

By: Mettetal, Hewes

To: Business and  
Financial  
Institutions

SENATE BILL NO. 3100  
(As Sent to Governor)

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; AND FOR RELATED PURPOSES.

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

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

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

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

25 (b) "Commissioner" means the Commissioner of the  
26 Mississippi Department of Banking and Consumer Finance.

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

31 (d) "Control" means the direct or indirect possession  
32 of the power to direct or cause the direction of the management

33 and policies of a person, whether through the ownership of voting  
34 securities, by contract or otherwise, and shall include  
35 "controlling," "controlled by," and "under common control with."

36 (e) "Department" means the Department of Banking and  
37 Consumer Finance of the State of Mississippi.

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

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

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

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

55 (j) "Make a mortgage loan" means to advance funds,  
56 offer to advance funds or make a commitment to advance funds to a  
57 borrower.

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

62 (l) "Mortgage company" means any person or entity who  
63 directly, indirectly or by electronic activity, solicits, places  
64 or negotiates mortgage loans for others, or offers to solicit,  
65 place or negotiate mortgage loans for others.

66 (m) "Mortgage loan" means a loan or agreement to extend  
67 credit made to a natural person, which loan is secured by a deed  
68 to secure debt, security deed, mortgage, security instrument, deed  
69 of trust or other document representing a security interest or

70 loan upon any interest in a lot intended for residential purposes,  
71 or single- to four-family residential property located in  
72 Mississippi, regardless of where made, including the renewal or  
73 refinancing of any loan.

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

77 (o) "Principal" means a natural person who, directly or  
78 indirectly, owns or controls an ownership interest of ten percent  
79 (10%) or more in a corporation or any other form of business  
80 organization, regardless of whether the natural person owns or  
81 controls the ownership interest through one or more natural  
82 persons or one or more proxies, powers of attorney, nominees,  
83 corporations, associations, limited liability companies,  
84 partnerships, trusts, joint-stock companies, other entities or  
85 devises, or any combination thereof.

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

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

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

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

102 SECTION 3. The following persons are not subject to the

103 provisions of this act, unless otherwise provided in this act:

104           (a) Any person authorized to engage in business as a  
105 bank holding company, or any subsidiary thereof; or any person  
106 authorized to engage in business as a financial holding company,  
107 bank, credit card bank, savings bank, savings institution, savings  
108 and loan association, building and loan association, trust company  
109 or credit union under the laws of the United States, any state or  
110 territory of the United States, or the District of Columbia, or  
111 any subsidiary or affiliate thereof.

112           (b) Approved mortgagees, sellers, servicers or issuers  
113 of the United States Department of Housing and Urban Development,  
114 the Federal Housing Administration, the Veterans Administration,  
115 the Federal National Mortgage Association (FNMA or "Fannie Mae"),  
116 the Federal Home Mortgage Company (FHLMC or "Freddie Mac"), the  
117 Government National Mortgage Association (GNMA or "Ginnie Mae"),  
118 when the mortgagees have been approved as a seller, servicer,  
119 mortgagee or issuer or when they have satisfied requirements to  
120 qualify for automatic authority; however, if these  
121 mortgagees/lenders close or fund any other type of mortgage loans  
122 not subject to examination or review by any of the above agencies,  
123 they will be subject to Sections 6, 11, 14, 18 and 22 of this act  
124 as it pertains to those loans, unless otherwise exempted under  
125 paragraph (a) of this section.

126           (c) Any lender holding a license under the Small Loan  
127 Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or  
128 affiliate thereof, and making real estate loans under that law are  
129 exempt from this act. However, those lenders holding a license  
130 under the Small Loan Regulatory Law and making real estate loans  
131 outside that law shall be subject to the entire provisions of this  
132 act, unless otherwise exempted under paragraph (a) of this  
133 section.

134           (d) Any person who funds a mortgage loan which has been  
135 originated and processed by a licensee, by a mortgage company

136 licensed under this act or by a person who is exempt under this  
137 section and who meets all of the following:

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

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

142 (iii) Does not participate in the negotiation of  
143 mortgage loans.

