

House Amendments to Senate Bill No. 2350

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

55 81-18-1. This chapter shall be known and cited as the
56 Mississippi Mortgage Consumer Protection Law.

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

59 81-18-3. For purposes of this chapter, the following terms
60 shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

duties of an originator enumerated in paragraph (1), but a loan originator may perform the duties of a loan processor.

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

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

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

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

* * *

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

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

(t) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, HUD-1 settlement statements,

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

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

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

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

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

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

216 (z) "Principal officer" means an owner or employee of a
217 mortgage broker or mortgage lender who submits documentation of
218 two (2) years' experience directly related to mortgage lending,

219 who registers as a loan originator as defined in this chapter, and
220 who resides within one hundred twenty-five (125) miles of the
221 licensed main office of the company.

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

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

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

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

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

243 * * *

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

246 81-18-5. The following persons are not subject to the
247 provisions of this chapter, unless otherwise provided in this
248 chapter:

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

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

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

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

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

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

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

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

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

* * *

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

(d) Any attorney licensed to practice law in Mississippi who provides mortgage loan services incidental to the

289 practice of law and who is not a principal of a * * * company as
290 defined under this chapter.

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

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

298 (g) Any person who is employed by and represents a
299 Mississippi manufactured housing operation and who makes a
300 mortgage loan on manufactured housing and land transactions,
301 modular homes, or any combination thereof; any person who engages
302 in owner-financing; or any person engaged in the financing of a
303 consumer loan secured by a mortgage on residential immovable
304 property in not more than twelve (12) Mississippi residential
305 mortgage loans, or who contracts for no more than twelve (12)
306 Mississippi residential loan transactions, over the licensing
307 period provided in this chapter, including those acting as
308 originators. The twelve (12) transactions are cumulative to any
309 combination of operations owned or controlled by any one
310 individual, sole proprietorship, corporation, limited liability
311 company, partnership, trust or any other group of individuals,
312 however organized. However, within thirty (30) days of loan
313 closure, the person shall submit to the commissioner a fee of Ten
314 Dollars (\$10.00), which is not chargeable to the consumer, and
315 written notification containing such loan information as required
316 by the commissioner, seeking approval to engage in a residential
317 mortgage transaction without first complying with the licensing
318 provisions of this chapter. Any person who enters into more than
319 twelve (12) of those transactions in the licensing period provided
320 in this chapter must be licensed according to the procedures
321 prescribed in this chapter. The fees paid for registration during
322 a licensing period will be deducted from the cost of an initial

license. This paragraph (g) shall not include persons solely involved in the making of a mortgage loan on modular homes.

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

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

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

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

(l) Loan originators as defined under Section 81-18-3(j) are exempt from the licensing requirements of this chapter except for Sections 81-18-9(3)(d), 81-18-13, 81-18-15(3), 81-18-17, 81-18-37 and 81-18-43, but shall register with the department as a loan originator. Any * * * person required to register under this paragraph * * * shall register initially with the department and thereafter file an application for renewal of registration with the department on or before December 31 of each year providing the department with such information as the department may prescribe by regulation, including, but not limited to, the business address where the person engages in any business

activities covered by this chapter, proof of at least one (1) year
of experience directly in mortgage lending within the two (2)
years prior to the date of application, the residential address of
the applicant and a telephone number that customers may use to
contact the person. If the person does not meet the experience
requirement, then he or she shall complete a minimum of
twenty-four (24) hours of education as approved by the Mississippi
Association of Mortgage Brokers, the National Association of
Mortgage Brokers, the Mortgage Bankers Association or the Mortgage
Bankers Association of Mississippi for the experience waiver. If
the experience did not occur within the State of Mississippi, then
the department shall require the person to complete an education
course of a minimum of four (4) hours covering the Mississippi
Mortgage Consumer Protection Law and to pass an examination
covering the cause material. This initial registration of a loan
originator shall be accompanied by a fee of One Hundred Dollars
(\$100.00). Annual renewals of this registration shall require a
fee of Fifty Dollars (\$50.00). No person required to register
under this paragraph * * * shall transact business in this state
directly or indirectly as a loan originator unless that person is
registered with the department. The loan originator shall display
the current, original registration issued by the department in the
licensed office in which he or she is assigned.

