

By: Representative Guice

To: Banking and Financial
ServicesHOUSE BILL NO. 788
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 81-18-1, 81-18-3, 81-18-5,
 2 81-18-7, 81-18-8, 81-18-9, 81-18-11, 81-18-13, 81-18-15, 81-18-17,
 3 81-18-19, 81-18-21, 81-18-23, 81-18-25, 81-18-27, 81-18-29,
 4 81-18-31, 81-18-33, 81-18-35, 81-18-36, 81-18-37, 81-18-39,
 5 81-18-41, 81-18-43, 81-18-45, 81-18-47 AND 81-18-49, MISSISSIPPI
 6 CODE OF 1972, WHICH CREATE THE MISSISSIPPI MORTGAGE CONSUMER
 7 PROTECTION LAW; TO AMEND REENACTED SECTION 81-18-3, MISSISSIPPI
 8 CODE OF 1972, TO DEFINE THE TERMS "BRANCH" AND "RESIDENTIAL
 9 IMMOVABLE PROPERTY" AND TO REVISE THE DEFINITIONS OF THE TERMS
 10 "LOAN ORIGINATOR" AND "MORTGAGE COMPANY"; TO AMEND REENACTED
 11 SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO REVISE THE
 12 EXEMPTIONS TO THE MORTGAGE CONSUMER PROTECTION LAW; TO PROVIDE
 13 THAT CERTAIN ENTITIES EXEMPT FROM LICENSURE MUST REGISTER AND
 14 OBTAIN A REGISTRATION CERTIFICATE FROM THE DEPARTMENT OF BANKING
 15 AND CONSUMER FINANCE; TO AMEND REENACTED SECTION 81-18-15,
 16 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPLICATION FEE IS
 17 NOT REFUNDABLE IF THE APPLICATION IS WITHDRAWN OR DENIED; TO AMEND
 18 REENACTED SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO REQUIRE
 19 BRANCH OFFICES HOLDING BRANCH LICENSES TO RENEW THAT LICENSE
 20 BEFORE A CERTAIN DATE; TO AMEND REENACTED SECTION 81-18-21,
 21 MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE EXAMINATION
 22 FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING AND
 23 CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE COMPANY;
 24 TO AMEND REENACTED SECTION 81-18-23, MISSISSIPPI CODE OF 1972, TO
 25 REVISE THE TIME PERIOD FOR FILING ANNUAL REPORTS AND TO REQUIRE
 26 NOTIFICATION TO THE COMMISSIONER OF CERTAIN EVENTS THAT MAY IMPACT
 27 THE MORTGAGE COMPANY; TO AMEND REENACTED SECTION 81-18-25,
 28 MISSISSIPPI CODE OF 1972, TO REQUIRE A LOCATION TO BE LICENSED AS
 29 A MORTGAGE COMPANY INSTEAD OF A BRANCH IN CERTAIN INSTANCES; TO
 30 AMEND REENACTED SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO
 31 AUTHORIZE THE COMMISSIONER TO MAKE PUBLIC ANY FINAL ADMINISTRATIVE
 32 ACTION IMPOSED AGAINST A LICENSEE OR EXEMPT REGISTRANT FOR
 33 VIOLATIONS OF THE CHAPTER; TO AMEND REENACTED SECTIONS 81-18-7,
 34 81-18-19, 81-18-27, 81-18-31 AND 81-18-33, MISSISSIPPI CODE OF
 35 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND SECTION
 36 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE
 37 MORTGAGE CONSUMER PROTECTION LAW; AND FOR RELATED PURPOSES.

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

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

41 81-18-1. This chapter shall be known and cited as the
 42 Mississippi Mortgage Consumer Protection Law.

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

45 81-18-3. For purposes of this chapter, the following terms
46 shall have the following meanings:

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

51 (b) "Branch" means a location of a company in or
52 outside of the state that conducts business as a mortgage company
53 on Mississippi land. A location shall be considered a branch in
54 any of the following:

55 (i) If the location is used on any type of
56 advertisement;

57 (ii) If any type of record, loan file or
58 application of the company is located at the location, with the
59 exception of unstaffed storage facilities; or

60 (iii) If a Mississippi consumer is received at the
61 location or is directed to deliver any information by any means to
62 the location.

63 (c) "Commissioner" means the Commissioner of the
64 Mississippi Department of Banking and Consumer Finance.

65 (d) "Commitment" means a statement by a lender required
66 to be licensed or registered under this chapter that sets forth
67 the terms and conditions upon which the lender is willing to make
68 a particular mortgage loan to a particular borrower.

69 (e) "Control" means the direct or indirect possession
70 of the power to direct or cause the direction of the management
71 and policies of a person, whether through the ownership of voting
72 securities, by contract or otherwise, and shall include
73 "controlling," "controlled by," and "under common control with."

74 (f) "Department" means the Department of Banking and
75 Consumer Finance of the State of Mississippi.

76 (g) "Executive officer" means the chief executive
77 officer, the president, the principal financial officer, the

78 principal operating officer, each vice president with
79 responsibility involving policy-making functions for a significant
80 aspect of a person's business, the secretary, the treasurer, or
81 any other person performing similar managerial or supervisory
82 functions with respect to any organization whether incorporated or
83 unincorporated.

84 (h) "License" means a license to act as a mortgage
85 company issued by the department under this chapter.

86 (i) "Licensee" means a person or entity who is required
87 to be licensed as a mortgage company under this chapter.

