

By: Mettetal, Hewes

To: Business and
Financial
Institutions

SENATE BILL NO. 3100

1 AN ACT RELATING TO MORTGAGE COMPANIES; TO PROVIDE FOR THE
2 LICENSING OF MORTGAGE COMPANIES BY THE DEPARTMENT OF BANKING AND
3 CONSUMER FINANCE; TO PROVIDE FOR EXEMPTIONS FROM LICENSURE; TO
4 PROHIBIT THE PURCHASE OF A MORTGAGE LOAN FROM AN UNLICENSED
5 MORTGAGE COMPANY; TO ESTABLISH PROCEDURES AND CRITERIA FOR
6 APPLICANTS TO BECOME LICENSED; TO ESTABLISH LICENSE RENEWAL
7 PROCEDURES AND CRITERIA; TO REQUIRE NOTIFICATION OF CERTAIN
8 ACTIONS AND ACTIVITIES BY THE LICENSEE; TO PROVIDE FOR THE
9 MAINTENANCE AND INVESTIGATION OF BUSINESS RECORDS; TO REQUIRE A
10 BIENNIAL INVESTIGATION OF BUSINESS RECORDS; TO PROHIBIT CERTAIN
11 CONDUCT BY LICENSEES; TO PROVIDE FOR THE DENIAL, SUSPENSION AND
12 REVOCATION OF LICENSES; TO PROVIDE FOR THE PROMULGATION OF RULES
13 AND REGULATIONS BY THE DEPARTMENT; TO PROVIDE FOR ENFORCEMENT OF
14 THIS ACT; TO PRESCRIBE PENALTIES FOR VIOLATIONS OF THIS ACT; TO
15 AMEND SECTION 81-19-7, MISSISSIPPI CODE OF 1972, TO EXEMPT
16 LICENSEES UNDER THIS ACT FROM THE CONSUMER LOAN BROKER ACT; TO
17 AMEND SECTION 81-20-1, MISSISSIPPI CODE OF 1972, TO EXTEND THE
18 REPEALER ON THE PROVISION AUTHORIZING THE COMMISSIONER OF BANKING
19 AND CONSUMER FINANCE TO INVESTIGATE COMPLAINTS AGAINST MORTGAGE
20 COMPANIES; AND FOR RELATED PURPOSES.

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

22 SECTION 1. This act shall be known and cited as the
23 Mississippi Mortgage Consumer Protection Act.

24 SECTION 2. For purposes of this act, the following terms
25 shall have the following meanings:

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

30 (b) "Commissioner" means the Commissioner of the
31 Mississippi Department of Banking and Consumer Finance.

32 (c) "Commitment" means a statement by a lender required
33 to be licensed or registered under this act that sets forth the
34 terms and conditions upon which the lender is willing to make a
35 particular mortgage loan to a particular borrower.

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

41 (e) "Department" means the Department of Banking and
42 Consumer Finance of the State of Mississippi.

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

51 (g) "License" means a license to act as a mortgage
52 company issued by the department under this act.

53 (h) "Licensee" means a person or entity who is required
54 to be licensed as a mortgage company under this act.

55 (i) "Loan originator" means an individual who directly
56 or indirectly solicits, processes, places or negotiates mortgage
57 loans for others, or offers to solicit, process, place or
58 negotiate mortgage loans for others or who closes mortgage loans.

59 (j) "Make a mortgage loan" means to advance funds,
60 offer to advance funds or make a commitment to advance funds to an
61 applicant for a mortgage loan.

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

66 (l) "Mortgage company" means any person or entity who
67 directly or indirectly solicits, processes, places or negotiates
68 mortgage loans for others, or offers to solicit, process, place or

69 negotiate mortgage loans for others, or who closes mortgage loans,
70 whether or not in the mortgage company's own name.

