any company that fails to file with the department by
707 January 31 the report required by this section shall be subject to
708 a late penalty of Ten Dollars (\$10.00) for each day after January
709 31 the report is delinquent, but in no event shall the aggregate
710 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

717 (5) Within fifteen (15) days of the occurrence of any of the
718 following events, a company shall file a written report with the

719 commissioner describing the event and its expected impact on the
720 activities of the company in this state:

721 (a) The filing for bankruptcy or reorganization by the
722 company;

723 (b) The institution of revocation or suspension
724 proceedings against the company by any state or governmental
725 authority;

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

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

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

734 **SECTION 13.** Section 81-18-25, Mississippi Code of 1972, is
735 reenacted as follows:

736 81-18-25. (1) Each principal place of business and branch
737 office in the state shall meet all of the following requirements:

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

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

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

745 Stationary construction does not include the use of portable
746 buildings.

747 (c) Display a permanent sign outside the place of
748 business readily visible to the general public, unless the display
749 of sign violates local zoning ordinances or restrictive covenants.

750 The sign must contain the name of the licensee and the words

751 "Mississippi Licensed Mortgage Company" or "Mississippi Registered
752 Mortgage Company."

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

756 (3) Each person registered under this chapter shall
757 prominently display his or her registration in the office where
758 the person is employed.

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

762 (a) It is a separate entity operating as an independent
763 business or mortgage operation which is not under the direct
764 control, management supervision and responsibility of the
765 licensee;

766 (b) The licensee or registered company is not the
767 lessee or owner of the branch and the branch is not under the
768 direct and daily ownership, control, management and supervision of
769 the licensee or registered company;

770 (c) All assets and liabilities of the branch are not
771 assets and liabilities of the licensee, and all income and
772 expenses of the branch are income and expenses of the licensee and
773 properly accounted for in the financial records and tax returns of
774 the licensee; or

775 (d) All practices, policies and procedures, including,
776 but not limited to, those relating to employment and operations,
777 are not originated and established by the licensee or registered
778 company and are not applied consistently to the main office and
779 all branches.

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

784 **SECTION 14.** Section 81-18-27, Mississippi Code of 1972, is
785 reenacted as follows:

786 81-18-27. (1) No person required to be licensed or
787 registered under this chapter shall:

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

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

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

797 (d) Improperly refuse to issue a satisfaction of a
798 mortgage loan.

799 (e) Fail to account for or deliver to any person any
800 personal property obtained in connection with a mortgage loan,
801 such as money, funds, deposits, checks, drafts, mortgages or other
802 documents or things of value that have come into the possession of
803 the mortgage company and that are not the property of the mortgage
804 company, or that the mortgage company is not by law or at equity
805 entitled to retain.

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

810 (g) Engage in any fraudulent residential mortgage
811 underwriting practices.

812 (h) Induce, require, or otherwise permit the applicant
813 for a mortgage loan or mortgagor to sign a security deed, note, or
814 other pertinent financial disclosure documents with any blank
815 spaces to be filled in after it has been signed, except blank

816 spaces relating to recording or other incidental information not
817 available at the time of signing.

818 (i) Make, directly or indirectly, any residential
819 mortgage loan with the intent to foreclose on the borrower's
820 property. For purposes of this paragraph, there is a presumption
821 that a person has made a residential mortgage loan with the intent
822 to foreclose on the borrower's property if all of the following
823 circumstances are proven:

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

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

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

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

831 (v) That the person does business under a trade
832 name that misrepresents or tends to misrepresent that the person
833 is a bank, trust company, savings bank, savings and loan
834 association, credit union, or insurance company.

