

By: Senator(s) Mettetal

To: Business and Financial  
Institutions; Judiciary,  
Division BCOMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2350

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 REENACTED  
49 SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE  
50 REPEALER; TO CREATE A NEW SECTION TO CREATE THE CRIMINAL OFFENSE  
51 OF RESIDENTIAL MORTGAGE FRAUD AND PRESCRIBE THE PENALTIES  
52 THEREFOR; AND FOR 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 subsequent 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 natural 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  
77 in 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 licensed location, whose conduct of the mortgage business  
118 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, \* \* \* assisting with the preparation of loan applications  
123 or other documents, quoting loan rates or terms, or providing  
124 required disclosures. This individual must work for a  
125 licensed \* \* \* company and work from the licensed location with  
126 the department. However, an owner of a minimum of ten percent  
127 (10%) of a licensed company or the named principal officer on file  
128 with the department, which are registered loan originators with  
129 the department, may work from any licensed location of the  
130 licensed company on a temporary basis, in the capacity of a loan  
131 originator as described in this chapter. The term does not  
132 include individuals whose job responsibilities on behalf of a  
133 company are solely clerical in nature, which is defined as normal  
134 office procedures, not including any duties listed in the  
135 definition of "loan originator," or sales representatives of a  
136 licensed Mississippi manufactured housing operation who transmits  
137 information concerning a sale via mail, courier service, or  
138 electronically to a licensee or registered originator.

139       (m) "Loan processor" means an employee of a licensed  
140 mortgage broker, mortgage lender or a person exempt from licensure  
141 under this chapter and who performs, under the direction and  
142 supervision of the mortgage broker, lender, originator or other  
143 exempt person, certain clerical duties in connection with  
144 residential mortgage loan transactions, which may include  
145 collecting financial information and other related documentation  
146 that is a part of the mortgage loan application process, ordering  
147 verification of employment, verification of deposits, requests for  
148 mortgage or other information necessary to process the mortgage  
149 loan application. A loan processor may not perform any of the  
150 duties of an originator enumerated in paragraph (1), but a loan  
151 originator may perform the duties of a loan processor.

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

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

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

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

164           \* \* \*

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

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

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

185 supporting personal documentation for loan applications such as  
186 W-2 forms, verifications of income and employment, bank  
187 statements, tax returns, payroll stubs and any required  
188 disclosures.

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

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

203         (w) "Natural person" means a human being, as  
204 distinguished from an artificial person created by law.

205         (x) "Person" means any individual, sole proprietorship,  
206 corporation, limited liability company, partnership, trust or any  
207 other group of individuals, however organized.

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

217           (z) "Principal officer" means an owner or employee of a  
218 mortgage broker or mortgage lender who submits documentation of  
219 two (2) years' experience directly related to mortgage lending,  
220 who registers as a loan originator as defined in this chapter, and  
221 who resides within one hundred twenty-five (125) miles of the  
222 licensed main office of the company.

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

229           (bb) "Registrant" means any person required to register  
230 under Section 81-18-5(1).

231           (cc) "Residential immovable property" means property  
232 such as, but not limited to, vinyl siding, roofs, pools, spas,  
233 appliances, windows, home additions, landscaping, fencing, etc.

234           (dd) "Residential property" means improved real  
235 property or lot used or occupied, or intended to be used or  
236 occupied, as a residence by a \* \* \* person.

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

244           \* \* \*

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

247           81-18-5. The following persons are not subject to the  
248 provisions of this chapter, unless otherwise provided in this  
249 chapter:

250           (a) Any person authorized to engage in business as a  
251 bank holding company or as a financial holding company, or any  
252 wholly owned subsidiary thereof; however, the wholly owned  
253 subsidiary must file a notification statement that includes the  
254 following information:

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

257                   (ii) The name and address of the parent financial  
258 institution;

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

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

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

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

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

277           (b) Any person authorized to engage in business as a  
278 bank, credit card bank, savings bank, savings institution, savings  
279 and loan association, building and loan association, trust company  
280 or credit union under the laws of the United States, any state or  
281 territory of the United States, or the District of Columbia, the



282 deposits of which are federally insured, or any wholly owned  
283 subsidiary thereof.

284 \* \* \*

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

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

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

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

299 (g) Any person who is employed by and represents a  
300 Mississippi manufactured housing operation and who makes a  
301 mortgage loan on manufactured housing and land transactions,  
302 modular homes, or any combination thereof; any person who engages  
303 in owner-financing; or any person engaged in the financing of a  
304 consumer loan secured by a mortgage on residential immovable  
305 property in not more than twelve (12) Mississippi residential  
306 mortgage loans, or who contracts for no more than twelve (12)  
307 Mississippi residential loan transactions, over the licensing  
308 period provided in this chapter, including those acting as  
309 originators. The twelve (12) transactions are cumulative to any  
310 combination of operations owned or controlled by any one  
311 individual, sole proprietorship, corporation, limited liability  
312 company, partnership, trust or any other group of individuals,  
313 however organized. However, within thirty (30) days of loan  
314 closure, the person shall submit to the commissioner a fee of Ten

315 Dollars (\$10.00), which is not chargeable to the consumer, and  
316 written notification containing such loan information as required  
317 by the commissioner, seeking approval to engage in a residential  
318 mortgage transaction without first complying with the licensing  
319 provisions of this chapter. Any person who enters into more than  
320 twelve (12) of those transactions in the licensing period provided  
321 in this chapter must be licensed according to the procedures  
322 prescribed in this chapter. The fees paid for registration during  
323 a licensing period will be deducted from the cost of an initial  
324 license. This paragraph (g) shall not include persons solely  
325 involved in the making of a mortgage loan on modular homes.

326 (h) Any natural person who purchases mortgage loans  
327 from a licensed mortgage broker or mortgage lender solely as an  
328 investment and who is not in the business of making or servicing  
329 mortgage loans.

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

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

344 (k) Nonprofit corporations exempt from federal taxation  
345 under Section 501(c) of the Internal Revenue Code making mortgage  
346 loans to promote home ownership or home improvements for the  
347 disadvantaged.