71 (m) "Mortgage loan" means a loan or agreement to extend
72 credit made to a natural person, which loan is secured by a deed
73 to secure debt, security deed, mortgage, security instrument, deed
74 of trust or other document representing a security interest or
75 loan upon any interest in a lot intended for residential purposes,
76 or single- to four-family residential property located in
77 Mississippi, regardless of where made, including the renewal or
78 refinancing of any loan.

79 (n) "Person" means any individual, sole proprietorship,
80 corporation, limited liability company, partnership, trust or any
81 other group of individuals, however organized.

82 (o) "Principal" means a natural person who, directly or
83 indirectly, owns or controls an ownership interest of ten percent
84 (10%) or more in a corporation or any other form of business
85 organization, regardless of whether the natural person owns or
86 controls the ownership interest through one or more natural
87 persons or one or more proxies, powers of attorney, nominees,
88 corporations, associations, limited liability companies,
89 partnerships, trusts, joint-stock companies, other entities or
90 devises, or any combination thereof.

91 (p) "Records" or "documents" means any item in hard
92 copy or produced in a format of storage commonly described as
93 electronic, imaged, magnetic, microphotographic or otherwise, and
94 any reproduction so made shall have the same force and effect as
95 the original thereof and be admitted in evidence equally with the
96 original.

97 (q) "Registrant" means any person required to register
98 under paragraph (m) of Section 3 of this act.

99 (r) "Residential property" means improved real property
100 or lot used or occupied, or intended to be used or occupied, as a
101 residence by a natural person.

(s) "Service a mortgage loan" means the collection or remittance for another, or the right to collect or remit for another, of payments of principal interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

SECTION 3. The following persons are not subject to the provisions of this act, unless otherwise provided in this act:

(a) Any lender authorized to engage in business as a bank, credit card bank, savings bank, savings institution, savings and loan association, building and loan association, 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.

(b) Approved mortgages of the United States Department of Housing and Urban Development or the Federal Housing Administration when the mortgages have been approved as a seller, servicer, mortgagee or issuer or when they have satisfied Veterans Administration requirements to qualify for automatic authority; however, if these mortgagees/lenders make any other type of mortgage loan, they will be subject to the entire provisions of this act.

(c) Any lender holding a license under the Small Loan Regulatory Law (Section 75-67-101 et seq.) and making real estate loans under that law are exempt from this act. However, those lenders holding a license under the Small Loan Regulatory Law and making real estate loans outside that law shall be subject to the entire provisions of this act.

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

(e) A real estate company or real estate salesperson who is actively engaged in the real estate business

135 who does not receive any fee, commission, kickback, rebate or
136 other payment for directly or indirectly negotiating, placing or
137 finding a mortgage for others.

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

140 (g) Any natural person, or the estate of or trust
141 created by a natural person, making a mortgage loan with his or
142 her own funds for his or her own investment, including but not
143 limited to, those natural persons, or the estates of or trusts
144 created by the natural person, who makes a purchase money mortgage
145 or financing sales of his or her own property. Any person who
146 enters into more than five (5) such investments or sales in any
147 twelve-month period is not exempt from being licensed under this
148 act.

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

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

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

166 (k) Government sponsored nonprofit corporations making
167 mortgage loans to promote home ownership or home improvements for

the disadvantaged.

(l) A natural person employed by a licensed mortgage company or any person exempted from the licensing requirements of this act when acting within the scope of employment with the licensee or exempted person. Persons employed as loan originators as defined under Section 2 of this act are exempt from the licensing requirements of this act but shall register as a loan originator with the department. This initial registration of a loan originator shall be accompanied by a fee of One Hundred Dollars (\$100.00), plus any fee charged by the Department of Public Safety to perform the necessary background check as required in subsection (5) of Section 7 of this act. Annual renewals of this registration shall require a fee of Fifty Dollars (\$50.00).

