

By: Senator(s) Jackson (15th)

To: Business and Financial  
InstitutionsSENATE BILL NO. 2983  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 81-18-1, MISSISSIPPI CODE OF 1972, TO  
2 CHANGE THE NAME OF THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION  
3 LAW TO THE MISSISSIPPI S.A.F.E. MORTGAGE LICENSING ACT OF 2009; TO  
4 AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO PROVIDE  
5 DEFINITIONS FOR VARIOUS TERMS USED IN THE ACT; TO AMEND SECTION  
6 81-18-5, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO.  
7 379, 2009 REGULAR SESSION, TO REVISE THE LIST OF PERSONS AND  
8 ENTITIES THAT ARE EXEMPT FROM THE ACT; TO AMEND SECTION 81-18-7,  
9 MISSISSIPPI CODE OF 1972, TO PROVIDE A TRANSITION PERIOD FOR  
10 COMPLIANCE WITH THE ACT; TO AMEND SECTION 81-18-9, MISSISSIPPI  
11 CODE OF 1972, TO PROVIDE THE LICENSURE REQUIREMENTS FOR MORTGAGE  
12 LOAN ORIGINATORS; TO AMEND SECTION 81-18-11, MISSISSIPPI CODE OF  
13 1972, TO REVISE THE REQUIREMENTS FOR SURETY BONDS FOR LOAN  
14 ORIGINATORS; TO AMEND SECTION 81-18-13, MISSISSIPPI CODE OF 1972,  
15 TO REVISE THE LICENSURE REQUIREMENTS FOR MORTGAGE BROKERS AND  
16 MORTGAGE LENDERS; TO CREATE NEW SECTION 81-18-14, MISSISSIPPI CODE  
17 OF 1972, TO PROVIDE THE REQUIREMENTS FOR PRELICENSING EDUCATION  
18 FOR LOAN ORIGINATORS AND THE REQUIREMENTS FOR THE TESTING OF LOAN  
19 ORIGINATORS; TO AMEND SECTION 81-18-15, MISSISSIPPI CODE OF 1972,  
20 TO PROVIDE THE LICENSE RENEWAL AND CONTINUING EDUCATION  
21 REQUIREMENTS FOR LOAN ORIGINATORS; TO AMEND SECTION 81-18-21,  
22 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT LICENSEES MUST MAKE  
23 BOOKS AND RECORDS AVAILABLE TO THE COMMISSIONER OF BANKING AND  
24 MAKE REPORTS AS REQUIRED BY THE COMMISSIONER; TO GIVE THE  
25 COMMISSIONER ADDITIONAL AUTHORITY TO CARRY OUT THE PURPOSES OF  
26 THIS SECTION; TO AMEND SECTION 81-18-23, MISSISSIPPI CODE OF 1972,  
27 TO REQUIRE LICENSEES TO SUBMIT REPORTS OF CONDITION TO THE  
28 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; TO AMEND  
29 SECTION 81-18-27, MISSISSIPPI CODE OF 1972, TO EXPAND THE LIST OF  
30 PROHIBITED ACTIONS BY LICENSEES; TO AMEND SECTIONS 81-18-17,  
31 81-18-19, 81-18-25, 81-18-31 AND 81-18-37, MISSISSIPPI CODE OF  
32 1972, TO REMOVE REFERENCES TO REGISTRATION, WHICH IS NO LONGER  
33 AVAILABLE UNDER THE ACT; TO AMEND SECTION 81-18-33, MISSISSIPPI  
34 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THE ACT; TO AMEND  
35 SECTION 81-18-43, MISSISSIPPI CODE OF 1972, TO REVISE THE  
36 PENALTIES FOR VIOLATIONS OF THE ACT; TO AMEND SECTION 81-18-51,  
37 MISSISSIPPI CODE OF 1972, TO CHANGE THE REPEAL DATE OF THE ACT; TO  
38 AMEND SECTION 81-18-61, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
39 THE COMMISSIONER SHALL REQUIRE LOAN ORIGINATORS TO BE LICENSED AND  
40 REGISTERED THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND  
41 REGISTRY; TO CREATE NEW SECTION 81-18-63, MISSISSIPPI CODE OF  
42 1972, TO PROVIDE FOR CONFIDENTIALITY OF ANY INFORMATION OR  
43 MATERIAL PROVIDED TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND  
44 REGISTRY; TO REPEAL SECTION 81-18-39, MISSISSIPPI CODE OF 1972,  
45 WHICH AUTHORIZES THE DEPARTMENT OF BANKING AND CONSUMER FINANCE TO



46 ISSUE CEASE AND DESIST ORDERS AND COLLECT CIVIL PENALTIES; AND FOR  
47 RELATED PURPOSES.

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

49 **SECTION 1.** Section 81-18-1, Mississippi Code of 1972, is  
50 amended as follows:

51 81-18-1. This chapter shall be known and cited as the  
52 "Mississippi S.A.F.E. Mortgage Licensing Act of 2009."

53 **SECTION 2.** Section 81-18-3, Mississippi Code of 1972, is  
54 amended as follows:

55 81-18-3. For purposes of this chapter, the following terms  
56 shall have the following meanings:

57 (a) "Application" means the submission of a borrower's  
58 financial information in anticipation of a credit decision,  
59 whether written or computer-generated. If the submission does not  
60 state or identify a specific property, the submission is an  
61 application for a prequalification and not an application for a  
62 federally related mortgage loan. The subsequent addition of an  
63 identified property to the submission converts the submission to  
64 an application for a federally related mortgage loan.

65 (b) "Borrower" means a person who submits an  
66 application for a loan secured by a first or subordinate mortgage  
67 or deed of trust on a single- to four-family home to be occupied  
68 by a natural person.

69 (c) "Branch" means a location of a company in or  
70 outside of the state that conducts business as a mortgage broker  
71 or mortgage lender. A location shall be considered a branch  
72 regarding mortgage broker or mortgage lender activities in any of  
73 the following:

74 (i) If the location is used on any type of  
75 advertisement;

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



79 (iii) If the activities of a mortgage loan  
80 originator occurs at the location \* \* \*.

81 (d) "Commissioner" means the Commissioner of the  
82 Mississippi Department of Banking and Consumer Finance.

83 (e) "Commitment" means a statement by a lender required  
84 to be licensed under this chapter that sets forth the terms and  
85 conditions upon which the lender is willing to make a particular  
86 mortgage loan to a particular borrower.

87 (f) "Company" means a licensed mortgage broker or  
88 mortgage lender under this chapter.

89 (g) "Control" means the direct or indirect possession  
90 of the power to direct or cause the direction of the management  
91 and policies of a person, whether through the ownership of voting  
92 securities, by contract or otherwise, and shall include  
93 "controlling," "controlled by," and "under common control with."

94 (h) "Department" means the Department of Banking and  
95 Consumer Finance of the State of Mississippi.

96 (i) "Depository institution" has the same meaning as in  
97 Section 3 of the Federal Deposit Insurance Act, and includes any  
98 credit union.

99 (j) "Executive officer" means the chief executive  
100 officer, the president, the principal financial officer, the  
101 principal operating officer, each vice president with  
102 responsibility involving policy-making functions for a significant  
103 aspect of a person's business, the secretary, the treasurer, or  
104 any other person performing similar managerial or supervisory  
105 functions with respect to any organization whether incorporated or  
106 unincorporated.

107 (k) "Federal banking agencies" means the Board of  
108 Governors of the Federal Reserve System, the Comptroller of the  
109 Currency, the Director of the Office of Thrift Supervision, the  
110 National Credit Union Administration, and the Federal Deposit  
111 Insurance Corporation.



112           (1) "Immediate family member" means a spouse, child,  
113 sibling, parent, grandparent or grandchild. This term includes  
114 stepparents, stepchildren, stepsiblings and adoptive  
115 relationships.

116           (m) "Individual" means a "natural person."

117           (n) "License" means a license to act as a mortgage  
118 broker or mortgage lender issued by the department under this  
119 chapter.

120           (o) "Licensee" means a person who is required to be  
121 licensed as a mortgage broker or mortgage lender under this  
122 chapter.

123           (p) "Loan processor or underwriter" means an individual  
124 who performs clerical or support duties as an employee at the  
125 direction of and subject to the supervision and instruction of a  
126 person licensed or exempt from licensing under this chapter.

127           For the purposes of this paragraph (p), the term "clerical or  
128 support duties" may include, after the receipt of an application:

129                   (i) The receipt, collection, distribution and  
130 analysis of information common for the processing or underwriting  
131 of a residential mortgage loan; and

132                   (ii) Communicating with a consumer to obtain the  
133 information necessary for the processing or underwriting of a  
134 loan, to the extent that the communication does not include  
135 offering or negotiating loan rates or terms, or counseling  
136 consumers about residential mortgage loan rates or terms.

137           An individual engaging solely in loan processor or  
138 underwriter activities, shall not represent to the public, through  
139 advertising or other means of communicating or providing  
140 information including the use of business cards, stationery,  
141 brochures, signs, rate lists or other promotional items, that the  
142 individual can or will perform any of the activities of a mortgage  
143 loan originator.



144           (q) "Lock-in agreement" means a written agreement  
145 stating the terms of the lock-in fee.

146           (r) "Lock-in fee" means a fee collected by a licensee  
147 to be paid to a lender to guarantee an interest rate or a certain  
148 number of points on a mortgage loan from the lender.

149           (s) "Make a mortgage loan" means to advance funds,  
150 offer to advance funds or make a commitment to advance funds to a  
151 borrower.

152           (t) "Misrepresent" means to make a false statement of a  
153 substantive fact or to engage in, with intent to deceive or  
154 mislead, any conduct that leads to a false belief that is material  
155 to the transaction.

156           (u) "Mortgage broker" means any person who directly or  
157 indirectly or by electronic activity solicits, places or  
158 negotiates residential mortgage loans for others, or offers to  
159 solicit, place or negotiate residential mortgage loans for others  
160 that does not close residential mortgage loans in the company  
161 name, does not use its own funds, or who closes residential  
162 mortgage loans in the name of the company, and sells, assigns or  
163 transfers the loan to others within forty-eight (48) hours of the  
164 closing.