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

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

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

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

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

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

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

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

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

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

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

(c) The complete address of the applicant's main office, branch office(s) and any other locations at which the

applicant will engage in any business activity covered by this chapter.

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

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

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

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

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

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

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

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

461 agents. A résumé alone shall not be sufficient proof of
462 employment history.

463 * * *

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

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

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

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

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

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

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

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

487 (iv) All loan originators.

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

490 81-18-11. (1) For purposes of Section 81-18-9, the
491 definitions of the classes of companies and their respective
492 minimum amounts of surety bonds will be:

493 * * *

494 (a) "Mortgage broker" shall be defined as any person
495 that directly solicits, processes, places or negotiates mortgage

loans for others and that does not close mortgage loans in the company name, does not use its own funds, or who closes mortgage loans in the name of the company, and sells, assigns or transfers the loan to others within forty-eight (48) hours of the closing. The amount of the surety bond for mortgage brokers shall be Twenty-five Thousand Dollars (\$25,000.00).

(b) "Mortgage lender" shall be defined as any company that makes a mortgage loan, using its own funds, for others or for compensation or gain, with the expectation of retaining servicing rights to those loans, or in the expectation of gain, either directly or indirectly, sells or offers to sell a mortgage loan to an investor in the secondary market. This definition includes companies that utilize the services of a person exempted or licensed under this chapter to make a mortgage loan, or purchase or service a mortgage loan, or who services mortgage loans only, including loans in the company's own portfolio. The amount of the surety bond for a mortgage lender shall be One Hundred Fifty Thousand Dollars (\$150,000.00). However, any licensed company that was required by this chapter before July 1, 2007, to hold a surety bond in the amount of Fifty Thousand Dollars (\$50,000.00) shall not be required to increase its bond until its 2007 license year renewal.

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

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

81-18-13. (1) Upon receipt of an application for licensure or registration, which shall include the required set of fingerprints from any local law enforcement agency, the department

531 or designated third party shall conduct such an investigation as
532 it deems necessary to determine that the applicant and its
533 officers, directors and principals are of good character and
534 ethical reputation; that the applicant demonstrates reasonable
535 financial responsibility; and that the applicant has reasonable
536 policies and procedures to receive and process customer grievances
537 and inquiries promptly and fairly.

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

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

545 (4) The department shall not issue a license or
546 registration * * * if it finds that the applicant, or any person
547 who is a director, officer, partner or principal officer of the
548 applicant, has been convicted * * * of: (a) a felony in which
549 fraud, theft, forgery, embezzlement or making a fraudulent or
550 false statement is an essential element in any jurisdiction; or
551 (b) a crime that, if committed within this state, would constitute
552 a felony in which fraud, theft, forgery, embezzlement or making a
553 fraudulent or false statement is an essential element under the
554 laws of this state * * *. The department may renew the existing
555 license or registration of any such applicant or person who holds
556 a license or registration on July 1, 2007. However, any person
557 submitting an initial application for license or registration with
558 a different company after July 1, 2007, in which the background
559 check discloses a felony as described in this section shall be
560 denied licensure or registration by the department. For the
561 purposes of this chapter, a person shall be deemed to have been
562 convicted of a crime if the person has pleaded guilty to a crime
563 before a court or federal magistrate, or plea of nolo contendere,
564 or has been found guilty of a crime by the decision or judgment of
565 a court or federal magistrate or by the verdict of a jury,

566 irrespective of the pronouncement of sentence or the suspension of
567 a sentence, unless the plea of guilty, or the decision, judgment
568 or verdict, has been set aside, reversed or otherwise abrogated by
569 lawful judicial process, or unless the person convicted of the
570 crime has received a pardon from the President of the United
571 States or the Governor or other pardoning authority in the
572 jurisdiction where the conviction was obtained.

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

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

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

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

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

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

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

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

669 manufactured housing licensee or loan originator may submit
670 evidence of completion of courses that have been approved by
671 the * * * Mortgage Bankers Association, the * * * National
672 Association of Mortgage Brokers, the Mississippi Association of
673 Mortgage Brokers or the Mortgage Bankers Association of
674 Mississippi to satisfy the four-hour requirement of courses in
675 primary and subordinated financing transactions.