(m) Any natural person claiming an exemption under paragraph (i) of this section who has no banking location in this state and any natural person claiming an exemption under paragraph (l) of this section shall register initially with the department and thereafter file an application for renewal of registration with the department on or before August 31 of each year providing the department with such information as the department may prescribe by regulation, including but not limited to, the business addresses where the person engages in any business activities covered by this act and a telephone number that customers may use to contact the person. No person required to register under this paragraph (m) shall transact business in this state directly or indirectly as a mortgage company or a mortgage lender unless that person is registered with the department.

SECTION 4. (1) On and after the effective date of this act, no person or natural person shall transact business in this state, directly or indirectly, as a mortgage company unless he or she is licensed as a mortgage company by the department or is a person

exempted from the licensing requirements under Section 3 of this act.

(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 the effective date of this act, 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. (1) An application for a license under this act 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 name under which the applicant will conduct business in the state.

(c) The complete address of the applicant's initial registered office, branch office(s) and any other locations at which the applicant will engage in any business activity covered by this act.

(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 or at least one (1) executive officer. 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 company or indirectly as an employee of a mortgage company.

(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 agents.

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

(a) The license fee specified in Section 8 of this act;

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

(c) An original or certified copy of a surety bond in

favor 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 mortgage company's breach of contract or of any obligation arising therefrom or any violation of law; and

(d) A set of fingerprints from any local law enforcement agency, from any applicant and any person who is a director with at least ten percent (10%) ownership in the corporation, an executive officer, a partner or a loan originator.

SECTION 6. For purposes of Section 5 of this act, the definitions of the classes of companies and their respective minimum amounts of surety bonds will be:

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

(b) "Mortgage broker" shall be defined as any company 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).

(c) "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. The amount of the surety bond for a mortgage lender shall be One Hundred Fifty Thousand Dollars (\$150,000.00).

SECTION 7. (1) Upon receipt of an application for a license, which shall include the required set of fingerprints from any local law enforcement agency, the department shall conduct such an investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the applicant has and maintains a place of business in this state.

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

(3) The department shall not license any mortgage company unless the applicant meets the requirements of Section 6 of this act.

(4) The department shall not issue a license if it finds that the applicant, or any person who is a director, officer, partner, or principal of the applicant, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime that, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this act, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the plea of guilty, or the decision, judgment

or verdict, has been set aside, reversed or otherwise abrogated by lawful judicial process, or unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained.

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

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

(7) Any mortgage company that has a United States Department of Housing and Urban Development designation as a mortgagee shall automatically be granted a license under this act without investigation by the department, unless the department has actual knowledge of facts that would constitute grounds for the revocation or suspension of that designation.

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

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

SECTION 8. (1) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars (\$750.00), and on or before August 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).

If the annual renewal fee remains unpaid thirty (30) days after August 31, the license shall expire, but not before September 30 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this act without paying the license fee provided for in this subsection before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

(2) Any licensee making timely and proper application for a license renewal shall be permitted to continue to operate under its existing license until its application is approved or

399 rejected, but shall not be released from or otherwise indemnified
400 for any act covered by this act or for any penalty incurred under
401 this act as a result of any violation of this act or regulations
402 adopted under this act, pending final approval or disapproval of
403 the application for the license renewal.

404 (3) Each application for licensing, renewal or registration
405 renewal shall include evidence of the satisfactory completion of
406 at least twelve (12) hours of approved continuing education in
407 primary and subordinated financing transactions by the officers,
408 principals and registered employees. For purposes of this
409 subsection (3), approved courses shall be those as approved by the
410 Education Committee of the National Association of Mortgage
411 Brokers or those approved by the Mississippi Association of
412 Mortgage Brokers, who shall submit to the department a listing of
413 approved schools, courses, programs and special training sessions.

414 SECTION 9. (1) Each license issued under this act shall
415 state the address of the licensee's principal place of business in
416 Mississippi and the name of the licensee.

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

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

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

422 (5) Each licensee shall notify the department, in writing,
423 of any change in the address of its principal place of business or
424 of any additional location of business or any change of officer,
425 director or principal of the licensee within thirty (30) days of
426 the change.