165           (v) "Mortgage lender" means any person who directly or  
166 indirectly or by electronic activity originates, makes, funds or  
167 purchases or offers to originate, make, or fund or purchase a  
168 residential mortgage loan or who services residential mortgage  
169 loans.

170           (w) "Mortgage lending process" means the process  
171 through which a person seeks or obtains a mortgage loan,  
172 including, but not limited to, solicitation, application,  
173 origination, negotiation of terms, third-party provider services,  
174 underwriting, signing and closing, and funding of the loan.  
175 Documents involved in the mortgage lending process include, but  
176 are not limited to, uniform residential loan applications or other



177 loan applications, appraisal reports, HUD-1 settlement statements,  
178 supporting personal documentation for loan applications such as  
179 W-2 forms, verifications of income and employment, bank  
180 statements, tax returns, payroll stubs and any required  
181 disclosures.

182 (x) "Mortgage loan originator" means an individual who  
183 for compensation or gain or in the expectation of compensation or  
184 gain takes a residential mortgage loan application, and offers or  
185 negotiates terms of a residential mortgage loan. The term  
186 "mortgage loan originator" does not include:

187 (i) An individual engaged solely as a loan  
188 processor or underwriter except as otherwise provided in this  
189 chapter;

190 (ii) A person or entity that only performs real  
191 estate brokerage activities and is licensed or registered in  
192 accordance with Mississippi law, unless the person or entity is  
193 compensated by a lender, a mortgage broker, or other mortgage loan  
194 originator or by any agent of such lender, mortgage broker, or  
195 other mortgage loan originator; and

196 (iii) A person or entity solely involved in  
197 extensions of credit relating to timeshare plans, as that term is  
198 defined in Title 11 USCS, Section 101(53D).

199 (y) "Nationwide Mortgage Licensing System and Registry"  
200 means a mortgage licensing system developed and maintained by the  
201 Conference of State Bank Supervisors and the American Association  
202 of Residential Mortgage Regulators for the licensing and  
203 registration of licensed mortgage loan originators.

204 (z) "Natural person" means a human being, as  
205 distinguished from an artificial person created by law.

206 (aa) "Nontraditional mortgage product" means any  
207 mortgage product other than a thirty-year fixed rate mortgage.



208            (bb) "Person" means a natural person, sole  
209 proprietorship, corporation, company, limited liability company,  
210 partnership or association.

211            (cc) "Principal" means a person who, directly or  
212 indirectly, owns or controls an ownership interest of ten percent  
213 (10%) or more in a corporation or any other form of business  
214 organization, regardless of whether the person owns or controls  
215 the ownership interest through one or more persons or one or more  
216 proxies, powers of attorney, nominees, corporations, associations,  
217 limited liability companies, partnerships, trusts, joint-stock  
218 companies, other entities or devises, or any combination thereof.

219            (dd) "Principal officer" means an owner or employee of  
220 a mortgage broker or mortgage lender who submits documentation of  
221 two (2) years' experience directly related to mortgage lending,  
222 who is licensed as a loan originator as defined in this chapter,  
223 and who resides within one hundred twenty-five (125) miles of the  
224 licensed principal place of business of the company. This  
225 individual will also be designated as a Qualifying Individual in  
226 the Nationwide Mortgage Licensing System and Registry.

227            (ee) "Real estate brokerage activity" means any  
228 activity that involves offering or providing real estate brokerage  
229 services to the public, including:

230                    (i) Acting as a real estate agent or real estate  
231 broker for a buyer, seller, lessor or lessee of real property;

232                    (ii) Bringing together parties interested in the  
233 sale, purchase, lease, rental or exchange of real property;

234                    (iii) Negotiating, on behalf of any party, any  
235 portion of a contract relating to the sale, purchase, lease,  
236 rental or exchange of real property (other than in connection with  
237 providing financing with respect to any such transaction);

238                    (iv) Engaging in any activity for which a person  
239 engaged in the activity is required to be registered or licensed



240 as a real estate agent or real estate broker under any applicable  
241 law; and

242 (v) Offering to engage in any activity, or act in  
243 any capacity, described in subparagraphs (i), (ii), (iii) or (iv)  
244 of this paragraph (ee).

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

251 (gg) "Registered mortgage loan originator" means any  
252 individual who:

253 (i) Meets the definition of mortgage loan  
254 originator and is an employee of a depository institution, a  
255 subsidiary that is owned and controlled by a depository  
256 institution and regulated by a federal banking agency or an  
257 institution regulated by the Farm Credit Administration; and

258 (ii) Is registered with, and maintains a unique  
259 identifier through, the Nationwide Mortgage Licensing System and  
260 Registry.

261 (hh) "Residential mortgage loan" means any loan  
262 primarily for personal, family or household use that is secured by  
263 a mortgage, deed of trust or other equivalent consensual security  
264 interest on a dwelling (as defined in Section 103(v) of the Truth  
265 in Lending Act) or residential real estate upon which is  
266 constructed or intended to be constructed a dwelling (as so  
267 defined).

268 (ii) "Residential real estate" means any real property  
269 located in Mississippi upon which is constructed or intended to be  
270 constructed a dwelling.

271 (jj) "Service a mortgage loan" means the collection or  
272 remittance for another, the right to collect or remit for another,





273 or the collection of the company's own loan portfolio, whether or  
274 not the company originated, funded or purchased the loan in the  
275 secondary market, of payments of principal and interest, trust  
276 items such as insurance and taxes, and any other payments pursuant  
277 to a mortgage loan.

278 (kk) "Unique identifier" means a number or other  
279 identifier assigned by protocols established by the Nationwide  
280 Mortgage Licensing System and Registry.

281 **SECTION 3.** Section 81-18-5, Mississippi Code of 1972, as  
282 amended by House Bill No. 379, 2009 Regular Session, is amended as  
283 follows:

284 81-18-5. The following \* \* \* are exempt from the provisions  
285 of this chapter \* \* \*:

286 (a) Registered mortgage loan originators, when acting  
287 for an entity described in Section 81-18-3(gg).

288 (b) Any person who offers or negotiates terms of a  
289 residential mortgage loan with or on behalf of an immediate family  
290 member of the individual.

291 (c) Any person who offers or negotiates terms of a  
292 residential mortgage loan secured by a dwelling that served as the  
293 individual's residence.

294 (d) A licensed attorney who negotiates the terms of a  
295 residential mortgage loan on behalf of a client as an ancillary  
296 matter to the attorney's representation of the client, unless the  
297 attorney is compensated by a lender, a mortgage broker, or other  
298 mortgage loan originator or by any agent of the lender, mortgage  
299 broker, or other mortgage loan originator.

300 (e) A depository institution, or a subsidiary that is  
301 owned and controlled by a depository institution.

302 \* \* \*

303 **SECTION 4.** Section 81-18-7, Mississippi Code of 1972, is  
304 amended as follows:



305 81-18-7. (1) \* \* \* No person shall transact business in  
306 this state, directly or indirectly, as a mortgage broker or  
307 mortgage lender unless he or she is licensed by the department or  
308 is a person exempted from the licensing requirements under Section  
309 81-18-5.

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

314 (3) \* \* \* Every person who directly or indirectly controls a  
315 person who violates this section, including a general partner,  
316 executive officer, joint venturer, contractor, or director of the  
317 person, violates this section to the same extent as the person,  
318 unless the person whose violation arises under this subsection  
319 shows by a preponderance of evidence the burden of proof that he  
320 or she did not know and, in the exercise of reasonable care, could  
321 not have known of the existence of the facts by reason of which  
322 the original violation is alleged to exist.

323 (4) An individual, unless specifically exempted from this  
324 chapter under Section 81-18-5, shall not engage in the business of  
325 a mortgage loan originator with respect to any dwelling located in  
326 this state without first obtaining and maintaining annually a  
327 license under this chapter. Each licensed mortgage loan  
328 originator must register with and maintain a valid unique  
329 identifier issued by the Nationwide Mortgage Licensing System and  
330 Registry.

331 (5) In order to facilitate an orderly transition to  
332 licensing and minimize disruption in the mortgage marketplace, the  
333 effective date of subsection (4) of this section shall be as  
334 follows:

335 (a) For all individuals other than individuals  
336 described in paragraph (b), the effective date shall be July 31,  
337 2010, or such later date approved by the Secretary of the United



338 States Department of Housing and Urban Development, under the  
339 authority granted under Public Law 110-289, Section 1508(a).

340 (b) For all individuals licensed as mortgage loan  
341 originators as of July 31, 2009, the effective date shall be  
342 January 1, 2011, or such later date approved by the Secretary of  
343 the United States Department of Housing and Urban Development,  
344 under the authority granted under Public Law 110-289, Section  
345 1508(a).

346 (6) For the purposes of implementing an orderly and  
347 efficient licensing process, the commissioner may establish  
348 licensing rules or regulations and interim procedures for  
349 licensing and acceptance of applications. For previously  
350 registered or licensed individuals, the commissioner may establish  
351 expedited review and licensing procedures.

352 **SECTION 5.** Section 81-18-9, Mississippi Code of 1972, is  
353 amended as follows:

354 81-18-9. (1) Applicants for a license shall apply in a form  
355 as prescribed by the commissioner. Each such form shall contain  
356 content as set forth by rule, regulation, instruction or procedure  
357 of the commissioner and may be changed or updated as necessary by  
358 the commissioner in order to carry out the purposes of this  
359 chapter.

360 (2) The mortgage broker and mortgage lender application  
361 through the Nationwide Mortgage Licensing System and Registry  
362 shall include, but is not limited to, the following:

363 (a) The legal name, residence, and business address of  
364 the applicant and, if applicable the legal name, residence and  
365 business address of every principal, together with the résumé of  
366 the applicant and of every principal of the applicant.

367 (b) The legal name of the mortgage broker or mortgage  
368 lender in addition to the name under which the applicant will  
369 conduct business in the state, neither of which may be already  
370 assigned to a licensed mortgage broker or mortgage lender.



371 (c) The complete address of the applicant's principal  
372 place of business, branch office(s) and any other locations at  
373 which the applicant will engage in any business activity covered  
374 by this chapter.