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

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

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

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

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

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

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

704 payment of a nonrefundable application fee of One Hundred Dollars
705 (\$100.00) and at least one (1) loan originator application
706 registered at that branch office. The application shall be
707 approved unless the department finds that the applicant has not
708 conducted business under this chapter in accordance with law. The
709 application shall be deemed approved if notice to the contrary has
710 not been mailed by the department to the applicant within thirty
711 (30) days of the date that the complete application is received by
712 the department. After approval, the applicant shall give written
713 notice to the department within ten (10) days of the commencement
714 of business at the branch office. Each branch office that
715 currently holds a branch license shall renew that branch license
716 before the expiration date of the main company license, on or
717 before December 31. The license renewal shall be on a form
718 prescribed by the department with a nonrefundable renewal
719 application fee of Twenty-five Dollars (\$25.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

866 81-18-25. (1) Each principal place of business and branch
867 office in the state shall meet all of the following requirements:

868 (a) Be in compliance with local zoning ordinances and
869 have posted any licenses required by local government agencies.
870 It is the responsibility of the licensee to meet local zoning
871 ordinances and obtain the required occupational licenses; however,
872 zoning cannot be residential. If there is no zoning in the area,
873 then the person shall submit to the department a letter from the
874 city or county stating that there is no zoning.

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

Stationary construction does not include the use of portable buildings. If there is no zoning in the requested location and the property is used for residential purposes, then the person shall utilize an enclosed room with a dedicated outside door.

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

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

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

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

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

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

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

(d) All practices, policies and procedures, including, but not limited to, those relating to employment and operations,

are not originated and established by the licensee or registered company and are not applied consistently to the main office and all branches.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

967 (v) That the person does business under a trade
968 name that misrepresents or tends to misrepresent that the person
969 is a bank, trust company, savings bank, savings and loan
970 association, credit union, or insurance company.

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

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

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

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

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

1000 (v) An advance fee, known as a lock-in fee,
1001 collected by a licensee to be paid to a lender to lock in an
1002 interest rate and/or a certain number of points on a mortgage loan
1003 from the lender as provided in Section 81-18-28.

1004 (k) Pay to any person not licensed or registered under
1005 the provisions of this chapter any commission, bonus or fee in
1006 connection with arranging for or originating a mortgage loan for a
1007 borrower, except that a registered loan originator may be paid a
1008 bonus, commission, or fee by his or her licensed employer.

1009 (l) Refuse to provide the loan payoff within three (3)
1010 business days of an oral or written request from a borrower or
1011 third party. Proof of authorization of the borrower shall be
1012 submitted for a third-party request.

1013 (m) Knowingly withhold, extract, remove, mutilate,
1014 destroy or conceal any books, records, computer records or other
1015 information which are required by law to be disclosed.

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

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

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

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

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

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

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

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

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

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

- 1050 (a) Identification of the property that is being
1051 purchased with the loan;
- 1052 (b) The principal amount and term of the loan;
- 1053 (c) The initial interest rate and/or points, whether
1054 the interest rate is fixed or variable, and if variable, the index
1055 and margin, or the method by which an interest rate change for the
1056 mortgage loan will be calculated;
- 1057 (d) The amount of the lock-in fee, whether the fee is
1058 refundable or nonrefundable, the time by which the lock-in fee
1059 must be paid to the lender, and if the fee is refundable, the
1060 terms and conditions necessary to obtain the refund; and
- 1061 (e) The length of the lock-in period that the agreement
1062 covers.

1063 **SECTION 17.** Section 81-18-29, Mississippi Code of 1972, is
1064 reenacted and amended as follows:

1065 81-18-29. The commissioner shall promulgate those rules and
1066 regulations, not inconsistent with law, necessary for the
1067 enforcement of this chapter.