427 (6) No licensee shall open a branch office without prior
428 approval of the department. An application for any branch office
429 shall be made in writing on a form prescribed by the department,
430 which shall include at least evidence of compliance with
431 subsection (1) of Section 13 of this act as to that branch and

shall be accompanied by payment of a nonrefundable application fee of One Hundred Dollars (\$100.00). The application shall be approved unless the department finds that the applicant has not conducted business under this act in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within thirty (30) days of the date that the application is received by the department. After approval, the applicant shall give written notice to the department within ten (10) days of the commencement of business at the branch office.

SECTION 10. (1) Except as provided in this section, on and after July 1, 2000, no person shall acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business under this act unless it first does all of the following:

(a) Files an application in such form as the department may prescribe.

(b) Delivers any other information required by the department as the department concerning the surety bond, the applicants background and experience, and activities, its directors and officers, if applicable, and its members, if applicable, and of any proposed new directors, officers or members of the licensee.

(c) Pays an application fee of One Hundred Fifty Dollars (\$150.00).

(2) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it is satisfied and finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have provided its surety bond and have the character, reputation and experience to warrant belief that the business will be operated

fairly and in accordance with the law. The department shall grant or deny the application within sixty (60) days from the date a completed application accompanied by the required fee is filed, unless the period is extended by order of the department specifying the reasons for the extension. If the application is denied, the department shall notify the applicant of the denial 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 it shall be subject to judicial review in the Chancery Court of the First Judicial District of Hinds County.

(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 exempt from this act under Section 3 of this act.

(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 11. (1) Any person required to be licensed under this act 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 act and the rules and regulations adopted by the department under this act. 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 two (2) years preceding the date of the last license application date forward.

(2) To assure compliance with the provisions of this act, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars (\$300.00) per examination of each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

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

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

531 regulation, or order under this act, provided the information is
532 derived from a final order of the department.

533 (5) Examinations and investigations conducted under this act
534 and information obtained by the department, except as provided in
535 subsection (4) of this section, in the course of its duties under
536 this act are confidential.

537 (6) In the absence of malice, fraud, or bad faith a person
538 is not subject to civil liability arising from the filing of a
539 complaint with the department, furnishing other information
540 required by this act, information required by the department under
541 the authority granted in this act, or information voluntarily
542 given to the department related to allegations that a licensee or
543 prospective licensee has violated this act.

544 SECTION 12. (1) Each licensee shall annually, on or before
545 April 1, file a written report with the department containing the
546 information that the department may reasonably require concerning
547 the licensee's business and operations during the preceding
548 calendar year. The report shall be made in the form prescribed by
549 the department.

550 (2) Any licensee who fails to file with the department by
551 April 1 the report required by this section shall be subject to a
552 late penalty of Fifty Dollars (\$50.00) for each day after April 1
553 the report is delinquent, but in no event shall the aggregate of
554 late penalties exceed Five Hundred Dollars (\$500.00).

555 (3) The department, in its discretion, may relieve any
556 licensee from the payment of any penalty, in whole or in part, for
557 good cause.

558 (4) If a licensee fails to pay a penalty from which it has
559 not been relieved, the department may maintain an action at law to
560 recover the penalty.

561 SECTION 13. (1) Each licensee shall maintain and transact
562 business from a principal place of business in the state.

563 (2) Each principal place of business and branch office in

the state also shall meet all of the following requirements:

(a) Be in compliance with local zoning ordinances and have posted any licenses required by local government agencies. It is the responsibility of the licensee to meet local zoning ordinances and obtain the required occupational licenses.

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

(c) Display a permanent sign outside the place of business readily visible to the general public. The sign must contain the name of the licensee and the words "Mississippi Licensed Mortgage Company."

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

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

SECTION 14. No person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this act and any person exempted from the licensing requirements of this act 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 mortgage company 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.