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

377 (e) Documentation satisfactory to the department as to  
378 a certificate of existence of authority to transact business  
379 lawfully in Mississippi from the Mississippi Secretary of State's  
380 office, if a limited liability company, partnership, trust or any  
381 other group of persons, however organized. This paragraph does  
382 not pertain to applicants organized as an individual or as a sole  
383 proprietorship.

384 (f) If a foreign entity, a copy of a certificate of  
385 authority to conduct business in Mississippi and the address of  
386 the principal place of business of the foreign entity.

387 (g) Documentation of a minimum of two (2) years'  
388 experience directly in mortgage lending by a person named as the  
389 principal officer of the company. This experience shall have been  
390 within the previous four (4) years from the date of application.  
391 If the proof of experience is with a company that is located  
392 outside of Mississippi, then the principal officer shall be  
393 required to complete four (4) hours of approved courses on the  
394 Mississippi S.A.F.E. Mortgage Licensing Act of 2009. The  
395 principal officer shall also be licensed as a loan originator with  
396 the department. Evidence shall include, where applicable:

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

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



404 (iii) A listing of wholesale lenders with whom the  
405 applicant has done business with in the past two (2) years either  
406 directly as a mortgage broker or loan originator.

407 (iv) Any other data and pertinent information as  
408 the department may require with respect to the applicant, its  
409 directors, principals, trustees, officers, members, contractors or  
410 agents. A résumé alone shall not be sufficient proof of  
411 employment history.

412 (3) The application shall be filed on the Nationwide  
413 Mortgage Licensing System and Registry together with the  
414 following:

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

416 \* \* \*

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

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

425 (i) All persons operating as a sole proprietorship  
426 that plan to conduct a mortgage brokering or lending business in  
427 the State of Mississippi;

428 (ii) Partners in a partnership or principal owners  
429 of a limited liability company that own at least ten percent (10%)  
430 of the voting shares of the company;

431 (iii) Any shareholders owning ten percent (10%) or  
432 more of the outstanding shares of the corporation; \* \* \*

433 (iv) All loan originators; and

434 (v) The named principal officer of the company as  
435 required in Section 81-18-9(2)(g).



436       (4) Applicants for a mortgage loan originator license shall  
437 apply in a form as prescribed by the commissioner. Each such form  
438 shall contain content as set forth by rules, regulations,  
439 instructions or procedures of the commissioner and may be changed  
440 or updated as necessary by the commissioner in order to carry out  
441 the purposes of this chapter. The initial license of a mortgage  
442 loan originator shall be accompanied by a fee of One Hundred  
443 Dollars (\$100.00) to be paid to the Nationwide Mortgage Licensing  
444 System and Registry and any additional fees as required by the  
445 Nationwide Mortgage Licensing System and Registry. The  
446 commissioner shall not issue a mortgage loan originator license  
447 unless the commissioner makes at a minimum the following findings:

448           (a) The applicant has never had a mortgage loan  
449 originator license revoked in any governmental jurisdiction,  
450 except that a later formal vacation of that revocation shall not  
451 be deemed a revocation.

452           (b) The applicant has not been convicted of, or pled  
453 guilty or nolo contendere to, (i) a felony in a domestic, foreign  
454 or military court during the seven-year period preceding the date  
455 of application for licensing and registration; however, if such  
456 conviction occurred before the seven-year period preceding the  
457 date of application for licensing and registration, the  
458 commissioner, in his discretion, may issue or deny a mortgage loan  
459 originator license; or (ii) a crime that, if committed within this  
460 state, would constitute a felony under the laws of this state; or  
461 (iii) a misdemeanor of fraud, theft, forgery, bribery,  
462 embezzlement or making a fraudulent or false statement in any  
463 jurisdiction. All of this is provided that any pardon of a  
464 conviction shall not be a conviction for purposes of this  
465 subsection.

466           (c) The applicant has demonstrated financial  
467 responsibility, character and general fitness such as to command  
468 the confidence of the community and to warrant a determination



469 that the mortgage loan originator will operate honestly, fairly  
470 and efficiently within the purposes of this chapter.

471 (d) The applicant has completed the prelicensing  
472 education requirement described in Section 81-18-14(1).

473 (e) The applicant has passed a written test that meets  
474 the test requirement described in Section 81-18-14(7).

475 (f) The applicant has met the surety bond requirement  
476 as provided in Section 81-18-11.

477 (g) This individual must work for a Mississippi  
478 licensed company and work from the location licensed with the  
479 department. The licensed location that he or she is assigned to  
480 must be within one hundred twenty-five (125) miles of his or her  
481 residency. If the licensed loan originator resides and works in  
482 Mississippi, then he or she may work from any licensed location of  
483 the licensed company within the State of Mississippi. However, an  
484 owner of a minimum of ten percent (10%) of a licensed company or  
485 the named principal officer on file with the department, who is a  
486 licensed loan originator with the department, may work from any  
487 licensed location of the licensed company within the State of  
488 Mississippi in the capacity of a loan originator as described in  
489 this chapter.

490 (5) The loan originator shall display the current, original  
491 license issued by the department in the licensed office in which  
492 he or she is assigned.

493 (6) In order to fulfill the purposes of this chapter, the  
494 commissioner is authorized to establish relationships or contracts  
495 with the Nationwide Mortgage Licensing System and Registry or  
496 other entities designated by the Nationwide Mortgage Licensing  
497 System and Registry to collect and maintain records and process  
498 transaction fees or other fees related to licensees or other  
499 persons subject to this chapter.

500 (7) In connection with an application for licensing as a  
501 mortgage loan originator, the applicant shall, at a minimum,



502 furnish to the Nationwide Mortgage Licensing System and Registry  
503 information concerning the applicant's identity, including:

504 (a) Fingerprints for submission to the Federal Bureau  
505 of Investigation, and any governmental agency or entity authorized  
506 to receive that information for a state, national and  
507 international criminal history background check; and

508 (b) Personal history and experience in a form  
509 prescribed by the Nationwide Mortgage Licensing System and  
510 Registry, including the submission of authorization for the  
511 Nationwide Mortgage Licensing System and Registry and the  
512 commissioner to obtain:

513 (i) An independent credit report obtained from a  
514 consumer reporting agency described in Section 603(p) of the Fair  
515 Credit Reporting Act; and

516 (ii) Information related to any administrative,  
517 civil or criminal findings by any governmental jurisdiction.

518 (8) For the purposes of this section and in order to reduce  
519 the points of contact which the Federal Bureau of Investigation  
520 may have to maintain for purposes of subsection (7)(a) and (b)(ii)  
521 of this section, the commissioner may use the Nationwide Mortgage  
522 Licensing System and Registry as a channeling agent for requesting  
523 information from and distributing information to the Department of  
524 Justice or any governmental agency.

525 (9) For the purposes of this section and in order to reduce  
526 the points of contact which the commissioner may have to maintain  
527 for purposes of subsection (7)(b)(i) and (ii) of this section, the  
528 commissioner may use the Nationwide Mortgage Licensing System and  
529 Registry as a channeling agent for requesting and distributing  
530 information to and from any source so directed by the  
531 commissioner.

532 **SECTION 6.** Section 81-18-11, Mississippi Code of 1972, is  
533 amended as follows:





534           81-18-11. (1) Each mortgage loan originator shall be  
535 covered by a surety bond in accordance with this section. If the  
536 mortgage loan originator is an employee or exclusive agent of a  
537 person subject to this chapter, the surety bond of the person who  
538 is subject to this chapter may be used in lieu of the mortgage  
539 loan originator's surety bond requirement.

540           (2) The surety bond shall be in a form as prescribed by the  
541 commissioner, and shall provide coverage for each mortgage loan  
542 originator in an amount as prescribed in subsection (3) of this  
543 subsection.

544           (3) The penal sum of the surety bond shall be maintained in  
545 an amount that reflects the dollar amount of loans originated as  
546 determined by the commissioner, but shall not exceed Twenty-five  
547 Thousand Dollars (\$25,000.00) for a mortgage broker or One Hundred  
548 Fifty Thousand Dollars (\$150,000.00) for a mortgage lender.

549           (4) When an action is commenced on a licensee's bond, the  
550 commissioner may require the filing of a new bond. Immediately  
551 upon recovery upon any action on the bond, the licensee shall file  
552 a new bond.

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

561           (6) The commissioner may promulgate rules or regulations  
562 with respect to the requirements for the surety bonds as are  
563 necessary to accomplish the purposes of this chapter.

564           **SECTION 7.** Section 81-18-13, Mississippi Code of 1972, is  
565 amended as follows:



566           81-18-13. (1) In order to fulfill the purposes of this  
567 chapter, the commissioner is authorized to establish relationships  
568 or contracts with the Nationwide Mortgage Licensing System and  
569 Registry or other entities designated by the Nationwide Mortgage  
570 Licensing System and Registry to collect and maintain records and  
571 process transaction fees or other fees related to licensees or  
572 other persons subject to this chapter.

573           (2) In connection with an application for licensing as a  
574 mortgage broker or lender under this chapter, the required  
575 stockholders, owners, directors, officers of the applicant shall,  
576 at a minimum, furnish to the Nationwide Mortgage Licensing System  
577 and Registry information concerning the individual's identity,  
578 including:

579                 (a) Fingerprints for submission to the Federal Bureau  
580 of Investigation, and any governmental agency or entity authorized  
581 to receive that information for a state, national and  
582 international criminal history background check; and

583                 (b) Personal history and experience in a form  
584 prescribed by the Nationwide Mortgage Licensing System and  
585 Registry, including the submission of authorization for the  
586 Nationwide Mortgage Licensing System and Registry and the  
587 commissioner to obtain:

588                     (i) An independent credit report obtained from a  
589 consumer reporting agency described in Section 603(p) of the Fair  
590 Credit Reporting Act; and

591                     (ii) Information related to any administrative,  
592 civil or criminal findings by any governmental jurisdiction.

593           (3) For the purposes of this section and in order to reduce  
594 the points of contact which the Federal Bureau of Investigation  
595 may have to maintain for purposes of subsection (2) (a) and (b) (ii)  
596 of this section, the commissioner may use the Nationwide Mortgage  
597 Licensing System and Registry as a channeling agent for requesting



598 information from and distributing information to the Department of  
599 Justice or any governmental agency.

