

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 3100

By Representative(s) Committee

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

19
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 a
60 borrower.

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

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

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

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

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

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

(r) "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.

(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, 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 close or fund any other type of mortgage loans not subject to examination or review by any of the above agencies, they will be subject to Sections 6, 11, 14, 18 and 22 of this act as it pertains to those loans, 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 section.

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

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

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

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

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

(f) A real estate company or real estate salesperson who is actively engaged in the real estate business who does not receive any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage for others. However, any real estate company or real estate salesperson who receives a fee, commission, kickback, rebate or other payment for negotiating, placing or finding not more than two (2) mortgages in any month or not more than twenty-four (24) mortgages in any twelve-month period for others is not subject to the provisions of this act, unless otherwise provided in this act.

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

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

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

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

(k) The United States of America, the State of Mississippi or any other state, and any agency, division or

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

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

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

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

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

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

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

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

by this act.

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

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

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

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

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

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

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

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

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

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

(b) A completed and signed form authorizing the department to obtain information from outside sources for each

person, executive officer and employee;

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

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

(i) All individuals operating as a sole proprietorship 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 are or will be actively engaged in the daily operation of 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 are or will be actively engaged in the daily operation of a mortgage brokering or lending business in the State of Mississippi; and

(iv) All loan originators.

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

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

(a) "Correspondent lender" shall be defined as a company that directly or indirectly solicits, processes, places or

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

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

(c) "Mortgage lender" shall be defined as any company that makes a mortgage loan, using its own funds, for others or for compensation or gain, with the expectation of retaining servicing rights to those loans, or in the expectation of gain, either directly or indirectly, sells or offers to sell a mortgage loan to an investor in the secondary market. The amount of the surety bond for a mortgage lender shall be One Hundred Fifty Thousand Dollars (\$150,000.00).

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

SECTION 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) 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.

(8) 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 and principals who are or will be actively engaged in the daily operation of a mortgage company in the State of Mississippi and registered originators. For purposes of this subsection (3), approved courses shall be those as approved by the Mississippi Mortgage Bankers Association, the Education Committee of the National Association of Mortgage Brokers or 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 the department shall permit, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this act and the rules and regulations adopted by the department under this act. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved and may represent historical data for two (2) years preceding the date of the last license application date forward.

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

(3) The department, its designated officers and employees, or its duly authorized representatives, for the purposes of

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

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

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

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

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

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

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

(i) Lack of substantial benefit to the borrower;

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

670 (iii) That the person has made a significant
671 proportion of loans foreclosed under similar circumstances;
672 (iv) That the person has provided an extension of
673 credit or collected a mortgage debt by extortion;
674 (v) That the person does business under a trade
675 name that misrepresents or tends to misrepresent that the person
676 is a bank, trust company, savings bank, savings and loan
677 association, credit union, or insurance company.
678 (j) Charge or collect any direct payment, compensation
679 or advance fee from a borrower unless and until a loan is actually
680 found, obtained and closed for that borrower, and in no event
681 shall that direct payment, compensation or advance fee exceed
682 eight percent (8%) of the original principal amount of the loan,
683 and any such direct payments, compensation or advance fees shall
684 be included in all annual percentage rate (APR) calculations if
685 required under Regulation Z of the federal Truth in Lending Act
686 (TILA). A direct payment, compensation or advance fee as defined
687 in this section shall not include:
688 (i) Any direct payment, compensation or advance
689 fee collected by a licensed mortgage company to be paid to a
690 nonrelated third party;
691 (ii) Any indirect payment to a licensed mortgage
692 company by a lender if those fees are not required to be disclosed
693 under the Real Estate Settlement Procedures Act (RESPA);
694 (iii) Any indirect payment or compensation by a
695 lender to a licensed mortgage company required to be disclosed by
696 the licensed mortgage company under RESPA, provided that the
697 payment or compensation is disclosed to the borrower by the
698 licensed mortgage company on a good faith estimate of costs, is
699 included in the APR if required under Regulation Z of TILA, and is
700 made pursuant to a written agreement between the licensed mortgage
701 company and the borrower as may be required by Section 17 of this
702 act; or
703 (iv) A fee not to exceed one percent (1%) of the
704 principal amount of a loan for construction, provided that a

binding commitment for the loan has been obtained for the prospective borrower.

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

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

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

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

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

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

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

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

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

(e) That no licensee shall advertise its services in Mississippi in any media disseminated primarily in this state,

whether print or electronic, without the words "Mississippi
Licensed Mortgage Company."

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

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

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

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

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

Mississippi Department of Banking and
Consumer Finance
P.O. Box 23729
Jackson, MS 39225-3729";

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

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

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

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

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

(g) A copy of the disclosures required under Regulation
Z of the federal Truth In Lending Act and other disclosures as
required under federal regulations and evidence that those

disclosures have been properly and timely made to the borrower.

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

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

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

- (a) A violation of any provision of this act or any rule or regulation adopted under this act;
- (b) Failure of the licensee or registrant to pay, within thirty (30) days after it becomes final and nonappealable, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's or registrant's business in this state as a mortgage company.

(2) Notice of the department's intention to enter an order denying an application for a license or registration under this act or of an order suspending or revoking a license or registration under this act shall be given to the applicant, licensee or registrant in writing, sent by registered or certified mail addressed to the principal place of business of the applicant, licensee or registrant. Within thirty (30) days of the date of the notice of intention to enter an order of denial, suspension or revocation under this act, the applicant, licensee or registrant may request in writing a hearing to contest the order. If a hearing is not requested in writing within thirty (30) days of the date of the notice of intention, the department shall enter a final order regarding the denial, suspension or revocation. Any final order of the department denying, suspending

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

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

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

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

(4) Any person required to be licensed or registered under this act who has been deemed by the court to have violated the terms of any order properly issued by the department under this section shall be liable for a civil penalty not to exceed Three

Thousand Dollars (\$3,000.00). The department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation. The department may compromise, modify or refund any penalty that has been imposed under this section. Any person assessed a penalty as provided in this subsection shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County.

SECTION 21. Nothing in this act shall preclude a person whose license or registration has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation.

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

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

(a) For a first offense, the licensee, individual required to be registered, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a

880 fine not in excess of One Thousand Dollars (\$1,000.00) or by
881 imprisonment in the county jail for not more than one (1) year, or
882 both fine and imprisonment;

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

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

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

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

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

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

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

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

937 SECTION 25. Section 81-19-7, Mississippi Code of 1972, is
938 amended as follows:

939 81-19-7. Except as otherwise provided in this section, this
940 chapter does not apply to:

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

946 (b) Approved mortgagees of the United States Department
947 of Housing and Urban Development, the Federal Housing
948 Administration or other federal agency.

949 (c) Mortgage companies required to be licensed and

950 individuals required to be registered under the Mississippi
951 Mortgage Consumer Protection Act (Sections 1 through 24 of this
952 act), and persons exempt from licensing and registration as
953 provided in Section 3 of this act.

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

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

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

966 SECTION 26. Sections 1 through 24 of this act shall stand
967 repealed from and after July 1, 2003.

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

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

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.