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

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

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

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

616 (i) Make, directly or indirectly, any residential
617 mortgage loan with the intent to foreclose on the borrower's
618 property. For purposes of this paragraph, there is a presumption
619 that a person has made a residential mortgage loan with the intent
620 to foreclose on the borrower's property if all of the following
621 circumstances are proven:

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

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

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

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

629 (v) That the person does business under a trade

name that misrepresents or tends to misrepresent that the person is a bank, trust company, savings bank, savings and loan association, credit union, or insurance company.

(j) Charge or collect any direct payment, compensation or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall that direct payment, compensation or advance fee exceed ten percent (10%) of the original principal amount of the loan, and any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations if required under Regulation Z of the federal Truth in Lending Act (TILA). A direct payment, compensation or advance fee as defined in this section shall not include:

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

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

(iii) Any indirect payment or compensation by a lender to a licensed mortgage company required to be disclosed by the licensed mortgage company under RESPA, provided that the payment or compensation is disclosed to the borrower by the licensed mortgage company on a good faith estimate of costs, is included in the APR if required under Regulation Z of TILA, and is made pursuant to a written agreement between the licensed mortgage company and the borrower as may be required by Section 17 of this act.

SECTION 15. The department shall promulgate those rules and regulations, not inconsistent with law, necessary for the enforcement of this act.

SECTION 16. The department shall promulgate regulations governing the advertising of mortgage loans, including, but not

limited to, the following requirements:

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

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

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

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

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

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

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

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

SECTION 17. The individual borrower files of a mortgage company shall contain at least the following:

(a) A mortgage origination agreement provided to the

borrower containing at least the information as contained in the currently effective form of HUD-1-B and including the following statements:

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

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

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

Mississippi Department of Banking and
Consumer Finance

P.O. Box 23729

Jackson, MS 39225-3729."

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

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

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

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

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

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

SECTION 18. Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated

729 on its license, which shall include at least the following
730 information:

731 (a) Name of applicant;

732 (b) Date of application; and

733 (c) Disposition of loan application, indicating date of
734 loan funding, loan denial, withdrawal and name of lender if
735 applicable.

736 SECTION 19. (1) The department may suspend or revoke any
737 license or registration for any reason that would have been
738 grounds for refusal to issue an original license or registration
739 or for:

740 (a) A violation of any provision of this act or any
741 rule or regulation adopted under this act;

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

747 (2) Notice of the department's intention to enter an order
748 denying an application for a license or registration under this
749 act or of an order suspending or revoking a license or
750 registration under this act shall be given to the applicant,
751 licensee or registrant in writing, sent by registered or certified
752 mail addressed to the principal place of business of the
753 applicant, licensee or registrant. Within thirty (30) days of the
754 date of the notice of intention to enter an order of denial,
755 suspension or revocation under this act, the applicant, licensee
756 or registrant may request in writing a hearing to contest the
757 order. If a hearing is not requested in writing within thirty
758 (30) days of the date of the notice of intention, the department
759 shall enter a final order regarding the denial, suspension or
760 revocation. Any final order of the department denying, suspending
761 or revoking a license or registration shall state the grounds upon

which it is based and shall be effective on the date of issuance. A copy of the final order shall be forwarded promptly by registered or certified mail addressed to the principal place of business of the applicant, licensee or registrant.

SECTION 20. (1) For purposes of this section, the term "person" shall be construed to include any officer, director, employee, affiliate or other person participating in the conduct of the affairs of the person subject to the orders issued under this section.

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

(3) Whenever a person required to be licensed or registered under this act fails to comply with the terms of an order of the department that has been properly issued, the department, upon notice of three (3) days to the person, may petition a court of competent jurisdiction for an order directing the person to obey the orders of the department within a period of time specified by the court. Upon the filing of a petition, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the relief sought by the department.

(4) Any person required to be licensed or registered under this act who has been deemed by the court to have violated the terms of any order properly issued by the department under this

section shall be liable for a civil penalty not to exceed Three Thousand Dollars (\$3,000.00). The department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation. The department may compromise, modify or refund any penalty that has been imposed under this section. Any person assessed a penalty as provided in this subsection shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County.

