CHAPTER 18
MISSISSIPPI S.A.F.E. MORTGAGE LICENSING ACT OF 2009

Section

IN GENERAL.

81-18-1. Short title [Repealed effective July 1, 2010].

81-18-3. Definitions [Repealed effective July 1, 2010].

81-18-5. Exemptions [Repealed effective July 1, 2010].

81-18-7. Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2010].

81-18-8. Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2010].

81-18-9. Application for license [Repealed effective July 1, 2010].

81-18-11. Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2010].

81-18-13. Authorization to collect and maintain records and process fees related to licensees; applicants to provide certain information; licensing procedures and criteria; denial [Repealed effective July 1, 2010].

81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2010].

81-18-15. Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2010].

81-18-17. License to state name, address, and principal place of business of licensee; original license to be displayed in conspicuous place; license nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval required for opening of branch office [Repealed effective July 1, 2010].

81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2010].

81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2010].

81-18-23. Annual written report by licensee [Repealed effective July 1, 2010].

81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2010].

81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2010].

81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2010].

81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2010].

81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2010].

81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2010].

81-18-35. Journal of mortgage transactions [Repealed effective July 1, 2010].

81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2010].

81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2010].

81-18-39. Definition of "person"; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2010].

81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2010].

81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2010].

81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2010].

81-18-45. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2010].

81-18-47. Immunity from liability [Repealed effective July 1, 2010].

81-18-49. Grandfather provisions [Repealed effective July 1, 2010].

81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2010].

81-18-53. Applicability of chapter [Repealed effective July 1, 2010].

NATIONWIDE LICENSING SYSTEM.

81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2010].

81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2010].

IN GENERAL

§ 81-18-1. Short title [Repealed effective July 1, 2010].

This chapter shall be known and cited as the "Mississippi S.A.F.E. Mortgage Licensing Act of 2009. "

Sources: Laws, 2000, ch. 579, § 1; Laws, 2009, ch. 544, § 1, eff from and after July 31, 2009.

§ 81-18-3. Definitions [Repealed effective July 1, 2010].

For purposes of this chapter, the following terms shall have the following meanings:

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

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

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

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

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

(iii) If the activities of a mortgage loan originator occurs at the location.

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

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

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

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

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

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

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

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

(*l*) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any such transaction);

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

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

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

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

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

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

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

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

(jj) "Service a mortgage loan" means the collection or remittance for another, the right to collect or remit for another, or the collection of the company's own loan portfolio, whether or not the company originated, funded or purchased the loan in the secondary market, of payments of principal and interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

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

Sources: Laws, 2000, ch. 579, § 2; reenacted and amended, Laws, 2002, ch. 500, § 2; reenacted and amended, Laws, 2004, ch. 364, § 2; reenacted and amended, Laws, 2007, ch. 581, § 2; Laws, 2008, ch. 434, § 1; Laws, 2009, ch. 544, § 2, eff from and after July 31, 2009.

§ 81-18-5. Exemptions [Repealed effective July 1, 2010].

The following are exempt from the provisions of this chapter:

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

(b) Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an

immediate family member of the individual.

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

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

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

Sources: Laws, 2000, ch. 579, § 3; reenacted and amended, Laws, 2002, ch. 500, § 3; reenacted and amended, Laws, 2004, ch. 364, § 3; reenacted and amended, Laws, 2007, ch. 581, § 3; Laws, 2008, ch. 434, § 2; Laws, 2009, ch. 428, § 2; Laws, 2009, ch. 544, § 3, eff from and after July 31, 2009.

§ 81-18-7. Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2010].

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

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

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

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

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

(a) For all individuals other than individuals described in paragraph (b), the effective date shall be July 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of July 31, 2009, the effective date shall be January 1, 2011, or such later date approved by the Secretary of the United States Department of

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

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

Sources: Laws, 2000, ch. 579, § 4; Laws, 2009, ch. 544, § 4, eff from and after July 31, 2009.

§ 81-18-8. Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2010].

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

Sources: Laws, 2002, ch. 500, § 5; reenacted without change, Laws, 2004, ch. 364, § 5; reenacted without change, Laws, 2007, ch. 581, § 5, eff from and after July 1, 2007.

§ 81-18-9. Application for license [Repealed effective July 1, 2010].

