

By: Senator(s) Mettetal

To: Business and Financial
Institutions; Judiciary,
Division B

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

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

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

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

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

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

162 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

240 * * *

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

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

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

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

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

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

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

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

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

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

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

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

280 * * *

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

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

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

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

295 (g) Any person who is employed by and represents a
296 Mississippi manufactured housing operation and who makes a
297 mortgage loan on manufactured housing and land transactions,
298 modular homes, or any combination thereof; any person who engages
299 in owner-financing; or any person engaged in the financing of a
300 consumer loan secured by a mortgage on residential immovable
301 property in not more than twelve (12) Mississippi residential
302 mortgage loans, or who contracts for no more than twelve (12)
303 Mississippi residential loan transactions, over the licensing
304 period provided in this chapter, including those acting as
305 originators. The twelve (12) transactions are cumulative to any
306 combination of operations owned or controlled by any one
307 individual, sole proprietorship, corporation, limited liability
308 company, partnership, trust or any other group of individuals,
309 however organized. However, within thirty (30) days of loan
310 closure, the person shall submit to the commissioner a fee of Ten
311 Dollars (\$10.00), which is not chargeable to the consumer, and
312 written notification containing such loan information as required
313 by the commissioner, seeking approval to engage in a residential

314 mortgage transaction without first complying with the licensing
315 provisions of this chapter. Any person who enters into more than
316 twelve (12) of those transactions in the licensing period provided
317 in this chapter must be licensed according to the procedures
318 prescribed in this chapter. The fees paid for registration during
319 a licensing period will be deducted from the cost of an initial
320 license. This paragraph (g) shall not include persons solely
321 involved in the making of a mortgage loan on modular homes.

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

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

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

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

344 (l) Loan originators as defined under Section
345 81-18-3(j) are exempt from the licensing requirements of this
346 chapter except for Sections 81-18-9(3)(d), 81-18-13, 81-18-15(3),

347 81-18-17, 81-18-37 and 81-18-43, but shall register with the
348 department as a loan originator. Any * * * person required to
349 register under this paragraph * * * shall register initially with
350 the department and thereafter file an application for renewal of
351 registration with the department on or before December 31 of each
352 year providing the department with such information as the
353 department may prescribe by regulation, including, but not limited
354 to, the business address where the person engages in any business
355 activities covered by this chapter, proof of at least one (1) year
356 of experience directly in mortgage lending within the two (2)
357 years prior to the date of application, the residential address of
358 the applicant and a telephone number that customers may use to
359 contact the person. If the person does not meet the experience
360 requirement, then he or she may complete twenty-four (24) hours of
361 education as approved by the Mississippi Association of Mortgage
362 Brokers, the National Association of Mortgage Brokers, the
363 Mortgage Bankers Association or the Mortgage Bankers Association
364 of Mississippi for the experience waiver. If the experience did
365 not occur within the State of Mississippi, then the department
366 shall require the person to complete an education course of a
367 minimum of two (2) hours covering the Mississippi Mortgage
368 Consumer Protection Law. This initial registration of a loan
369 originator shall be accompanied by a fee of One Hundred Dollars
370 (\$100.00). Annual renewals of this registration shall require a
371 fee of Fifty Dollars (\$50.00). No person required to register
372 under this paragraph * * * shall transact business in this state
373 directly or indirectly as a loan originator unless that person is
374 registered with the department. The loan originator shall display
375 the current, original registration issued by the department in the
376 licensed office in which he or she is assigned.

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

379 81-18-7. (1) On and after July 1, 2000, no person * * *
380 shall transact business in this state, directly or indirectly, as
381 a mortgage broker or mortgage lender unless he or she is
382 licensed * * * by the department or is a person exempted from the
383 licensing requirements under Section 81-18-5.

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

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

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

400 81-18-8. Municipalities and counties in this state may enact
401 ordinances that are in compliance with, but not more restrictive
402 than, the provisions of this chapter. Any order, ordinance or
403 regulation existing on July 1, 2002, or enacted on or after July
404 1, 2002, that conflicts with this provision shall be null and
405 void.