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

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

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

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

164 (i) Any natural person who purchases mortgage loans  
165 from a licensed mortgage company solely as an investment and who  
166 is not in the business of making or servicing mortgage loans.

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

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

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

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

189           (n) Employees or exclusive agents serving as loan  
190 originators for licensed mortgage companies as defined under  
191 Section 2 of this act are exempt from the licensing requirements  
192 of this act but shall register with the department as a loan  
193 originator. Any natural person required to register under this  
194 paragraph (n) shall register initially with the department and  
195 thereafter file an application for renewal of registration with  
196 the department on or before August 31 of each year providing the  
197 department with such information as the department may prescribe  
198 by regulation, including, but not limited to, the business  
199 addresses where the person engages in any business activities  
200 covered by this act and a telephone number that customers may use  
201 to contact the person. This initial registration of a loan

202 originator shall be accompanied by a fee of One Hundred Dollars  
203 (\$100.00). Annual renewals of this registration shall require a  
204 fee of Fifty Dollars (\$50.00). No person required to register  
205 under this paragraph (n) shall transact business in this state  
206 directly or indirectly as a mortgage company or mortgage lender  
207 unless that person is registered with the department.

208 SECTION 4. (1) On and after the effective date of this act,  
209 no person or natural person shall transact business in this state,  
210 directly or indirectly, as a mortgage company unless he or she is  
211 licensed as a mortgage company by the department or is a person  
212 exempted from the licensing requirements under Section 3 of this  
213 act.

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

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

228 SECTION 5. (1) An application for a license under this act  
229 shall be made in writing and in the form as the department may  
230 prescribe.

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

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

235 the applicant and of every principal of the applicant.

236 (b) The name under which the applicant will conduct  
237 business in the state.

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

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

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

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

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

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

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

263 (iii) A listing of wholesale lenders with whom the  
264 applicant has done business with in the past two (2) years either  
265 directly as a mortgage company or indirectly as an employee of a  
266 mortgage company.

267 (iv) Any other data and pertinent information as



268 the department may require with respect to the applicant, its  
269 directors, principals, trustees, officers, members, contractors or  
270 agents.

271 (h) In lieu of documentation of two (2) years  
272 experience in mortgage lending by an applicant, documentation of  
273 passage of an examination covering mortgage lending, approved by  
274 the department.

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

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

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

281 (c) An original or certified copy of a surety bond in  
282 favor of the State of Mississippi for the use, benefit, and  
283 indemnity of any person who suffers any damage or loss as a result  
284 of the mortgage company's breach of contract or of any obligation  
285 arising therefrom or any violation of law; and

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

289 (i) All individuals operating as a sole  
290 proprietorship that plan to conduct a mortgage brokering or  
291 lending business in the State of Mississippi;

292 (ii) Partners in a partnership or principal owners  
293 of a limited liability company that are or will be actively  
294 engaged in the daily operation of a mortgage brokering or lending  
295 business in the State of Mississippi;

296 (iii) The chief executive officer of a  
297 corporation, or his designee, which supervises the Mississippi  
298 location(s) and any shareholders owning twenty-five percent (25%)  
299 or more of the outstanding shares of the corporation that are or  
300 will be actively engaged in the daily operation of a mortgage

301 brokering or lending business in the State of Mississippi; and

302 (iv) All loan originators.

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

310 SECTION 6. (1) For purposes of Section 5 of this act, the  
311 definitions of the classes of companies and their respective  
312 minimum amounts of surety bonds will be:

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

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

330 (c) "Mortgage lender" shall be defined as any company  
331 that makes a mortgage loan, using its own funds, for others or for  
332 compensation or gain, with the expectation of retaining servicing  
333 rights to those loans, or in the expectation of gain, either

334 directly or indirectly, sells or offers to sell a mortgage loan to  
335 an investor in the secondary market. The amount of the surety  
336 bond for a mortgage lender shall be One Hundred Fifty Thousand  
337 Dollars (\$150,000.00).