348           (1) Loan originators as defined under Section  
349 81-18-3(j) are exempt from the licensing requirements of this  
350 chapter except for Sections 81-18-9(3)(d), 81-18-13, 81-18-15(3),  
351 81-18-17, 81-18-37 and 81-18-43, but shall register with the  
352 department as a loan originator. Any \* \* \* person required to  
353 register under this paragraph \* \* \* shall register initially with  
354 the department and thereafter file an application for renewal of  
355 registration with the department on or before December 31 of each  
356 year providing the department with such information as the  
357 department may prescribe by regulation, including, but not limited  
358 to, the business address where the person engages in any business  
359 activities covered by this chapter, proof of at least one (1) year  
360 of experience directly in mortgage lending within the two (2)  
361 years prior to the date of application, the residential address of  
362 the applicant and a telephone number that customers may use to  
363 contact the person. If the person does not meet the experience  
364 requirement, then he or she shall complete a minimum of  
365 twenty-four (24) hours of education as approved by the Mississippi  
366 Association of Mortgage Brokers, the National Association of  
367 Mortgage Brokers, the Mortgage Bankers Association or the Mortgage  
368 Bankers Association of Mississippi for the experience waiver. If  
369 the experience did not occur within the State of Mississippi, then  
370 the department shall require the person to complete an education  
371 course of a minimum of four (4) hours covering the Mississippi  
372 Mortgage Consumer Protection Law and to pass an examination  
373 covering the cause material. This initial registration of a loan  
374 originator shall be accompanied by a fee of One Hundred Dollars  
375 (\$100.00). Annual renewals of this registration shall require a  
376 fee of Fifty Dollars (\$50.00). No person required to register  
377 under this paragraph \* \* \* shall transact business in this state  
378 directly or indirectly as a loan originator unless that person is  
379 registered with the department. The loan originator shall display

380 the current, original registration issued by the department in the  
381 licensed office in which he or she is assigned.

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

384 81-18-7. (1) On and after July 1, 2000, no person \* \* \*  
385 shall transact business in this state, directly or indirectly, as  
386 a mortgage broker or mortgage lender unless he or she is  
387 licensed \* \* \* by the department or is a person exempted from the  
388 licensing requirements under Section 81-18-5.

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

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

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

405 81-18-8. Municipalities and counties in this state may enact  
406 ordinances that are in compliance with, but not more restrictive  
407 than, the provisions of this chapter. Any order, ordinance or  
408 regulation existing on July 1, 2002, or enacted on or after July  
409 1, 2002, that conflicts with this provision shall be null and  
410 void.

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

413           81-18-9. (1) An application for a license under this  
414 chapter shall be made in writing and in the form as the department  
415 may prescribe.

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

417           (a) The legal name, residence, and business address of  
418 the applicant and, if applicable the legal name, residence and  
419 business address of every principal, together with the resume of  
420 the applicant and of every principal of the applicant.

421           (b) The legal name of the mortgage broker or mortgage  
422 lender in addition to the name under which the applicant will  
423 conduct business in the state, neither of which may be already  
424 assigned to a licensed mortgage broker or mortgage lender.

425           (c) The complete address of the applicant's main  
426 office, branch office(s) and any other locations at which the  
427 applicant will engage in any business activity covered by this  
428 chapter.

429           (d) A copy of the certificate of incorporation, if a  
430 Mississippi corporation.

431           (e) Documentation satisfactory to the department as to  
432 a certificate of existence of authority to transact business  
433 lawfully in Mississippi, if an individual, sole proprietorship,  
434 limited liability company, partnership, trust or any other group  
435 of individuals, however organized.

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

439           (g) Documentation of a minimum of two (2) years'  
440 experience directly in mortgage lending by a person named as the  
441 principal officer of the company. This experience shall have been  
442 within the previous four (4) years from the date of application.

443 If the proof of experience is with a company that is located  
444 outside of Mississippi, then the principal officer shall be  
445 required to complete four (4) hours of approved courses on the

446 Mississippi Mortgage Consumer Protection Law. The principal  
447 officer shall also register as a loan originator with the  
448 department. Evidence shall include, where applicable:

449 (i) Copies of business licenses issued by  
450 governmental agencies.

451 (ii) Written letters of employment history of the  
452 person filing the application for at least two (2) years before  
453 the date of the filing of an application including, but not  
454 limited to, job descriptions, length of employment, names,  
455 addresses and phone numbers for past employers.

456 (iii) A listing of wholesale lenders with whom the  
457 applicant has done business with in the past two (2) years either  
458 directly as a mortgage broker or loan originator.

459 (iv) Any other data and pertinent information as  
460 the department may require with respect to the applicant, its  
461 directors, principals, trustees, officers, members, contractors or  
462 agents. A résumé alone shall not be sufficient proof of  
463 employment history.

464 \* \* \*

465 (3) The application shall be filed together with the  
466 following:

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

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

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

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

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

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

486 (iii) \* \* \* Any shareholders owning ten percent  
487 (10%) or more of the outstanding shares of the corporation; and

488 (iv) All loan originators.

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

491 81-18-11. (1) For purposes of Section 81-18-9, the  
492 definitions of the classes of companies and their respective  
493 minimum amounts of surety bonds will be:

494 \* \* \*

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

503 (b) "Mortgage lender" shall be defined as any company  
504 that makes a mortgage loan, using its own funds, for others or for  
505 compensation or gain, with the expectation of retaining servicing  
506 rights to those loans, or in the expectation of gain, either  
507 directly or indirectly, sells or offers to sell a mortgage loan to  
508 an investor in the secondary market. This definition includes  
509 companies that utilize the services of a person exempted or

510 licensed under this chapter to make a mortgage loan, or purchase  
511 or service a mortgage loan, or who services mortgage loans only,  
512 including loans in the company's own portfolio. The amount of the  
513 surety bond for a mortgage lender shall be One Hundred Fifty  
514 Thousand Dollars (\$150,000.00). However, any licensed company  
515 that was required by this chapter before July 1, 2007, to hold a  
516 surety bond in the amount of Fifty Thousand Dollars (\$50,000.00)  
517 shall not be required to increase its bond until its 2007 license  
518 year renewal.