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

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

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

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

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

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

(e) Documentation satisfactory to the department as to a certificate of existence of authority to transact business lawfully in Mississippi from the Mississippi Secretary of State's office, if a limited liability

company, partnership, trust or any other group of persons, however organized. This paragraph does not pertain to applicants organized as an individual or as a sole proprietorship.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) All loan originators; and

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

(4) Applicants for a mortgage loan originator license shall apply in a form as prescribed by the commissioner. Each such form shall contain content as set forth by rules, regulations, instructions or procedures of the commissioner and may be changed or updated as necessary by the commissioner in

order to carry out the purposes of this chapter. The initial license of a mortgage loan originator shall be accompanied by a fee of One Hundred Dollars ($100.00) to be paid to the Nationwide Mortgage Licensing System and Registry and any additional fees as required by the Nationwide Mortgage Licensing System and Registry. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

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

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

(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this chapter.

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

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

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

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

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

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

(7) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

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

background check; and

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 5; reenacted and amended, Laws, 2002, ch. 500, § 6; reenacted without change, Laws, 2004, ch. 364, § 6; reenacted and amended, Laws, 2007, ch. 581, § 6; Laws, 2008, ch. 434, § 3; Laws, 2009, ch. 544, § 5, eff from and after July 31, 2009.

§ 81-18-11. Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2010].

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

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

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

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

(5) All surety bonds shall be in favor, first, of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising from contract or any violation of law, and, second, for the payment of any civil

penalties, criminal fines, or costs of investigation and/or prosecution incurred by the State of Mississippi, including local law enforcement agencies.

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

Sources: Laws, 2000, ch. 579, § 6; Laws, 2009, ch. 544, § 6, eff from and after July 31, 2009.

§ 81-18-13. Authorization to collect and maintain records and process fees related to licensees; applicants to provide certain information; licensing procedures and criteria; denial [Repealed effective July 1, 2010].

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

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

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

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

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

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

(3) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (2)(a) and (b)(ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

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

(5) Upon receipt of an application for licensure, which shall include the required set of fingerprints from any local law enforcement agency, the department or designated third party shall conduct such an

investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; and that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly.

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

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

(8) The department shall not issue a license if it finds that the applicant, or any person who is a director, officer, partner or principal officer of the applicant, has been convicted of: (a) a felony in any jurisdiction; or (b) a crime that, if committed within this state, would constitute a felony under the laws of this state; or (c) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. For the purposes of this chapter, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained.

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

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

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

Sources: Laws, 2000, ch. 579, § 7; Laws, 2009, ch. 544, § 7, eff from and after July 31, 2009.

§ 81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2010].

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

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

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

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

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

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

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

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

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

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

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

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

(a) Ethics;

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

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

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

(9) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity

with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(10) (a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions.

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

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

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

Sources: Laws, 2009, ch. 544, § 8, eff from and after July 31, 2009.

§ 81-18-15. Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2010].

(1) Each mortgage broker and mortgage lender license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license to operate as a mortgage broker or mortgage lender, the applicant shall pay through the Nationwide Mortgage Licensing System and Registry to the commissioner a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before December 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the initial license fee, which is Seven Hundred Fifty Dollars ($750.00), plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department. If the application is withdrawn or denied, the application fee along with any other applicable fee are not refundable.

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

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

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

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

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

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

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

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

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

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

(d) Two (2) hours of education related to the Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

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

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

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

(9) A licensed mortgage loan originator:

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

(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education, with the exception of the course concerning the Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

(10) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing

education requirement at the rate of two (2) hours credit for every one (1) hour taught.

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

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

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

Sources: Laws, 2000, ch. 579, § 8; reenacted and amended, Laws, 2002, ch. 500, § 9; reenacted and amended, Laws, 2004, ch. 364, § 9; reenacted and amended, Laws, 2007, ch. 581, § 9; Laws, 2008, ch. 434, § 4; Laws, 2009, ch. 544, § 9, eff from and after July 31, 2009.

§ 81-18-17. License to state name, address, and principal place of business of licensee; original license to be displayed in conspicuous place; license nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval required for opening of branch office [Repealed effective July 1, 2010].

(1) Each license issued under this chapter shall state the address of the licensee's principal place of business, the licensee's assigned licensed location and the name of the licensee.

(2) A licensee shall post the original license in a conspicuous place in the assigned place of business of the licensee.