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

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

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

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

364 (4) The department shall not issue a license or registration  
365 certificate if it finds that the applicant, or any person who is a  
366 director, officer, partner, or principal of the applicant, has

367 been convicted within ten (10) years of the application for  
368 license or registration of a felony involving moral turpitude in  
369 any jurisdiction or of a crime that, if committed within this  
370 state, would constitute a felony involving moral turpitude under  
371 the laws of this state. For the purposes of this act, a person  
372 shall be deemed to have been convicted of a crime if the person  
373 has pleaded guilty to a crime before a court or federal  
374 magistrate, or plea of nolo contendere, or has been found guilty  
375 of a crime by the decision or judgment of a court or federal  
376 magistrate or by the verdict of a jury, irrespective of the  
377 pronouncement of sentence or the suspension of a sentence, unless  
378 the plea of guilty, or the decision, judgment or verdict, has been  
379 set aside, reversed or otherwise abrogated by lawful judicial  
380 process, or unless the person convicted of the crime has received  
381 a pardon from the President of the United States or the Governor  
382 or other pardoning authority in the jurisdiction where the  
383 conviction was obtained.

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

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

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

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

418           SECTION 8. (1) Each license shall remain in full force and  
419 effect until relinquished, suspended, revoked or expired. With  
420 each initial application for a license, the applicant shall pay to  
421 the commissioner a license fee of Seven Hundred Fifty Dollars  
422 (\$750.00), and on or before August 31 of each year thereafter, an  
423 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).

424           If the annual renewal fee remains unpaid thirty (30) days after  
425 August 31, the license shall expire, but not before September 30  
426 of any year for which the annual renewal fee has been paid. If  
427 any person engages in business as provided for in this act without  
428 paying the license fee provided for in this subsection before  
429 commencing business or before the expiration of the person's  
430 current license, as the case may be, then the person shall be  
431 liable for the full amount of the license fee, plus a penalty in  
432 an amount not to exceed Twenty-five Dollars (\$25.00) for each day

433 that the person has engaged in such business without a license or  
434 after the expiration of a license. All licensing fees and  
435 penalties shall be paid into the Consumer Finance Fund of the  
436 department.

437 (2) Any licensee making timely and proper application for a  
438 license renewal shall be permitted to continue to operate under  
439 its existing license until its application is approved or  
440 rejected, but shall not be released from or otherwise indemnified  
441 for any act covered by this act or for any penalty incurred under  
442 this act as a result of any violation of this act or regulations  
443 adopted under this act, pending final approval or disapproval of  
444 the application for the license renewal.

445 (3) Each application for licensing renewal or registration  
446 renewal shall include evidence of the satisfactory completion of  
447 at least twelve (12) hours of approved continuing education in  
448 primary and subordinated financing transactions by the officers  
449 and principals who are or will be actively engaged in the daily  
450 operation of a mortgage company in the State of Mississippi and  
451 registered originators. For purposes of this subsection (3),  
452 approved courses shall be those as approved by the Mississippi  
453 Mortgage Bankers Association, the Education Committee of the  
454 National Association of Mortgage Brokers or the Mississippi  
455 Association of Mortgage Brokers, who shall submit to the  
456 department a listing of approved schools, courses, programs and  
457 special training sessions.

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

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

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

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

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

471 (6) No licensee shall open a branch office without prior  
472 approval of the department. An application for any branch office  
473 shall be made in writing on a form prescribed by the department,  
474 which shall include at least evidence of compliance with  
475 subsection (1) of Section 13 of this act as to that branch and  
476 shall be accompanied by payment of a nonrefundable application fee  
477 of One Hundred Dollars (\$100.00). The application shall be  
478 approved unless the department finds that the applicant has not  
479 conducted business under this act in accordance with law. The  
480 application shall be deemed approved if notice to the contrary has  
481 not been mailed by the department to the applicant within thirty  
482 (30) days of the date that the application is received by the  
483 department. After approval, the applicant shall give written  
484 notice to the department within ten (10) days of the commencement  
485 of business at the branch office.