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

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

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

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



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

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

574 (5) In order to determine the applicant's suitability for a  
575 license, the commissioner or a designated third party shall

576 forward the fingerprints submitted with the application to the  
577 Department of Public Safety; and if no disqualifying record is  
578 identified at the state level, the fingerprints shall be forwarded  
579 by the Department of Public Safety or a designated third party to  
580 the FBI for a national criminal history record check. All  
581 conviction data received by the department shall be used by the  
582 department for the exclusive purpose of carrying out the  
583 responsibilities of this chapter, may not be a public record,  
584 shall be privileged, and may not be disclosed to any other person  
585 or agency, except to any person or agency that otherwise has a  
586 legal right to inspect the file. All records shall be maintained  
587 by the department according to law, except as provided in the  
588 uniform multistate administration of an automated licensing system  
589 for mortgage brokers, mortgage lenders and loan originators. As  
590 used in this section "conviction data" means a record of a finding  
591 or verdict of guilty or plea of guilty or plea of nolo contendere  
592 with regard to any crime regardless of whether an appeal of the  
593 conviction has been sought.

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

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

606 (8) A person shall not be indemnified for any act covered by  
607 this chapter or for any fine or penalty incurred under this  
608 chapter as a result of any violation of this chapter or

609 regulations adopted under this chapter, due to the legal form,  
610 corporate structure, or choice of organization of the person,  
611 including, but not limited to, a limited liability corporation.

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

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

635         (2) Any licensee making timely and proper application for a  
636 license renewal shall be permitted to continue to operate under  
637 its existing license until its application is approved or  
638 rejected, but shall not be released from or otherwise indemnified  
639 for any act covered by this chapter or for any penalty incurred  
640 under this chapter as a result of any violation of this chapter or

641 regulations adopted under this chapter, pending final approval or  
642 disapproval of the application for the license renewal.

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

674 Mortgage Brokers or the Mortgage Bankers Association of  
675 Mississippi to satisfy the four-hour requirement of courses in  
676 primary and subordinated financing transactions.

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

679 81-18-17. (1) Each license or registration issued under  
680 this chapter shall state the address of the licensee's principal  
681 place of business, the registrant's assigned licensed location and  
682 the name of the licensee or registrant.

683 (2) A licensee or registrant shall post the original license  
684 or original registration in a conspicuous place in the assigned  
685 place of business of the licensee.

686 (3) A license or registration may not be transferred or  
687 assigned.

688 (4) No licensee or registrant shall transact business under  
689 any name other than that designated in the license or  
690 registration.

691 (5) Each licensee shall notify the department, in writing,  
692 of any change in the address of its principal place of business or  
693 registered loan originator or of any additional location of  
694 business or any change of officer, director or principal of the  
695 licensee, or registered loan originator within thirty (30) days of  
696 the change.

697 (6) No licensee shall open a branch office in this state or  
698 a branch office outside this state from which the licensee has  
699 direct contact with \* \* \* consumers regarding origination or  
700 brokering Mississippi residential property, without prior approval  
701 of the department. An application for any branch office shall be  
702 made in writing on a form prescribed by the department, which  
703 shall include at least evidence of compliance with subsection (1)  
704 of Section 81-18-25 as to that branch and shall be accompanied by  
705 payment of a nonrefundable application fee of One Hundred Dollars  
706 (\$100.00) and at least one (1) loan originator application

707 registered at that branch office. The application shall be  
708 approved unless the department finds that the applicant has not  
709 conducted business under this chapter in accordance with law. The  
710 application shall be deemed approved if notice to the contrary has  
711 not been mailed by the department to the applicant within thirty  
712 (30) days of the date that the complete application is received by  
713 the department. After approval, the applicant shall give written  
714 notice to the department within ten (10) days of the commencement  
715 of business at the branch office. Each branch office that  
716 currently holds a branch license shall renew that branch license  
717 before the expiration date of the main company license, on or  
718 before December 31. The license renewal shall be on a form  
719 prescribed by the department with a nonrefundable renewal  
720 application fee of Twenty-five Dollars (\$25.00).

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

723 81-18-19. (1) Except as provided in this section, no person  
724 shall acquire directly or indirectly twenty-five percent (25%) or  
725 more of the voting shares of a corporation or twenty-five percent  
726 (25%) or more of the ownership of any other entity licensed to  
727 conduct business under this chapter unless it first files an  
728 application in accordance with the requirements prescribed in  
729 Section 81-18-9.

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

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

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

746 (a) The acquisition of an interest in a licensee  
747 directly or indirectly including an acquisition by merger or  
748 consolidation by or with a person registered under this chapter or  
749 exempt from this chapter under Section 81-18-5.

750 (b) The acquisition of an interest in a licensee  
751 directly or indirectly including an acquisition by merger or  
752 consolidation by or with a person affiliated through common  
753 ownership with the licensee.

754 (c) The acquisition of an interest in a licensee by a  
755 person by bequest, devise, gift or survivorship or by operation of  
756 law.

757 (5) A person acquiring an interest in a licensee in a  
758 transaction that is requesting exemption from filing an  
759 application for approval of the application shall send a written  
760 request to the department for an exemption within thirty (30) days  
761 before the closing of the transaction.

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

764 81-18-21. (1) Any person required to be licensed under this  
765 chapter shall maintain in its offices, or such other location as  
766 the department shall permit, the books, accounts and records  
767 necessary for the department to determine whether or not the  
768 person is complying with the provisions of this chapter and the  
769 rules and regulations adopted by the department under this  
770 chapter. These books, accounts and records shall be maintained  
771 apart and separate from any other business in which the person is  
772 involved and may represent historical data for three (3) years

773 preceding the date of the last license application date forward.  
774 The books, accounts and records shall be kept in a secure location  
775 under conditions that will not lead to their damage or  
776 destruction. If the licensee wishes to keep the files in a  
777 location other than the location listed on the license \* \* \*, then  
778 the licensee first must submit a written request on a form  
779 designated by the department and gain written approval from the  
780 commissioner before storing the files at an off-site secure  
781 location.

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

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



806 business without a license or registration as required under this  
807 chapter.

808 (4) The department, in its discretion, may disclose  
809 information concerning any violation of this chapter or any rule,  
810 regulation, or order under this chapter, provided the information  
811 is derived from a final order of the department.