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

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

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

412 (a) The legal name, residence, and business address of
413 the applicant and, if applicable the legal name, residence and
414 business address of every principal, together with the resume of
415 the applicant and of every principal of the applicant.

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

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

424 (d) A copy of the certificate of incorporation, if a
425 Mississippi corporation.

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

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

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

444 (i) Copies of business licenses issued by
445 governmental agencies.

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

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

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

460 * * *

461 (3) The application shall be filed together with the
462 following:

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

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

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

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

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

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

482 (iii) * * * Any shareholders owning ten percent
483 (10%) or more of the outstanding shares of the corporation; and

484 (iv) All loan originators.

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

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

490 * * *

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

499 (b) "Mortgage lender" shall be defined as any company
500 that makes a mortgage loan, using its own funds, for others or for
501 compensation or gain, with the expectation of retaining servicing
502 rights to those loans, or in the expectation of gain, either
503 directly or indirectly, sells or offers to sell a mortgage loan to
504 an investor in the secondary market. This definition includes
505 companies that utilize the services of a person exempted or
506 licensed under this chapter to make a mortgage loan, or purchase
507 or service a mortgage loan, or who services mortgage loans only,
508 including loans in the company's own portfolio. The amount of the

509 surety bond for a mortgage lender shall be One Hundred Fifty
510 Thousand Dollars (\$150,000.00). However, any licensed company
511 that was required by this chapter before July 1, 2007, to hold a
512 surety bond in the amount of Fifty Thousand Dollars (\$50,000.00)
513 shall not be required to increase its bond until its 2007 license
514 year renewal.

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

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

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

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

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

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

570 (5) In order to determine the applicant's suitability for a
571 license, the commissioner or a designated third party shall
572 forward the fingerprints submitted with the application to the
573 Department of Public Safety; and if no disqualifying record is
574 identified at the state level, the fingerprints shall be forwarded

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

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

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

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

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

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

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

639 (3) Each application for licensing renewal or registration
640 renewal shall include evidence of the satisfactory completion of

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

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

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

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

682 (3) A license or registration may not be transferred or
683 assigned.

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

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

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

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

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

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

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

736 (3) A decision of the department denying a license or
737 registration, original or renewal shall be conclusive, except that

738 the applicant may seek judicial review in the Chancery Court of
739 the First Judicial District of Hinds County, Mississippi.

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

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

746 (b) 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 affiliated through common
749 ownership with the licensee.

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

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

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

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

771 under conditions that will not lead to their damage or
772 destruction. If the licensee wishes to keep the files in a
773 location other than the location listed on the license * * *, then
774 the licensee first must submit a written request on a form
775 designated by the department and gain written approval from the
776 commissioner before storing the files at an off-site secure
777 location.

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

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

804 (4) The department, in its discretion, may disclose
805 information concerning any violation of this chapter or any rule,
806 regulation, or order under this chapter, provided the information
807 is derived from a final order of the department.

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

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

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

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

827 (2) Any company that fails to file with the department by
828 January 31 the report required by this section shall be subject to
829 a late penalty of Ten Dollars (\$10.00) for each day after January
830 31 the report is delinquent, but in no event shall the aggregate
831 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

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

842 (a) The filing for bankruptcy or reorganization by the
843 company;

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

847 (c) Any felony indictment of the company or any of its
848 directors, executive officers, principal officer or loan
849 originators; * * *

850 (d) Any felony conviction of the company or any of its
851 directors, executive officers, principal officer or loan
852 originators; or

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

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

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

863 81-18-25. (1) Each principal place of business and branch
864 office in the state shall meet all of the following requirements:

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

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

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

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

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

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

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

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

893 (a) It is a separate entity operating as an independent
894 business or mortgage operation which is not under the direct
895 control, management supervision and responsibility of the
896 licensee;

897 (b) The licensee * * * is not the lessee or owner of
898 the branch and the branch is not under the direct and daily
899 ownership, control, management and supervision of the
900 licensee * * *;

901 (c) All assets and liabilities of the branch are not
902 assets and liabilities of the licensee, and all income and
903 expenses of the branch are income and expenses of the licensee and
904 properly accounted for in the financial records and tax returns of
905 the licensee; or

906 (d) All practices, policies and procedures, including,
907 but not limited to, those relating to employment and operations,
908 are not originated and established by the licensee or registered
909 company and are not applied consistently to the main office and
910 all branches.

