

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 1522
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-49,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI MORTGAGE
3 CONSUMER PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-3,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITIONS OF "LOAN
5 ORIGINATOR" AND "PRINCIPAL" AND TO DEFINE "WHOLESALE LENDER"; TO
6 AMEND REENACTED SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO
7 REQUIRE WHOLLY OWNED SUBSIDIARIES OF HOLDING COMPANIES THAT ARE
8 EXEMPT FROM THIS LAW TO FILE A NOTIFICATION STATEMENT CONTAINING
9 CERTAIN INFORMATION AND PAY A FEE; TO PROVIDE THAT FINANCIAL
10 INSTITUTIONS THAT ARE EXEMPT FROM THIS LAW ARE THOSE WITH
11 FEDERALLY INSURED DEPOSITS; TO REVISE THE EXEMPTION FROM THIS LAW
12 FOR APPROVED MORTGAGEES, SELLERS, SERVICERS OR ISSUERS OF CERTAIN
13 FEDERAL AGENCIES AND INSTRUMENTALITIES; TO DELETE THE EXEMPTION
14 FROM THIS LAW FOR CERTAIN PERSONS WHO FUND MORTGAGE LOANS THAT
15 HAVE BEEN ORIGINATED AND PROCESSED BY A LICENSED OR EXEMPT PERSON
16 OR COMPANY; TO PROVIDE THAT PERSONS EMPLOYED BY A MISSISSIPPI
17 MANUFACTURED HOUSING OPERATION WHO MAKE NOT MORE THAN TWELVE
18 RESIDENTIAL MORTGAGE LOANS OVER A LICENSING PERIOD ARE EXEMPT FROM
19 THIS LAW; TO PROVIDE THAT THOSE EXEMPT PERSONS MUST PAY A FEE AND
20 NOTIFY THE COMMISSIONER TO OBTAIN THE EXEMPTION; TO PROVIDE THAT
21 NONPROFIT CORPORATIONS MUST BE EXEMPT FROM FEDERAL TAXATION IN
22 ORDER TO BE EXEMPT FROM THIS LAW; TO DELETE THE EXEMPTION FROM
23 THIS LAW FOR EMPLOYEES AND EXCLUSIVE AGENTS OF LICENSEES OR
24 EXEMPTED PERSONS; TO PROVIDE THAT EXEMPT LOAN ORIGINATORS FOR
25 MORTGAGE COMPANIES WILL BE SUBJECT TO CERTAIN PROVISIONS OF THIS
26 LAW; TO CODIFY NEW SECTION 81-18-8, MISSISSIPPI CODE OF 1972, TO
27 PROVIDE THAT MUNICIPALITIES AND COUNTIES MAY ENACT ORDINANCES THAT
28 ARE IN COMPLIANCE WITH, BUT NOT MORE RESTRICTIVE THAN, THE
29 PROVISIONS OF THIS LAW; TO AMEND REENACTED SECTION 81-18-9,
30 MISSISSIPPI CODE OF 1972, TO REQUIRE FINGERPRINTING OF ALL
31 SHAREHOLDERS OWNING A CERTAIN PERCENTAGE OF THE CORPORATION; TO
32 DELETE THE EXEMPTION FROM THE FINGERPRINTING REQUIREMENT FOR
33 CERTAIN CORPORATIONS; TO AMEND REENACTED SECTION 81-18-13,
34 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A LICENSE WILL NOT BE
35 ISSUED TO ANY PERSON WHO HAS BEEN CONVICTED WITHIN TEN YEARS OF
36 APPLICATION DATE OF ANY FELONY, ANY MISDEMEANOR INVOLVING FRAUD,
37 OR CERTAIN SPECIFIED CRIMES; TO AMEND REENACTED SECTION 81-18-15,
38 MISSISSIPPI CODE OF 1972, TO SPECIFY THE REQUIRED CONTINUING
39 EDUCATION FOR MANUFACTURED HOUSING LICENSEES OR ORIGINATORS; TO
40 AMEND REENACTED SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO
41 PROHIBIT A LICENSEE FROM OPENING CERTAIN BRANCH OFFICES WITHOUT
42 PRIOR APPROVAL OF THE DEPARTMENT OF BANKING; TO AMEND REENACTED
43 SECTION 81-18-19, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO
44 PERSON MAY ACQUIRE TWENTY-FIVE PERCENT OR MORE OF A LICENSEE
45 UNLESS THE PERSON FIRST FILES AN APPLICATION; TO AMEND REENACTED
46 SECTION 81-18-21, MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSEES
47 TO KEEP THEIR ACCOUNTS AND RECORDS IN SECURE LOCATIONS; TO AMEND
48 REENACTED SECTION 81-18-25, MISSISSIPPI CODE OF 1972, TO DELETE
49 THE REQUIREMENT THAT A LICENSEE MUST MAINTAIN AND TRANSACT
50 BUSINESS FROM A PRINCIPAL PLACE OF BUSINESS IN THE STATE; TO
51 PROVIDE THAT THE BUSINESS SIGNS OF LICENSEES MUST CONTAIN THE
52 WORDS "MISSISSIPPI LICENSED MORTGAGE COMPANY" OR "MISSISSIPPI