812 (5) Examinations and investigations conducted under this  
813 chapter and information obtained by the department, except as  
814 provided in subsection (4) of this section, in the course of its  
815 duties under this chapter are confidential.

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

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

825 81-18-23. (1) Each company shall annually, on or before  
826 March 31, file a written report with the department containing the  
827 December 31 information that the department may reasonably require  
828 concerning the company's business and operations during the  
829 preceding calendar year. The report shall be made in the form  
830 prescribed by the department.

831 (2) Any company that fails to file with the department by  
832 January 31 the report required by this section shall be subject to  
833 a late penalty of Ten Dollars (\$10.00) for each day after January  
834 31 the report is delinquent, but in no event shall the aggregate  
835 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

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

846 (a) The filing for bankruptcy or reorganization by the  
847 company;

848 (b) The institution of revocation or suspension  
849 proceedings against the company by any state or governmental  
850 authority;

851 (c) Any felony indictment of the company or any of its  
852 directors, executive officers, principal officer or loan  
853 originators; \* \* \*

854 (d) Any felony conviction of the company or any of its  
855 directors, executive officers, principal officer or loan  
856 originators; or

857 (e) Any misdemeanor conviction, in which fraud is an  
858 essential element, of any of the company's directors, executive  
859 officers, principal officer or loan originators.

860 (6) If the company, owner, principal officer of a company or  
861 registered loan originator is involved in a civil action  
862 concerning the company, then the person shall notify the  
863 commissioner in writing within sixty (60) days after the initial  
864 filing of the civil action.

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

867 81-18-25. (1) Each principal place of business and branch  
868 office in the state shall meet all of the following requirements:

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

871 It is the responsibility of the licensee to meet local zoning

872 ordinances and obtain the required occupational licenses; however,  
873 zoning cannot be residential. If there is no zoning in the area,  
874 then the person shall submit to the department a letter from the  
875 city or county stating that there is no zoning.

876 (b) Consist of at least one (1) secure enclosed room or  
877 secure building of stationary construction in which negotiations  
878 of mortgage loan transactions may be conducted in privacy.  
879 Stationary construction does not include the use of portable  
880 buildings. If there is no zoning in the requested location and  
881 the property is used for residential purposes, then the person  
882 shall utilize an enclosed room with a dedicated outside door.

883 (c) Display a permanent sign outside the place of  
884 business readily visible to the general public, unless the display  
885 of sign violates local zoning ordinances or restrictive covenants.  
886 The sign must contain the name of the licensee and the words  
887 "Mississippi Licensed Mortgage Company" or "Mississippi Registered  
888 Mortgage Company" or, if the initial license is obtained after  
889 July 1, 2007, the words "Licensed by the Mississippi Department of  
890 Banking and Consumer Finance".

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

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

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

899 (a) It is a separate entity operating as an independent  
900 business or mortgage operation which is not under the direct  
901 control, management supervision and responsibility of the  
902 licensee;

903 (b) The licensee \* \* \* is not the lessee or owner of  
904 the branch and the branch is not under the direct and daily

905 ownership, control, management and supervision of the  
906 licensee \* \* \*;

907 (c) All assets and liabilities of the branch are not  
908 assets and liabilities of the licensee, and all income and  
909 expenses of the branch are income and expenses of the licensee and  
910 properly accounted for in the financial records and tax returns of  
911 the licensee; or

912 (d) All practices, policies and procedures, including,  
913 but not limited to, those relating to employment and operations,  
914 are not originated and established by the licensee or registered  
915 company and are not applied consistently to the main office and  
916 all branches.

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

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

923 81-18-27. (1) No person required to be licensed or  
924 registered under this chapter shall:

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

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

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

934 (d) Improperly refuse to issue a satisfaction of a  
935 mortgage loan.

936 (e) Fail to account for or deliver to any person any  
937 personal property obtained in connection with a mortgage loan,

938 such as money, funds, deposits, checks, drafts, mortgages or other  
939 documents or things of value that have come into the possession of  
940 the licensee and that are not the property of the licensee, or  
941 that the licensee is not by law or at equity entitled to retain.

942 (f) Engage in any transaction, practice, or course of  
943 business that is not in good faith, or that operates a fraud upon  
944 any person in connection with the making of or purchase or sale of  
945 any mortgage loan, including the use of white-out on any document  
946 associated with the mortgage loan.

947 (g) Engage in any fraudulent residential mortgage  
948 underwriting practices.

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

955 (i) Make, directly or indirectly, any residential  
956 mortgage loan with the intent to foreclose on the borrower's  
957 property. For purposes of this paragraph, there is a presumption  
958 that a person has made a residential mortgage loan with the intent  
959 to foreclose on the borrower's property if all of the following  
960 circumstances are proven:

961 (i) Lack of substantial benefit to the borrower;  
962 (ii) The probability that full payment of the loan  
963 cannot be made by the borrower;

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

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

968 (v) That the person does business under a trade  
969 name that misrepresents or tends to misrepresent that the person

970 is a bank, trust company, savings bank, savings and loan  
971 association, credit union, or insurance company.

972 (j) Charge or collect any direct payment, compensation  
973 or advance fee from a borrower unless and until a loan is actually  
974 found, obtained and closed for that borrower, and in no event  
975 shall that direct payment, compensation or advance fee exceed  
976 seven and ninety-five one-hundredths percent (7.95%) of the  
977 original principal amount of the loan, and any such direct  
978 payments, compensation or advance fees shall be included in all  
979 annual percentage rate (APR) calculations if required under  
980 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
981 payment, compensation or advance fee as defined in this section  
982 shall not include:

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

986 (ii) Any indirect payment to a licensed mortgage  
987 broker or mortgage lender by a lender if those fees are not  
988 required to be disclosed under the Real Estate Settlement  
989 Procedures Act (RESPA);

990 (iii) Any indirect payment or compensation by a  
991 lender to a licensee required to be disclosed by the licensee  
992 under RESPA, provided that the payment or compensation is  
993 disclosed to the borrower by the licensee on a good faith estimate  
994 of costs, is included in the APR if required under Regulation Z of  
995 TILA, and is made pursuant to a written agreement between the  
996 licensee and the borrower as may be required by Section 81-18-33;

997 (iv) A fee not to exceed one percent (1%) of the  
998 principal amount of a loan for construction, provided that a  
999 binding commitment for the loan has been obtained for the  
1000 prospective borrower; or

1001 (v) An advance fee, known as a lock-in fee,  
1002 collected by a licensee to be paid to a lender to lock in an

1003 interest rate and/or a certain number of points on a mortgage loan  
1004 from the lender as provided in Section 81-18-28.