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

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

917 81-18-27. (1) No person required to be licensed or
918 registered under this chapter shall:

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

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

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

928 (d) Improperly refuse to issue a satisfaction of a
929 mortgage loan.

930 (e) Fail to account for or deliver to any person any
931 personal property obtained in connection with a mortgage loan,
932 such as money, funds, deposits, checks, drafts, mortgages or other
933 documents or things of value that have come into the possession of

934 the licensee and that are not the property of the licensee, or
935 that the licensee is not by law or at equity entitled to retain.

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

941 (g) Engage in any fraudulent residential mortgage
942 underwriting practices.

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

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

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

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

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

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

962 (v) That the person does business under a trade
963 name that misrepresents or tends to misrepresent that the person
964 is a bank, trust company, savings bank, savings and loan
965 association, credit union, or insurance company.

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

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

980 (ii) Any indirect payment to a licensed mortgage
981 broker or mortgage lender by a lender if those fees are not
982 required to be disclosed under the Real Estate Settlement
983 Procedures Act (RESPA);

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

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

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

999 (k) Pay to any person not licensed or registered under
1000 the provisions of this chapter any commission, bonus or fee in
1001 connection with arranging for or originating a mortgage loan for a
1002 borrower, except that a registered loan originator may be paid a
1003 bonus, commission, or fee by his or her licensed employer.

1004 (l) Refuse to provide the loan payoff within three (3)
1005 business days of an oral or written request from a borrower or
1006 third party. Proof of authorization of the borrower shall be
1007 submitted for a third-party request.

1008 (m) Knowingly withhold, extract, remove, mutilate,
1009 destroy or conceal any books, records, computer records or other
1010 information which are required by law to be disclosed.

1011 (2) A licensed mortgage broker or mortgage lender shall only
1012 broker a residential mortgage loan to a mortgage broker or
1013 mortgage lender licensed * * * under this chapter or to a person
1014 exempt from licensure under the provisions of this chapter.

1015 (3) No nonbanking entity may use any sign or hand-written or
1016 printed paper indicating that it is a bank, savings bank, trust
1017 company or place of banking. No entity may use the word "bank,"
1018 "savings bank," "banking," "banker" or "trust company," or the
1019 equivalent or plural of any of these words, in connection with any
1020 business other than that of banking. This subsection does not
1021 prohibit a person from acting in a trust capacity.

1022 (4) No person shall use the name or logo of any banking
1023 entity in connection with the sale, offering for sale, or
1024 advertising of any financial product or service without the
1025 express written consent of the banking entity.

1026 **SECTION 16.** Section 81-18-28, Mississippi Code of 1972, is
1027 reenacted and amended as follows:

1028 81-18-28. (1) A licensed mortgage broker or mortgage lender
1029 may enter into lock-in agreements and collect a lock-in fee from a
1030 borrower on the lender's behalf. The lock-in fee shall not exceed
1031 the following:

1032 (a) No fee may be collected to lock in for sixty (60)
1033 days or less;

1034 (b) One percent (1%) of the principal amount of the
1035 loan to lock in for more than sixty (60) days, but not to exceed
1036 one hundred eighty (180) days;

1037 (c) One and one-half percent (1-1/2%) of the principal
1038 amount of the loan to lock in for more than one hundred eighty
1039 (180) days, but not to exceed two hundred seventy (270) days; or

1040 (d) Two percent (2%) of the principal amount of the
1041 loan to lock in for more than two hundred seventy (270) days.