1068 **SECTION 18.** Section 81-18-31, Mississippi Code of 1972, is
1069 reenacted and amended as follows:

1070 81-18-31. The department shall promulgate regulations
1071 governing the advertising of mortgage loans, including, but not
1072 limited to, the following requirements:

1073 (a) That all advertisements for loans regulated under
1074 this chapter may not be false, misleading or deceptive. No person
1075 whose activities are regulated under this chapter may advertise in
1076 any manner so as to indicate or imply that its interest rates or
1077 charges for loans are "recommended," "approved," "set" or
1078 "established" by the State of Mississippi;

1079 (b) That all licensees shall maintain a copy of all
1080 advertisements citing interest rates or payment amounts primarily
1081 disseminated in this state and shall attach to each advertisement
1082 documentation that provides corroboration of the availability of
1083 the interest rate and terms of loans and names the specific media
1084 sources by which the advertisements were distributed;

1085 (c) That all published advertisements disseminated
1086 primarily in this state by a license shall contain the name and an
1087 office address of the licensee, which shall be the same as the
1088 name and address of the licensee on record with the department;

1089 (d) That an advertisement containing either a quoted
1090 interest rate or monthly payment amount must include:

1091 (i) The interest rate of the mortgage, a statement
1092 as to whether the rate is fixed or adjustable, and the adjustment
1093 index and frequency of adjustments;

1094 (ii) The term in years or months to fully repay
1095 the mortgage;

1096 (iii) The APR as computed under federal
1097 guidelines; and

1098 (e) That no licensee shall advertise its services in
1099 Mississippi in any media disseminated primarily in this state,
1100 whether print or electronic, without the words "Mississippi
1101 Licensed Mortgage Company" or "Mississippi Registered Mortgage
1102 Company" or, if the initial license is obtained after July 1,
1103 2007, the words "Licensed by the Mississippi Department of Banking
1104 and Consumer Finance".

1105 **SECTION 19.** Section 81-18-33, Mississippi Code of 1972, is
1106 reenacted and amended as follows:

1107 81-18-33. The individual borrower files of a licensee shall
1108 contain at least the following:

1109 (a) A mortgage origination agreement provided to the
1110 borrower containing at least the following statements:

1111 (i) "As required by Mississippi Law, (licensed
1112 company name) has secured a bond issued by (name of insurance
1113 company), a surety company authorized to do business in this
1114 state. A certified copy of this bond is filed with the
1115 Mississippi Commissioner of Banking and Consumer Finance."

1116 (ii) "As a borrower you are protected under the
1117 Mississippi Mortgage Consumer Protection Law."

1118 (iii) "Complaints against a licensee may be made
1119 by contacting the:

1120 Mississippi Department of Banking and
1121 Consumer Finance

1122 P.O. Box 23729

1123 Jackson, MS 39225-3729";

1124 (b) A copy of the original loan application signed and
1125 dated by the licensee;

1126 (c) A copy of the signed closing statement as required
1127 by HUD or documentation of denial or cancellation of the loan
1128 application;

1129 (d) A copy of the good faith estimate of costs provided
1130 to the borrower;

1131 (e) A copy of the appraisal or statement of value if
1132 procured as a part of the loan application process;

1133 (f) A copy of a loan lock-in agreement, if any,
1134 provided by the licensee; * * *

1135 (g) A copy of the disclosures required under Regulation
1136 Z of the federal Truth In Lending Act and other disclosures as
1137 required under federal regulations and evidence that those
1138 disclosures have been properly and timely made to the borrower;
1139 and

1140 (h) A copy of the final signed Uniform Residential Loan
1141 Application.

1142 **SECTION 20.** Section 81-18-35, Mississippi Code of 1972, is
1143 reenacted and amended as follows:

1144 81-18-35. Each licensee shall maintain a journal of mortgage
1145 transactions at the principal place of business as stated on its
1146 license, which shall include at least the following information:

1147 (a) Name of applicant and co-applicant, if applicable;

1148 (b) Date of application; and

1149 (c) Disposition of loan application, indicating date of
1150 loan funding, loan denial, withdrawal and name of lender if
1151 applicable.

1152 **SECTION 21.** Section 81-18-36, Mississippi Code of 1972, is
1153 reenacted and amended as follows:

1154 81-18-36. (1) (a) All monies paid to a licensee for
1155 payment of taxes, loan commitment deposits, work completion
1156 deposits, appraisals, credit reports or insurance premiums on
1157 property that secures any loan made or serviced by the licensee
1158 shall be deposited in an account that is insured by the Federal
1159 Deposit Insurance Corporation or the National Credit Union
1160 Administration and shall be kept separate, distinct, and apart
1161 from funds belonging to the licensee.