1005 (k) Pay to any person not licensed or registered under  
1006 the provisions of this chapter any commission, bonus or fee in  
1007 connection with arranging for or originating a mortgage loan for a  
1008 borrower, except that a registered loan originator may be paid a  
1009 bonus, commission, or fee by his or her licensed employer.

1010 (l) Refuse to provide the loan payoff within three (3)  
1011 business days of an oral or written request from a borrower or  
1012 third party. Proof of authorization of the borrower shall be  
1013 submitted for a third-party request.

1014 (m) Knowingly withhold, extract, remove, mutilate,  
1015 destroy or conceal any books, records, computer records or other  
1016 information which are required by law to be disclosed.

1017 (2) A licensed mortgage broker or mortgage lender shall only  
1018 broker a residential mortgage loan to a mortgage broker or  
1019 mortgage lender licensed \* \* \* under this chapter or to a person  
1020 exempt from licensure under the provisions of this chapter.

1021 (3) No nonbanking entity may use any sign or hand-written or  
1022 printed paper indicating that it is a bank, savings bank, trust  
1023 company or place of banking. No entity may use the word "bank,"  
1024 "savings bank," "banking," "banker" or "trust company," or the  
1025 equivalent or plural of any of these words, in connection with any  
1026 business other than that of banking. This subsection does not  
1027 prohibit a person from acting in a trust capacity.

1028 (4) No person shall use the name or logo of any banking  
1029 entity in connection with the sale, offering for sale, or  
1030 advertising of any financial product or service without the  
1031 express written consent of the banking entity.

1032 **SECTION 16.** Section 81-18-28, Mississippi Code of 1972, is  
1033 reenacted and amended as follows:

1034 81-18-28. (1) A licensed mortgage broker or mortgage lender  
1035 may enter into lock-in agreements and collect a lock-in fee from a

1036 borrower on the lender's behalf. The lock-in fee shall not exceed  
1037 the following:

1038 (a) No fee may be collected to lock in for sixty (60)  
1039 days or less;

1040 (b) One percent (1%) of the principal amount of the  
1041 loan to lock in for more than sixty (60) days, but not to exceed  
1042 one hundred eighty (180) days;

1043 (c) One and one-half percent (1-1/2%) of the principal  
1044 amount of the loan to lock in for more than one hundred eighty  
1045 (180) days, but not to exceed two hundred seventy (270) days; or

1046 (d) Two percent (2%) of the principal amount of the  
1047 loan to lock in for more than two hundred seventy (270) days.

1048 (2) Before the collection of a lock-in fee, the applicant  
1049 must be provided a copy of the lock-in fee agreement. This  
1050 agreement shall contain at least the following:

1051 (a) Identification of the property that is being  
1052 purchased with the loan;

1053 (b) The principal amount and term of the loan;

1054 (c) The initial interest rate and/or points, whether  
1055 the interest rate is fixed or variable, and if variable, the index  
1056 and margin, or the method by which an interest rate change for the  
1057 mortgage loan will be calculated;

1058 (d) The amount of the lock-in fee, whether the fee is  
1059 refundable or nonrefundable, the time by which the lock-in fee  
1060 must be paid to the lender, and if the fee is refundable, the  
1061 terms and conditions necessary to obtain the refund; and

1062 (e) The length of the lock-in period that the agreement  
1063 covers.

1064 **SECTION 17.** Section 81-18-29, Mississippi Code of 1972, is  
1065 reenacted and amended as follows:

1066 81-18-29. (1) The commissioner shall promulgate those rules  
1067 and regulations, not inconsistent with law, necessary for the  
1068 enforcement of this chapter.



1069           (2) The Legislature finds that a uniform multistate  
1070 administration of a multistate licensing system for mortgage  
1071 brokers, mortgage lenders and mortgage loan originators is  
1072 consistent with both the public interest and the provisions of  
1073 this chapter; therefore, for the sole purpose of participating in  
1074 the establishment and implementation of a multistate licensing  
1075 system for mortgage brokers, mortgage lenders and mortgage loan  
1076 originators, the commissioner may establish by regulation such new  
1077 requirements as are necessary for the State of Mississippi to  
1078 participate in a multistate licensing system upon the  
1079 commissioner's finding that each new requirement is consistent  
1080 with both the public interest and the provisions of this chapter.  
1081 These new requirements shall include criminal background checks by  
1082 the FBI and the Mississippi Department of Public Safety.

1083           **SECTION 18.** Section 81-18-31, Mississippi Code of 1972, is  
1084 reenacted and amended as follows:

1085           81-18-31. The department shall promulgate regulations  
1086 governing the advertising of mortgage loans, including, but not  
1087 limited to, the following requirements:

1088           (a) That all advertisements for loans regulated under  
1089 this chapter may not be false, misleading or deceptive. No person  
1090 whose activities are regulated under this chapter may advertise in  
1091 any manner so as to indicate or imply that its interest rates or  
1092 charges for loans are "recommended," "approved," "set" or  
1093 "established" by the State of Mississippi;

1094           (b) That all licensees shall maintain a copy of all  
1095 advertisements citing interest rates or payment amounts primarily  
1096 disseminated in this state and shall attach to each advertisement  
1097 documentation that provides corroboration of the availability of  
1098 the interest rate and terms of loans and names the specific media  
1099 sources by which the advertisements were distributed;

1100           (c) That all published advertisements disseminated  
1101 primarily in this state by a license shall contain the name and an

1102 office address of the licensee, which shall be the same as the  
1103 name and address of the licensee on record with the department;

1104 (d) That an advertisement containing either a quoted  
1105 interest rate or monthly payment amount must include:

1106 (i) The interest rate of the mortgage, a statement  
1107 as to whether the rate is fixed or adjustable, and the adjustment  
1108 index and frequency of adjustments;

1109 (ii) The term in years or months to fully repay  
1110 the mortgage;

1111 (iii) The APR as computed under federal  
1112 guidelines; and

1113 (e) That no licensee shall advertise its services in  
1114 Mississippi in any media disseminated primarily in this state,  
1115 whether print or electronic, without the words "Mississippi  
1116 Licensed Mortgage Company" or "Mississippi Registered Mortgage  
1117 Company" or, if the initial license is obtained after July 1,  
1118 2007, the words "Licensed by the Mississippi Department of Banking  
1119 and Consumer Finance".