1042 (2) Before the collection of a lock-in fee, the applicant
1043 must be provided a copy of the lock-in fee agreement. This
1044 agreement shall contain at least the following:

1045 (a) Identification of the property that is being
1046 purchased with the loan;

1047 (b) The principal amount and term of the loan;

1048 (c) The initial interest rate and/or points, whether
1049 the interest rate is fixed or variable, and if variable, the index
1050 and margin, or the method by which an interest rate change for the
1051 mortgage loan will be calculated;

1052 (d) The amount of the lock-in fee, whether the fee is
1053 refundable or nonrefundable, the time by which the lock-in fee
1054 must be paid to the lender, and if the fee is refundable, the
1055 terms and conditions necessary to obtain the refund; and

1056 (e) The length of the lock-in period that the agreement
1057 covers.

1058 **SECTION 17.** Section 81-18-29, Mississippi Code of 1972, is
1059 reenacted and amended as follows:

1060 81-18-29. (1) The commissioner shall promulgate those rules
1061 and regulations, not inconsistent with law, necessary for the
1062 enforcement of this chapter.

1063 (2) The Legislature finds that a uniform multistate
1064 administration of a multistate licensing system for mortgage

1065 brokers, mortgage lenders and mortgage loan originators is
1066 consistent with both the public interest and the purposes of this
1067 chapter; therefore, for the sole purpose of participating in the
1068 establishment and implementation of a multistate licensing system
1069 for mortgage brokers, mortgage lenders and mortgage loan
1070 originators, the commissioner may establish by regulation such new
1071 requirements as are necessary for the State of Mississippi to
1072 participate in a multistate licensing system upon the
1073 commissioner's finding that each new requirement is consistent
1074 with both the public interest and the purposes of this chapter.
1075 These new requirements shall include criminal background checks by
1076 the FBI and the Mississippi Department of Public Safety.

1077 **SECTION 18.** Section 81-18-31, Mississippi Code of 1972, is
1078 reenacted and amended as follows:

1079 81-18-31. The department shall promulgate regulations
1080 governing the advertising of mortgage loans, including, but not
1081 limited to, the following requirements:

1082 (a) That all advertisements for loans regulated under
1083 this chapter may not be false, misleading or deceptive. No person
1084 whose activities are regulated under this chapter may advertise in
1085 any manner so as to indicate or imply that its interest rates or
1086 charges for loans are "recommended," "approved," "set" or
1087 "established" by the State of Mississippi;

1088 (b) That all licensees shall maintain a copy of all
1089 advertisements citing interest rates or payment amounts primarily
1090 disseminated in this state and shall attach to each advertisement
1091 documentation that provides corroboration of the availability of
1092 the interest rate and terms of loans and names the specific media
1093 sources by which the advertisements were distributed;

1094 (c) That all published advertisements disseminated
1095 primarily in this state by a licensee shall contain the name and an
1096 office address of the licensee, which shall be the same as the
1097 name and address of the licensee on record with the department;

1098 (d) That an advertisement containing either a quoted
1099 interest rate or monthly payment amount must include:

1100 (i) The interest rate of the mortgage, a statement
1101 as to whether the rate is fixed or adjustable, and the adjustment
1102 index and frequency of adjustments;

1103 (ii) The term in years or months to fully repay
1104 the mortgage;

1105 (iii) The APR as computed under federal
1106 guidelines; and

1107 (e) That no licensee shall advertise its services in
1108 Mississippi in any media disseminated primarily in this state,
1109 whether print or electronic, without the words "Licensed by the
1110 Mississippi Department of Banking and Consumer Finance."

1111 **SECTION 19.** Section 81-18-33, Mississippi Code of 1972, is
1112 reenacted and amended as follows:

1113 81-18-33. The individual borrower files of a licensee shall
1114 contain at least the following:

1115 (a) A mortgage origination agreement provided to the
1116 borrower containing at least the following statements:

1117 (i) "As required by Mississippi Law, (licensed
1118 company name) has secured a bond issued by (name of insurance
1119 company), a surety company authorized to do business in this
1120 state. A certified copy of this bond is filed with the
1121 Mississippi Commissioner of Banking and Consumer Finance."

1122 (ii) "As a borrower you are protected under the
1123 Mississippi Mortgage Consumer Protection Law."