53 SUPERVISED MORTGAGE COMPANY"; TO AMEND REENACTED SECTION 81-18-27,
54 MISSISSIPPI CODE OF 1972, TO PROHIBIT LICENSEES FROM PAYING TO ANY
55 PERSON NOT LICENSED OR EXEMPT FROM THIS LAW ANY COMMISSION, BONUS
56 OR FEE IN CONNECTION WITH ARRANGING OR ORIGINATING A MORTGAGE LOAN
57 FOR A BORROWER; TO PROHIBIT LICENSEES FROM REFUSING TO PROVIDE THE
58 LOAN PAYOFF WITHIN THREE BUSINESS DAYS OF A REQUEST FROM A
59 BORROWER OR THIRD PARTY; TO PROVIDE THAT A MORTGAGE COMPANY SHALL
60 ONLY BROKER A RESIDENTIAL MORTGAGE LOAN TO A LICENSED MORTGAGE
61 COMPANY OR TO A PERSON EXEMPT FROM THIS LAW; TO AMEND REENACTED
62 SECTION 81-18-31, MISSISSIPPI CODE OF 1972, TO PROHIBIT LICENSEES
63 FROM ADVERTISING THEIR SERVICES WITHOUT THE WORDS "MISSISSIPPI
64 LICENSED MORTGAGE COMPANY" OR "MISSISSIPPI SUPERVISED MORTGAGE
65 COMPANY"; TO AMEND REENACTED SECTION 81-18-39, MISSISSIPPI CODE OF
66 1972, TO DELETE THE PROVISION FOR THE DEPARTMENT OF BANKING TO
67 OBTAIN A COURT ORDER TO REQUIRE COMPLIANCE WITH THE DEPARTMENT'S
68 ORDERS; TO PROVIDE THAT A LICENSEE WHO VIOLATES AN ORDER OF A
69 DEPARTMENT IS SUBJECT TO A CIVIL PENALTY UPON DETERMINATION OF A
70 VIOLATION BY THE COMMISSIONER OF BANKING, INSTEAD OF BY THE COURT;
71 TO PROVIDE THAT IF A LICENSEE SEEKS JUDICIAL REVIEW OF THE
72 ASSESSMENT OF A CIVIL PENALTY, THE COURT SHALL UPHOLD THE
73 DEPARTMENT'S ORDER IF THE COURT DETERMINES THAT THE ORDER WAS
74 PROPERLY ISSUED; TO CODIFY NEW SECTION 81-18-36, MISSISSIPPI CODE
75 OF 1972, TO PROVIDE THAT ALL MONIES PAID TO A MORTGAGE COMPANY FOR
76 PAYMENT OF TAXES OR INSURANCE PREMIUMS ON PROPERTY SECURING ANY
77 LOAN MADE OR SERVICED BY THE MORTGAGE COMPANY SHALL BE DEPOSITED
78 IN A FEDERALLY-INSURED ACCOUNT AND KEPT SEPARATE FROM FUNDS
79 BELONGING TO THE MORTGAGE COMPANY; TO AMEND SECTION 81-18-51,
80 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE
81 MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; AND FOR RELATED
82 PURPOSES.

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

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

86 81-18-1. This chapter shall be known and cited as the
87 Mississippi Mortgage Consumer Protection Law.

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

90 81-18-3. For purposes of this chapter, the following terms
91 shall have the following meanings:

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

96 (b) "Commissioner" means the Commissioner of the
97 Mississippi Department of Banking and Consumer Finance.

98 (c) "Commitment" means a statement by a lender required
99 to be licensed or registered under this chapter that sets forth



100 the terms and conditions upon which the lender is willing to make
101 a particular mortgage loan to a particular borrower.

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

107 (e) "Department" means the Department of Banking and
108 Consumer Finance of the State of Mississippi.

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

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

119 (h) "Licensee" means a person or entity who is required
120 to be licensed as a mortgage company under this chapter.

121 (i) "Loan originator" means an individual who is an
122 employee * * * of a single mortgage company whose conduct of the
123 mortgage business is the responsibility of the licensee, and whose
124 job responsibilities include direct contact with borrowers during
125 the loan origination process, which may include soliciting,
126 negotiating, acquiring, arranging or making mortgage loans for
127 others, obtaining personal or financial information, assisting
128 with the preparation of loan applications or other documents,
129 quoting loan rates or terms, or providing required disclosures.
130 The term does not include individuals whose job responsibilities
131 on behalf of a licensee are solely clerical in nature or sales
132 representatives of a licensed Mississippi manufactured housing



133 operation who transmits information concerning a sale via mail,
134 courier service, or electronically to a licensed mortgage company
135 or registered originator.

136 (j) "Make a mortgage loan" means to advance funds,
137 offer to advance funds or make a commitment to advance funds to a
138 borrower.

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

143 (l) "Mortgage company" means any person or entity who
144 directly, indirectly or by electronic activity, solicits, places
145 or negotiates mortgage loans for others, or offers to solicit,
146 place or negotiate mortgage loans for others.

147 (m) "Mortgage loan" means a loan or agreement to extend
148 credit made to a natural person, which loan is secured by a deed
149 to secure debt, security deed, mortgage, security instrument, deed
150 of trust or other document representing a security interest or
151 loan upon any interest in a lot intended for residential purposes,
152 or single- to four-family residential property located in
153 Mississippi, regardless of where made, including the renewal or
154 refinancing of any loan.