88 (j) "Loan originator" means an individual who is an
89 employee of a single mortgage company whose conduct of the
90 mortgage business is the responsibility of the company, and whose
91 job responsibilities include direct contact with borrowers during
92 the loan origination process, which may include soliciting,
93 negotiating, acquiring, arranging or making mortgage loans for
94 others, obtaining personal or financial information, assisting
95 with the preparation of loan applications or other documents,
96 quoting loan rates or terms, or providing required disclosures.
97 This individual must work for a licensed or registered company and
98 work from the registered location with the department. The term
99 does not include individuals whose job responsibilities on behalf
100 of a company are solely clerical in nature, which is defined as
101 normal office procedures, not including any duties listed in the
102 definition of "loan originator," or sales representatives of a
103 licensed Mississippi manufactured housing operation who transmits
104 information concerning a sale via mail, courier service, or
105 electronically to a licensed mortgage company or registered
106 originator.

107 (k) "Make a mortgage loan" means to advance funds,
108 offer to advance funds or make a commitment to advance funds to a
109 borrower.

110 (l) "Misrepresent" means to make a false statement of a
111 substantive fact or to engage in, with intent to deceive or
112 mislead, any conduct that leads to a false belief that is material
113 to the transaction.

114 (m) "Mortgage company" means any person or entity who
115 directly, indirectly or by electronic activity, solicits, places
116 or negotiates mortgage loans for others, or offers to solicit,
117 place or negotiate mortgage loans for others. Unless indicated
118 otherwise, the use of the word "company" in this chapter means
119 "mortgage company" as defined in this paragraph (m).

120 (n) "Mortgage loan" means a loan or agreement to extend
121 credit made to a natural person, which loan is secured by a deed
122 to secure debt, security deed, mortgage, security instrument, deed
123 of trust or other document representing a security interest or
124 loan upon any interest in a lot intended for residential purposes,
125 or single- to four-family residential property located in
126 Mississippi, regardless of where made, including the renewal or
127 refinancing of any loan.

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

131 (p) "Principal" means a natural person who, directly or
132 indirectly, owns or controls an ownership interest of twenty-five
133 percent (25%) or more in a corporation or any other form of
134 business organization, regardless of whether the natural person
135 owns or controls the ownership interest through one or more
136 natural persons or one or more proxies, powers of attorney,
137 nominees, corporations, associations, limited liability companies,
138 partnerships, trusts, joint-stock companies, other entities or
139 devises, or any combination thereof.

140 (q) "Records" or "documents" means any item in hard
141 copy or produced in a format of storage commonly described as
142 electronic, imaged, magnetic, microphotographic or otherwise, and

143 any reproduction so made shall have the same force and effect as
144 the original thereof and be admitted in evidence equally with the
145 original.

146 (r) "Registrant" means any person required to register
147 under Section 81-18-5(m).

148 (s) "Residential immovable property" means property
149 such as, but not limited to, vinyl siding, roofs, pools, spas,
150 appliances, windows, home additions, landscaping, fencing, etc.

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

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

159 (v) "Wholesale lender" means any person or entity who
160 makes a mortgage loan, or purchases or services mortgage loans,
161 utilizing the services of a person exempted, licensed or
162 registered under this chapter.

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

165 81-18-5. The following persons are not subject to the
166 provisions of this chapter, unless otherwise provided in this
167 chapter:

168 (a) Any person authorized to engage in business as a
169 bank holding company or as a financial holding company, or any
170 wholly owned subsidiary thereof; however, the wholly owned
171 subsidiary must file a notification statement that includes the
172 following information:

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

175 (ii) The name and address of the parent financial
176 institution;

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

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

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

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

187 The notification statement must be filed before beginning to
188 conduct a mortgage business in this state and must be updated by
189 the entity as the information changes. Any entity that fails to
190 file the notification statement or keep the information current
191 will be immediately subject to the licensing requirements of
192 Section 81-18-9. This notification statement must be renewed
193 annually as of September 30 of each year with a renewal fee of One
194 Hundred Dollars (\$100.00).

195 (b) Any person authorized to engage in business as a
196 bank, credit card bank, savings bank, savings institution, savings
197 and loan association, building and loan association, trust company
198 or credit union under the laws of the United States, any state or
199 territory of the United States, or the District of Columbia, the
200 deposits of which are federally insured, or any wholly owned
201 subsidiary thereof.

202 (c) Any person who is a wholesale lender as defined in
203 Section 81-18-3(v) or who is registered by * * * the Federal
204 National Mortgage Association, * * * the Federal Home Loan
205 Mortgage Corporation, the Government National Mortgage Association
206 or the United States Department of Housing and Urban
207 Development; * * * however, * * * persons who qualify for

208 registration under this paragraph shall be subject to Sections
209 81-18-11, 81-18-13, 81-18-21, 81-18-23, 81-18-25, 81-18-27,
210 81-18-31, 81-18-33, 81-18-35, 81-18-39 and 81-18-43. Upon the
211 request of the commissioner, those persons shall submit copies of
212 any reports as required by the aforementioned governmental entity
213 to which the person is subject for licensing, supervision or
214 auditing. The department shall have the authority to investigate
215 all consumer complaints concerning Mississippi residential
216 property. To qualify for registration, the applicant shall
217 register for a registration certificate with the department and
218 pay an initial fee of Three Hundred Dollars (\$300.00). With each
219 application for renewal of the registration certificate, the
220 applicant shall pay a renewal fee of One Hundred Fifty Dollars
221 (\$150.00) and provide the department with evidence that the
222 applicant is still licensed, supervised or audited by the
223 governmental entity. If the renewal fee remains unpaid for thirty
224 (30) days after August 31, the registration shall expire, but not
225 before September 30 of any year for which the annual renewal fee
226 has been paid. If any person engages in business without paying
227 the fees provided for in this paragraph before commencing business
228 or before the expiration of the person's current registration, as
229 the case may be, then the person shall be liable for the full
230 amount of the registration fee, plus a penalty in an amount not to
231 exceed Twenty-five Dollars (\$25.00) for each day that the person
232 has engaged in business without a registration certificate or
233 after the expiration of a registration certificate. All
234 registration fees and penalties shall be paid into the Consumer
235 Finance Fund of the department. If the registered company has a
236 physical branch location in Mississippi, then this location must
237 be registered with the department as a branch in accordance with
238 Sections 81-18-17 and 81-18-25.