1124 (iii) "Complaints against a licensee may be made
1125 by contacting the:

1126 Mississippi Department of Banking and

1127 Consumer Finance

1128 P.O. Box 23729

1129 Jackson, MS 39225-3729";

1130 (b) A copy of the original loan application signed and
1131 dated by the licensee;

1132 (c) A copy of the signed closing statement as required
1133 by HUD or documentation of denial or cancellation of the loan
1134 application;

1135 (d) A copy of the good faith estimate of costs provided
1136 to the borrower;

1137 (e) A copy of the appraisal or statement of value if
1138 procured as a part of the loan application process;

1139 (f) A copy of a loan lock-in agreement provided by the
1140 lender; * * *

1141 (g) A copy of the disclosures required under Regulation
1142 Z of the federal Truth In Lending Act and other disclosures as
1143 required under federal regulations and evidence that those
1144 disclosures have been properly and timely made to the borrower;
1145 and

1146 (h) A copy of the final signed Uniform Residential Loan
1147 Application.

1148 **SECTION 20.** Section 81-18-35, Mississippi Code of 1972, is
1149 reenacted and amended as follows:

1150 81-18-35. Each licensee shall maintain a journal of mortgage
1151 transactions at the principal place of business as stated on its
1152 license, which shall include at least the following information:

1153 (a) Name of applicant and co-applicant, if applicable;

1154 (b) Date of application; and

1155 (c) Disposition of loan application, indicating date of
1156 loan funding, loan denial, withdrawal and name of lender if
1157 applicable.

1158 **SECTION 21.** Section 81-18-36, Mississippi Code of 1972, is
1159 reenacted and amended as follows:

1160 81-18-36. (1) (a) All monies paid to a licensee for
1161 payment of taxes, loan commitment deposits, work completion
1162 deposits, appraisals, credit reports or insurance premiums on

1163 property that secures any loan made or serviced by the licensee
1164 shall be deposited in an account that is insured by the Federal
1165 Deposit Insurance Corporation or the National Credit Union
1166 Administration and shall be kept separate, distinct, and apart
1167 from funds belonging to the licensee.

1168 (b) The funds, when deposited, are to be designated as
1169 an "escrow account," or under some other appropriate name,
1170 indicating that the funds are not the funds of the licensee.

1171 (2) The licensee shall, upon reasonable notice, account to
1172 any debtor whose property secures a loan made by the licensee for
1173 any funds which that person has paid to the licensee for the
1174 payment of taxes or insurance premiums on the property in
1175 question.

1176 (3) The licensee shall, upon reasonable notice, account to
1177 the commissioner for all funds in the company's escrow account.

1178 (4) Escrow accounts are not subject to execution or
1179 attachment on any claim against the licensee.

1180 (5) It is unlawful for any licensee knowingly to keep or
1181 cause to be kept any funds or money in any bank or other financial
1182 institution under the heading of "escrow account" or any other
1183 name designating the funds or monies belonging to the debtors of
1184 the licensee, except actual funds paid to the licensee for the
1185 payment of taxes and insurance premiums on property securing loans
1186 made or serviced by the company.

1187 **SECTION 22.** Section 81-18-37, Mississippi Code of 1972, is
1188 reenacted and amended as follows:

1189 81-18-37. (1) The department may suspend or revoke any
1190 license or registration for any reason that would have been
1191 grounds for refusal to issue an original license or registration
1192 or for:

1193 (a) A violation of any provision of this chapter or any
1194 rule or regulation adopted under this chapter;

1195 (b) Failure of the licensee or registrant to pay,
1196 within thirty (30) days after it becomes final and nonappealable,
1197 a judgment recovered in any court within this state by a claimant
1198 or creditor in an action arising out of the licensee's or
1199 registrant's business in this state as a mortgage broker or
1200 mortgage lender.