600 (4) For the purposes of this section and in order to reduce  
601 the points of contact which the commissioner may have to maintain  
602 for purposes of subsection (2) (b) (i) and (ii) of this section, the  
603 commissioner may use the Nationwide Mortgage Licensing System and  
604 Registry as a channeling agent for requesting and distributing  
605 information to and from any source so directed by the  
606 commissioner.

607 (5) Upon receipt of an application for licensure \* \* \*,  
608 which shall include the required set of fingerprints from any  
609 local law enforcement agency, the department or designated third  
610 party shall conduct such an investigation as it deems necessary to  
611 determine that the applicant and its officers, directors and  
612 principals are of good character and ethical reputation; that the  
613 applicant demonstrates reasonable financial responsibility; and  
614 that the applicant has reasonable policies and procedures to  
615 receive and process customer grievances and inquiries promptly and  
616 fairly.

617 (6) The department shall not license an applicant unless it  
618 is satisfied that the applicant will operate its mortgage  
619 activities in compliance with the laws, rules and regulations of  
620 this state and the United States.

621 (7) The department shall not license any mortgage broker or  
622 mortgage lender unless the applicant meets the requirements of  
623 Section 81-18-11.

624 (8) The department shall not issue a license \* \* \* if it  
625 finds that the applicant, or any person who is a director,  
626 officer, partner or principal officer of the applicant, has been  
627 convicted of: (a) a felony in any jurisdiction; or (b) a crime  
628 that, if committed within this state, would constitute a felony  
629 under the laws of this state; or (c) a misdemeanor of fraud,  
630 theft, forgery, bribery, embezzlement or making a fraudulent or



631 false statement in any jurisdiction. \* \* \* For the purposes of  
632 this chapter, a person shall be deemed to have been convicted of a  
633 crime if the person has pleaded guilty to a crime before a court  
634 or federal magistrate, or plea of nolo contendere, or has been  
635 found guilty of a crime by the decision or judgment of a court or  
636 federal magistrate or by the verdict of a jury, irrespective of  
637 the pronouncement of sentence or the suspension of a  
638 sentence, \* \* \* unless the person convicted of the crime has  
639 received a pardon from the President of the United States or the  
640 Governor or other pardoning authority in the jurisdiction where  
641 the conviction was obtained.

642 (9) The department shall deny a license \* \* \* if it finds  
643 that the applicant has had a mortgage loan originator license  
644 revoked in any governmental jurisdiction, except that a subsequent  
645 formal vacation of that revocation shall not be deemed a  
646 revocation.

647 (10) Within thirty (30) days after receipt of a completed  
648 application, final verification from the Department of Public  
649 Safety and/or FBI, and payment of licensing fees prescribed by  
650 this chapter, the department shall either grant or deny the  
651 request for license. However, if the Federal Financial  
652 Institutions Examination Council (FFIEC) prescribes a lesser  
653 period of time within which the department shall either grant or  
654 deny the request for license, then that time limitation shall  
655 supersede this subsection.

656 (11) A person shall not be indemnified for any act covered  
657 by this chapter or for any fine or penalty incurred under this  
658 chapter as a result of any violation of this chapter or  
659 regulations adopted under this chapter, due to the legal form,  
660 corporate structure, or choice of organization of the person  
661 including, but not limited to, a limited liability corporation.

662 **SECTION 8.** The following shall be codified as Section  
663 81-18-14, Mississippi Code of 1972:



664           81-18-14. (1) In order to meet the prelicensing education  
665 requirement referred to in Section 81-18-9(4) (d), a person shall  
666 complete at least twenty (20) hours of education approved in  
667 accordance with subsection (2) of this section, which shall  
668 include at least:

669                   (a) Three (3) hours of federal law and regulations;

670                   (b) Three (3) hours of ethics, which shall include  
671 instruction on fraud, consumer protection and fair lending issues;

672                   (c) Two (2) hours of training related to lending  
673 standards for the nontraditional mortgage product marketplace; and

674                   (d) Four (4) hours of education related to the  
675 Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

676           (2) For the purposes of subsection (1) of this section,  
677 prelicensing education courses shall be reviewed, and approved by  
678 the Nationwide Mortgage Licensing System and Registry based upon  
679 reasonable standards. Review and approval of a prelicensing  
680 education course shall include review and approval of the course  
681 provider.

682           (3) Nothing in this section shall preclude any prelicensing  
683 education course, as approved by the Nationwide Mortgage Licensing  
684 System and Registry that is provided by the employer of the  
685 applicant or an entity that is affiliated with the applicant by an  
686 agency contract, or any subsidiary or affiliate of such employer  
687 or entity.

688           (4) Prelicensing education may be offered either in a  
689 classroom, online or by any other means approved by the Nationwide  
690 Mortgage Licensing System and Registry.

691           (5) The prelicensing education requirements approved by the  
692 Nationwide Mortgage Licensing System and Registry in subsection  
693 (1) of this section for any state shall be accepted as credit  
694 towards completion of prelicensing education requirements in  
695 Mississippi.



696 (6) A person previously licensed under this chapter who  
697 applies to be licensed again on or after July 1, 2009, must prove  
698 that they have completed all of the continuing education  
699 requirements for the year in which the license was last held.

700 (7) In order to meet the written test requirement for  
701 mortgage loan originators referred to in Section 81-18-9(4)(e), an  
702 individual shall pass, in accordance with the standards  
703 established under this subsection, a qualified written test  
704 developed by the Nationwide Mortgage Licensing System and Registry  
705 and administered by a test provider approved by the Nationwide  
706 Mortgage Licensing System and Registry based upon reasonable  
707 standards.

708 (8) A written test shall not be treated as a qualified  
709 written test for purposes of subsection (7) of this section unless  
710 the test adequately measures the applicant's knowledge and  
711 comprehension in appropriate subject areas, including:

712 (a) Ethics;

713 (b) Federal law and regulation pertaining to mortgage  
714 origination;

715 (c) State law and regulation pertaining to mortgage  
716 origination; and

717 (d) Federal and state law and regulation, including  
718 instruction on fraud, consumer protection, the nontraditional  
719 mortgage marketplace and fair lending issues.

720 (9) Nothing in this section shall prohibit a test provider  
721 approved by the Nationwide Mortgage Licensing System and Registry  
722 from providing a test at the location of the employer of the  
723 applicant or the location of any subsidiary or affiliate of the  
724 employer of the applicant, or the location of any entity with  
725 which the applicant holds an exclusive arrangement to conduct the  
726 business of a mortgage loan originator.

727 (10) (a) An individual shall not be considered to have  
728 passed a qualified written test unless the individual achieves a



729 test score of not less than seventy-five percent (75%) correct  
730 answers to questions.

731 (b) An individual may retake a test three (3)  
732 consecutive times with each consecutive taking occurring at least  
733 thirty (30) days after the preceding test.

734 (c) After failing three (3) consecutive tests, an  
735 individual shall wait at least six (6) months before taking the  
736 test again.

737 (d) A licensed mortgage loan originator who fails to  
738 maintain a valid license for a period of five (5) years or longer  
739 shall retake the test, not taking into account any time during  
740 which such individual is a registered mortgage loan originator.

741 **SECTION 9.** Section 81-18-15, Mississippi Code of 1972, is  
742 amended as follows:

743 81-18-15. (1) Each mortgage broker and mortgage lender  
744 license shall remain in full force and effect until relinquished,  
745 suspended, revoked or expired. With each initial application for  
746 a license to operate as a mortgage broker or mortgage lender, the  
747 applicant shall pay through the Nationwide Mortgage Licensing  
748 System and Registry to the commissioner a license fee of Seven  
749 Hundred Fifty Dollars (\$750.00), and on or before December 31 of  
750 each year thereafter, an annual renewal fee of Four Hundred  
751 Seventy-five Dollars (\$475.00). If the annual renewal fee remains  
752 unpaid, the license shall expire, but not before December 31 of  
753 any year for which the annual renewal fee has been paid. If any  
754 person engages in business as provided for in this chapter without  
755 paying the license fee provided for in this subsection before  
756 commencing business or before the expiration of the person's  
757 current license, as the case may be, then the person shall be  
758 liable for \* \* \* the initial license fee, which is Seven Hundred  
759 Fifty Dollars (\$750.00), plus a penalty in an amount not to exceed  
760 Twenty-five Dollars (\$25.00) for each day that the person has  
761 engaged in such business without a license or after the expiration



762 of a license. All licensing fees and penalties shall be paid into  
763 the Consumer Finance Fund of the department. If the application  
764 is withdrawn or denied, the application fee along with any other  
765 applicable fee are not refundable.

766 (2) The minimum standards for license renewal for mortgage  
767 loan originators shall include the following:

768 (a) The mortgage loan originator continues to meet the  
769 minimum standards for license issuance under Section 81-18-9(4).

770 (b) The mortgage loan originator has satisfied the  
771 annual continuing education requirements described in Section  
772 81-18-15(5).

773 (c) The mortgage loan originator has paid all required  
774 fees for renewal of the license. Annual renewals of this license  
775 shall require a fee of Fifty Dollars (\$50.00).

776 (3) The license of a mortgage loan originator failing to  
777 satisfy the minimum standards for license renewal shall expire.  
778 The commissioner may adopt procedures for the reinstatement of  
779 expired licenses consistent with the standards established by the  
780 Nationwide Mortgage Licensing System and Registry. If the renewal  
781 fee remains unpaid, the license shall expire, but not before  
782 December 31 of any year for which the annual renewal fee has been  
783 paid. If the renewal fee is not paid before the expiration date  
784 of the license, the mortgage loan originator shall be liable for  
785 the initial license fee, which is One Hundred Dollars (\$100.00),  
786 in order to renew.

787 (4) Any licensee making timely and proper application for a  
788 license renewal shall be permitted to continue to operate under  
789 its existing license until its application is approved or  
790 rejected, but shall not be released from or otherwise indemnified  
791 for any act covered by this chapter or for any penalty incurred  
792 under this chapter as a result of any violation of this chapter or  
793 regulations adopted under this chapter, pending final approval or  
794 disapproval of the application for the license renewal.