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

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

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

499 of the licensee.

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

502 (2) Upon the filing and investigation of an application, the  
503 department shall permit the applicant to acquire the interest in  
504 the licensee if it is satisfied and finds that the applicant and  
505 its members, if applicable, its directors and officers, if a  
506 corporation, and any proposed new directors and officers have  
507 provided its surety bond and have the character, reputation and  
508 experience to warrant belief that the business will be operated  
509 fairly and in accordance with the law. The department shall grant  
510 or deny the application within sixty (60) days from the date a  
511 completed application accompanied by the required fee is filed,  
512 unless the period is extended by order of the department  
513 specifying the reasons for the extension. If the application is  
514 denied, the department shall notify the applicant of the denial  
515 and the reasons for the denial.

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

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

522 (a) The acquisition of an interest in a licensee  
523 directly or indirectly including an acquisition by merger or  
524 consolidation by or with a person exempt from this act under  
525 Section 3 of this act.

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

530 (c) The acquisition of an interest in a licensee by a  
531 person by bequest, devise, gift or survivorship or by operation of



532 law.

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

538 SECTION 11. (1) Any person required to be licensed under  
539 this act shall maintain in its offices, or such other location as  
540 the department shall permit, the books, accounts and records  
541 necessary for the department to determine whether or not the  
542 person is complying with the provisions of this act and the rules  
543 and regulations adopted by the department under this act. These  
544 books, accounts and records shall be maintained apart and separate  
545 from any other business in which the person is involved and may  
546 represent historical data for two (2) years preceding the date of  
547 the last license application date forward.

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

560 (3) The department, its designated officers and employees,  
561 or its duly authorized representatives, for the purposes of  
562 discovering violations of this act and for the purpose of  
563 determining whether any person or individual reasonably suspected  
564 by the commissioner of conducting business that requires a license

565 or registration under this act, may investigate those persons and  
566 individuals and examine all relevant books, records and papers  
567 employed by those persons or individuals in the transaction of  
568 business, and may summon witnesses and examine them under oath  
569 concerning matters as to the business of those persons, or other  
570 such matters as may be relevant to the discovery of violations of  
571 this act including, without limitation, the conduct of business  
572 without a license or registration as required under this act.

573 (4) The department, in its discretion, may disclose  
574 information concerning any violation of this act or any rule,  
575 regulation, or order under this act, provided the information is  
576 derived from a final order of the department.

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

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

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

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

598 late penalties exceed Five Hundred Dollars (\$500.00).

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

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

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

607 (2) Each principal place of business and branch office in  
608 the state also shall meet all of the following requirements:

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

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

616 (c) Display a permanent sign outside the place of  
617 business readily visible to the general public, unless the display  
618 of sign violates local zoning ordinances or restrictive covenants.

619 The sign must contain the name of the licensee and the words  
620 "Mississippi Licensed Mortgage Company."

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

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

627 SECTION 14. No person required to be licensed or registered  
628 under this act shall:

629 (a) Misrepresent the material facts or make false  
630 promises intended to influence, persuade or induce an applicant

631 for a mortgage loan or mortgagee to take a mortgage loan or cause  
632 or contribute to misrepresentation by its agents or employees.

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

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

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

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

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

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

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

659 (i) Make, directly or indirectly, any residential  
660 mortgage loan with the intent to foreclose on the borrower's  
661 property. For purposes of this paragraph, there is a presumption  
662 that a person has made a residential mortgage loan with the intent  
663 to foreclose on the borrower's property if all of the following

664 circumstances are proven:

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

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

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

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

672 (v) That the person does business under a trade  
673 name that misrepresents or tends to misrepresent that the person  
674 is a bank, trust company, savings bank, savings and loan  
675 association, credit union, or insurance company.