1201 (2) Notice of the department's intention to enter an order
1202 denying an application for a license or registration under this
1203 chapter or of an order suspending or revoking a license or
1204 registration under this chapter shall be given to the applicant,
1205 licensee or registrant in writing, sent by registered or certified
1206 mail addressed to the principal place of business of the
1207 applicant, licensee or registrant. Within thirty (30) days of the
1208 date of the notice of intention to enter an order of denial,
1209 suspension or revocation under this chapter, the applicant,
1210 licensee or registrant may request in writing a hearing to contest
1211 the order. If a hearing is not requested in writing within thirty
1212 (30) days of the date of the notice of intention, the department
1213 shall enter a final order regarding the denial, suspension or
1214 revocation. Any final order of the department denying, suspending
1215 or revoking a license or registration shall state the grounds upon
1216 which it is based and shall be effective on the date of issuance.
1217 A copy of the final order shall be forwarded promptly by
1218 registered or certified mail addressed to the principal place of
1219 business of the applicant, licensee or registrant.

1220 **SECTION 23.** Section 81-18-39, Mississippi Code of 1972, is
1221 reenacted as follows:

1222 81-18-39. (1) For purposes of this section, the term
1223 "person" shall be construed to include any officer, director,
1224 employee, affiliate or other person participating in the conduct
1225 of the affairs of the person subject to the orders issued under
1226 this section.

1227 (2) If the department reasonably determines that a person
1228 required to be licensed or registered under this chapter has
1229 violated any law of this state or any order or regulation of the
1230 department, the department may issue a written order requiring the
1231 person to cease and desist from unlawful or unauthorized
1232 practices. In the case of an unlawful purchase of mortgage loans,
1233 the cease and desist order to a purchaser shall constitute the
1234 knowledge required under this section for any subsequent
1235 violations.

1236 (3) Any person required to be licensed or registered under
1237 this chapter who has been deemed by the commissioner, after notice
1238 and hearing, to have violated the terms of any order properly
1239 issued by the department under this section shall be liable for a
1240 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1241 The department, in determining the amount of the penalty, shall
1242 take into account the appropriateness of the penalty relative to
1243 the size of the financial resources of the person, the good faith
1244 efforts of the person to comply with the order, the gravity of the
1245 violation, the history of previous violations by the person, and
1246 other factors or circumstances that contributed to the violation.
1247 The department may compromise, modify or refund any penalty that
1248 has been imposed under this section. Any person assessed a
1249 penalty as provided in this subsection shall have the right to
1250 request a hearing on the amount of the penalty within ten (10)
1251 days after receiving notification of the assessment. If no
1252 hearing is requested within ten (10) days of the receipt of the
1253 notice, the penalty shall be final except as to judicial review in
1254 the Chancery Court of the First Judicial District of Hinds County.
1255 Upon the filing of a petition for judicial review, the court shall
1256 issue an order to the licensee requiring the licensee to show
1257 cause why it should not be entered. If the court determines,
1258 after a hearing upon the merits or after failure of the person to
1259 appear when so ordered, that the order of the department was

1260 properly issued, it shall grant the penalty sought by the
1261 department.

1262 **SECTION 24.** Section 81-18-41, Mississippi Code of 1972, is
1263 reenacted and amended as follows:

1264 81-18-41. Nothing in this chapter shall preclude a person
1265 whose license * * * has been suspended or revoked from continuing
1266 to service mortgage loans pursuant to servicing contracts in
1267 existence at the time of the suspension or revocation for a
1268 reasonable transition period, as determined by the commissioner,
1269 after the date of the entry of the final decision in the case
1270 suspending or revoking the license.

1271 **SECTION 25.** Section 81-18-43, Mississippi Code of 1972, is
1272 reenacted and amended as follows:

1273 81-18-43. (1) In addition to any other penalty that may be
1274 applicable, any licensee, person required to be registered, or
1275 employee who willfully violates any provision of this chapter, or
1276 who willfully makes a false entry in any document specifically
1277 required by this chapter, shall be guilty of a misdemeanor and,
1278 upon conviction thereof, shall be punishable by a fine not in
1279 excess of One Thousand Dollars (\$1,000.00) per violation or false
1280 entry.