239 (d) Any lender holding a license under the Small Loan
240 Regulatory Law (Section 75-67-101 et seq.) and the Small Loan
241 Privilege Tax Law (Section 75-67-201 et seq.).

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

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

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

253 (h) Any person who is employed by and representing a
254 Mississippi manufactured housing operation and who makes a
255 mortgage loan for an investment or on a whole loan basis; any
256 person who engages in owner-financing; or any person engaged in
257 the financing of a consumer loan secured by a mortgage on
258 residential immovable property in not more than twelve (12)
259 Mississippi residential mortgage loans, or who contracts for no
260 more than twelve (12) Mississippi residential loan transactions,
261 over the licensing period provided in this chapter, including
262 those acting as originators. The twelve (12) transactions are
263 cumulative to any combination of operations owned or controlled by
264 any one individual, sole proprietorship, corporation, limited
265 liability company, partnership, trust or any other group of
266 individuals, however organized. However, within thirty (30) days
267 of loan closure, the person shall submit to the commissioner a fee
268 of Ten Dollars (\$10.00), which is not chargeable to the consumer,
269 and written notification containing such loan information as
270 required by the commissioner, seeking approval to engage in a
271 residential mortgage transaction without first complying with the

272 licensing provisions of this chapter. Any person who enters into
273 more than twelve (12) of those transactions in the licensing
274 period provided in this chapter must be licensed according to the
275 procedures prescribed in this chapter. The fees paid for
276 registration during a licensing period will be deducted from the
277 cost of an initial license.

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

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

283 (k) The United States of America, the State of
284 Mississippi or any other state, and any agency, division or
285 corporate instrumentality thereof including, but not limited to,
286 the Mississippi Home Corporation, Rural Economic Community
287 Development (RECD), Habitat for Humanity, the Federal National
288 Mortgage Association (FNMA), the Federal Home Loan Mortgage
289 Company (FHLMC), the Government National Mortgage Association
290 (GNMA), the United States Department of Housing and Urban
291 Development (HUD), the Federal Housing Administration (FHA), the
292 Department of Veterans Affairs (VA), the Farmers Home
293 Administration (FmHA), and the Federal Land Banks and Production
294 Credit Associations.

295 (l) Nonprofit corporations exempt from federal taxation
296 under Section 501(c) of the Internal Revenue Code making mortgage
297 loans to promote home ownership or home improvements for the
298 disadvantaged.

299 (m) Loan originators * * * as defined under Section
300 81-18-3(j) are exempt from the licensing requirements of this
301 chapter except for Sections 81-18-9(3)(d), 81-18-13 and
302 81-18-15(3), but shall register with the department as a loan
303 originator. Any natural person required to register under this
304 paragraph (m) shall register initially with the department and

305 thereafter file an application for renewal of registration with
306 the department on or before September 30 of each year providing
307 the department with such information as the department may
308 prescribe by regulation, including, but not limited to, the
309 business addresses where the person engages in any business
310 activities covered by this chapter and a telephone number that
311 customers may use to contact the person. This initial
312 registration of a loan originator shall be accompanied by a fee of
313 One Hundred Dollars (\$100.00). Annual renewals of this
314 registration shall require a fee of Fifty Dollars (\$50.00). No
315 person required to register under this paragraph (m) shall
316 transact business in this state directly or indirectly as a
317 mortgage company or mortgage lender unless that person is
318 registered with the department.

319 **SECTION 4.** Section 81-18-7, Mississippi Code of 1972, is
320 reenacted and amended as follows:

321 81-18-7. (1) On and after July 1, 2000, no person or
322 natural person shall transact business in this state, directly or
323 indirectly, as a mortgage company unless he or she is licensed or
324 registered as a mortgage company by the department or is a person
325 exempted from the licensing requirements under Section 81-18-5.

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

330 (3) On and after July 1, 2000, every person who directly or
331 indirectly controls a person who violates this section, including
332 a general partner, executive officer, joint venturer, contractor,
333 or director of the person, violates this section to the same
334 extent as the person, unless the person whose violation arises
335 under this subsection shows by a preponderance of evidence the
336 burden of proof that he or she did not know and, in the exercise
337 of reasonable care, could not have known of the existence of the

338 facts by reason of which the original violation is alleged to
339 exist.

340 **SECTION 5.** Section 81-18-8, Mississippi Code of 1972, is
341 reenacted as follows:

342 81-18-8. Municipalities and counties in this state may enact
343 ordinances that are in compliance with, but not more restrictive
344 than, the provisions of this chapter. Any order, ordinance or
345 regulation existing on July 1, 2002, or enacted on or after July
346 1, 2002, that conflicts with this provision shall be null and
347 void.

348 **SECTION 6.** Section 81-18-9, Mississippi Code of 1972, is
349 reenacted as follows:

350 81-18-9. (1) An application for a license under this
351 chapter shall be made in writing and in the form as the department
352 may prescribe.

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

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

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

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

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

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

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

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

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

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

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

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

393 (h) In lieu of documentation of two (2) years
394 experience in mortgage lending by an applicant, documentation of
395 passage of an examination covering mortgage lending, approved by
396 the department.