676 (j) Charge or collect any direct payment, compensation  
677 or advance fee from a borrower unless and until a loan is actually  
678 found, obtained and closed for that borrower, and in no event  
679 shall that direct payment, compensation or advance fee exceed  
680 seven and ninety-five one-hundredths percent (7.95%) of the  
681 original principal amount of the loan, and any such direct  
682 payments, compensation or advance fees shall be included in all  
683 annual percentage rate (APR) calculations if required under  
684 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
685 payment, compensation or advance fee as defined in this section  
686 shall not include:

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

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

693 (iii) Any indirect payment or compensation by a  
694 lender to a licensed mortgage company required to be disclosed by  
695 the licensed mortgage company under RESPA, provided that the  
696 payment or compensation is disclosed to the borrower by the

697 licensed mortgage company on a good faith estimate of costs, is  
698 included in the APR if required under Regulation Z of TILA, and is  
699 made pursuant to a written agreement between the licensed mortgage  
700 company and the borrower as may be required by Section 17 of this  
701 act; or

702 (iv) A fee not to exceed one percent (1%) of the  
703 principal amount of a loan for construction, provided that a  
704 binding commitment for the loan has been obtained for the  
705 prospective borrower.

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

709 SECTION 16. The department shall promulgate regulations  
710 governing the advertising of mortgage loans, including, but not  
711 limited to, the following requirements:

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

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

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

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

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

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

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

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

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

743 (a) A mortgage origination agreement provided to the  
744 borrower containing at least the information as contained in the  
745 currently effective form of HUD-1-B and including the following  
746 statements:

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

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

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

756 Mississippi Department of Banking and  
757 Consumer Finance

758 P.O. Box 23729

759 Jackson, MS 39225-3729";

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

762 (c) A copy of the signed closing statement as required

763 by HUD or documentation of denial or cancellation of the loan  
764 application;

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

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

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

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

775 SECTION 18. Each licensee shall maintain a journal of  
776 mortgage transactions at the principal place of business as stated  
777 on its license, which shall include at least the following  
778 information:

779 (a) Name of applicant;

780 (b) Date of application; and

781 (c) Disposition of loan application, indicating date of  
782 loan funding, loan denial, withdrawal and name of lender if  
783 applicable.

784 SECTION 19. (1) The department may suspend or revoke any  
785 license or registration for any reason that would have been  
786 grounds for refusal to issue an original license or registration  
787 or for:

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

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

795 (2) Notice of the department's intention to enter an order



796 denying an application for a license or registration under this  
797 act or of an order suspending or revoking a license or  
798 registration under this act shall be given to the applicant,  
799 licensee or registrant in writing, sent by registered or certified  
800 mail addressed to the principal place of business of the  
801 applicant, licensee or registrant. Within thirty (30) days of the  
802 date of the notice of intention to enter an order of denial,  
803 suspension or revocation under this act, the applicant, licensee  
804 or registrant may request in writing a hearing to contest the  
805 order. If a hearing is not requested in writing within thirty  
806 (30) days of the date of the notice of intention, the department  
807 shall enter a final order regarding the denial, suspension or  
808 revocation. Any final order of the department denying, suspending  
809 or revoking a license or registration shall state the grounds upon  
810 which it is based and shall be effective on the date of issuance.  
811 A copy of the final order shall be forwarded promptly by  
812 registered or certified mail addressed to the principal place of  
813 business of the applicant, licensee or registrant.

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

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

828       (3) Whenever a person required to be licensed or registered

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

840 (4) Any person required to be licensed or registered under  
841 this act who has been deemed by the court to have violated the  
842 terms of any order properly issued by the department under this  
843 section shall be liable for a civil penalty not to exceed Three  
844 Thousand Dollars (\$3,000.00). The department, in determining the  
845 amount of the penalty, shall take into account the appropriateness  
846 of the penalty relative to the size of the financial resources of  
847 the person, the good faith efforts of the person to comply with  
848 the order, the gravity of the violation, the history of previous  
849 violations by the person, and other factors or circumstances that  
850 contributed to the violation. The department may compromise,  
851 modify or refund any penalty that has been imposed under this  
852 section. Any person assessed a penalty as provided in this  
853 subsection shall have the right to request a hearing on the amount  
854 of the penalty within ten (10) days after receiving notification  
855 of the assessment. If no hearing is requested within ten (10)  
856 days of the receipt of the notice, the penalty shall be final  
857 except as to judicial review in the Chancery Court of the First  
858 Judicial District of Hinds County.