795 (5) In order to meet the annual continuing education  
796 requirements referred to in Section 81-18-15(2) (b), a licensed  
797 mortgage loan originator shall complete at least twelve (12) hours  
798 of education approved in accordance with subsection (2) of this  
799 section, which shall include at least:

800 (a) Three (3) hours of federal law and regulations;

801 (b) Two (2) hours of ethics, which shall include  
802 instruction on fraud, consumer protection and fair lending issues;

803 (c) Two (2) hours of training related to lending  
804 standards for the nontraditional mortgage product marketplace; and

805 (d) Two (2) hours of education related to the

806 Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

807 (6) For the purposes of subsection (5) of this section,  
808 continuing education courses shall be reviewed, and approved by  
809 the Nationwide Mortgage Licensing System and Registry based upon  
810 reasonable standards. Review and approval of a continuing  
811 education course shall include review and approval of the course  
812 provider.

813 (7) Nothing in this section shall preclude any education  
814 course, as approved by the Nationwide Mortgage Licensing System  
815 and Registry, that is provided by the employer of the mortgage  
816 loan originator or an entity that is affiliated with the mortgage  
817 loan originator by an agency contract, or any subsidiary or  
818 affiliate of such employer or entity.

819 (8) Continuing education may be offered either in a  
820 classroom, online or by any other means approved by the Nationwide  
821 Mortgage Licensing System and Registry.

822 (9) A licensed mortgage loan originator:

823 (a) Except for Section 81-18-15(3) and subsection (13)  
824 of this section, may only receive credit for a continuing  
825 education course in the year in which the course is taken; and

826 (b) May not take the same approved course in the same  
827 or successive years to meet the annual requirements for continuing



828 education, with the exception of the course concerning the  
829 Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

830 (10) A licensed mortgage loan originator who is an approved  
831 instructor of an approved continuing education course may receive  
832 credit for the licensed mortgage loan originator's own annual  
833 continuing education requirement at the rate of two (2) hours  
834 credit for every one (1) hour taught.

835 (11) A person having successfully completed the education  
836 requirements approved by the Nationwide Mortgage Licensing System  
837 and Registry in subsection (5) of this section for any state shall  
838 be accepted as credit towards completion of continuing education  
839 requirements in Mississippi.

840 (12) A licensed mortgage loan originator who later becomes  
841 unlicensed must complete the continuing education requirements for  
842 the last year in which the license was held prior to issuance of a  
843 new or renewed license.

844 (13) A person meeting the requirements of Section  
845 81-18-15(2) (a) and (c) may make up any deficiency in continuing  
846 education as established by rule or regulation of the  
847 commissioner.

848 **SECTION 10.** Section 81-18-17, Mississippi Code of 1972, is  
849 amended as follows:

850 81-18-17. (1) Each license \* \* \* issued under this chapter  
851 shall state the address of the licensee's principal place of  
852 business, the licensee's assigned licensed location and the name  
853 of the licensee \* \* \*.

854 (2) A licensee \* \* \* shall post the original license \* \* \*  
855 in a conspicuous place in the assigned place of business of the  
856 licensee.

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

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



860 (5) Each licensee shall notify the department, in writing,  
861 of any change in the address of its principal place of business or  
862 licensed loan originator or of any additional location of business  
863 or any change of officer, director or principal of the licensee,  
864 or licensed loan originator within thirty (30) days of the change.

865 (6) No licensee shall open a branch office in this state or  
866 a branch office outside this state from which the licensee has  
867 direct contact with consumers regarding origination or brokering  
868 Mississippi residential property, without prior approval of the  
869 department. An application for any branch office shall be made  
870 through the Nationwide Mortgage Licensing System and Registry on a  
871 form prescribed by the department, which shall include at least  
872 evidence of compliance with subsection (1) of Section 81-18-25 as  
873 to that branch and shall be accompanied by payment of a  
874 nonrefundable application fee of One Hundred Dollars (\$100.00) and  
875 at least one (1) loan originator application licensed at that  
876 branch office. The application shall be approved unless the  
877 department finds that the applicant has not conducted business  
878 under this chapter in accordance with law. The application shall  
879 be deemed approved if notice to the contrary has not been mailed  
880 by the department to the applicant within thirty (30) days of the  
881 date that the complete application is received by the department.  
882 After approval, the applicant shall give written notice to the  
883 department within ten (10) days of the commencement of business at  
884 the branch office. Each branch office that currently holds a  
885 branch license shall renew that branch license before the  
886 expiration date of the main company license, on or before December  
887 31. The license renewal shall be on a form prescribed by the  
888 department with a nonrefundable renewal application fee of  
889 Twenty-five Dollars (\$25.00). If the annual renewal fee remains  
890 unpaid, the license shall expire, but not before December 31 of  
891 any year for which the annual renewal fee has been paid. If the  
892 renewal fee is not paid before the expiration date of the license,



893 the branch shall be liable for the initial license fee, which is  
894 One Hundred Dollars (\$100.00), in order to renew.

895 **SECTION 11.** Section 81-18-19, Mississippi Code of 1972, is  
896 amended as follows:

897 81-18-19. (1) Except as provided in this section, no person  
898 shall acquire directly or indirectly ten percent (10%) or more of  
899 the voting shares of a corporation or ten percent (10%) or more of  
900 the ownership of any other entity licensed to conduct business  
901 under this chapter unless it first files an application in  
902 accordance with the requirements prescribed in Section 81-18-9.

903 (2) Upon the filing and investigation of an application, the  
904 department shall permit the applicant to acquire the interest in  
905 the licensee if it is satisfied and finds that the applicant and  
906 its members, if applicable, its directors and officers, if a  
907 corporation, and any proposed new directors and officers have  
908 provided its surety bond and have the character, reputation and  
909 experience to warrant belief that the business will be operated  
910 fairly and in accordance with the law. If the application is  
911 denied, the department shall notify the applicant of the denial  
912 and the reasons for the denial.

913 (3) A decision of the department denying a license \* \* \*,  
914 original or renewal, shall be conclusive, except that the  
915 applicant may seek judicial review in the Chancery Court of the  
916 First Judicial District of Hinds County, Mississippi.

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

919 (a) The acquisition of an interest in a licensee  
920 directly or indirectly including an acquisition by merger or  
921 consolidation by or with a person licensed under this chapter or  
922 exempt from this chapter under Section 81-18-5.

923 (b) The acquisition of an interest in a licensee  
924 directly or indirectly including an acquisition by merger or



925 consolidation by or with a person affiliated through common  
926 ownership with the licensee.

927 (c) The acquisition of an interest in a licensee by a  
928 person by bequest, device, gift or survivorship or by operation of  
929 law.

930 (5) A person acquiring an interest in a licensee in a  
931 transaction that is requesting exemption from filing an  
932 application for approval of the application shall send a written  
933 request to the department for an exemption within thirty (30) days  
934 before the closing of the transaction.

935 **SECTION 12.** Section 81-18-21, Mississippi Code of 1972, is  
936 amended as follows:

937 81-18-21. (1) Any person required to be licensed under this  
938 chapter shall maintain in its offices, or such other location as  
939 the department shall permit, the books, accounts and records  
940 necessary for the department to determine whether or not the  
941 person is complying with the provisions of this chapter and the  
942 rules and regulations adopted by the department under this  
943 chapter. These books, accounts and records shall be maintained  
944 apart and separate from any other business in which the person is  
945 involved and may represent historical data for three (3) years  
946 preceding the date of the last license application date forward.  
947 The books, accounts and records shall be kept in a secure location  
948 under conditions that will not lead to their damage or  
949 destruction. If the licensee wishes to keep the files in a  
950 location other than the location listed on the license, then the  
951 licensee first must submit a written request on a form designated  
952 by the department and gain written approval from the commissioner  
953 before storing the files at an off-site secure location.

954 (2) To assure compliance with the provisions of this  
955 chapter, the department may examine the books and records of any  
956 licensee without notice during normal business hours. The  
957 commissioner shall charge the licensee an examination fee in an



958 amount not less than Three Hundred Dollars (\$300.00) nor more than  
959 Six Hundred Dollars (\$600.00) for each office or location within  
960 the State of Mississippi, plus any actual expenses incurred while  
961 examining the licensee's records or books that are located outside  
962 the State of Mississippi. However, in no event shall a licensee  
963 be examined more than once in a two-year period unless for cause  
964 shown based upon consumer complaint and/or other exigent reasons  
965 as determined by the commissioner.

966 (3) The department, its designated officers and employees,  
967 or its duly authorized representatives, for the purposes of  
968 discovering violations of this chapter and for the purpose of  
969 determining whether any person or individual reasonably suspected  
970 by the commissioner of conducting business that requires a  
971 license \* \* \* under this chapter, may investigate those persons  
972 and individuals and examine all relevant books, records and papers  
973 employed by those persons or individuals in the transaction of  
974 business, and may summon witnesses and examine them under oath  
975 concerning matters as to the business of those persons, or other  
976 such matters as may be relevant to the discovery of violations of  
977 this chapter including, without limitation, the conduct of  
978 business without a license \* \* \* as required under this chapter.

979 (4) Each licensee, individual or person subject to this  
980 chapter shall make available to the commissioner upon request the  
981 books and records relating to the operations of the licensee,  
982 individual or person subject to this chapter. The commissioner  
983 shall have access to those books and records and interview the  
984 officers, principals, mortgage loan originators, employees,  
985 independent contractors, agents, and customers of the licensee,  
986 individual or person subject to this chapter concerning their  
987 business.

988 (5) Each licensee, individual or person subject to this  
989 chapter shall make or compile reports or prepare other information



990 as directed by the commissioner in order to carry out the purposes  
991 of this section including, but not limited to:

992 (a) Accounting compilations;

993 (b) Information lists and data concerning loan  
994 transactions in a format prescribed by the commissioner; or

995 (c) Such other information deemed necessary to carry  
996 out the purposes of this section.

997 (6) In making any examination or investigation authorized by  
998 this chapter, the commissioner may control access to any documents  
999 and records of the licensee or person under examination or  
1000 investigation. The commissioner may take possession of the  
1001 documents and records or place a person in exclusive charge of the  
1002 documents and records in the place where they are usually kept.  
1003 During the period of control, no individual or person shall remove  
1004 or attempt to remove any of the documents and records except under  
1005 a court order or with the consent of the commissioner. Unless the  
1006 commissioner has reasonable grounds to believe the documents or  
1007 records of the licensee have been or are at risk of being altered  
1008 or destroyed for purposes of concealing a violation of this  
1009 chapter, the licensee or owner of the documents and records shall  
1010 have access to the documents or records as necessary to conduct  
1011 its ordinary business affairs.

