

By: Mettetal, Hewes

To: Business and  
Financial  
InstitutionsSENATE BILL NO. 3100  
(As Passed the Senate)

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

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

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

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

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

28 (b) "Commissioner" means the Commissioner of the  
29 Mississippi Department of Banking and Consumer Finance.

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

34 (d) "Control" means the direct or indirect possession

35 of the power to direct or cause the direction of the management  
36 and policies of a person, whether through the ownership of voting  
37 securities, by contract or otherwise, and shall include  
38 "controlling," "controlled by," and "under common control with."

39 (e) "Department" means the Department of Banking and  
40 Consumer Finance of the State of Mississippi.

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

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

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

53 (i) "Loan originator" means an individual who is an  
54 employee or exclusive agent of a licensed mortgage company and who  
55 directly or indirectly solicits, places or negotiates mortgage  
56 loans for others, or offers to solicit, place or negotiate  
57 mortgage loans for others.

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

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

65 (l) "Mortgage company" means any person or entity who  
66 directly, indirectly or by electronic activity, solicits, places  
67 or negotiates mortgage loans for others, or offers to solicit,

68 place or negotiate mortgage loans for others.

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

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

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

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

95 (q) "Registrant" means any person required to register  
96 under paragraph (n) of Section 3 of this act.

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

100 (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 person authorized to engage in business as a bank holding company, or any subsidiary thereof; or any person authorized to engage in business as a financial holding company, bank holding company, 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, or any subsidiary or affiliate thereof.

(b) Approved mortgagees, sellers, servicers or issuers of the United States Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association (FNMA or "Fannie Mae"), the Federal Home Mortgage Company (FHLMC or "Freddie Mac"), the Government National Mortgage Association (GNMA or "Ginnie Mae"), when the mortgagees have been approved as a seller, servicer, mortgagee or issuer or when they have satisfied 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 unless otherwise exempted under paragraph (a) of this section.

(c) Any lender holding a license under the Small Loan Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or affiliate thereof, 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, unless otherwise exempted under paragraph (a) of this

134 section.

135 (d) Any person who funds a mortgage loan which has been  
136 originated and processed by a licensee, by a mortgage company  
137 licensed under this act or by a person who is exempt under this  
138 section and who meets all of the following:

139 (i) Does not maintain a place of business in this  
140 state in connection with funding mortgage loans;

141 (ii) Does not directly or indirectly solicit  
142 borrowers in this state for the purpose of making mortgage loans;  
143 and

144 (iii) Does not participate in the negotiation of  
145 mortgage loans.

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

150 (f) A real estate company or real estate  
151 salesperson who is actively engaged in the real estate business  
152 who does not receive any fee, commission, kickback, rebate or  
153 other payment for directly or indirectly negotiating, placing or  
154 finding a mortgage for others.

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

157 (h) Any natural person, or the estate of or trust  
158 created by a natural person, making a mortgage loan with his or  
159 her own funds for his or her own investment, including but not  
160 limited to, those natural persons, or the estates of or trusts  
161 created by the natural person, who makes a purchase money mortgage  
162 or financing sales of his or her own property. Any person who  
163 enters into more than five (5) such investments or sales in any  
164 twelve-month period is not exempt from being licensed under this  
165 act.

166 (i) Any natural person who purchases mortgage loans

167 from a licensed mortgage company solely as an investment and who  
168 is not in the business of making or servicing mortgage loans.

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

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

183 (l) Government sponsored nonprofit corporations making  
184 mortgage loans to promote home ownership or home improvements for  
185 the disadvantaged.

186 (m) A natural person who is an employee or an exclusive  
187 agent of a licensed mortgage company or any person exempted from  
188 the licensing requirements of this act when acting within the  
189 scope of employment or exclusive agency with the licensee or  
190 exempted person.

191 (n) Employees or exclusive agents serving as loan  
192 originators for licensed mortgage companies as defined under  
193 Section 2 of this act are exempt from the licensing requirements  
194 of this act but shall register with the department as a loan  
195 originator. Any natural person required to register under this  
196 paragraph (n) shall register initially with the department and  
197 thereafter file an application for renewal of registration with  
198 the department on or before August 31 of each year providing the  
199 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. 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 (n) shall transact business in this state directly or indirectly as a mortgage company or 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.

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

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

238           (b) The name under which the applicant will conduct  
239 business in the state.

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

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

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

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

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

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

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

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

(i) All persons and sole proprietorships that plan to conduct a mortgage brokering or lending business in the State of Mississippi;

(ii) Partners in a partnership or principal owners of a limited liability company that plan to conduct a mortgage brokering or lending business in the State of Mississippi;

(iii) The chief executive officer of a corporation, or his designee, which supervises the Mississippi location(s) and any shareholders owning twenty-five percent (25%) or more of the outstanding shares of the corporation that plan to conduct a mortgage brokering or lending business in the State of Mississippi; and

299 (iv) All loan originators.