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

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

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

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

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

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

414 (ii) Partners in a partnership or principal owners
415 of a limited liability company that are or will be actively
416 engaged in the daily operation of a mortgage brokering or lending
417 business in the State of Mississippi;

418 (iii) The chief executive officer of a
419 corporation, or his designee, which supervises the Mississippi
420 location(s) and any shareholders owning twenty-five percent (25%)
421 or more of the outstanding shares of the corporation; and

422 (iv) All loan originators.

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

425 81-18-11. (1) For purposes of Section 81-18-9, the
426 definitions of the classes of companies and their respective
427 minimum amounts of surety bonds will be:

428 (a) "Correspondent lender" shall be defined as a
429 company that directly or indirectly solicits, processes, places or
430 negotiates mortgage loans for others, or offers to solicit,
431 process, place or negotiate mortgage loans for others, that uses
432 its own funds for closing and may hold loans and may service those
433 loans for a period of time not to exceed six (6) months before
434 selling the loan in the secondary market. The amount of the

435 surety bond for correspondent lenders shall be Fifty Thousand
436 Dollars (\$50,000.00).

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

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

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

461 **SECTION 8.** Section 81-18-13, Mississippi Code of 1972, is
462 reenacted as follows:

463 81-18-13. (1) Upon receipt of an application for licensure
464 or registration, which shall include the required set of
465 fingerprints from any local law enforcement agency, the department
466 shall conduct such an investigation as it deems necessary to
467 determine that the applicant and its officers, directors and

468 principals are of good character and ethical reputation; that the
469 applicant demonstrates reasonable financial responsibility; and
470 that the applicant has reasonable policies and procedures to
471 receive and process customer grievances and inquiries promptly and
472 fairly.

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

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

479 (4) The department shall not issue a license or registration
480 certificate if it finds that the applicant, or any person who is a
481 director, officer, partner or principal of the applicant, has been
482 convicted within ten (10) years of the application for license or
483 registration of: (a) a felony in any jurisdiction; or (b) a crime
484 that, if committed within this state, would constitute a felony
485 under the laws of this state; or (c) a misdemeanor in any
486 jurisdiction in which fraud is an essential element, including,
487 but not limited to, forgery, bribery, embezzlement or making a
488 fraudulent or false statement. For the purposes of this chapter,
489 a person shall be deemed to have been convicted of a crime if the
490 person has pleaded guilty to a crime before a court or federal
491 magistrate, or plea of nolo contendere, or has been found guilty
492 of a crime by the decision or judgment of a court or federal
493 magistrate or by the verdict of a jury, irrespective of the
494 pronouncement of sentence or the suspension of a sentence, unless
495 the plea of guilty, or the decision, judgment or verdict, has been
496 set aside, reversed or otherwise abrogated by lawful judicial
497 process, or unless the person convicted of the crime has received
498 a pardon from the President of the United States or the Governor
499 or other pardoning authority in the jurisdiction where the
500 conviction was obtained.

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

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

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

530 (8) A person shall not be indemnified for any act covered by
531 this chapter or for any fine or penalty incurred under this
532 chapter as a result of any violation of this chapter or
533 regulations adopted under this chapter, due to the legal form,

534 corporate structure, or choice of organization of the person,
535 including, but not limited to, a limited liability corporation.

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

538 81-18-15. (1) Each license shall remain in full force and
539 effect until relinquished, suspended, revoked or expired. With
540 each initial application for a license, the applicant shall pay to
541 the commissioner a license fee of Seven Hundred Fifty Dollars
542 (\$750.00), and on or before August 31 of each year thereafter, an
543 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
544 If the annual renewal fee remains unpaid thirty (30) days after
545 August 31, the license shall expire, but not before September 30
546 of any year for which the annual renewal fee has been paid. If
547 any person engages in business as provided for in this chapter
548 without paying the license fee provided for in this subsection
549 before commencing business or before the expiration of the
550 person's current license, as the case may be, then the person
551 shall be liable for the full amount of the license fee, plus a
552 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
553 for each day that the person has engaged in such business without
554 a license or after the expiration of a license. All licensing
555 fees and penalties shall be paid into the Consumer Finance Fund of
556 the department. If the application is withdrawn or denied, the
557 application fee is not refundable.

558 (2) Any licensee making timely and proper application for a
559 license renewal shall be permitted to continue to operate under
560 its existing license until its application is approved or
561 rejected, but shall not be released from or otherwise indemnified
562 for any act covered by this chapter or for any penalty incurred
563 under this chapter as a result of any violation of this chapter or
564 regulations adopted under this chapter, pending final approval or
565 disapproval of the application for the license renewal.

566 (3) Each application for licensing renewal or registration
567 renewal shall include evidence of the satisfactory completion of
568 at least twelve (12) hours of approved continuing education in
569 primary and subordinated financing transactions by the officers
570 and principals who are or will be actively engaged in the daily
571 operation of a mortgage company in the State of Mississippi and
572 registered originators. For purposes of this subsection (3),
573 approved courses shall be those as approved by the Mississippi
574 Mortgage Bankers Association, the Education Committee of the
575 National Association of Mortgage Brokers or the Mississippi
576 Association of Mortgage Brokers, who shall submit to the
577 department a listing of approved schools, courses, programs and
578 special training sessions. However, each application for
579 licensing renewal or registration renewal of manufactured housing
580 licensees or originators shall include evidence of the
581 satisfactory completion of at least twelve (12) hours of
582 continuing education, of which eight (8) hours must be approved by
583 the Commissioner of Insurance and four (4) hours consisting of
584 courses in primary and subordinated financing transactions must be
585 approved by the Mississippi Manufactured Housing Association,
586 which shall submit to the department a listing of those approved
587 schools, courses, programs and special training sessions. A
588 manufactured housing licensee or originator may submit evidence of
589 completion of courses that have been approved by the Mississippi
590 Mortgage Bankers Association, the Education Committee of the
591 National Association of Mortgage Brokers or the Mississippi
592 Association of Mortgage Brokers to satisfy the four-hour
593 requirement of courses in primary and subordinated financing
594 transactions.