1162 (b) The funds, when deposited, are to be designated as
1163 an "escrow account," or under some other appropriate name,
1164 indicating that the funds are not the funds of the licensee.

1165 (2) The licensee shall, upon reasonable notice, account to
1166 any debtor whose property secures a loan made by the licensee for
1167 any funds which that person has paid to the licensee for the
1168 payment of taxes or insurance premiums on the property in
1169 question.

1170 (3) The licensee shall, upon reasonable notice, account to
1171 the commissioner for all funds in the company's escrow account.

1172 (4) Escrow accounts are not subject to execution or
1173 attachment on any claim against the licensee.

1174 (5) It is unlawful for any licensee knowingly to keep or
1175 cause to be kept any funds or money in any bank or other financial
1176 institution under the heading of "escrow account" or any other
1177 name designating the funds or monies belonging to the debtors of
1178 the licensee, except actual funds paid to the licensee for the
1179 payment of taxes and insurance premiums on property securing loans
1180 made or serviced by the company.

1181 **SECTION 22.** Section 81-18-37, Mississippi Code of 1972, is
1182 reenacted and amended as follows:

1183 81-18-37. (1) The department may suspend or revoke any
1184 license or registration for any reason that would have been
1185 grounds for refusal to issue an original license or registration
1186 or for:

1187 (a) A violation of any provision of this chapter or any
1188 rule or regulation adopted under this chapter;

1189 (b) Failure of the licensee or registrant to pay,
1190 within thirty (30) days after it becomes final and nonappealable,
1191 a judgment recovered in any court within this state by a claimant
1192 or creditor in an action arising out of the licensee's or
1193 registrant's business in this state as a mortgage broker or
1194 mortgage lender.

1195 (2) Notice of the department's intention to enter an order
1196 denying an application for a license or registration under this
1197 chapter or of an order suspending or revoking a license or
1198 registration under this chapter shall be given to the applicant,
1199 licensee or registrant in writing, sent by registered or certified
1200 mail addressed to the principal place of business of the
1201 applicant, licensee or registrant. Within thirty (30) days of the
1202 date of the notice of intention to enter an order of denial,
1203 suspension or revocation under this chapter, the applicant,
1204 licensee or registrant may request in writing a hearing to contest
1205 the order. If a hearing is not requested in writing within thirty
1206 (30) days of the date of the notice of intention, the department
1207 shall enter a final order regarding the denial, suspension or
1208 revocation. Any final order of the department denying, suspending
1209 or revoking a license or registration shall state the grounds upon
1210 which it is based and shall be effective on the date of issuance.
1211 A copy of the final order shall be forwarded promptly by
1212 registered or certified mail addressed to the principal place of
1213 business of the applicant, licensee or registrant.

1214 **SECTION 23.** Section 81-18-39, Mississippi Code of 1972, is
1215 reenacted as follows:

1216 81-18-39. (1) For purposes of this section, the term
1217 "person" shall be construed to include any officer, director,
1218 employee, affiliate or other person participating in the conduct
1219 of the affairs of the person subject to the orders issued under
1220 this section.

1221 (2) If the department reasonably determines that a person
1222 required to be licensed or registered under this chapter has
1223 violated any law of this state or any order or regulation of the

1224 department, the department may issue a written order requiring the
1225 person to cease and desist from unlawful or unauthorized
1226 practices. In the case of an unlawful purchase of mortgage loans,
1227 the cease and desist order to a purchaser shall constitute the
1228 knowledge required under this section for any subsequent
1229 violations.