835 (j) Charge or collect any direct payment, compensation
836 or advance fee from a borrower unless and until a loan is actually
837 found, obtained and closed for that borrower, and in no event
838 shall that direct payment, compensation or advance fee exceed
839 seven and ninety-five one-hundredths percent (7.95%) of the
840 original principal amount of the loan, and any such direct
841 payments, compensation or advance fees shall be included in all
842 annual percentage rate (APR) calculations if required under
843 Regulation Z of the federal Truth in Lending Act (TILA). A direct
844 payment, compensation or advance fee as defined in this section
845 shall not include:

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

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

852 (iii) Any indirect payment or compensation by a
853 lender to a licensed mortgage company required to be disclosed by
854 the licensed mortgage company under RESPA, provided that the
855 payment or compensation is disclosed to the borrower by the
856 licensed mortgage company on a good faith estimate of costs, is
857 included in the APR if required under Regulation Z of TILA, and is
858 made pursuant to a written agreement between the licensed mortgage
859 company and the borrower as may be required by Section 81-18-33;

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

864 (v) An advance fee collected by a licensed or
865 registered mortgage company to be paid to a lender to lock in an
866 interest rate and/or a certain number of points on a mortgage loan
867 from the lender as provided in Section 81-18-28.

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

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

877 (2) A mortgage company shall only broker a residential
878 mortgage loan to a mortgage company licensed or registered under
879 this chapter or to a person exempt from licensure under the
880 provisions of this chapter.

881 **SECTION 15.** Section 81-18-29, Mississippi Code of 1972, is
882 reenacted as follows:

883 81-18-29. The department shall promulgate those rules and
884 regulations, not inconsistent with law, necessary for the
885 enforcement of this chapter.

886 **SECTION 16.** Section 81-18-31, Mississippi Code of 1972, is
887 reenacted as follows:

888 81-18-31. The department shall promulgate regulations
889 governing the advertising of mortgage loans, including, but not
890 limited to, the following requirements:

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

897 (b) That all licensees shall maintain a copy of all
898 advertisements citing interest rates or payment amounts primarily
899 disseminated in this state and shall attach to each advertisement
900 documentation that provides corroboration of the availability of
901 the interest rate and terms of loans and names the specific media
902 sources by which the advertisements were distributed;

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

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

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

912 (ii) The term in years or months to fully repay
913 the mortgage;

914 (iii) The APR as computed under federal
915 guidelines; and

916 (e) That no licensee shall advertise its services in
917 Mississippi in any media disseminated primarily in this state,
918 whether print or electronic, without the words "Mississippi
919 Licensed Mortgage Company" or "Mississippi Registered Mortgage
920 Company."

921 **SECTION 17.** Section 81-18-33, Mississippi Code of 1972, is
922 reenacted as follows:

923 81-18-33. The individual borrower files of a mortgage
924 company shall contain at least the following:

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

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

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

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

936 Mississippi Department of Banking and
937 Consumer Finance

938 P.O. Box 23729

939 Jackson, MS 39225-3729";

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

942 (c) A copy of the signed closing statement as required
943 by HUD or documentation of denial or cancellation of the loan
944 application;

945 (d) A copy of the good faith estimate of costs provided
946 to the borrower;

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

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

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

955 **SECTION 18.** Section 81-18-35, Mississippi Code of 1972, is
956 reenacted as follows:

957 81-18-35. Each licensee shall maintain a journal of mortgage
958 transactions at the principal place of business as stated on its
959 license, which shall include at least the following information:

960 (a) Name of applicant;

961 (b) Date of application; and

962 (c) Disposition of loan application, indicating date of
963 loan funding, loan denial, withdrawal and name of lender if
964 applicable.

965 **SECTION 19.** Section 81-18-37, Mississippi Code of 1972, is
966 reenacted as follows:

967 81-18-37. (1) The department may suspend or revoke any
968 license or registration for any reason that would have been
969 grounds for refusal to issue an original license or registration
970 or for:

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

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

978 (2) Notice of the department's intention to enter an order
979 denying an application for a license or registration under this

980 chapter or of an order suspending or revoking a license or
981 registration under this chapter shall be given to the applicant,
982 licensee or registrant in writing, sent by registered or certified
983 mail addressed to the principal place of business of the
984 applicant, licensee or registrant. Within thirty (30) days of the
985 date of the notice of intention to enter an order of denial,
986 suspension or revocation under this chapter, the applicant,
987 licensee or registrant may request in writing a hearing to contest
988 the order. If a hearing is not requested in writing within thirty
989 (30) days of the date of the notice of intention, the department
990 shall enter a final order regarding the denial, suspension or
991 revocation. Any final order of the department denying, suspending
992 or revoking a license or registration shall state the grounds upon
993 which it is based and shall be effective on the date of issuance.
994 A copy of the final order shall be forwarded promptly by
995 registered or certified mail addressed to the principal place of
996 business of the applicant, licensee or registrant.