1120 **SECTION 19.** Section 81-18-33, Mississippi Code of 1972, is  
1121 reenacted and amended as follows:

1122 81-18-33. The individual borrower files of a licensee shall  
1123 contain at least the following:

1124 (a) A mortgage origination agreement provided to the  
1125 borrower containing at least the following statements:

1126 (i) "As required by Mississippi Law, (licensed  
1127 company name) has secured a bond issued by (name of insurance  
1128 company), a surety company authorized to do business in this  
1129 state. A certified copy of this bond is filed with the  
1130 Mississippi Commissioner of Banking and Consumer Finance."

1131 (ii) "As a borrower you are protected under the  
1132 Mississippi Mortgage Consumer Protection Law."

1133 (iii) "Complaints against a licensee may be made  
1134 by contacting the:

1135 Mississippi Department of Banking and  
1136 Consumer Finance  
1137 P.O. Box 23729  
1138 Jackson, MS 39225-3729";

1139 (b) A copy of the original loan application signed and  
1140 dated by the licensee;

1141 (c) A copy of the signed closing statement as required  
1142 by HUD or documentation of denial or cancellation of the loan  
1143 application;

1144 (d) A copy of the good faith estimate of costs provided  
1145 to the borrower;

1146 (e) A copy of the appraisal or statement of value if  
1147 procured as a part of the loan application process;

1148 (f) A copy of a loan lock-in agreement, if any,  
1149 provided by the licensee; \* \* \*

1150 (g) A copy of the disclosures required under Regulation  
1151 Z of the federal Truth In Lending Act and other disclosures as  
1152 required under federal regulations and evidence that those  
1153 disclosures have been properly and timely made to the borrower;  
1154 and

1155 (h) A copy of the final signed Uniform Residential Loan  
1156 Application.

1157 **SECTION 20.** Section 81-18-35, Mississippi Code of 1972, is  
1158 reenacted and amended as follows:

1159 81-18-35. Each licensee shall maintain a journal of mortgage  
1160 transactions at the principal place of business as stated on its  
1161 license, which shall include at least the following information:

1162 (a) Name of applicant and co-applicant, if applicable;

1163 (b) Date of application; and

1164 (c) Disposition of loan application, indicating date of  
1165 loan funding, loan denial, withdrawal and name of lender if  
1166 applicable.

1167           **SECTION 21.** Section 81-18-36, Mississippi Code of 1972, is  
1168 reenacted and amended as follows:

1169           81-18-36. (1) (a) All monies paid to a licensee for  
1170 payment of taxes, loan commitment deposits, work completion  
1171 deposits, appraisals, credit reports or insurance premiums on  
1172 property that secures any loan made or serviced by the licensee  
1173 shall be deposited in an account that is insured by the Federal  
1174 Deposit Insurance Corporation or the National Credit Union  
1175 Administration and shall be kept separate, distinct, and apart  
1176 from funds belonging to the licensee.

1177           (b) The funds, when deposited, are to be designated as  
1178 an "escrow account," or under some other appropriate name,  
1179 indicating that the funds are not the funds of the licensee.

1180           (2) The licensee shall, upon reasonable notice, account to  
1181 any debtor whose property secures a loan made by the licensee for  
1182 any funds which that person has paid to the licensee for the  
1183 payment of taxes or insurance premiums on the property in  
1184 question.

1185           (3) The licensee shall, upon reasonable notice, account to  
1186 the commissioner for all funds in the company's escrow account.

1187           (4) Escrow accounts are not subject to execution or  
1188 attachment on any claim against the licensee.

1189           (5) It is unlawful for any licensee knowingly to keep or  
1190 cause to be kept any funds or money in any bank or other financial  
1191 institution under the heading of "escrow account" or any other  
1192 name designating the funds or monies belonging to the debtors of  
1193 the licensee, except actual funds paid to the licensee for the  
1194 payment of taxes and insurance premiums on property securing loans  
1195 made or serviced by the company.

1196           **SECTION 22.** Section 81-18-37, Mississippi Code of 1972, is  
1197 reenacted and amended as follows:

1198           81-18-37. (1) The department may suspend or revoke any  
1199 license or registration for any reason that would have been

1200 grounds for refusal to issue an original license or registration  
1201 or for:

1202 (a) A violation of any provision of this chapter or any  
1203 rule or regulation adopted under this chapter;

1204 (b) Failure of the licensee or registrant to pay,  
1205 within thirty (30) days after it becomes final and nonappealable,  
1206 a judgment recovered in any court within this state by a claimant  
1207 or creditor in an action arising out of the licensee's or  
1208 registrant's business in this state as a mortgage broker or  
1209 mortgage lender.

1210 (2) Notice of the department's intention to enter an order  
1211 denying an application for a license or registration under this  
1212 chapter or of an order suspending or revoking a license or  
1213 registration under this chapter shall be given to the applicant,  
1214 licensee or registrant in writing, sent by registered or certified  
1215 mail addressed to the principal place of business of the  
1216 applicant, licensee or registrant. Within thirty (30) days of the  
1217 date of the notice of intention to enter an order of denial,  
1218 suspension or revocation under this chapter, the applicant,  
1219 licensee or registrant may request in writing a hearing to contest  
1220 the order. If a hearing is not requested in writing within thirty  
1221 (30) days of the date of the notice of intention, the department  
1222 shall enter a final order regarding the denial, suspension or  
1223 revocation. Any final order of the department denying, suspending  
1224 or revoking a license or registration shall state the grounds upon  
1225 which it is based and shall be effective on the date of issuance.  
1226 A copy of the final order shall be forwarded promptly by  
1227 registered or certified mail addressed to the principal place of  
1228 business of the applicant, licensee or registrant.