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

597 81-18-17. (1) Each license issued under this chapter shall
598 state the address of the licensee's principal place of business
599 and the name of the licensee.

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

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

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

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

610 (6) No licensee shall open a branch office in this state or
611 a branch office outside this state from which the licensee has
612 direct contact with Mississippi consumers regarding origination or
613 brokering Mississippi property, without prior approval of the
614 department. An application for any branch office shall be made in
615 writing on a form prescribed by the department, which shall
616 include at least evidence of compliance with subsection (1) of
617 Section 81-18-25 as to that branch and shall be accompanied by
618 payment of a nonrefundable application fee of One Hundred Dollars
619 (\$100.00). The application shall be approved unless the
620 department finds that the applicant has not conducted business
621 under this chapter in accordance with law. The application shall
622 be deemed approved if notice to the contrary has not been mailed
623 by the department to the applicant within thirty (30) days of the
624 date that the application is received by the department. After
625 approval, the applicant shall give written notice to the
626 department within ten (10) days of the commencement of business at
627 the branch office. Each branch office that currently holds a
628 branch license shall renew that branch license before the
629 expiration date of the main company license, on or before

630 September 30. The license renewal shall be on a form prescribed
631 by the department with a nonrefundable renewal application fee of
632 Twenty-five Dollars (\$25.00).

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

635 81-18-19. (1) Except as provided in this section, no person
636 shall acquire directly or indirectly twenty-five percent (25%) or
637 more of the voting shares of a corporation or twenty-five percent
638 (25%) or more of the ownership of any other entity licensed to
639 conduct business under this chapter unless it first files an
640 application in accordance with the requirements prescribed in
641 Section 81-18-9.

642 (2) Upon the filing and investigation of an application, the
643 department shall permit the applicant to acquire the interest in
644 the licensee if it is satisfied and finds that the applicant and
645 its members, if applicable, its directors and officers, if a
646 corporation, and any proposed new directors and officers have
647 provided its surety bond and have the character, reputation and
648 experience to warrant belief that the business will be operated
649 fairly and in accordance with the law. If the application is
650 denied, the department shall notify the applicant of the denial
651 and the reasons for the denial.

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

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

658 (a) The acquisition of an interest in a licensee
659 directly or indirectly including an acquisition by merger or
660 consolidation by or with a person registered under this chapter or
661 exempt from this chapter under Section 81-18-5.

662 (b) The acquisition of an interest in a licensee
663 directly or indirectly including an acquisition by merger or
664 consolidation by or with a person affiliated through common
665 ownership with the licensee.

666 (c) The acquisition of an interest in a licensee by a
667 person by bequest, device, gift or survivorship or by operation of
668 law.

669 (5) A person acquiring an interest in a licensee in a
670 transaction that is requesting exemption from filing an
671 application for approval of the application shall send a written
672 request to the department for an exemption within thirty (30) days
673 before the closing of the transaction.

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

676 81-18-21. (1) Any person required to be licensed under this
677 chapter shall maintain in its offices, or such other location as
678 the department shall permit, the books, accounts and records
679 necessary for the department to determine whether or not the
680 person is complying with the provisions of this chapter and the
681 rules and regulations adopted by the department under this
682 chapter. These books, accounts and records shall be maintained
683 apart and separate from any other business in which the person is
684 involved and may represent historical data for three (3) years
685 preceding the date of the last license application date forward.
686 The books, accounts and records shall be kept in a secure location
687 under conditions that will not lead to their damage or
688 destruction. If the mortgage company wishes to keep the files in
689 a location other than the location listed on the license or
690 registration certificate, then the company first must submit a
691 written request on a form designated by the department and gain
692 written approval from the commissioner before storing the files in
693 a different location.

694 (2) To assure compliance with the provisions of this
695 chapter, the department may examine the books and records of any
696 licensee without notice during normal business hours. The
697 commissioner shall charge the licensee an examination fee in an
698 amount not less than Three Hundred Dollars (\$300.00) nor more than
699 Six Hundred Dollars (\$600.00) for each office or location within
700 the State of Mississippi, plus any actual expenses incurred while
701 examining the licensee's records or books that are located outside
702 the State of Mississippi. However, in no event shall a licensee
703 be examined more than once in a two-year period unless for cause
704 shown based upon consumer complaint and/or other exigent reasons
705 as determined by the commissioner.

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

720 (4) The department, in its discretion, may disclose
721 information concerning any violation of this chapter or any rule,
722 regulation, or order under this chapter, provided the information
723 is derived from a final order of the department.

724 (5) Examinations and investigations conducted under this
725 chapter and information obtained by the department, except as

726 provided in subsection (4) of this section, in the course of its
727 duties under this chapter are confidential.

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

735 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is
736 reenacted and amended as follows:

737 81-18-23. (1) Each company shall annually, on or before
738 January 31, file a written report with the department containing
739 the December 31 information that the department may reasonably
740 require concerning the company's business and operations during
741 the preceding calendar year. The report shall be made in the form
742 prescribed by the department.

743 (2) Any company that fails to file with the department by
744 January 31 the report required by this section shall be subject to
745 a late penalty of Ten Dollars (\$10.00) for each day after January
746 31 the report is delinquent, but in no event shall the aggregate
747 of late penalties exceed Two Hundred Dollars (\$200.00).