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

158 (o) "Principal" means a natural person who, directly or
159 indirectly, owns or controls an ownership interest of twenty-five
160 percent (25%) or more in a corporation or any other form of
161 business organization, regardless of whether the natural person
162 owns or controls the ownership interest through one or more
163 natural persons or one or more proxies, powers of attorney,
164 nominees, corporations, associations, limited liability companies,



165 partnerships, trusts, joint-stock companies, other entities or
166 devises, or any combination thereof.

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

173 (q) "Registrant" means any person required to register
174 under Section 81-18-5(m).

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

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

183 (t) "Wholesale lender" means any person or entity who
184 makes a mortgage loan, or purchases or services mortgage loans,
185 utilizing the services of a person exempted, licensed or
186 registered under this chapter.

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

189 81-18-5. The following persons are not subject to the
190 provisions of this chapter, unless otherwise provided in this
191 chapter:

192 (a) Any person authorized to engage in business as a
193 bank holding company or as a financial holding company, or any
194 wholly owned subsidiary thereof; however, the wholly owned
195 subsidiary must file a notification statement that includes the
196 following information:



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

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

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

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

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

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

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

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

226 (c) Any person who is a wholesale lender as defined in
227 Section 81-18-3 or who is licensed by or directly supervised or
228 audited by the Federal National Mortgage Association, the United
229 States Department of Veterans Affairs, or the Federal Home Loan



230 Mortgage Corporation, the Government National Mortgage Association
231 or the United States Department of Housing and Urban Development;
232 provided, however, that persons who qualify for an exemption under
233 this paragraph shall be subject to Sections 81-18-11, 81-18-21,
234 81-18-25, 81-18-27, 81-18-31, 81-18-35, 81-18-39 and 81-18-43.
235 Upon the request of the commissioner, such persons shall submit
236 copies of any reports as required by the aforementioned
237 governmental entity to which the person is subject for licensing,
238 supervision or auditing. The department shall have the authority
239 to investigate all consumer complaints concerning Mississippi
240 residential property. To qualify for an exemption, the applicant
241 shall register for an exemption certificate with the department
242 and pay an initial fee of Three Hundred Dollars (\$300.00). With
243 each application for renewal of the exemption certificate, the
244 applicant shall pay a renewal fee of One Hundred Fifty Dollars
245 (\$150.00) and provide the department with evidence that the
246 applicant is still licensed, supervised or audited by the
247 governmental entity. If the renewal fee remains unpaid for thirty
248 (30) days after August 31, the registration shall expire, but not
249 before September 30 of any year for which the annual renewal fee
250 has been paid. If any person engages in business without paying
251 the fees provided for in this paragraph before commencing business
252 or before the expiration of the person's current registration, as
253 the case may be, then the person shall be liable for the full
254 amount of the registration fee, plus a penalty in an amount not to
255 exceed Twenty-five Dollars (\$25.00) for each day that the person
256 has engaged in business without an exemption certificate or after
257 the expiration of an exemption certificate. All registration fees
258 and penalties shall be paid into the Consumer Finance Fund of the
259 department.

260 (d) Any lender holding a license under the Small Loan
261 Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or
262 affiliate thereof, and making real estate loans under that law are



263 exempt from this chapter. However, those lenders holding a
264 license under the Small Loan Regulatory Law and making real estate
265 loans outside that law shall be subject to the entire provisions
266 of this chapter, unless otherwise exempted under paragraph (a) or
267 (b) of this section.

268 * * *

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

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

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

280 (h) Any * * * person who is employed by and
281 representing a Mississippi manufactured housing operation and who
282 makes a mortgage loan * * * for an investment or on a whole loan
283 basis in not more than twelve (12) Mississippi residential
284 mortgage loans, or who contracts for no more than twelve (12)
285 Mississippi residential loan transactions, over the licensing
286 period provided in this chapter, including those acting as
287 originators. The twelve (12) transactions are cumulative to any
288 combination of operations owned or controlled by any one
289 individual, sole proprietorship, corporation, limited liability
290 company, partnership, trust or any other group of individuals,
291 however, organized. However, within thirty (30) days of loan
292 closure, the person shall submit to the commissioner a fee of Ten
293 Dollars (\$10.00), which is not chargeable to the consumer, and
294 written notification containing such loan information as required
295 by the commissioner, seeking approval to engage in a residential



296 mortgage transaction without first complying with the licensing
297 provisions of this chapter. Any person who enters into more than
298 twelve (12) of those transactions in the licensing period provided
299 in this chapter must be licensed according to the procedures
300 prescribed in this chapter. The fees paid for exemption during a
301 licensing period will be deducted from the cost of an initial
302 license.

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

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

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

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

324 * * *

325 (m) * * * Loan originators for licensed mortgage
326 companies as defined under Section 81-18-3 are exempt from the
327 licensing requirements of this chapter except for Sections
328 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall register with



329 the department as a loan originator. Any natural person required
330 to register under this paragraph (m) shall register initially with
331 the department and thereafter file an application for renewal of
332 registration with the department on or before September 30 of each
333 year providing the department with such information as the
334 department may prescribe by regulation, including, but not limited
335 to, the business addresses where the person engages in any
336 business activities covered by this chapter and a telephone number
337 that customers may use to contact the person. This initial
338 registration of a loan originator shall be accompanied by a fee of
339 One Hundred Dollars (\$100.00). Annual renewals of this
340 registration shall require a fee of Fifty Dollars (\$50.00). No
341 person required to register under this paragraph (m) shall
342 transact business in this state directly or indirectly as a
343 mortgage company or mortgage lender unless that person is
344 registered with the department.