300 However, any corporation that is owned by or is an affiliate  
301 of a depository institution that is insured by the Federal Deposit  
302 Insurance Corporation or the National Credit Union Administration,  
303 or any financial holding company that is registered under the Bank  
304 Holding Company Act or created under the Gramm-Leach-Bliley  
305 Financial Modernization Act of 1999, shall be exempt from the  
306 fingerprint requirement.

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

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

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

327 (c) "Mortgage lender" shall be defined as any company  
328 that makes a mortgage loan, using its own funds, for others or for  
329 compensation or gain, with the expectation of retaining servicing  
330 rights to those loans, or in the expectation of gain, either  
331 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 licensure or registration, 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 or registration certificate 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 registration certificate or otherwise restrict a license or registration certificate 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 rejected, but shall not be released from or otherwise indemnified for any act covered by this act or for any penalty incurred under this act as a result of any violation of this act or regulations adopted under this act, pending final approval or disapproval of the application for the license renewal.

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

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

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

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

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

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

(6) No licensee shall open a branch office without prior approval of the department. An application for any branch office shall be made in writing on a form prescribed by the department,

which shall include at least evidence of compliance with 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



530 the department shall permit, the books, accounts and records  
531 necessary for the department to determine whether or not the  
532 person is complying with the provisions of this act and the rules  
533 and regulations adopted by the department under this act. These  
534 books, accounts and records shall be maintained apart and separate  
535 from any other business in which the person is involved and may  
536 represent historical data for two (2) years preceding the date of  
537 the last license application date forward.

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

550 (3) The department, its designated officers and employees,  
551 or its duly authorized representatives, for the purposes of  
552 discovering violations of this act and for the purpose of  
553 determining whether any person or individual reasonably suspected  
554 by the commissioner of conducting business that requires a license  
555 or registration under this act, may investigate those persons and  
556 individuals and examine all relevant books, records and papers  
557 employed by those persons or individuals in the transaction of  
558 business, and may summon witnesses and examine them under oath  
559 concerning matters as to the business of those persons, or other  
560 such matters as may be relevant to the discovery of violations of  
561 this act including, without limitation, the conduct of business  
562 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, regulation, or order under this act, provided the information is derived from a final order of the department.

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

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

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

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

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

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

SECTION 13. (1) Each licensee shall maintain and transact

business from a principal place of business in the state.

(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 required to be licensed or registered under 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.

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

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

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

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

648           (i) Make, directly or indirectly, any residential  
649 mortgage loan with the intent to foreclose on the borrower's  
650 property. For purposes of this paragraph, there is a presumption  
651 that a person has made a residential mortgage loan with the intent  
652 to foreclose on the borrower's property if all of the following  
653 circumstances are proven:

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

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

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

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

661                   (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

695 limited to, the following requirements:

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

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

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

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

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

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

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

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

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

727           (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

761 on its license, which shall include at least the following  
762 information:

- 763 (a) Name of applicant;
- 764 (b) Date of application; and
- 765 (c) Disposition of loan application, indicating date of  
766 loan funding, loan denial, withdrawal and name of lender if  
767 applicable.

768 SECTION 19. (1) The department may suspend or revoke any  
769 license or registration for any reason that would have been  
770 grounds for refusal to issue an original license or registration  
771 or for:

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

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

779 (2) Notice of the department's intention to enter an order  
780 denying an application for a license or registration under this  
781 act or of an order suspending or revoking a license or  
782 registration under this act shall be given to the applicant,  
783 licensee or registrant in writing, sent by registered or certified  
784 mail addressed to the principal place of business of the  
785 applicant, licensee or registrant. Within thirty (30) days of the  
786 date of the notice of intention to enter an order of denial,  
787 suspension or revocation under this act, the applicant, licensee  
788 or registrant may request in writing a hearing to contest the  
789 order. If a hearing is not requested in writing within thirty  
790 (30) days of the date of the notice of intention, the department  
791 shall enter a final order regarding the denial, suspension or  
792 revocation. Any final order of the department denying, suspending  
793 or revoking a license or registration shall state the grounds upon



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

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

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

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

824       (4) Any person required to be licensed or registered under  
825 this act who has been deemed by the court to have violated the  
826 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 Senate Bill No. 3100, 2000 Regular Session), and persons exempt from licensing and registration as provided in Section 3 of Senate Bill No. 3100, 2000 Regular Session.

(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, \* \* \* places or negotiates mortgage loans for others, or offers to solicit, \* \* \* place or negotiate mortgage loans for others \* \* \*.

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

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

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

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

SECTION 26. Sections 1 through 23 of this act shall stand repealed from and after July 1, 2002.

SECTION 27. This act shall take effect and be in force from and after July 1, 2000.