997 **SECTION 20.** Section 81-18-39, Mississippi Code of 1972, is
998 reenacted as follows:

999 81-18-39. (1) For purposes of this section, the term
1000 "person" shall be construed to include any officer, director,
1001 employee, affiliate or other person participating in the conduct
1002 of the affairs of the person subject to the orders issued under
1003 this section.

1004 (2) If the department reasonably determines that a person
1005 required to be licensed or registered under this chapter has
1006 violated any law of this state or any order or regulation of the
1007 department, the department may issue a written order requiring the
1008 person to cease and desist from unlawful or unauthorized
1009 practices. In the case of an unlawful purchase of mortgage loans,
1010 the cease and desist order to a purchaser shall constitute the
1011 knowledge required under this section for any subsequent
1012 violations.

1013 (3) Any person required to be licensed or registered under
1014 this chapter who has been deemed by the commissioner, after notice
1015 and hearing, to have violated the terms of any order properly
1016 issued by the department under this section shall be liable for a
1017 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1018 The department, in determining the amount of the penalty, shall
1019 take into account the appropriateness of the penalty relative to
1020 the size of the financial resources of the person, the good faith
1021 efforts of the person to comply with the order, the gravity of the
1022 violation, the history of previous violations by the person, and
1023 other factors or circumstances that contributed to the violation.
1024 The department may compromise, modify or refund any penalty that
1025 has been imposed under this section. Any person assessed a
1026 penalty as provided in this subsection shall have the right to
1027 request a hearing on the amount of the penalty within ten (10)
1028 days after receiving notification of the assessment. If no
1029 hearing is requested within ten (10) days of the receipt of the
1030 notice, the penalty shall be final except as to judicial review in
1031 the Chancery Court of the First Judicial District of Hinds County.
1032 Upon the filing of a petition for judicial review, the court shall
1033 issue an order to the licensee requiring the licensee to show
1034 cause why it should not be entered. If the court determines,
1035 after a hearing upon the merits or after failure of the person to
1036 appear when so ordered, that the order of the department was
1037 properly issued, it shall grant the penalty sought by the
1038 department.

1039 **SECTION 21.** Section 81-18-41, Mississippi Code of 1972, is
1040 reenacted as follows:

1041 81-18-41. Nothing in this chapter shall preclude a person
1042 whose license or registration has been suspended or revoked from
1043 continuing to service mortgage loans pursuant to servicing
1044 contracts in existence at the time of the suspension or
1045 revocation.

1046 **SECTION 22.** Section 81-18-43, Mississippi Code of 1972, is
1047 reenacted as follows:

1048 81-18-43. (1) In addition to any other penalty that may be
1049 applicable, any licensee, individual required to be registered, or
1050 employee who willfully violates any provision of this chapter, or
1051 who willfully makes a false entry in any document specifically
1052 required by this chapter, shall be guilty of a misdemeanor and,
1053 upon conviction thereof, shall be punishable by a fine not in
1054 excess of One Thousand Dollars (\$1,000.00) per violation or false
1055 entry.

1056 (2) In addition to any other penalty that may be applicable,
1057 any licensee, individual required to be registered, or employee
1058 who fails to make a record of a mortgage transaction and
1059 subsequently sells or disposes of the mortgage from that
1060 transaction shall be punished as follows:

1061 (a) For a first offense, the licensee, individual
1062 required to be registered, or employee shall be guilty of a
1063 misdemeanor and, upon conviction thereof, shall be punishable by a
1064 fine not in excess of One Thousand Dollars (\$1,000.00) or by
1065 imprisonment in the county jail for not more than one (1) year, or
1066 both fine and imprisonment;

1067 (b) For a second or subsequent offense, the licensee,
1068 individual required to be registered, or employee shall be guilty
1069 of a felony and, upon conviction thereof, shall be punishable by a
1070 fine not in excess of Five Thousand Dollars (\$5,000.00) or by
1071 imprisonment in the custody of the State Department of Corrections
1072 for a term not less than one (1) year nor more than five (5)
1073 years, or by both fine and imprisonment.