1281 (2) In addition to any other penalty that may be applicable,
1282 any licensee, person required to be registered, or employee who
1283 fails to make a record of a mortgage transaction and subsequently
1284 sells or disposes of the mortgage from that transaction shall be
1285 punished as follows:

1286 (a) For a first offense, the licensee, person required
1287 to be registered, or employee shall be guilty of a misdemeanor
1288 and, upon conviction thereof, shall be punishable by a fine not in
1289 excess of One Thousand Dollars (\$1,000.00) or by imprisonment in
1290 the county jail for not more than one (1) year, or both fine and
1291 imprisonment;

1292 (b) For a second or subsequent offense, the licensee,
1293 person required to be registered, or employee shall be guilty of a
1294 felony and, upon conviction thereof, shall be punishable by a fine
1295 not in excess of Five Thousand Dollars (\$5,000.00) or by
1296 imprisonment in the custody of the State Department of Corrections
1297 for a term not less than one (1) year nor more than five (5)
1298 years, or by both fine and imprisonment.

1299 (3) Compliance with the criminal provisions of this section
1300 shall be enforced by the appropriate law enforcement agency, which
1301 may exercise for that purpose any authority conferred upon the
1302 agency by law.

1303 (4) When the commissioner has reasonable cause to believe
1304 that a person is violating any provision of this chapter, the
1305 commissioner, in addition to and without prejudice to the
1306 authority provided elsewhere in this chapter, may enter an order
1307 requiring the person to stop or to refrain from the violation.
1308 The commissioner may sue in any chancery court of the state having
1309 jurisdiction and venue to enjoin the person from engaging in or
1310 continuing the violation or from doing any act in furtherance of
1311 the violation. In such an action, the court may enter an order or
1312 judgment awarding a preliminary or permanent injunction.

1313 (5) The commissioner may, after notice and hearing, impose a
1314 civil penalty against any licensee if the licensee, person
1315 required to be registered, or employee is adjudged by the
1316 commissioner to be in violation of the provisions of this chapter.
1317 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
1318 per violation and shall be deposited into the Consumer Finance
1319 Fund of the department.

1320 (6) The commissioner may make public any final
1321 administrative action imposed against a licensee or registrant for
1322 a violation of this chapter, including cease and desist orders,
1323 civil monetary penalties, license suspensions, revocations or
1324 application denials.

1325 (7) The state may enforce its rights under the surety bond
1326 as required in Section 81-18-11 as an available remedy for the
1327 collection of any civil penalties, criminal fines or costs of
1328 investigation and/or prosecution incurred.

1329 **SECTION 26.** Section 81-18-45, Mississippi Code of 1972, is
1330 reenacted as follows:

1331 81-18-45. The commissioner may employ the necessary
1332 full-time employees above the number of permanent full-time
1333 employees authorized for the department for the fiscal year 2001,
1334 to carry out and enforce the provisions of this chapter. The
1335 commissioner also may expend the necessary funds and equip and
1336 provide necessary travel expenses for those employees.

1337 **SECTION 27.** Section 81-18-47, Mississippi Code of 1972, is
1338 reenacted as follows:

1339 81-18-47. (1) A licensee under this chapter shall have no
1340 liability for any act or practice done or omitted in conformity
1341 with (a) any rule or regulation of the commissioner, or (b) any
1342 rule, regulation, interpretation or approval of any other state or
1343 federal agency or any opinion of the Attorney General,
1344 notwithstanding that after such act or omission has occurred the
1345 rule, regulation, interpretation, approval or opinion is amended,
1346 rescinded, or determined by judicial or other authority to be
1347 invalid for any reason.

1348 (2) A licensee under this chapter, acting in conformity with
1349 a written interpretation or approval by an official or employee of
1350 any state or federal agency or department, shall be presumed to
1351 have acted in accordance with applicable law, notwithstanding that
1352 after such act has occurred, the interpretation or approval is
1353 amended, rescinded, or determined by judicial or other authority
1354 to be incorrect or invalid for any reason.

1355 **SECTION 28.** Section 81-18-49, Mississippi Code of 1972, is
1356 reenacted as follows:

1357 81-18-49. Notwithstanding any provisions of this chapter to
1358 the contrary, mortgage companies engaging in business on or before
1359 June 1, 2000, shall be duly licensed by the department after
1360 submitting not later than January 1, 2001, the required documents
1361 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1362 the expiration of the initial licenses for such mortgage
1363 companies, the department shall renew the licenses only if the
1364 mortgage companies satisfy all of the provisions of this chapter.