1230 (3) Any person required to be licensed or registered under
1231 this chapter who has been deemed by the commissioner, after notice
1232 and hearing, to have violated the terms of any order properly
1233 issued by the department under this section shall be liable for a
1234 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1235 The department, in determining the amount of the penalty, shall
1236 take into account the appropriateness of the penalty relative to
1237 the size of the financial resources of the person, the good faith
1238 efforts of the person to comply with the order, the gravity of the
1239 violation, the history of previous violations by the person, and
1240 other factors or circumstances that contributed to the violation.
1241 The department may compromise, modify or refund any penalty that
1242 has been imposed under this section. Any person assessed a
1243 penalty as provided in this subsection shall have the right to
1244 request a hearing on the amount of the penalty within ten (10)
1245 days after receiving notification of the assessment. If no
1246 hearing is requested within ten (10) days of the receipt of the
1247 notice, the penalty shall be final except as to judicial review in
1248 the Chancery Court of the First Judicial District of Hinds County.
1249 Upon the filing of a petition for judicial review, the court shall
1250 issue an order to the licensee requiring the licensee to show
1251 cause why it should not be entered. If the court determines,
1252 after a hearing upon the merits or after failure of the person to
1253 appear when so ordered, that the order of the department was
1254 properly issued, it shall grant the penalty sought by the
1255 department.

1256 **SECTION 24.** Section 81-18-41, Mississippi Code of 1972, is
1257 reenacted and amended as follows:

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

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

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

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

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

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

1293 (3) Compliance with the criminal provisions of this section
1294 shall be enforced by the appropriate law enforcement agency, which
1295 may exercise for that purpose any authority conferred upon the
1296 agency by law.

1297 (4) When the commissioner has reasonable cause to believe
1298 that a person is violating any provision of this chapter, the
1299 commissioner, in addition to and without prejudice to the
1300 authority provided elsewhere in this chapter, may enter an order
1301 requiring the person to stop or to refrain from the violation.
1302 The commissioner may sue in any chancery court of the state having
1303 jurisdiction and venue to enjoin the person from engaging in or
1304 continuing the violation or from doing any act in furtherance of
1305 the violation. In such an action, the court may enter an order or
1306 judgment awarding a preliminary or permanent injunction.

1307 (5) The commissioner may, after notice and hearing, impose a
1308 civil penalty against any licensee if the licensee, person
1309 required to be registered, or employee is adjudged by the
1310 commissioner to be in violation of the provisions of this chapter.
1311 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
1312 per violation and shall be deposited into the Consumer Finance
1313 Fund of the department.

1314 (6) The commissioner may make public any final
1315 administrative action imposed against a licensee or registrant for
1316 a violation of this chapter, including cease and desist orders,
1317 civil monetary penalties, license suspensions, revocations or
1318 application denials.

1319 (7) The state may enforce its rights under the surety bond
1320 as required in Section 81-18-11 as an available remedy for the
1321 collection of any civil penalties, criminal fines or costs of
1322 investigation and/or prosecution incurred.

1323 **SECTION 26.** Section 81-18-45, Mississippi Code of 1972, is
1324 reenacted as follows:

1325 81-18-45. The commissioner may employ the necessary
1326 full-time employees above the number of permanent full-time
1327 employees authorized for the department for the fiscal year 2001,

to carry out and enforce the provisions of this chapter. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

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

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

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

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

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

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

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

1363 **SECTION 30.** (1) A person commits the offense of residential
1364 mortgage fraud when, with the intent to defraud such person, he:

1365 (a) Knowingly makes any deliberate misstatement,
1366 misrepresentation or omission during the mortgage lending process
1367 with the intention that it be relied on by a licensed mortgage
1368 broker or mortgage lender, borrower or any other party to the
1369 mortgage lending process;

1370 (b) Knowingly uses or facilitates the use of any
1371 deliberate misstatement, misrepresentation or omission, knowing
1372 the same to contain a misstatement, misrepresentation or omission,
1373 during the mortgage lending process with the intention that it be
1374 relied on by a company, borrower, or any other party to the
1375 mortgage lending process;

1376 (c) Receives any proceeds or any other funds in
1377 connection with a residential mortgage closing that such person
1378 knew resulted from a violation of paragraph (a) or (b) of this
1379 subsection;

1380 (d) Conspires to violate any of the provisions of
1381 paragraph (a), (b) or (c) of this subsection; or

1382 (e) Files or causes to be filed with the chancery clerk
1383 of any county of this state any deed of trust such person knows to
1384 contain a deliberate misstatement, misrepresentation or omission.

1385 (2) An offense of residential mortgage fraud shall not be
1386 predicated solely upon information lawfully disclosed under
1387 federal disclosure laws, regulations and interpretations related
1388 to the mortgage lending process.