345 **SECTION 4.** Section 81-18-7, Mississippi Code of 1972, is
346 reenacted as follows:

347 81-18-7. (1) On and after the effective date of this
348 chapter, no person or natural person shall transact business in
349 this state, directly or indirectly, as a mortgage company unless
350 he or she is licensed as a mortgage company by the department or
351 is a person exempted from the licensing requirements under Section
352 81-18-5.

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

357 (3) On and after the effective date of this chapter, every
358 person who directly or indirectly controls a person who violates
359 this section, including a general partner, executive officer,
360 joint venturer, contractor, or director of the person, violates
361 this section to the same extent as the person, unless the person



362 whose violation arises under this subsection shows by a
363 preponderance of evidence the burden of proof that he or she did
364 not know and, in the exercise of reasonable care, could not have
365 known of the existence of the facts by reason of which the
366 original violation is alleged to exist.

367 **SECTION 5.** The following shall be codified as Section
368 81-18-8, Mississippi Code of 1972:

369 81-18-8. Municipalities and counties in this state may enact
370 ordinances that are in compliance with, but not more restrictive
371 than, the provisions of this chapter. Any order, ordinance or
372 regulation existing on July 1, 2002, or enacted on or after July
373 1, 2002, that conflicts with this provision shall be null and
374 void.

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

377 81-18-9. (1) An application for a license under this
378 chapter shall be made in writing and in the form as the department
379 may prescribe.

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

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

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

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

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

393 (e) Documentation satisfactory to the department as to
394 a certificate of existence of authority to transact business



395 lawfully in Mississippi, if an individual, sole proprietorship,
396 limited liability company, partnership, trust or any other group
397 of individuals, however organized.

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

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

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

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

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

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

420 (h) In lieu of documentation of two (2) years
421 experience in mortgage lending by an applicant, documentation of
422 passage of an examination covering mortgage lending, approved by
423 the department.

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

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



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

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

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

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

441 (ii) Partners in a partnership or principal owners
442 of a limited liability company that are or will be actively
443 engaged in the daily operation of a mortgage brokering or lending
444 business in the State of Mississippi;

445 (iii) The chief executive officer of a
446 corporation, or his designee, which supervises the Mississippi
447 location(s) and any shareholders owning twenty-five percent (25%)
448 or more of the outstanding shares of the corporation * * *; and

449 (iv) All loan originators.

450 * * *

451 **SECTION 7.** Section 81-18-11, Mississippi Code of 1972, is
452 reenacted as follows:

453 81-18-11. (1) For purposes of Section 81-18-9, the
454 definitions of the classes of companies and their respective
455 minimum amounts of surety bonds will be:

456 (a) "Correspondent lender" shall be defined as a
457 company that directly or indirectly solicits, processes, places or
458 negotiates mortgage loans for others, or offers to solicit,
459 process, place or negotiate mortgage loans for others, that uses



460 its own funds for closing and may hold loans and may service those
461 loans for a period of time not to exceed six (6) months before
462 selling the loan in the secondary market. The amount of the
463 surety bond for correspondent lenders shall be Fifty Thousand
464 Dollars (\$50,000.00).

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

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

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

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

491 81-18-13. (1) Upon receipt of an application for licensure
492 or registration, which shall include the required set of



493 fingerprints from any local law enforcement agency, the department
494 shall conduct such an investigation as it deems necessary to
495 determine that the applicant and its officers, directors and
496 principals are of good character and ethical reputation; that the
497 applicant demonstrates reasonable financial responsibility; and
498 that the applicant has reasonable policies and procedures to
499 receive and process customer grievances and inquiries promptly and
500 fairly * * *.

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

505 (3) The department shall not license any mortgage company
506 unless the applicant meets the requirements of Section 81-18-11.

507 (4) The department shall not issue a license or registration
508 certificate if it finds that the applicant, or any person who is a
509 director, officer, partner or principal of the applicant, has been
510 convicted within ten (10) years of the application for license or
511 registration of: (a) a felony * * * in any jurisdiction; or * * *
512 (b) a crime that, if committed within this state, would constitute
513 a felony * * * under the laws of this state; or (c) a misdemeanor
514 in any jurisdiction in which fraud is an essential element,
515 including, but not limited to, forgery, bribery, embezzlement or
516 making a fraudulent or false statement. For the purposes of this
517 act, a person shall be deemed to have been convicted of a crime if
518 the person has pleaded guilty to a crime before a court or federal
519 magistrate, or plea of nolo contendere, or has been found guilty
520 of a crime by the decision or judgment of a court or federal
521 magistrate or by the verdict of a jury, irrespective of the
522 pronouncement of sentence or the suspension of a sentence, unless
523 the plea of guilty, or the decision, judgment or verdict, has been
524 set aside, reversed or otherwise abrogated by lawful judicial
525 process, or unless the person convicted of the crime has received



526 a pardon from the President of the United States or the Governor
527 or other pardoning authority in the jurisdiction where the
528 conviction was obtained.

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

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

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

557 (8) A person shall not be indemnified for any act covered by
558 this act or for any fine or penalty incurred under this act as a



559 result of any violation of this act or regulations adopted under
560 this act, due to the legal form, corporate structure, or choice of
561 organization of the person including, but not limited to, a
562 limited liability corporation.