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

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

754 (5) Within fifteen (15) days of the occurrence of any of the
755 following events, a company shall file a written report with the
756 commissioner describing the event and its expected impact on the
757 activities of the company in this state:

758 (a) The filing for bankruptcy or reorganization by the
759 company;

760 (b) The institution of revocation or suspension
761 proceedings against the company by any state or governmental
762 authority;

763 (c) Any felony indictment of the company or any of its
764 directors, executive officers, principals or loan originators; or

765 (d) Any felony conviction of the company or any of its
766 directors, executive officers, principals or loan originators.

767 (6) If the owner or principal of a company is involved in a
768 civil action concerning the company, then he shall notify the
769 commissioner in writing within sixty (60) days after the initial
770 filing of the civil action.

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

773 81-18-25. (1) Each principal place of business and branch
774 office in the state shall meet all of the following requirements:

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

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

784 (c) Display a permanent sign outside the place of
785 business readily visible to the general public, unless the display
786 of sign violates local zoning ordinances or restrictive covenants.
787 The sign must contain the name of the licensee and the words
788 "Mississippi Licensed Mortgage Company" or "Mississippi Registered
789 Mortgage Company."

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

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

796 (4) If one (1) of the following is correct, then that
797 location shall be licensed as a mortgage company under this
798 chapter and not as a branch:

799 (a) It is a separate entity operating as an independent
800 business or mortgage operation which is not under the direct
801 control, management supervision and responsibility of the
802 licensee;

803 (b) The licensee or registered company is not the
804 lessee or owner of the branch and the branch is not under the
805 direct and daily ownership, control, management and supervision of
806 the licensee or registered company;

807 (c) All assets and liabilities of the branch are not
808 assets and liabilities of the licensee, and all income and
809 expenses of the branch are income and expenses of the licensee and
810 properly accounted for in the financial records and tax returns of
811 the licensee; or

812 (d) All practices, policies and procedures, including,
813 but not limited to, those relating to employment and operations,
814 are not originated and established by the licensee or registered
815 company and are not applied consistently to the main office and
816 all branches.

817 Nothing in this subsection (4) shall affect or change, or be
818 construed as affecting or changing, the existing statutory law and
819 common law on agency, principal and agent, independent
820 contractors, and parent and subsidiary companies.

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

823 81-18-27. (1) No person required to be licensed or
824 registered under this chapter shall:

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

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

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

834 (d) Improperly refuse to issue a satisfaction of a
835 mortgage loan.

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

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

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

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

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

861 (i) Lack of substantial benefit to the borrower;
862 (ii) The probability that full payment of the loan
863 cannot be made by the borrower;

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

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

868 (v) That the person does business under a trade
869 name that misrepresents or tends to misrepresent that the person
870 is a bank, trust company, savings bank, savings and loan
871 association, credit union, or insurance company.

872 (j) Charge or collect any direct payment, compensation
873 or advance fee from a borrower unless and until a loan is actually
874 found, obtained and closed for that borrower, and in no event
875 shall that direct payment, compensation or advance fee exceed
876 seven and ninety-five one-hundredths percent (7.95%) of the
877 original principal amount of the loan, and any such direct
878 payments, compensation or advance fees shall be included in all
879 annual percentage rate (APR) calculations if required under
880 Regulation Z of the federal Truth in Lending Act (TILA). A direct
881 payment, compensation or advance fee as defined in this section
882 shall not include:

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

886 (ii) Any indirect payment to a licensed mortgage
887 company by a lender if those fees are not required to be disclosed

888 under the Real Estate Settlement Procedures Act (RESPA);

889 (iii) Any indirect payment or compensation by a
890 lender to a licensed mortgage company required to be disclosed by
891 the licensed mortgage company under RESPA, provided that the
892 payment or compensation is disclosed to the borrower by the
893 licensed mortgage company on a good faith estimate of costs, is
894 included in the APR if required under Regulation Z of TILA, and is
895 made pursuant to a written agreement between the licensed mortgage
896 company and the borrower as may be required by Section 81-18-33;
897 or

898 (iv) A fee not to exceed one percent (1%) of the
899 principal amount of a loan for construction, provided that a
900 binding commitment for the loan has been obtained for the
901 prospective borrower.

902 (k) Pay to any person not licensed or registered under
903 the provisions of this chapter any commission, bonus or fee in
904 connection with arranging for or originating a mortgage loan for a
905 borrower, except that a registered loan originator may be paid a
906 bonus, commission, or fee by his or her licensed employer.

907 (1) Refuse to provide the loan payoff within three (3)
908 business days of an oral or written request from a borrower or
909 third party. Proof of authorization of the borrower shall be
910 submitted for a third-party request.

911 (2) A mortgage company shall only broker a residential
912 mortgage loan to a mortgage company licensed or registered under
913 this chapter or to a person exempt from licensure under the
914 provisions of this chapter.

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

917 81-18-29. The department shall promulgate those rules and
918 regulations, not inconsistent with law, necessary for the
919 enforcement of this chapter.

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

922 81-18-31. The department shall promulgate regulations
923 governing the advertising of mortgage loans, including, but not
924 limited to, the following requirements:

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

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

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

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

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

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

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

950 (e) That no licensee shall advertise its services in
951 Mississippi in any media disseminated primarily in this state,
952 whether print or electronic, without the words "Mississippi

953 Licensed Mortgage Company" or "Mississippi Registered Mortgage
954 Company."

955 **SECTION 18.** Section 81-18-33, Mississippi Code of 1972, is
956 reenacted and amended as follows:

957 81-18-33. The individual borrower files of a mortgage
958 company shall contain at least the following:

959 (a) A mortgage origination agreement provided to the
960 borrower containing at least * * * the following statements:

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

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

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

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

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

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

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

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

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

984 and

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

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

991 81-18-35. Each licensee shall maintain a journal of mortgage
992 transactions at the principal place of business as stated on its
993 license, which shall include at least the following information:

994 (a) Name of applicant;

995 (b) Date of application; and

996 (c) Disposition of loan application, indicating date of
997 loan funding, loan denial, withdrawal and name of lender if
998 applicable.