1365 **SECTION 29.** Section 81-18-51, Mississippi Code of 1972, is
1366 amended as follows:

1367 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1368 repealed on July 1, 2012.

1369 **SECTION 30.** (1) A person commits the offense of residential
1370 mortgage fraud when, with the intent to defraud such person, he:

1371 (a) Knowingly makes any deliberate misstatement,
1372 misrepresentation or omission during the mortgage lending process
1373 with the intention that it be relied on by a licensed mortgage
1374 broker or mortgage lender, borrower or any other party to the
1375 mortgage lending process;

1376 (b) Knowingly uses or facilitates the use of any
1377 deliberate misstatement, misrepresentation or omission, knowing
1378 the same to contain a misstatement, misrepresentation or omission,
1379 during the mortgage lending process with the intention that it be
1380 relied on by a company, borrower, or any other party to the
1381 mortgage lending process;

1382 (c) Receives any proceeds or any other funds in
1383 connection with a residential mortgage closing that such person
1384 knew resulted from a violation of paragraph (a) or (b) of this
1385 subsection;

1386 (d) Conspires to violate any of the provisions of
1387 paragraph (a), (b) or (c) of this subsection; or

1388 (e) Files or causes to be filed with the chancery clerk
1389 of any county of this state any deed of trust such person knows to
1390 contain a deliberate misstatement, misrepresentation or omission.

1391 (2) An offense of residential mortgage fraud shall not be
1392 predicated solely upon information lawfully disclosed under
1393 federal disclosure laws, regulations and interpretations related
1394 to the mortgage lending process.

1395 (3) For the purposes of venue under this section, any
1396 violation of this section shall be considered to have been
1397 committed:

1398 (a) In the county in which the residential property for
1399 which a mortgage loan is being sought is located;

1400 (b) In any county in which any act was performed in
1401 furtherance of this violation;

1402 (c) In any county in which any person alleged to have
1403 violated this chapter had control or possession of any proceeds of
1404 this violation;

1405 (d) If a closing occurred, in any county in which the
1406 closing occurred; or

1407 (e) In any county in which a document containing a
1408 deliberate misstatement, misrepresentation or omission is filed
1409 with the chancery clerk.

1410 (4) District attorneys and the Attorney General shall have
1411 the authority to conduct the criminal investigation of all cases
1412 of residential mortgage fraud under this section.

1413 (5) (a) Any person violating this section shall be guilty
1414 of a felony and, upon conviction, shall be punished by
1415 imprisonment for not less than one (1) year nor more than ten (10)
1416 years, by a fine not to exceed Five Thousand Dollars (\$5,000.00),
1417 or both.

1418 (b) If a violation of this section involves engaging or
1419 participating in a pattern of residential mortgage fraud or a
1420 conspiracy or endeavor to engage or participate in a pattern of

1421 residential mortgage fraud, the violation shall be punishable by
1422 imprisonment for not less than three (3) years nor more than
1423 twenty (20) years, by a fine not to exceed One Hundred Thousand
1424 Dollars (\$100,000.00), or both.

1425 (c) Each residential property transaction subject to a
1426 violation of this section shall constitute a separate offense and
1427 shall not merge with any other crimes set forth in this section.

1428 (6) All real and personal property of every kind used or
1429 intended for use in the course of, derived from, or realized
1430 through a violation of this section shall be subject to forfeiture
1431 to the state. Forfeiture shall be had by the same procedure as
1432 outlined in Sections 97-43-9 and 97-43-11. District attorneys and
1433 the Attorney General may commence forfeiture proceedings under
1434 this section.

1435 (7) For purposes of this section, the term "pattern of
1436 residential mortgage fraud" means one or more misstatements,
1437 misrepresentations or omissions made during the mortgage lending
1438 process that involve two (2) or more residential properties which
1439 have the same or similar intents, results, accomplices, victims or
1440 methods of commission or otherwise are interrelated by
1441 distinguishing characteristics.

1442 **SECTION 31.** This act shall take effect and be in force from
1443 and after July 1, 2007.