859 SECTION 21. Nothing in this act shall preclude a person  
860 whose license or registration has been suspended or revoked from  
861 continuing to service mortgage loans pursuant to servicing

862 contracts in existence at the time of the suspension or  
863 revocation.

864 SECTION 22. (1) In addition to any other penalty that may  
865 be applicable, any licensee, individual required to be registered,  
866 or employee who willfully violates any provision of this act, or  
867 who willfully makes a false entry in any document specifically  
868 required by this act, shall be guilty of a misdemeanor and, upon  
869 conviction thereof, shall be punishable by a fine not in excess of  
870 One Thousand Dollars (\$1,000.00) per violation or false entry.

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

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

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

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

893 (4) When the commissioner has reasonable cause to believe  
894 that a person is violating any provision of this act, the

895 commissioner, in addition to and without prejudice to the  
896 authority provided elsewhere in this act, may enter an order  
897 requiring the person to stop or to refrain from the violation.  
898 The commissioner may sue in any chancery court of the state having  
899 jurisdiction and venue to enjoin the person from engaging in or  
900 continuing the violation or from doing any act in furtherance of  
901 the violation. In such an action, the court may enter an order or  
902 judgment awarding a preliminary or permanent injunction.

903 (5) The commissioner may, after notice and hearing, impose a  
904 civil penalty against any licensee if the licensee, individual  
905 required to be registered, or employee is adjudged by the  
906 commissioner to be in violation of the provisions of this act.  
907 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)  
908 per violation and shall be deposited into the Consumer Finance  
909 Fund of the department.

910 (6) The state may enforce its rights under the surety bond  
911 as required in Section 6 of this act as an available remedy for  
912 the collection of any civil penalties, criminal fines or costs of  
913 investigation and/or prosecution incurred.

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

920 SECTION 24. (1) A licensee under this act shall have no  
921 liability for any act or practice done or omitted in conformity  
922 with (a) any rule or regulation of the commissioner, or (b) any  
923 rule, regulation, interpretation or approval of any other state or  
924 federal agency or any opinion of the Attorney General,  
925 notwithstanding that after such act or omission has occurred the  
926 rule, regulation, interpretation, approval or opinion is amended,  
927 rescinded, or determined by judicial or other authority to be

928 invalid for any reason.

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

936 SECTION 25. Notwithstanding any provisions of this act to  
937 the contrary, mortgage companies engaging in business on or before  
938 June 1, 2000, shall be duly licensed by the department after  
939 submitting not later than January 1, 2001, the required documents  
940 and fees provided in Sections 5 and 8 of this act. However, upon  
941 the expiration of the initial licenses for such mortgage  
942 companies, the department shall renew the licenses only if the  
943 mortgage companies satisfy all of the provisions of this act.

944 SECTION 26. Section 81-19-7, Mississippi Code of 1972, is  
945 amended as follows:

946 81-19-7. Except as otherwise provided in this section, this  
947 chapter does not apply to:

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

953 (b) Approved mortgagees of the United States Department  
954 of Housing and Urban Development, the Federal Housing  
955 Administration or other federal agency.

956 (c) Mortgage companies required to be licensed and  
957 individuals required to be registered under the Mississippi  
958 Mortgage Consumer Protection Act (Sections 1 through 24 of this  
959 act), and persons exempt from licensing and registration as  
960 provided in Section 3 of this act.

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

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

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

973           SECTION 27. Sections 1 through 25 of this act shall stand  
974 repealed from and after July 1, 2002.

975           SECTION 28. This act shall take effect and be in force from  
976 and after July 1, 2000.