1074 (3) Compliance with the criminal provisions of this section
1075 shall be enforced by the appropriate law enforcement agency, which
1076 may exercise for that purpose any authority conferred upon the
1077 agency by law.

1078 (4) When the commissioner has reasonable cause to believe
1079 that a person is violating any provision of this chapter, the
1080 commissioner, in addition to and without prejudice to the
1081 authority provided elsewhere in this chapter, may enter an order
1082 requiring the person to stop or to refrain from the violation.
1083 The commissioner may sue in any chancery court of the state having
1084 jurisdiction and venue to enjoin the person from engaging in or
1085 continuing the violation or from doing any act in furtherance of
1086 the violation. In such an action, the court may enter an order or
1087 judgment awarding a preliminary or permanent injunction.

1088 (5) The commissioner may, after notice and hearing, impose a
1089 civil penalty against any licensee if the licensee, individual
1090 required to be registered, or employee is adjudged by the
1091 commissioner to be in violation of the provisions of this chapter.
1092 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
1093 per violation and shall be deposited into the Consumer Finance
1094 Fund of the department.

1095 (6) The commissioner may make public any final
1096 administrative action imposed against a licensee or registrant for
1097 a violation of this chapter, including cease and desist orders,
1098 civil monetary penalties, license suspensions, revocations or
1099 application denials.

1100 (7) The state may enforce its rights under the surety bond
1101 as required in Section 81-18-11 as an available remedy for the
1102 collection of any civil penalties, criminal fines or costs of
1103 investigation and/or prosecution incurred.

1104 **SECTION 23.** Section 81-18-45, Mississippi Code of 1972, is
1105 reenacted as follows:

1106 81-18-45. The commissioner may employ the necessary
1107 full-time employees above the number of permanent full-time
1108 employees authorized for the department for the fiscal year 2001,
1109 to carry out and enforce the provisions of this chapter. The

1110 commissioner also may expend the necessary funds and equip and
1111 provide necessary travel expenses for those employees.

1112 **SECTION 24.** Section 81-18-47, Mississippi Code of 1972, is
1113 reenacted as follows:

1114 81-18-47. (1) A licensee under this chapter shall have no
1115 liability for any act or practice done or omitted in conformity
1116 with (a) any rule or regulation of the commissioner, or (b) any
1117 rule, regulation, interpretation or approval of any other state or
1118 federal agency or any opinion of the Attorney General,
1119 notwithstanding that after such act or omission has occurred the
1120 rule, regulation, interpretation, approval or opinion is amended,
1121 rescinded, or determined by judicial or other authority to be
1122 invalid for any reason.

1123 (2) A licensee under this chapter, acting in conformity with
1124 a written interpretation or approval by an official or employee of
1125 any state or federal agency or department, shall be presumed to
1126 have acted in accordance with applicable law, notwithstanding that
1127 after such act has occurred, the interpretation or approval is
1128 amended, rescinded, or determined by judicial or other authority
1129 to be incorrect or invalid for any reason.

1130 **SECTION 25.** Section 81-18-49, Mississippi Code of 1972, is
1131 reenacted as follows:

1132 81-18-49. Notwithstanding any provisions of this chapter to
1133 the contrary, mortgage companies engaging in business on or before
1134 June 1, 2000, shall be duly licensed by the department after
1135 submitting not later than January 1, 2001, the required documents
1136 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1137 the expiration of the initial licenses for such mortgage
1138 companies, the department shall renew the licenses only if the
1139 mortgage companies satisfy all of the provisions of this chapter.

1140 **SECTION 26.** Section 81-18-51, Mississippi Code of 1972, is
1141 amended as follows:

1142 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1143 repealed on July 1, 2009.

1144 **SECTION 27.** This act shall take effect and be in force from
1145 and after July 1, 2007.