999 **SECTION 20.** Section 81-18-36, Mississippi Code of 1972, is
1000 reenacted as follows:

1001 81-18-36. (1) (a) All monies paid to a mortgage company
1002 for payment of taxes, loan commitment deposits, work completion
1003 deposits, appraisals, credit reports or insurance premiums on
1004 property that secures any loan made or serviced by the mortgage
1005 company shall be deposited in an account that is insured by the
1006 Federal Deposit Insurance Corporation or the National Credit Union
1007 Administration and shall be kept separate, distinct, and apart
1008 from funds belonging to the mortgage company.

1009 (b) The funds, when deposited, are to be designated as
1010 an "escrow account," or under some other appropriate name,
1011 indicating that the funds are not the funds of the mortgage
1012 company.

1013 (2) The mortgage company shall, upon reasonable notice,
1014 account to any debtor whose property secures a loan made by the
1015 mortgage company for any funds which that person has paid to the
1016 mortgage company for the payment of taxes or insurance premiums on
1017 the property in question.

1018 (3) The mortgage company shall, upon reasonable notice,
1019 account to the commissioner for all funds in the company's escrow
1020 account.

1021 (4) Escrow accounts are not subject to execution or
1022 attachment on any claim against the mortgage company.

1023 (5) It is unlawful for any mortgage company knowingly to
1024 keep or cause to be kept any funds or money in any bank or other
1025 financial institution under the heading of "escrow account" or any
1026 other name designating the funds or monies belonging to the
1027 debtors of the mortgage company, except actual funds paid to the
1028 mortgage company for the payment of taxes and insurance premiums
1029 on property securing loans made or serviced by the company.

1030 **SECTION 21.** Section 81-18-37, Mississippi Code of 1972, is
1031 reenacted as follows:

1032 81-18-37. (1) The department may suspend or revoke any
1033 license or registration for any reason that would have been
1034 grounds for refusal to issue an original license or registration
1035 or for:

1036 (a) A violation of any provision of this chapter or any
1037 rule or regulation adopted under this chapter;

1038 (b) Failure of the licensee or registrant to pay,
1039 within thirty (30) days after it becomes final and nonappealable,
1040 a judgment recovered in any court within this state by a claimant
1041 or creditor in an action arising out of the licensee's or
1042 registrant's business in this state as a mortgage company.

1043 (2) Notice of the department's intention to enter an order
1044 denying an application for a license or registration under this
1045 chapter or of an order suspending or revoking a license or
1046 registration under this chapter shall be given to the applicant,
1047 licensee or registrant in writing, sent by registered or certified
1048 mail addressed to the principal place of business of the
1049 applicant, licensee or registrant. Within thirty (30) days of the
1050 date of the notice of intention to enter an order of denial,

1051 suspension or revocation under this chapter, the applicant,
1052 licensee or registrant may request in writing a hearing to contest
1053 the order. If a hearing is not requested in writing within thirty
1054 (30) days of the date of the notice of intention, the department
1055 shall enter a final order regarding the denial, suspension or
1056 revocation. Any final order of the department denying, suspending
1057 or revoking a license or registration shall state the grounds upon
1058 which it is based and shall be effective on the date of issuance.
1059 A copy of the final order shall be forwarded promptly by
1060 registered or certified mail addressed to the principal place of
1061 business of the applicant, licensee or registrant.

1062 **SECTION 22.** Section 81-18-39, Mississippi Code of 1972, is
1063 reenacted as follows:

1064 81-18-39. (1) For purposes of this section, the term
1065 "person" shall be construed to include any officer, director,
1066 employee, affiliate or other person participating in the conduct
1067 of the affairs of the person subject to the orders issued under
1068 this section.

1069 (2) If the department reasonably determines that a person
1070 required to be licensed or registered under this chapter has
1071 violated any law of this state or any order or regulation of the
1072 department, the department may issue a written order requiring the
1073 person to cease and desist from unlawful or unauthorized
1074 practices. In the case of an unlawful purchase of mortgage loans,
1075 the cease and desist order to a purchaser shall constitute the
1076 knowledge required under this section for any subsequent
1077 violations.

1078 (3) Any person required to be licensed or registered under
1079 this chapter who has been deemed by the commissioner, after notice
1080 and hearing, to have violated the terms of any order properly
1081 issued by the department under this section shall be liable for a
1082 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1083 The department, in determining the amount of the penalty, shall

1084 take into account the appropriateness of the penalty relative to
1085 the size of the financial resources of the person, the good faith
1086 efforts of the person to comply with the order, the gravity of the
1087 violation, the history of previous violations by the person, and
1088 other factors or circumstances that contributed to the violation.
1089 The department may compromise, modify or refund any penalty that
1090 has been imposed under this section. Any person assessed a
1091 penalty as provided in this subsection shall have the right to
1092 request a hearing on the amount of the penalty within ten (10)
1093 days after receiving notification of the assessment. If no
1094 hearing is requested within ten (10) days of the receipt of the
1095 notice, the penalty shall be final except as to judicial review in
1096 the Chancery Court of the First Judicial District of Hinds County.
1097 Upon the filing of a petition for judicial review, the court shall
1098 issue an order to the licensee requiring the licensee to show
1099 cause why it should not be entered. If the court determines,
1100 after a hearing upon the merits or after failure of the person to
1101 appear when so ordered, that the order of the department was
1102 properly issued, it shall grant the penalty sought by the
1103 department.