1012 (7) The commissioner shall report regularly violations of  
1013 this act, as well as enforcement actions and other relevant  
1014 information, to the Nationwide Mortgage Licensing System and  
1015 Registry subject to the provisions contained in Section 81-18-63.

1016 (8) Examinations and investigations conducted under this  
1017 chapter and information obtained by the department, except as  
1018 provided in subsection (7) of this section, in the course of its  
1019 duties under this chapter are confidential.

1020 (9) In the absence of malice, fraud or bad faith a person is  
1021 not subject to civil liability arising from the filing of a  
1022 complaint with the department, furnishing other information



1023 required by this chapter, information required by the department  
1024 under the authority granted in this chapter, or information  
1025 voluntarily given to the department related to allegations that a  
1026 licensee or prospective licensee has violated this chapter.

1027 (10) In order to carry out the purposes of this section, the  
1028 commissioner may:

1029 (a) Accept and rely on examination or investigation  
1030 reports made by other government officials, within or without this  
1031 state; or

1032 (b) Accept audit reports made by an independent  
1033 certified public accountant for the licensee, individual or person  
1034 subject to this chapter in the course of that part of the  
1035 examination covering the same general subject matter as the audit  
1036 and may incorporate the audit report in the report of the  
1037 examination, report of investigation or other writing of the  
1038 commissioner.

1039 (11) The authority of this section shall remain in effect,  
1040 whether such a licensee, individual or person subject to this  
1041 chapter acts or claims to act under any licensing or registration  
1042 law of this state, or claims to act without that authority.

1043 (12) No licensee, individual or person subject to  
1044 investigation or examination under this section may knowingly  
1045 withhold, abstract, remove, mutilate, destroy or secrete any  
1046 books, records, computer records or other information.

1047 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is  
1048 amended as follows:

1049 81-18-23. (1) Each mortgage licensee shall submit to the  
1050 Nationwide Mortgage Licensing System and Registry reports of  
1051 condition, which shall be in such form and shall contain such  
1052 information as the Nationwide Mortgage Licensing System and  
1053 Registry may require.





1054       (2) The department, in its discretion, may relieve any  
1055 company from the payment of any penalty, in whole or in part, for  
1056 good cause.

1057       (3) If a company fails to pay a penalty from which it has  
1058 not been relieved, the department may maintain an action at law to  
1059 recover the penalty.

1060       (4) Within fifteen (15) days of the occurrence of any of the  
1061 following events, a company shall file a written report with the  
1062 commissioner describing the event and its expected impact on the  
1063 activities of the company in this state:

1064               (a) The filing for bankruptcy or reorganization by the  
1065 company;

1066               (b) The institution of revocation or suspension  
1067 proceedings against the company by any state or governmental  
1068 authority;

1069               (c) Any felony indictment of the company or any of its  
1070 directors, executive officers, principal officer or loan  
1071 originators;

1072               (d) Any felony conviction of the company or any of its  
1073 directors, executive officers, principal officer or loan  
1074 originators; or

1075               (e) Any misdemeanor conviction, in which fraud is an  
1076 essential element, of any of the company's directors, executive  
1077 officers, principal officer or loan originators.

1078       (5) If the company, owner, principal officer of a company or  
1079 licensed loan originator is involved in a civil action concerning  
1080 the company, then the person shall notify the commissioner in  
1081 writing within sixty (60) days after the initial filing of the  
1082 civil action.

1083       **SECTION 14.** Section 81-18-25, Mississippi Code of 1972, is  
1084 amended as follows:

1085       81-18-25. (1) Each principal place of business and branch  
1086 office in the state shall meet all of the following requirements:



1087 (a) Be in compliance with local zoning ordinances and  
1088 have posted any licenses required by local government agencies.  
1089 It is the responsibility of the licensee to meet local zoning  
1090 ordinances and obtain the required occupational licenses; however,  
1091 zoning cannot be residential. If there is no zoning in the area,  
1092 then the person shall submit to the department a letter from the  
1093 city or county stating that there is no zoning.

1094 (b) Consist of at least one (1) secure enclosed room or  
1095 secure building of stationary construction in which negotiations  
1096 of mortgage loan transactions may be conducted in privacy.  
1097 Stationary construction does not include the use of portable  
1098 buildings. If there is no zoning in the requested location and  
1099 the property is used for residential purposes, then the person  
1100 shall utilize an enclosed room with a dedicated outside door.

1101 (c) Display a permanent sign outside the place of  
1102 business readily visible to the general public, unless the display  
1103 of sign violates local zoning ordinances or restrictive covenants.  
1104 The sign must contain the name of the licensee and the words  
1105 "Mississippi Licensed Mortgage Company" \* \* \* or, if the initial  
1106 license is obtained after July 1, 2007, the words "Licensed by the  
1107 Mississippi Department of Banking and Consumer Finance."

1108 (2) Each licensee shall prominently display the original  
1109 license at the principal place of business and each branch office.

1110 (3) Each person licensed under this chapter shall  
1111 prominently display his or her original license in the office  
1112 where the person is employed.

1113 (4) If one (1) of the following is correct, then that  
1114 location shall be licensed as a mortgage broker or mortgage lender  
1115 under this chapter and not as a branch:

1116 (a) It is a separate entity operating as an independent  
1117 business or mortgage operation which is not under the direct  
1118 control, management supervision and responsibility of the  
1119 licensee;



1120 (b) The licensee is not the lessee or owner of the  
1121 branch and the branch is not under the direct and daily ownership,  
1122 control, management and supervision of the licensee;

1123 (c) All assets and liabilities of the branch are not  
1124 assets and liabilities of the licensee, and all income and  
1125 expenses of the branch are income and expenses of the licensee and  
1126 properly accounted for in the financial records and tax returns of  
1127 the licensee; or

1128 (d) All practices, policies and procedures, including,  
1129 but not limited to, those relating to employment and operations,  
1130 are not originated and established by the licensee or registered  
1131 company and are not applied consistently to the principal place of  
1132 business and all branches.

1133 Nothing in this subsection (4) shall affect or change, or be  
1134 construed as affecting or changing, the existing statutory law and  
1135 common law on agency, principal and agent, independent  
1136 contractors, and parent and subsidiary companies.

1137 **SECTION 15.** Section 81-18-27, Mississippi Code of 1972, is  
1138 amended as follows:

1139 81-18-27. (1) No person required to be licensed \* \* \* under  
1140 this chapter shall:

1141 (a) Directly or indirectly employ any scheme, device or  
1142 artifice to defraud or mislead borrowers or lenders or to defraud  
1143 any person.

1144 (b) Misrepresent to or conceal from an applicant for a  
1145 mortgage loan or mortgagor, material facts, terms or conditions of  
1146 a transaction to which the licensee is a party.

1147 (c) Fail to disburse funds in accordance with a written  
1148 commitment or agreement to make a mortgage loan.

1149 (d) Fail to truthfully account for monies belonging to  
1150 a party to a residential mortgage loan transaction.

1151 (e) Improperly refuse to issue a satisfaction of a  
1152 mortgage loan.



1153           (f) Fail to account for or deliver to any person any  
1154 personal property obtained in connection with a mortgage loan,  
1155 such as money, funds, deposits, checks, drafts, mortgages or other  
1156 documents or things of value that have come into the possession of  
1157 the licensee and that are not the property of the licensee, or  
1158 that the licensee is not by law or at equity entitled to retain.

1159           (g) Engage in any transaction, practice, or course of  
1160 business that is not in good faith, or that operates a fraud upon  
1161 any person in connection with the making of or purchase or sale of  
1162 any mortgage loan, including the use of correction fluid on any  
1163 document associated with the mortgage loan.

1164           (h) Engage in any fraudulent residential mortgage  
1165 underwriting practices, which include, but are not limited to,  
1166 making in any manner, any false or deceptive statement or  
1167 representation including, with regard to the rates, points or  
1168 other financing terms or conditions for a residential mortgage  
1169 loan, or engage in bait and switch advertising.

1170           (i) Solicit or enter into a contract with a borrower  
1171 that provides in substance that the person or individual subject  
1172 to this chapter may earn a fee or commission through "best  
1173 efforts" to obtain a loan even though no loan is actually obtained  
1174 for the borrower.

1175           (j) Induce, require, or otherwise permit the applicant  
1176 for a mortgage loan or mortgagor to sign a security deed, note, or  
1177 other pertinent financial disclosure documents with any blank  
1178 spaces to be filled in after it has been signed, except blank  
1179 spaces relating to recording or other incidental information not  
1180 available at the time of signing.

1181           (k) Make, directly or indirectly, any residential  
1182 mortgage loan with the intent to foreclose on the borrower's  
1183 property. For purposes of this paragraph, there is a presumption  
1184 that a person has made a residential mortgage loan with the intent



1185 to foreclose on the borrower's property if any of the following  
1186 circumstances are proven:

- 1187 (i) Lack of substantial benefit to the borrower;
- 1188 (ii) The probability that full payment of the loan  
1189 cannot be made by the borrower;
- 1190 (iii) That the person has made a significant  
1191 proportion of loans foreclosed under similar circumstances;
- 1192 (iv) That the person has provided an extension of  
1193 credit or collected a mortgage debt by extortion;
- 1194 (v) That the person does business under a trade  
1195 name that misrepresents or tends to misrepresent that the person  
1196 is a bank, trust company, savings bank, savings and loan  
1197 association, credit union, or insurance company.