1229 **SECTION 23.** Section 81-18-39, Mississippi Code of 1972, is  
1230 reenacted as follows:

1231 81-18-39. (1) For purposes of this section, the term  
1232 "person" shall be construed to include any officer, director,

1233 employee, affiliate or other person participating in the conduct  
1234 of the affairs of the person subject to the orders issued under  
1235 this section.

1236 (2) If the department reasonably determines that a person  
1237 required to be licensed or registered under this chapter has  
1238 violated any law of this state or any order or regulation of the  
1239 department, the department may issue a written order requiring the  
1240 person to cease and desist from unlawful or unauthorized  
1241 practices. In the case of an unlawful purchase of mortgage loans,  
1242 the cease and desist order to a purchaser shall constitute the  
1243 knowledge required under this section for any subsequent  
1244 violations.

1245 (3) Any person required to be licensed or registered under  
1246 this chapter who has been deemed by the commissioner, after notice  
1247 and hearing, to have violated the terms of any order properly  
1248 issued by the department under this section shall be liable for a  
1249 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).  
1250 The department, in determining the amount of the penalty, shall  
1251 take into account the appropriateness of the penalty relative to  
1252 the size of the financial resources of the person, the good faith  
1253 efforts of the person to comply with the order, the gravity of the  
1254 violation, the history of previous violations by the person, and  
1255 other factors or circumstances that contributed to the violation.  
1256 The department may compromise, modify or refund any penalty that  
1257 has been imposed under this section. Any person assessed a  
1258 penalty as provided in this subsection shall have the right to  
1259 request a hearing on the amount of the penalty within ten (10)  
1260 days after receiving notification of the assessment. If no  
1261 hearing is requested within ten (10) days of the receipt of the  
1262 notice, the penalty shall be final except as to judicial review in  
1263 the Chancery Court of the First Judicial District of Hinds County.  
1264 Upon the filing of a petition for judicial review, the court shall  
1265 issue an order to the licensee requiring the licensee to show

1266 cause why it should not be entered. If the court determines,  
1267 after a hearing upon the merits or after failure of the person to  
1268 appear when so ordered, that the order of the department was  
1269 properly issued, it shall grant the penalty sought by the  
1270 department.

1271 **SECTION 24.** Section 81-18-41, Mississippi Code of 1972, is  
1272 reenacted and amended as follows:

1273 81-18-41. Nothing in this chapter shall preclude a person  
1274 whose license \* \* \* has been suspended or revoked from continuing  
1275 to service mortgage loans pursuant to servicing contracts in  
1276 existence at the time of the suspension or revocation for a  
1277 reasonable transition period, as determined by the commissioner,  
1278 after the date of the entry of the final decision in the case  
1279 suspending or revoking the license.

1280 **SECTION 25.** Section 81-18-43, Mississippi Code of 1972, is  
1281 reenacted and amended as follows:

1282 81-18-43. (1) In addition to any other penalty that may be  
1283 applicable, any licensee, person required to be registered, or  
1284 employee who willfully violates any provision of this chapter, or  
1285 who willfully makes a false entry in any document specifically  
1286 required by this chapter, shall be guilty of a misdemeanor and,  
1287 upon conviction thereof, shall be punishable by a fine not in  
1288 excess of One Thousand Dollars (\$1,000.00) per violation or false  
1289 entry.

1290 (2) In addition to any other penalty that may be applicable,  
1291 any licensee, person required to be registered, or employee who  
1292 fails to make a record of a mortgage transaction and subsequently  
1293 sells or disposes of the mortgage from that transaction shall be  
1294 punished as follows:

1295 (a) For a first offense, the licensee, person required  
1296 to be registered, or employee shall be guilty of a misdemeanor  
1297 and, upon conviction thereof, shall be punishable by a fine not in  
1298 excess of One Thousand Dollars (\$1,000.00) or by imprisonment in

1299 the county jail for not more than one (1) year, or both fine and  
1300 imprisonment;

1301 (b) For a second or subsequent offense, the licensee,  
1302 person required to be registered, or employee shall be guilty of a  
1303 felony and, upon conviction thereof, shall be punishable by a fine  
1304 not in excess of Five Thousand Dollars (\$5,000.00) or by  
1305 imprisonment in the custody of the State Department of Corrections  
1306 for a term not less than one (1) year nor more than five (5)  
1307 years, or by both fine and imprisonment.

1308 (3) Compliance with the criminal provisions of this section  
1309 shall be enforced by the appropriate law enforcement agency, which  
1310 may exercise for that purpose any authority conferred upon the  
1311 agency by law.

1312 (4) When the commissioner has reasonable cause to believe  
1313 that a person is violating any provision of this chapter, the  
1314 commissioner, in addition to and without prejudice to the  
1315 authority provided elsewhere in this chapter, may enter an order  
1316 requiring the person to stop or to refrain from the violation.  
1317 The commissioner may sue in any chancery court of the state having  
1318 jurisdiction and venue to enjoin the person from engaging in or  
1319 continuing the violation or from doing any act in furtherance of  
1320 the violation. In such an action, the court may enter an order or  
1321 judgment awarding a preliminary or permanent injunction.

1322 (5) The commissioner may, after notice and hearing, impose a  
1323 civil penalty against any licensee if the licensee, person  
1324 required to be registered, or employee is adjudged by the  
1325 commissioner to be in violation of the provisions of this chapter.  
1326 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
1327 per violation and shall be deposited into the Consumer Finance  
1328 Fund of the department.

1329 (6) The commissioner may make public any final  
1330 administrative action imposed against a licensee or registrant for  
1331 a violation of this chapter, including cease and desist orders,



1332 civil monetary penalties, license suspensions, revocations or  
1333 application denials.

1334 (7) The state may enforce its rights under the surety bond  
1335 as required in Section 81-18-11 as an available remedy for the  
1336 collection of any civil penalties, criminal fines or costs of  
1337 investigation and/or prosecution incurred.