1104 **SECTION 23.** Section 81-18-41, Mississippi Code of 1972, is
1105 reenacted as follows:

1106 81-18-41. Nothing in this chapter shall preclude a person
1107 whose license or registration has been suspended or revoked from
1108 continuing to service mortgage loans pursuant to servicing
1109 contracts in existence at the time of the suspension or
1110 revocation.

1111 **SECTION 24.** Section 81-18-43, Mississippi Code of 1972, is
1112 reenacted and amended as follows:

1113 81-18-43. (1) In addition to any other penalty that may be
1114 applicable, any licensee, individual required to be registered, or
1115 employee who willfully violates any provision of this chapter, or
1116 who willfully makes a false entry in any document specifically

1117 required by this chapter, shall be guilty of a misdemeanor and,
1118 upon conviction thereof, shall be punishable by a fine not in
1119 excess of One Thousand Dollars (\$1,000.00) per violation or false
1120 entry.

1121 (2) In addition to any other penalty that may be applicable,
1122 any licensee, individual required to be registered, or employee
1123 who fails to make a record of a mortgage transaction and
1124 subsequently sells or disposes of the mortgage from that
1125 transaction shall be punished as follows:

1126 (a) For a first offense, the licensee, individual
1127 required to be registered, or employee shall be guilty of a
1128 misdemeanor and, upon conviction thereof, shall be punishable by a
1129 fine not in excess of One Thousand Dollars (\$1,000.00) or by
1130 imprisonment in the county jail for not more than one (1) year, or
1131 both fine and imprisonment;

1132 (b) For a second or subsequent offense, the licensee,
1133 individual required to be registered, or employee shall be guilty
1134 of a felony and, upon conviction thereof, shall be punishable by a
1135 fine not in excess of Five Thousand Dollars (\$5,000.00) or by
1136 imprisonment in the custody of the State Department of Corrections
1137 for a term not less than one (1) year nor more than five (5)
1138 years, or by both fine and imprisonment.

1139 (3) Compliance with the criminal provisions of this section
1140 shall be enforced by the appropriate law enforcement agency, which
1141 may exercise for that purpose any authority conferred upon the
1142 agency by law.

1143 (4) When the commissioner has reasonable cause to believe
1144 that a person is violating any provision of this chapter, the
1145 commissioner, in addition to and without prejudice to the
1146 authority provided elsewhere in this chapter, may enter an order
1147 requiring the person to stop or to refrain from the violation.
1148 The commissioner may sue in any chancery court of the state having
1149 jurisdiction and venue to enjoin the person from engaging in or

1150 continuing the violation or from doing any act in furtherance of
1151 the violation. In such an action, the court may enter an order or
1152 judgment awarding a preliminary or permanent injunction.

1153 (5) The commissioner may, after notice and hearing, impose a
1154 civil penalty against any licensee if the licensee, individual
1155 required to be registered, or employee is adjudged by the
1156 commissioner to be in violation of the provisions of this chapter.
1157 The civil penalty shall not exceed Five Hundred Dollars (\$500.00)
1158 per violation and shall be deposited into the Consumer Finance
1159 Fund of the department.

1160 (6) The commissioner may make public any final
1161 administrative action imposed against a licensee or registrant for
1162 a violation of this chapter, including cease and desist orders,
1163 civil monetary penalties, license suspensions, revocations or
1164 application denials.

1165 (7) The state may enforce its rights under the surety bond
1166 as required in Section 81-18-11 as an available remedy for the
1167 collection of any civil penalties, criminal fines or costs of
1168 investigation and/or prosecution incurred.

1169 **SECTION 25.** Section 81-18-45, Mississippi Code of 1972, is
1170 reenacted as follows:

1171 81-18-45. The commissioner may employ the necessary
1172 full-time employees above the number of permanent full-time
1173 employees authorized for the department for the fiscal year 2001,
1174 to carry out and enforce the provisions of this chapter. The
1175 commissioner also may expend the necessary funds and equip and
1176 provide necessary travel expenses for those employees.

1177 **SECTION 26.** Section 81-18-47, Mississippi Code of 1972, is
1178 reenacted as follows:

1179 81-18-47. (1) A licensee under this chapter shall have no
1180 liability for any act or practice done or omitted in conformity
1181 with (a) any rule or regulation of the commissioner, or (b) any
1182 rule, regulation, interpretation or approval of any other state or

1183 federal agency or any opinion of the Attorney General,
1184 notwithstanding that after such act or omission has occurred the
1185 rule, regulation, interpretation, approval or opinion is amended,
1186 rescinded, or determined by judicial or other authority to be
1187 invalid for any reason.

1188 (2) A licensee under this chapter, acting in conformity with
1189 a written interpretation or approval by an official or employee of
1190 any state or federal agency or department, shall be presumed to
1191 have acted in accordance with applicable law, notwithstanding that
1192 after such act has occurred, the interpretation or approval is
1193 amended, rescinded, or determined by judicial or other authority
1194 to be incorrect or invalid for any reason.

1195 **SECTION 27.** Section 81-18-49, Mississippi Code of 1972, is
1196 reenacted as follows:

1197 81-18-49. Notwithstanding any provisions of this chapter to
1198 the contrary, mortgage companies engaging in business on or before
1199 June 1, 2000, shall be duly licensed by the department after
1200 submitting not later than January 1, 2001, the required documents
1201 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1202 the expiration of the initial licenses for such mortgage
1203 companies, the department shall renew the licenses only if the
1204 mortgage companies satisfy all of the provisions of this chapter.

1205 **SECTION 28.** Section 81-18-51, Mississippi Code of 1972, is
1206 amended as follows:

1207 81-18-51. Sections 81-18-1 through 81-18-49 shall stand
1208 repealed on July 1, 2007.

1209 **SECTION 29.** This act shall take effect and be in force from
1210 and after its passage.