SECTION 21. Nothing in this act shall preclude a person whose license or registration 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.

SECTION 22. (1) In addition to any other penalty that may be applicable, any licensee, individual required to be registered, or employee who willfully violates any provision of this act, or who willfully makes a false entry in any document specifically required by this act, 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, individual 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, individual 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, individual 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.

(3) Any licensee convicted in the manner provided in subsection (2) of this section shall forfeit the surety bond or deposit required in Section 6 of this act and the amount of the bond or deposit shall be credited to the budget of the state or local agency that directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Any proceeds of a forfeited bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

(4) Compliance with the criminal provisions of this act shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(5) When the commissioner has reasonable cause to believe that a person is violating any provision of this act, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this act, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any chancery court of the state having jurisdiction and venue to enjoin the person from engaging in or

continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(6) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee, individual required to be registered, or employee is adjudged by the commissioner to be in violation of the provisions of this act. The civil penalty shall not exceed Five Hundred Dollars (\$500.00) per violation and shall be deposited into the Consumer Finance Fund of the department. Any person or officers, directors and employees thereof who violate any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one (1) year or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both fine and imprisonment. The state may enforce its rights under the surety bond as required in Section 6 of this act as an available remedy for the collection of these fines.

SECTION 23. The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for the fiscal year 2001, to carry out and enforce the provisions of this act. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SECTION 24. Section 81-19-7, Mississippi Code of 1972, is amended as follows:

81-19-7. Except as otherwise provided in this section, this chapter does not apply to:

(a) Banks, bank holding companies, credit unions, insurance companies, savings and loan associations, savings banks, savings and loan association holding companies, small loan licensees, pawnbrokers, trust companies and their employees when acting on behalf of the employer.

(b) Approved mortgagees of the United States Department

of Housing and Urban Development, the Federal Housing Administration or other federal agency.

(c) Mortgage companies required to be licensed and individuals required to be registered under the Mississippi Mortgage Consumer Protection Act (Sections 1 through 23 of this act).

(d) An attorney licensed in this state who is not actively and principally engaged in the business of being a consumer loan broker even though the services of a consumer loan broker are occasionally rendered in the attorney's practice of law.

(e) A person who, without the consent of the owner, receives a mortgage or deed of trust on real or personal property as security for an obligation arising from use of materials or services in the improvement or repair of the property.

(f) A seller of real property who receives one or more mortgages or deeds of trust as security for a purchase money obligation.

SECTION 25. Section 81-20-1, Mississippi Code of 1972, is amended as follows:[RF1]

81-20-1. (1) For purposes of this section, the following terms shall have the following meanings:

(a) "Mortgage company" means any person or entity that directly or indirectly solicits, processes, places or negotiates mortgage loans for others, or offers to solicit, process, place or negotiate mortgage loans for others, or who closes mortgage loans, whether or not in the mortgage company's own name.

(b) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust or other document representing a security interest or loan upon any interest in a lot intended for residential purposes, or single- to four-family residential property located in

927 Mississippi, regardless of where made, including the renewal or
928 refinancing of any loan.

929 (c) "Residential property" means improved real property
930 or lot used or occupied, or intended to be used or occupied, as a
931 residence by a natural person.

932 (2) The Commissioner of Banking and Consumer Finance is
933 authorized to investigate and resolve consumer complaints and
934 disputes against mortgage companies. The commissioner or his duly
935 authorized representative, for the purpose of resolving any
936 consumer complaint or dispute against a mortgage company, may
937 examine the mortgage company and all relevant books, records and
938 papers employed by the mortgage company in the transaction of its
939 business, and may summon witnesses and examine them under oath
940 concerning matters relating to the business of the mortgage
941 company or such other matters as may be relevant to resolving the
942 consumer complaint or dispute against the mortgage company.

943 (3) This section shall stand repealed on July 1, 2001.

944 SECTION 26. This act shall take effect and be in force from
945 and after July 1, 2000.