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

565 81-18-15. (1) Each license shall remain in full force and
566 effect until relinquished, suspended, revoked or expired. With
567 each initial application for a license, the applicant shall pay to
568 the commissioner a license fee of Seven Hundred Fifty Dollars
569 (\$750.00), and on or before August 31 of each year thereafter, an
570 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
571 If the annual renewal fee remains unpaid thirty (30) days after
572 August 31, the license shall expire, but not before September 30
573 of any year for which the annual renewal fee has been paid. If
574 any person engages in business as provided for in this act without
575 paying the license fee provided for in this subsection before
576 commencing business or before the expiration of the person's
577 current license, as the case may be, then the person shall be
578 liable for the full amount of the license fee, plus a penalty in
579 an amount not to exceed Twenty-five Dollars (\$25.00) for each day
580 that the person has engaged in such business without a license or
581 after the expiration of a license. All licensing fees and
582 penalties shall be paid into the Consumer Finance Fund of the
583 department.

584 (2) Any licensee making timely and proper application for a
585 license renewal shall be permitted to continue to operate under
586 its existing license until its application is approved or
587 rejected, but shall not be released from or otherwise indemnified
588 for any act covered by this chapter or for any penalty incurred
589 under this chapter as a result of any violation of this chapter or
590 regulations adopted under this chapter, pending final approval or
591 disapproval of the application for the license renewal.



592 (3) Each application for licensing renewal or registration
593 renewal shall include evidence of the satisfactory completion of
594 at least twelve (12) hours of approved continuing education in
595 primary and subordinated financing transactions by the officers
596 and principals who are or will be actively engaged in the daily
597 operation of a mortgage company in the State of Mississippi and
598 registered originators. For purposes of this subsection (3),
599 approved courses shall be those as approved by the Mississippi
600 Mortgage Bankers Association, the Education Committee of the
601 National Association of Mortgage Brokers or the Mississippi
602 Association of Mortgage Brokers, who shall submit to the
603 department a listing of approved schools, courses, programs and
604 special training sessions. However, each application for
605 licensing renewal or registration renewal of manufactured housing
606 licensees or originators shall include evidence of the
607 satisfactory completion of at least twelve (12) hours of
608 continuing education, of which eight (8) hours must be approved by
609 the Commissioner of Insurance and four (4) hours consisting of
610 courses in primary and subordinated financing transactions must be
611 approved by the Mississippi Manufactured Housing Association,
612 which shall submit to the department a listing of those approved
613 schools, courses, programs and special training sessions. A
614 manufactured housing licensee or originator may submit evidence of
615 completion of courses that have been approved by the Mississippi
616 Mortgage Brokers Association, the Education Committee of the
617 National Association of Mortgage Brokers or the Mississippi
618 Association of Mortgage Brokers to satisfy the four-hour
619 requirement of courses in primary and subordinated financing
620 transactions.

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



623 81-18-17. (1) Each license issued under this act shall
624 state the address of the licensee's principal place of
625 business * * * and the name of the licensee.

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

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

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

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

636 (6) No licensee shall open a branch office in this state or
637 a branch office outside this state from which the licensee has
638 direct contact with Mississippi consumers regarding origination or
639 brokering Mississippi property, without prior approval of the
640 department. An application for any branch office shall be made in
641 writing on a form prescribed by the department, which shall
642 include at least evidence of compliance with subsection (1) of
643 Section 81-18-25 as to that branch and shall be accompanied by
644 payment of a nonrefundable application fee of One Hundred Dollars
645 (\$100.00). The application shall be approved unless the
646 department finds that the applicant has not conducted business
647 under this act in accordance with law. The application shall be
648 deemed approved if notice to the contrary has not been mailed by
649 the department to the applicant within thirty (30) days of the
650 date that the application is received by the department. After
651 approval, the applicant shall give written notice to the
652 department within ten (10) days of the commencement of business at
653 the branch office.

654 **SECTION 11.** Section 81-18-19, Mississippi Code of 1972, is
655 reenacted and amended as follows:



656 81-18-19. (1) Except as provided in this section, * * * no
657 person shall acquire directly or indirectly twenty-five percent
658 (25%) or more of the voting shares of a corporation or twenty-five
659 percent (25%) or more of the ownership of any other entity
660 licensed to conduct business under this chapter unless it
661 first * * * files an application in accordance with the
662 requirements prescribed in Section 81-18-9.

663 (2) Upon the filing and investigation of an application, the
664 department shall permit the applicant to acquire the interest in
665 the licensee if it is satisfied and finds that the applicant and
666 its members, if applicable, its directors and officers, if a
667 corporation, and any proposed new directors and officers have
668 provided its surety bond and have the character, reputation and
669 experience to warrant belief that the business will be operated
670 fairly and in accordance with the law. * * * If the application
671 is denied, the department shall notify the applicant of the denial
672 and the reasons for the denial.

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

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

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

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



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

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

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

697 81-18-21. (1) Any person required to be licensed under this
698 chapter shall maintain in its offices, or such other location as
699 the department shall permit, the books, accounts and records
700 necessary for the department to determine whether or not the
701 person is complying with the provisions of this chapter and the
702 rules and regulations adopted by the department under this
703 chapter. These books, accounts and records shall be maintained
704 apart and separate from any other business in which the person is
705 involved and may represent historical data for two (2) years
706 preceding the date of the last license application date forward.
707 The books, accounts, and records shall be kept in a secure
708 location under conditions that will not lead to their damage or
709 destruction.