1338 **SECTION 26.** Section 81-18-45, Mississippi Code of 1972, is  
1339 reenacted as follows:

1340 81-18-45. The commissioner may employ the necessary  
1341 full-time employees above the number of permanent full-time  
1342 employees authorized for the department for the fiscal year 2001,  
1343 to carry out and enforce the provisions of this chapter. The  
1344 commissioner also may expend the necessary funds and equip and  
1345 provide necessary travel expenses for those employees.

1346 **SECTION 27.** Section 81-18-47, Mississippi Code of 1972, is  
1347 reenacted as follows:

1348 81-18-47. (1) A licensee under this chapter shall have no  
1349 liability for any act or practice done or omitted in conformity  
1350 with (a) any rule or regulation of the commissioner, or (b) any  
1351 rule, regulation, interpretation or approval of any other state or  
1352 federal agency or any opinion of the Attorney General,  
1353 notwithstanding that after such act or omission has occurred the  
1354 rule, regulation, interpretation, approval or opinion is amended,  
1355 rescinded, or determined by judicial or other authority to be  
1356 invalid for any reason.

1357 (2) A licensee under this chapter, acting in conformity with  
1358 a written interpretation or approval by an official or employee of  
1359 any state or federal agency or department, shall be presumed to  
1360 have acted in accordance with applicable law, notwithstanding that  
1361 after such act has occurred, the interpretation or approval is  
1362 amended, rescinded, or determined by judicial or other authority  
1363 to be incorrect or invalid for any reason.

1364           **SECTION 28.** Section 81-18-49, Mississippi Code of 1972, is  
1365 reenacted as follows:

1366           81-18-49. Notwithstanding any provisions of this chapter to  
1367 the contrary, mortgage companies engaging in business on or before  
1368 June 1, 2000, shall be duly licensed by the department after  
1369 submitting not later than January 1, 2001, the required documents  
1370 and fees provided in Sections 81-18-9 and 81-18-15. However, upon  
1371 the expiration of the initial licenses for such mortgage  
1372 companies, the department shall renew the licenses only if the  
1373 mortgage companies satisfy all of the provisions of this chapter.

1374           **SECTION 29.** Section 81-18-51, Mississippi Code of 1972, is  
1375 amended as follows:

1376           81-18-51. Sections 81-18-1 through 81-18-49 shall stand  
1377 repealed on July 1, 2012.

1378           **SECTION 30.** (1) A person commits the offense of residential  
1379 mortgage fraud when, with the intent to defraud such person, he:

1380                   (a) Knowingly makes any deliberate misstatement,  
1381 misrepresentation or omission during the mortgage lending process  
1382 with the intention that it be relied on by a licensed mortgage  
1383 broker or mortgage lender, borrower or any other party to the  
1384 mortgage lending process;

1385                   (b) Knowingly uses or facilitates the use of any  
1386 deliberate misstatement, misrepresentation or omission, knowing  
1387 the same to contain a misstatement, misrepresentation or omission,  
1388 during the mortgage lending process with the intention that it be  
1389 relied on by a company, borrower, or any other party to the  
1390 mortgage lending process;

1391                   (c) Receives any proceeds or any other funds in  
1392 connection with a residential mortgage closing that such person  
1393 knew resulted from a violation of paragraph (a) or (b) of this  
1394 subsection;

1395                   (d) Conspires to violate any of the provisions of  
1396 paragraph (a), (b) or (c) of this subsection; or

1397 (e) Files or causes to be filed with the chancery clerk  
1398 of any county of this state any deed of trust such person knows to  
1399 contain a deliberate misstatement, misrepresentation or omission.

1400 (2) An offense of residential mortgage fraud shall not be  
1401 predicated solely upon information lawfully disclosed under  
1402 federal disclosure laws, regulations and interpretations related  
1403 to the mortgage lending process.

1404 (3) For the purposes of venue under this section, any  
1405 violation of this section shall be considered to have been  
1406 committed:

1407 (a) In the county in which the residential property for  
1408 which a mortgage loan is being sought is located;

1409 (b) In any county in which any act was performed in  
1410 furtherance of this violation;

1411 (c) In any county in which any person alleged to have  
1412 violated this chapter had control or possession of any proceeds of  
1413 this violation;

1414 (d) If a closing occurred, in any county in which the  
1415 closing occurred; or

1416 (e) In any county in which a document containing a  
1417 deliberate misstatement, misrepresentation or omission is filed  
1418 with the chancery clerk.

1419 (4) District attorneys and the Attorney General shall have  
1420 the authority to conduct the criminal investigation of all cases  
1421 of residential mortgage fraud under this section.

1422 (5) (a) Any person violating this section shall be guilty  
1423 of a felony and, upon conviction, shall be punished by  
1424 imprisonment for not less than one (1) year nor more than ten (10)  
1425 years, by a fine not to exceed Five Thousand Dollars (\$5,000.00),  
1426 or both.

1427 (b) If a violation of this section involves engaging or  
1428 participating in a pattern of residential mortgage fraud or a  
1429 conspiracy or endeavor to engage or participate in a pattern of

1430 residential mortgage fraud, the violation shall be punishable by  
1431 imprisonment for not less than three (3) years nor more than  
1432 twenty (20) years, by a fine not to exceed One Hundred Thousand  
1433 Dollars (\$100,000.00), or both.

1434 (c) Each residential property transaction subject to a  
1435 violation of this section shall constitute a separate offense and  
1436 shall not merge with any other crimes set forth in this section.

1437 (6) All real and personal property of every kind used or  
1438 intended for use in the course of, derived from, or realized  
1439 through a violation of this section shall be subject to forfeiture  
1440 to the state. Forfeiture shall be had by the same procedure as  
1441 outlined in Sections 97-43-9 and 97-43-11. District attorneys and  
1442 the Attorney General may commence forfeiture proceedings under  
1443 this section.

1444 (7) For purposes of this section, the term "pattern of  
1445 residential mortgage fraud" means one or more misstatements,  
1446 misrepresentations or omissions made during the mortgage lending  
1447 process that involve two (2) or more residential properties which  
1448 have the same or similar intents, results, accomplices, victims or  
1449 methods of commission or otherwise are interrelated by  
1450 distinguishing characteristics.

1451 **SECTION 31.** This act shall take effect and be in force from  
1452 and after July 1, 2007.