1389 (3) For the purposes of venue under this section, any
1390 violation of this section shall be considered to have been
1391 committed:

1392 (a) In the county in which the residential property for
1393 which a mortgage loan is being sought is located;

1394 (b) In any county in which any act was performed in
1395 furtherance of this violation;

1396 (c) In any county in which any person alleged to have
1397 violated this chapter had control or possession of any proceeds of
1398 this violation;

1399 (d) If a closing occurred, in any county in which the
1400 closing occurred; or

1401 (e) In any county in which a document containing a
1402 deliberate misstatement, misrepresentation or omission is filed
1403 with the chancery clerk.

1404 (4) District attorneys and the Attorney General shall have
1405 the authority to conduct the criminal investigation of all cases
1406 of residential mortgage fraud under this section.

1407 (5) (a) Any person violating this section shall be guilty
1408 of a felony and, upon conviction, shall be punished by
1409 imprisonment for not less than one (1) year nor more than ten (10)
1410 years, by a fine not to exceed Five Thousand Dollars (\$5,000.00),
1411 or both.

1412 (b) If a violation of this section involves engaging or
1413 participating in a pattern of residential mortgage fraud or a
1414 conspiracy or endeavor to engage or participate in a pattern of
1415 residential mortgage fraud, the violation shall be punishable by
1416 imprisonment for not less than three (3) years nor more than
1417 twenty (20) years, by a fine not to exceed One Hundred Thousand
1418 Dollars (\$100,000.00), or both.

1419 (c) Each residential property transaction subject to a
1420 violation of this section shall constitute a separate offense and
1421 shall not merge with any other crimes set forth in this section.

1422 (6) All real and personal property of every kind used or
1423 intended for use in the course of, derived from, or realized
1424 through a violation of this section shall be subject to forfeiture
1425 to the state. Forfeiture shall be had by the same procedure as
1426 outlined in Sections 97-43-9 and 97-43-11. District attorneys and
1427 the Attorney General may commence forfeiture proceedings under
1428 this section.

1429 (7) For purposes of this section, the term "pattern of
1430 residential mortgage fraud" means one or more misstatements,

1431 misrepresentations or omissions made during the mortgage lending
1432 process that involve two (2) or more residential properties which
1433 have the same or similar intents, results, accomplices, victims or
1434 methods of commission or otherwise are interrelated by
1435 distinguishing characteristics.

1436 **SECTION 31.** This act shall take effect and be in force from
1437 and after July 1, 2007.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 UNDER THE PROVISIONS OF
35 THIS ACT; TO AMEND REENACTED SECTION 81-18-31, MISSISSIPPI CODE OF
36 1972, TO REQUIRE INDIVIDUAL BORROWER FILES TO CONTAIN A FINAL
37 SIGNED UNIFORM RESIDENTIAL LOAN APPLICATION; TO AMEND REENACTED
38 SECTION 81-18-33, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED
39 CONTENTS OF INDIVIDUAL BORROWER FILES OF A LICENSEE; TO AMEND
40 REENACTED SECTION 81-18-35, MISSISSIPPI CODE OF 1972, TO REQUIRE
41 THE NAME OF CO-APPLICANT IN THE JOURNAL OF MORTGAGE TRANSACTIONS;
42 TO AMEND REENACTED SECTIONS 81-18-36 AND 81-18-37, MISSISSIPPI
43 CODE OF 1972, IN CONFORMITY; TO AMEND REENACTED SECTION 81-18-41,
44 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A SUSPENDED LICENSEE MAY
45 CONTINUE SERVICING CONTRACTS ONLY FOR A REASONABLE TRANSITION
46 PERIOD AS DETERMINED BY THE COMMISSIONER; TO AMEND REENACTED
47 SECTION 81-18-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
48 AMEND SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE
49 REPEALER; TO CREATE A NEW SECTION TO CREATE THE CRIMINAL OFFENSE

50 OF RESIDENTIAL MORTGAGE FRAUD AND PRESCRIBE THE PENALTIES
51 THEREFOR; AND FOR RELATED PURPOSES.

HR03\SB2350A.J

Don Richardson
Clerk of the House of Representatives