710 (2) To assure compliance with the provisions of this
711 chapter, the department may examine the books and records of any
712 licensee without notice during normal business hours. The
713 commissioner shall charge the licensee an examination fee in an
714 amount not less than Two Hundred Dollars (\$200.00) nor more than
715 Three Hundred Dollars (\$300.00) per examination of each office or
716 location within the State of Mississippi, plus any actual expenses
717 incurred while examining the licensee's records or books that are
718 located outside the State of Mississippi. However, in no event
719 shall a licensee be examined more than once in a two-year period



720 unless for cause shown based upon consumer complaint and/or other
721 exigent reasons as determined by the commissioner.

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

735 (4) The department, in its discretion, may disclose
736 information concerning any violation of this chapter or any rule,
737 regulation, or order under this chapter, provided the information
738 is derived from a final order of the department.

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

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

750 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is
751 reenacted as follows:



752 81-18-23. (1) Each licensee shall annually, on or before
753 April 1, file a written report with the department containing the
754 information that the department may reasonably require concerning
755 the licensee's business and operations during the preceding
756 calendar year. The report shall be made in the form prescribed by
757 the department.

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

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

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

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

771 81-18-25. * * *

772 (1) Each principal place of business and branch office in
773 the state * * * shall meet all of the following requirements:

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

778 (b) Consist of at least one (1) secure enclosed room or
779 secure building of stationary construction in which negotiations
780 of mortgage loan transactions may be conducted in privacy.
781 Stationary construction does not include the use of portable
782 buildings.

783 (c) Display a permanent sign outside the place of
784 business readily visible to the general public, unless the display



785 of sign violates local zoning ordinances or restrictive covenants.
786 The sign must contain the name of the licensee and the words
787 "Mississippi Licensed Mortgage Company" or "Mississippi Supervised
788 Mortgage Company."

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

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

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

797 81-18-27. (1) No person required to be licensed or
798 registered under this chapter shall:

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

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

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

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

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



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

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

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

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

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

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

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

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

842 (v) That the person does business under a trade
843 name that misrepresents or tends to misrepresent that the person
844 is a bank, trust company, savings bank, savings and loan
845 association, credit union, or insurance company.

846 (j) Charge or collect any direct payment, compensation
847 or advance fee from a borrower unless and until a loan is actually
848 found, obtained and closed for that borrower, and in no event
849 shall that direct payment, compensation or advance fee exceed



850 seven and ninety-five one-hundredths percent (7.95%) of the
851 original principal amount of the loan, and any such direct
852 payments, compensation or advance fees shall be included in all
853 annual percentage rate (APR) calculations if required under
854 Regulation Z of the federal Truth in Lending Act (TILA). A direct
855 payment, compensation or advance fee as defined in this section
856 shall not include:

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

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

863 (iii) Any indirect payment or compensation by a
864 lender to a licensed mortgage company required to be disclosed by
865 the licensed mortgage company under RESPA, provided that the
866 payment or compensation is disclosed to the borrower by the
867 licensed mortgage company on a good faith estimate of costs, is
868 included in the APR if required under Regulation Z of TILA, and is
869 made pursuant to a written agreement between the licensed mortgage
870 company and the borrower as may be required by Section 81-18-33;
871 or

872 (iv) A fee not to exceed one percent (1%) of the
873 principal amount of a loan for construction, provided that a
874 binding commitment for the loan has been obtained for the
875 prospective borrower.

876 (k) Pay to any person not licensed or not exempt under
877 the provisions of this chapter any commission, bonus or fee in
878 connection with arranging for or originating a mortgage loan for a
879 borrower, except that a registered loan originator may be paid a
880 bonus, commission, or fee by his or her licensed employer.

881 (l) Refuse to provide the loan payoff within three (3)
882 business days of an oral or written request from a borrower or



883 third party. Proof of authorization of the borrower shall be
884 submitted for a third-party request.

885 (2) A mortgage company shall only broker a residential
886 mortgage loan to a mortgage company licensed under this chapter or
887 to a person exempt from licensure under the provisions of this
888 chapter.

889 **SECTION 16.** Section 81-18-29, Mississippi Code of 1972, is
890 reenacted as follows:

891 81-18-29. The department shall promulgate those rules and
892 regulations, not inconsistent with law, necessary for the
893 enforcement of this chapter.

894 **SECTION 17.** Section 81-18-31, Mississippi Code of 1972, is
895 reenacted and amended as follows:

896 81-18-31. The department shall promulgate regulations
897 governing the advertising of mortgage loans, including, but not
898 limited to, the following requirements:

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

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

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



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

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

920 (ii) The term in years or months to fully repay
921 the mortgage; * * *

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

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

929 **SECTION 18.** Section 81-18-33, Mississippi Code of 1972, is
930 reenacted as follows:

931 81-18-33. The individual borrower files of a mortgage
932 company shall contain at least the following:

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

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

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

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

946 Mississippi Department of Banking and
947 Consumer Finance



948 P.O. Box 23729

949 Jackson, MS 39225-3729";

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

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

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

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

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

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

965 **SECTION 19.** Section 81-18-35, Mississippi Code of 1972, is
966 reenacted as follows:

967 81-18-35. Each licensee shall maintain a journal of mortgage
968 transactions at the principal place of business as stated on its
969 license, which shall include at least the following information:

970 (a) Name of applicant;

971 (b) Date of application; and

972 (c) Disposition of loan application, indicating date of
973 loan funding, loan denial, withdrawal and name of lender if
974 applicable.