1198 (1) Charge or collect any direct payment, compensation  
1199 or advance fee from a borrower unless and until a loan is actually  
1200 found, obtained and closed for that borrower, and in no event  
1201 shall that direct payment, compensation or advance fee exceed  
1202 seven and ninety-five one-hundredths percent (7.95%) of the  
1203 original principal amount of the loan, and any such direct  
1204 payments, compensation or advance fees shall be included in all  
1205 annual percentage rate (APR) calculations if required under  
1206 Regulation Z of the federal Truth in Lending Act (TILA). A direct  
1207 payment, compensation or advance fee as defined in this section  
1208 shall not include:

- 1209 (i) Any direct payment, compensation or advance  
1210 fee collected by a licensed mortgage broker or mortgage lender to  
1211 be paid to a nonrelated third party;

- 1212 (ii) Any indirect payment to a licensed mortgage  
1213 broker or mortgage lender by a lender if those fees are not  
1214 required to be disclosed under the Real Estate Settlement  
1215 Procedures Act (RESPA);

- 1216 (iii) Any indirect payment or compensation by a  
1217 lender to a licensee required to be disclosed by the licensee



1218 under RESPA, provided that the payment or compensation is  
1219 disclosed to the borrower by the licensee on a good faith estimate  
1220 of costs, is included in the APR if required under Regulation Z of  
1221 TILA, and is made pursuant to a written agreement between the  
1222 licensee and the borrower as may be required by Section 81-18-33;

1223 (iv) A fee not to exceed one percent (1%) of the  
1224 principal amount of a loan for construction, provided that a  
1225 binding commitment for the loan has been obtained for the  
1226 prospective borrower; or

1227 (v) An advance fee, known as a lock-in fee,  
1228 collected by a licensee to be paid to a lender to lock in an  
1229 interest rate and/or a certain number of points on a mortgage loan  
1230 from the lender as provided in Section 81-18-28.

1231 (m) Pay to any person not licensed \* \* \* under the  
1232 provisions of this chapter any commission, bonus or fee in  
1233 connection with arranging for or originating a mortgage loan for a  
1234 borrower, except that a licensed loan originator may be paid a  
1235 bonus, commission, or fee by his or her licensed employer.

1236 (n) Refuse to provide the loan payoff within three (3)  
1237 business days of an oral or written request from a borrower or  
1238 third party. Proof of authorization of the borrower shall be  
1239 submitted for a third-party request.

1240 (o) Knowingly withhold, extract, remove, mutilate,  
1241 destroy or conceal any books, records, computer records or other  
1242 information which are required by law to be disclosed.

1243 (p) Negligently make any false statement or knowingly  
1244 and willfully make any omission of material fact in connection  
1245 with any information or reports filed with a governmental agency  
1246 or the Nationwide Mortgage Licensing System and Registry or in  
1247 connection with any investigation conducted by the commissioner or  
1248 another governmental agency.

1249 (q) Fail to comply with this chapter or rules or  
1250 regulations promulgated under this chapter, or fail to comply with



1251 any other state or federal law, including the rules and  
1252 regulations under that law, applicable to any business authorized  
1253 or conducted under this chapter.

1254 (r) Conduct any business covered by this chapter  
1255 without holding a valid license as required under this chapter, or  
1256 assist or aid and abet any person in the conduct of business under  
1257 this chapter without a valid license as required under this  
1258 chapter.

1259 (s) Make any payment, threat or promise, directly or  
1260 indirectly, to any person for the purposes of influencing the  
1261 independent judgment of the person in connection with a  
1262 residential mortgage loan, or make any payment threat or promise,  
1263 directly or indirectly, to any appraiser of a property, for the  
1264 purposes of influencing the independent judgment of the appraiser  
1265 with respect to the value of the property.

1266 (t) Solicit, advertise or enter into a contract for  
1267 specific interest rates, points or other financing terms unless  
1268 the terms are actually available at the time of soliciting,  
1269 advertising or contracting.

1270 (u) Fail to make disclosures as required by this  
1271 chapter and any other applicable state or federal law including  
1272 regulations under that law.

1273 (v) Cause or require a borrower to obtain property  
1274 insurance coverage in an amount that exceeds the replacement cost  
1275 of the improvements as established by the property insurer.

1276 (2) A licensed mortgage broker or mortgage lender shall only  
1277 broker a residential mortgage loan to a mortgage broker or  
1278 mortgage lender licensed under this chapter or to a person exempt  
1279 from licensure under the provisions of this chapter.

1280 (3) No nonbanking entity may use any sign or handwritten or  
1281 printed paper indicating that it is a bank, savings bank, trust  
1282 company or place of banking. No entity may use the word "bank,"  
1283 "savings bank," "banking," "banker" or "trust company," or the



1284 equivalent or plural of any of these words, in connection with any  
1285 business other than that of banking. This subsection does not  
1286 prohibit a person from acting in a trust capacity.

1287 (4) No person shall use the name or logo of any banking  
1288 entity in connection with the sale, offering for sale, or  
1289 advertising of any financial product or service without the  
1290 express written consent of the banking entity.

1291 (5) No unlicensed Mississippi location of a Mississippi  
1292 licensed mortgage broker or mortgage lender may advertise mortgage  
1293 services if the unlicensed location is more than fifty (50) miles  
1294 from a licensed Mississippi location.

1295 **SECTION 16.** Section 81-18-31, Mississippi Code of 1972, is  
1296 amended as follows:

1297 81-18-31. The department shall promulgate regulations  
1298 governing the advertising of mortgage loans, including, but not  
1299 limited to, the following requirements:

1300 (a) That all advertisements for loans regulated under  
1301 this chapter may not be false, misleading or deceptive. No person  
1302 whose activities are regulated under this chapter may advertise in  
1303 any manner so as to indicate or imply that its interest rates or  
1304 charges for loans are "recommended," "approved," "set" or  
1305 "established" by the State of Mississippi;

1306 (b) That all licensees shall maintain a copy of all  
1307 advertisements citing interest rates or payment amounts primarily  
1308 disseminated in this state and shall attach to each advertisement  
1309 documentation that provides corroboration of the availability of  
1310 the interest rate and terms of loans and names the specific media  
1311 sources by which the advertisements were distributed;

1312 (c) That all published advertisements disseminated  
1313 primarily in this state by a licensee shall contain the name and an  
1314 office address of the licensee, which shall be the same as the  
1315 name and address of the licensee on record with the department;





1316 (d) That an advertisement containing either a quoted  
1317 interest rate or monthly payment amount must include:

1318 (i) The interest rate of the mortgage, a statement  
1319 as to whether the rate is fixed or adjustable, and the adjustment  
1320 index and frequency of adjustments;

1321 (ii) The term in years or months to fully repay  
1322 the mortgage;

1323 (iii) The APR as computed under federal  
1324 guidelines; and

1325 (e) That no licensee shall advertise its services in  
1326 Mississippi in any media disseminated primarily in this state,  
1327 whether print or electronic, without the words "Mississippi  
1328 Licensed Mortgage Company" \* \* \* or, if the initial license is  
1329 obtained after July 1, 2007, the words "Licensed by the  
1330 Mississippi Department of Banking and Consumer Finance."

1331 (f) That the unique identifier of any person  
1332 originating a residential mortgage loan shall be clearly shown on  
1333 all residential mortgage loan application forms, solicitations or  
1334 advertisements, including business cards or Web sites, and any  
1335 other documents as established by rule, regulation or order of the  
1336 commissioner.

1337 **SECTION 17.** Section 81-18-33, Mississippi Code of 1972, is  
1338 amended as follows:

1339 81-18-33. The individual borrower files of a licensee shall  
1340 contain at least the following:

1341 (a) A mortgage origination agreement provided to the  
1342 borrower containing at least the following statements:

1343 (i) "As required by Mississippi Law, (licensed  
1344 company name) has secured a bond issued by (name of insurance  
1345 company), a surety company authorized to do business in this  
1346 state. A certified copy of this bond is filed with the  
1347 Mississippi Commissioner of Banking and Consumer Finance."



- 1348 (ii) "As a borrower you are protected under the  
1349 Mississippi S.A.F.E. Mortgage Licensing Act of 2009."
- 1350 (iii) "Complaints against a licensee may be made  
1351 by contacting the:  
1352 Mississippi Department of Banking and  
1353 Consumer Finance  
1354 P.O. Drawer 23729  
1355 Jackson, MS 39225-3729";
- 1356 (b) A copy of the original loan application signed and  
1357 dated by the licensee;
- 1358 (c) A copy of the signed closing statement as required  
1359 by HUD or documentation of denial or cancellation of the loan  
1360 application;
- 1361 (d) A copy of the good faith estimate of costs provided  
1362 to the borrower;
- 1363 (e) A copy of the appraisal or statement of value if  
1364 procured as a part of the loan application process;
- 1365 (f) A copy of a loan lock-in agreement, if any,  
1366 provided by the licensee;
- 1367 (g) A copy of the disclosures required under Regulation  
1368 Z of the federal Truth In Lending Act and other disclosures as  
1369 required under federal regulations and evidence that those  
1370 disclosures have been properly and timely made to the borrower;  
1371 and
- 1372 (h) A copy of the final signed Uniform Residential Loan  
1373 Application.

1374 **SECTION 18.** Section 81-18-37, Mississippi Code of 1972, is  
1375 amended as follows:

1376 81-18-37. (1) The department may suspend or revoke any  
1377 license \* \* \* for any reason that would have been grounds for  
1378 refusal to issue an original license \* \* \* or for:

1379 (a) A violation of any provision of this chapter or any  
1380 rule or regulation adopted under this chapter;



1381 (b) Failure of the licensee \* \* \* to pay, within thirty  
1382 (30) days after it becomes final and nonappealable, a judgment  
1383 recovered in any court within this state by a claimant or creditor  
1384 in an action arising out of the licensee's \* \* \* business in this  
1385 state as a mortgage broker or mortgage lender.

1386 (2) Notice of the department's intention to enter an order  
1387 denying an application for a license \* \* \* under this chapter or  
1388 of an order suspending or revoking a license \* \* \* under this  
1389 chapter shall be given to the applicant, licensee \* \* \* in  
1390 writing, sent by registered or certified mail addressed to the  
1391 principal place of business of the applicant or licensee \* \* \*.  
1392 Within thirty (30) days of the date of the notice of intention to  
1393 enter an order of denial, suspension or revocation under this  
1394 chapter, the applicant, licensee \* \* \* may request in writing a  
1395 hearing to contest the order. If a hearing is not requested in  
1396 writing within thirty (30) days of the date of the notice of  
1397 intention, the department shall enter a final order regarding the  
1398 denial, suspension or revocation. Any final order of the  
1399 department denying, suspending or revoking a license \* \* \* shall  
1400 state the grounds upon which it is based and shall be effective on  
1401 the date of issuance. A copy of the final order shall be forwarded  
1402 promptly by registered or certified mail addressed to the  
1403 principal place of business of the applicant or licensee \* \* \*.