975 **SECTION 20.** The following shall be codified as Section
976 81-18-36, Mississippi Code of 1972:

977 81-18-36. (1) (a) All monies paid to a mortgage company
978 for payment of taxes, loan commitment deposits, work completion
979 deposits, appraisals, credit reports or insurance premiums on
980 property that secures any loan made or serviced by the mortgage



981 company shall be deposited in an account that is insured by the
982 Federal Deposit Insurance Corporation or the National Credit Union
983 Administration and shall be kept separate, distinct, and apart
984 from funds belonging to the mortgage company.

985 (b) The funds, when deposited, are to be designated as
986 an "escrow account," or under some other appropriate name,
987 indicating that the funds are not the funds of the mortgage
988 company.

989 (2) The mortgage company shall, upon reasonable notice,
990 account to any debtor whose property secures a loan made by the
991 mortgage company for any funds which that person has paid to the
992 mortgage company for the payment of taxes or insurance premiums on
993 the property in question.

994 (3) The mortgage company shall, upon reasonable notice,
995 account to the commissioner for all funds in the company's escrow
996 account.

997 (4) Escrow accounts are not subject to execution or
998 attachment on any claim against the mortgage company.

999 (5) It is unlawful for any mortgage company knowingly to
1000 keep or cause to be kept any funds or money in any bank or other
1001 financial institution under the heading of "escrow account" or any
1002 other name designating the funds or monies belonging to the
1003 debtors of the mortgage company, except actual funds paid to the
1004 mortgage company for the payment of taxes and insurance premiums
1005 on property securing loans made or serviced by the company.

1006 **SECTION 21.** Section 81-18-37, Mississippi Code of 1972, is
1007 reenacted as follows:

1008 81-18-37. (1) The department may suspend or revoke any
1009 license or registration for any reason that would have been
1010 grounds for refusal to issue an original license or registration
1011 or for:

1012 (a) A violation of any provision of this chapter or any
1013 rule or regulation adopted under this chapter;



1014 (b) Failure of the licensee or registrant to pay,
1015 within thirty (30) days after it becomes final and nonappealable,
1016 a judgment recovered in any court within this state by a claimant
1017 or creditor in an action arising out of the licensee's or
1018 registrant's business in this state as a mortgage company.

1019 (2) Notice of the department's intention to enter an order
1020 denying an application for a license or registration under this
1021 chapter or of an order suspending or revoking a license or
1022 registration under this chapter shall be given to the applicant,
1023 licensee or registrant in writing, sent by registered or certified
1024 mail addressed to the principal place of business of the
1025 applicant, licensee or registrant. Within thirty (30) days of the
1026 date of the notice of intention to enter an order of denial,
1027 suspension or revocation under this chapter, the applicant,
1028 licensee or registrant may request in writing a hearing to contest
1029 the order. If a hearing is not requested in writing within thirty
1030 (30) days of the date of the notice of intention, the department
1031 shall enter a final order regarding the denial, suspension or
1032 revocation. Any final order of the department denying, suspending
1033 or revoking a license or registration shall state the grounds upon
1034 which it is based and shall be effective on the date of issuance.
1035 A copy of the final order shall be forwarded promptly by
1036 registered or certified mail addressed to the principal place of
1037 business of the applicant, licensee or registrant.

1038 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is
1039 reenacted and amended as follows:

1040 81-18-39. (1) For purposes of this section, the term
1041 "person" shall be construed to include any officer, director,
1042 employee, affiliate or other person participating in the conduct
1043 of the affairs of the person subject to the orders issued under
1044 this section.

1045 (2) If the department reasonably determines that a person
1046 required to be licensed or registered under this chapter has



1047 violated any law of this state or any order or regulation of the
1048 department, the department may issue a written order requiring the
1049 person to cease and desist from unlawful or unauthorized
1050 practices. In the case of an unlawful purchase of mortgage loans,
1051 the cease and desist order to a purchaser shall constitute the
1052 knowledge required under this section for any subsequent
1053 violations.

1054 * * *

1055 (3) Any person required to be licensed or registered under
1056 this chapter who has been deemed by the commissioner, after notice
1057 and hearing, to have violated the terms of any order properly
1058 issued by the department under this section shall be liable for a
1059 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1060 The department, in determining the amount of the penalty, shall
1061 take into account the appropriateness of the penalty relative to
1062 the size of the financial resources of the person, the good faith
1063 efforts of the person to comply with the order, the gravity of the
1064 violation, the history of previous violations by the person, and
1065 other factors or circumstances that contributed to the violation.
1066 The department may compromise, modify or refund any penalty that
1067 has been imposed under this section. Any person assessed a
1068 penalty as provided in this subsection shall have the right to
1069 request a hearing on the amount of the penalty within ten (10)
1070 days after receiving notification of the assessment. If no
1071 hearing is requested within ten (10) days of the receipt of the
1072 notice, the penalty shall be final except as to judicial review in
1073 the Chancery Court of the First Judicial District of Hinds County.
1074 Upon the filing of a petition for judicial review, the court shall
1075 issue an order to the licensee requiring the licensee to show
1076 cause why it should not be entered. If the court determines,
1077 after a hearing upon the merits or after failure of the person to
1078 appear when so ordered, that the order of the department was



1079 properly issued, it shall grant the penalty sought by the
1080 department.