1404 **SECTION 19.** Section 81-18-43, Mississippi Code of 1972, is  
1405 amended as follows:

1406 81-18-43. (1) In order to ensure the effective supervision  
1407 and enforcement of this chapter, the commissioner may:

1408 (a) Deny, suspend, revoke, condition or decline to  
1409 renew a license for a violation of this chapter, rules or  
1410 regulations issued under this chapter or order or directive  
1411 entered under this chapter.

1412 (b) Deny, suspend, revoke, condition or decline to  
1413 renew a license if an applicant or licensee fails at any time to



1414 meet the requirements of Section 81-18-9(4) or 81-18-15(2), or  
1415 withholds information or makes a material misstatement in an  
1416 application for a license or renewal of a license.

1417 (c) Order restitution against persons subject to this  
1418 chapter for violations of this chapter.

1419 (d) Impose civil penalties on persons subject to this  
1420 chapter under subsections (2) and (3) of this section.

1421 (e) Issue orders or directives under this chapter as  
1422 follows:

1423 (i) Order or direct persons subject to this  
1424 chapter to cease and desist from conducting business, including  
1425 immediate temporary orders to cease and desist.

1426 (ii) Order or direct persons subject to this  
1427 chapter to cease any harmful activities or violations of this  
1428 chapter, including immediate temporary orders to cease and desist.

1429 (iii) Enter immediate temporary orders to cease  
1430 business under a license issued under the authority granted under  
1431 Section 81-18-7(6) if the commissioner determines that the license  
1432 was erroneously granted or the licensee is currently in violation  
1433 of this chapter.

1434 (iv) Order or direct such other affirmative action  
1435 as the commissioner deems necessary.

1436 (2) The commissioner may impose a civil penalty on a  
1437 mortgage loan originator or person subject to this chapter, if the  
1438 commissioner finds, on the record after notice and opportunity for  
1439 hearing, that the mortgage loan originator or person subject to  
1440 this chapter has violated or failed to comply with any requirement  
1441 of this chapter or any regulation prescribed by the commissioner  
1442 under this chapter or order issued under authority of this  
1443 chapter. The maximum amount of penalty for each act or omission  
1444 described in this subsection shall be Twenty-five Thousand Dollars  
1445 (\$25,000.00).



1446           (3) Each violation or failure to comply with any directive  
1447 or order of the commissioner is a separate and distinct violation  
1448 or failure.

1449           (4) \* \* \* For a first offense, the licensee, person required  
1450 to be licensed, or employee may be found guilty of a misdemeanor  
1451 and, upon conviction thereof, shall be punishable by \* \* \*  
1452 imprisonment in the county jail for not more than one (1)  
1453 year \* \* \*;

1454           (5) \* \* \* For a second or subsequent offense, the licensee,  
1455 person required to be licensed, or employee shall be guilty of a  
1456 felony and, upon conviction thereof, may be punished by  
1457 imprisonment in the custody of the State Department of Corrections  
1458 for a term not less than one (1) year nor more than five (5)  
1459 years \* \* \*.

1460           (6) Compliance with the criminal provisions of this section  
1461 shall be enforced by the appropriate law enforcement agency, which  
1462 may exercise for that purpose any authority conferred upon the  
1463 agency by law.

1464           (7) The commissioner shall report regularly violations of  
1465 this chapter, as well as enforcement actions and other relevant  
1466 information, to the Nationwide Mortgage Licensing System and  
1467 Registry subject to the provisions contained in Section 81-18-63.

1468           (8) The state may enforce its rights under the surety bond  
1469 as required in Section 81-18-11 as an available remedy for the  
1470 collection of any civil penalties, criminal fines or costs of  
1471 investigation and/or prosecution incurred.

1472           (9) Any person assessed a penalty as provided in this  
1473 section shall have the right to request a hearing on the amount of  
1474 the penalty within ten (10) days after receiving notification of  
1475 the assessment. If no hearing is requested within ten (10) days  
1476 of the receipt of the notice, the penalty shall be final except as  
1477 to judicial review in the Chancery Court of the First Judicial  
1478 District of Hinds County. Upon the filing of a petition for



1479 judicial review, the court shall issue an order to the licensee  
1480 requiring the licensee to show cause why it should not be entered.  
1481 If the court determines, after a hearing upon the merits or after  
1482 failure of the person to appear when so ordered, that the order of  
1483 the department was properly issued, it shall grant the penalty  
1484 sought by the department.

1485       **SECTION 20.** Section 81-18-51, Mississippi Code of 1972, is  
1486 amended as follows:

1487       81-18-51. Sections 81-18-1 through 81-18-63 shall stand  
1488 repealed on July 1, 2010.

1489       **SECTION 21.** Section 81-18-61, Mississippi Code of 1972, is  
1490 amended as follows:

1491       81-18-61. (1) In addition to any other duties imposed upon  
1492 the commissioner by law, the commissioner shall require mortgage  
1493 loan originators to be licensed and registered through the  
1494 Nationwide Mortgage Licensing System and Registry. In order to  
1495 carry out this requirement, the commissioner is authorized to  
1496 participate in the Nationwide Mortgage Licensing System and  
1497 Registry. For this purpose, the commissioner may establish, by  
1498 rule, regulation or order, requirements as necessary, including  
1499 but not limited to:

1500           (a) Background checks for:

1501                   (i) Criminal history through fingerprint or other  
1502 databases;

1503                   (ii) Civil or administrative records;

1504                   (iii) Credit history; or

1505                   (iv) Any other information as deemed necessary by  
1506 the Nationwide Mortgage Licensing System and Registry;

1507           (b) The payment of fees to apply for or renew licenses  
1508 through the Nationwide Mortgage Licensing System and Registry;

1509           (c) The setting or resetting as necessary of renewal or  
1510 reporting dates; and



1511           (d) Requirements for amending or surrendering a license  
1512 or any other such activities as the commissioner deems necessary  
1513 for participation in the Nationwide Mortgage Licensing System and  
1514 Registry.

1515           (2) The commissioner shall establish a process by which  
1516 mortgage loan originators may challenge information entered into  
1517 the Nationwide Mortgage Licensing System and Registry by the  
1518 commissioner.

1519           (3) In order to fulfill the purposes of this chapter, the  
1520 commissioner is authorized to establish relationships or contracts  
1521 with the Nationwide Mortgage Licensing System and Registry or  
1522 other entities designated by the Nationwide Mortgage Licensing  
1523 System and Registry to collect and maintain records and process  
1524 transaction fees or other fees related to licensees or other  
1525 persons subject to this chapter.

1526           (4) A loan processor or underwriter who is an independent  
1527 contractor may not engage in the activities of a loan processor or  
1528 underwriter unless the independent contractor loan processor or  
1529 underwriter obtains and maintains a license under Section  
1530 81-18-7(4). Each independent contractor loan processor or  
1531 underwriter licensed as a mortgage loan originator must have and  
1532 maintain a valid unique identifier issued by the Nationwide  
1533 Mortgage Licensing System and Registry.

1534       \* \* \*

1535           **SECTION 22.** The following shall be codified as Section  
1536 81-18-63, Mississippi Code of 1972:

1537           81-18-63. (1) Except as otherwise provided in Public Law  
1538 110-289, Section 1512, the requirements under any federal law or  
1539 applicable state law regarding the privacy or confidentiality of  
1540 any information or material provided to the Nationwide Mortgage  
1541 Licensing System and Registry, and any privilege arising under  
1542 federal or state law (including the rules of any federal or state  
1543 court) with respect to that information or material, shall



1544 continue to apply to the information or material after the  
1545 information or material has been disclosed to the Nationwide  
1546 Mortgage Licensing System and Registry. The information and  
1547 material may be shared with all state and federal regulatory  
1548 officials with mortgage industry oversight authority without the  
1549 loss of privilege or the loss of confidentiality protections  
1550 provided by federal law or applicable state law.

1551 (2) In order to promote more effective regulation and reduce  
1552 regulatory burden through supervisory information sharing, the  
1553 commissioner is authorized to enter agreements or sharing  
1554 arrangements with other governmental agencies, the Conference of  
1555 State Bank Supervisors, the American Association of Residential  
1556 Mortgage Regulators or other associations representing  
1557 governmental agencies as established by rule, regulation or order  
1558 of the commissioner.

1559 (3) Information or material that is subject to a privilege  
1560 or confidentiality under subsection (1) of this section shall not  
1561 be subject to:

1562 (a) Disclosure under any federal or state law governing  
1563 the disclosure to the public of information held by an officer or  
1564 an agency of the federal government or the respective state; or

1565 (b) Subpoena or discovery, or admission into evidence,  
1566 in any private civil action or administrative process, unless with  
1567 respect to any privilege held by the Nationwide Mortgage Licensing  
1568 System and Registry with respect to that information or material,  
1569 the person to whom the information or material pertains waives, in  
1570 whole or in part, in the discretion of the person, that privilege.

1571 (4) Any applicable state law relating to the disclosure of  
1572 confidential supervisory information or any information or  
1573 material described in subsection (1) of this section that is  
1574 inconsistent with subsection (1) shall be superseded by the  
1575 requirements of this section.





1576 (5) This section shall not apply with respect to the  
1577 information or material relating to the employment history of, and  
1578 publicly adjudicated disciplinary and enforcement actions against,  
1579 mortgage loan originators that is included in the Nationwide  
1580 Mortgage Licensing System and Registry for access by the public.

1581 **SECTION 23.** The provisions of this chapter shall apply to  
1582 the activities of retail sellers of manufactured homes to the  
1583 extent as determined by the United States Department of Housing  
1584 and Urban Development through guidelines, rules, regulations or  
1585 interpretive letters.

1586 **SECTION 24.** Section 81-18-39, Mississippi Code of 1972,  
1587 which authorizes the Department of Banking and Consumer Finance to  
1588 issue cease and desist orders and collect civil penalties, is  
1589 hereby repealed.

1590 **SECTION 25.** This act shall take effect and be in force from  
1591 and after July 31, 2009.