1081 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is
1082 reenacted as follows:

1083 81-18-41. Nothing in this chapter shall preclude a person
1084 whose license or registration has been suspended or revoked from
1085 continuing to service mortgage loans pursuant to servicing
1086 contracts in existence at the time of the suspension or
1087 revocation.

1088 **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is
1089 reenacted as follows:

1090 81-18-43. (1) In addition to any other penalty that may be
1091 applicable, any licensee, individual required to be registered, or
1092 employee who willfully violates any provision of this chapter, or
1093 who willfully makes a false entry in any document specifically
1094 required by this chapter, shall be guilty of a misdemeanor and,
1095 upon conviction thereof, shall be punishable by a fine not in
1096 excess of One Thousand Dollars (\$1,000.00) per violation or false
1097 entry.

1098 (2) In addition to any other penalty that may be applicable,
1099 any licensee, individual required to be registered, or employee
1100 who fails to make a record of a mortgage transaction and
1101 subsequently sells or disposes of the mortgage from that
1102 transaction shall be punished as follows:

1103 (a) For a first offense, the licensee, individual
1104 required to be registered, or employee shall be guilty of a
1105 misdemeanor and, upon conviction thereof, shall be punishable by a
1106 fine not in excess of One Thousand Dollars (\$1,000.00) or by
1107 imprisonment in the county jail for not more than one (1) year, or
1108 both fine and imprisonment;

1109 (b) For a second or subsequent offense, the licensee,
1110 individual required to be registered, or employee shall be guilty
1111 of a felony and, upon conviction thereof, shall be punishable by a



1112 fine not in excess of Five Thousand Dollars (\$5,000.00) or by
1113 imprisonment in the custody of the State Department of Corrections
1114 for a term not less than one (1) year nor more than five (5)
1115 years, or by both fine and imprisonment.

1116 (3) Compliance with the criminal provisions of this act
1117 shall be enforced by the appropriate law enforcement agency, which
1118 may exercise for that purpose any authority conferred upon the
1119 agency by law.

1120 (4) When the commissioner has reasonable cause to believe
1121 that a person is violating any provision of this chapter, the
1122 commissioner, in addition to and without prejudice to the
1123 authority provided elsewhere in this chapter, may enter an order
1124 requiring the person to stop or to refrain from the violation.
1125 The commissioner may sue in any chancery court of the state having
1126 jurisdiction and venue to enjoin the person from engaging in or
1127 continuing the violation or from doing any act in furtherance of
1128 the violation. In such an action, the court may enter an order or
1129 judgment awarding a preliminary or permanent injunction.

1130 (5) The commissioner may, after notice and hearing, impose a
1131 civil penalty against any licensee if the licensee, individual
1132 required to be registered, or employee is adjudged by the
1133 commissioner to be in violation of the provisions of this chapter.
1134 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
1135 per violation and shall be deposited into the Consumer Finance
1136 Fund of the department.

1137 (6) The state may enforce its rights under the surety bond
1138 as required in Section 81-18-11 as an available remedy for the
1139 collection of any civil penalties, criminal fines or costs of
1140 investigation and/or prosecution incurred.

1141 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is
1142 reenacted as follows:

1143 81-18-45. The commissioner may employ the necessary
1144 full-time employees above the number of permanent full-time



1145 employees authorized for the department for the fiscal year 2001,
1146 to carry out and enforce the provisions of this chapter. The
1147 commissioner also may expend the necessary funds and equip and
1148 provide necessary travel expenses for those employees.

1149 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is
1150 reenacted as follows:

1151 81-18-47. (1) A licensee under this chapter shall have no
1152 liability for any act or practice done or omitted in conformity
1153 with (a) any rule or regulation of the commissioner, or (b) any
1154 rule, regulation, interpretation or approval of any other state or
1155 federal agency or any opinion of the Attorney General,
1156 notwithstanding that after such act or omission has occurred the
1157 rule, regulation, interpretation, approval or opinion is amended,
1158 rescinded, or determined by judicial or other authority to be
1159 invalid for any reason.

1160 (2) A licensee under this chapter, acting in conformity with
1161 a written interpretation or approval by an official or employee of
1162 any state or federal agency or department, shall be presumed to
1163 have acted in accordance with applicable law, notwithstanding that
1164 after such act has occurred, the interpretation or approval is
1165 amended, rescinded, or determined by judicial or other authority
1166 to be incorrect or invalid for any reason.

1167 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is
1168 reenacted as follows:

1169 81-18-49. Notwithstanding any provisions of this chapter to
1170 the contrary, mortgage companies engaging in business on or before
1171 June 1, 2000, shall be duly licensed by the department after
1172 submitting not later than January 1, 2001, the required documents
1173 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1174 the expiration of the initial licenses for such mortgage
1175 companies, the department shall renew the licenses only if the
1176 mortgage companies satisfy all of the provisions of this chapter.



1177 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is
1178 amended as follows:

1179 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1180 repealed on July 1, 2005.

1181 **SECTION 29.** This act shall take effect and be in force from
1182 and after July 1, 2002.