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

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

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

(6) No licensee shall open a branch office in this state or a branch office outside this state from which the licensee has direct contact with consumers regarding origination or brokering Mississippi residential property, without prior approval of the department. An application for any branch office shall be made through the Nationwide Mortgage Licensing System and Registry on a form prescribed by the department, which shall include at least evidence of compliance with subsection (1) of Section 81-18-25 as to that branch and shall be accompanied by payment of a nonrefundable application fee of One Hundred Dollars ($100.00) and at least one (1) loan originator application licensed at that branch office. The application shall be approved unless the department finds that the applicant has not conducted business under this chapter in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within thirty (30) days of the date that the complete application is received by the department. After approval, the applicant shall give written notice to the department within ten (10) days of the commencement of business at the branch

office. Each branch office that currently holds a branch license shall renew that branch license before the expiration date of the main company license, on or before December 31. The license renewal shall be on a form prescribed by the department with a nonrefundable renewal application fee of Twenty-five Dollars ($25.00). If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If the renewal fee is not paid before the expiration date of the license, the branch shall be liable for the initial license fee, which is One Hundred Dollars ($100.00), in order to renew.

Sources: Laws, 2000, ch. 579, § 9; reenacted and amended, Laws, 2002, ch. 500, § 10; reenacted and amended, Laws, 2004, ch. 364, § 10; reenacted and amended, Laws, 2007, ch. 581, § 10; Laws, 2008, ch. 434, § 5; Laws, 2009, ch. 544, § 10, eff from and after July 31, 2009.

§ 81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2010].

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

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

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

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 10; reenacted and amended, Laws, 2002, ch. 500, § 11; reenacted and

amended, Laws, 2004, ch. 364, § 11; reenacted without change, Laws, 2007, ch. 581, § 11; Laws, 2008, ch. 434, § 6; Laws, 2009, ch. 544, § 11, eff from and after July 31, 2009.

§ 81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2010].

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

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

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

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

(5) Each licensee, individual or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including, but not limited to:

(a) Accounting compilations;

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

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

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

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

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

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

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 11; Laws, 2009, ch. 544, § 12, eff from and after July 31, 2009.

§ 81-18-23. Annual written report by licensee [Repealed effective July 1, 2010].

(1) Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

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

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

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

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

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 12; reenacted without change, Laws, 2002, ch. 500, § 13; reenacted and amended, Laws, 2004, ch. 364, § 13; reenacted and amended, Laws, 2007, ch. 581, § 13; Laws, 2008, ch. 434, § 7; Laws, 2009, ch. 544, § 13, eff from and after July 31, 2009.

§ 81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2010].

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

(a) Be in compliance with local zoning ordinances and have posted any licenses required by local government agencies. It is the responsibility of the licensee to meet local zoning ordinances and obtain the required occupational licenses; however, zoning cannot be residential. If there is no zoning in the

area, then the person shall submit to the department a letter from the city or county stating that there is no zoning.

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

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

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

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

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

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 13; Laws, 2009, ch. 544, § 14, eff from and after July 31, 2009.

§ 81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2010].

(1) No person required to be licensed under this chapter shall:

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

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

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

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

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

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

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

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

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

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

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

(i) Lack of substantial benefit to the borrower;

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

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

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

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

company.

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

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

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

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

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

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

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

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

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

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

(q) Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations under that law, applicable to any business authorized or conducted under this chapter.

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

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

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

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

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

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

(3) No nonbanking entity may use any sign or handwritten or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity may use the word "bank," "savings bank," "banking," "banker" or "trust company," or the equivalent or plural of any of these words, in connection with any business other than that of banking. This subsection does not prohibit a person from acting in a trust capacity.

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

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

Sources: Laws, 2000, ch. 579, § 14; Laws, 2006, ch. 451, § 1; reenacted and amended, Laws, 2007, ch. 581, § 15; Laws, 2009, ch. 544, § 15, eff from and after July 31, 2009.

§ 81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2010].

(1) A licensed mortgage broker or mortgage lender may enter into lock-in agreements and collect a lock-in fee from a borrower on the lender's behalf. The lock-in fee shall not exceed the following:

(a) No fee may be collected to lock in for sixty (60) days or less;

(b) One percent (1%) of the principal amount of the loan to lock in for more than sixty (60) days, but not to exceed one hundred eighty (180) days;

(c) One and one-half percent (1-1/2%) of the principal amount of the loan to lock in for more than one hundred eighty (180) days, but not to exceed two hundred seventy (270) days; or

(d) Two percent (2%) of the principal amount of the loan to lock in for more than two hundred seventy (270) days.

(2) Before the collection of a lock-in fee, the applicant must be provided a copy of the lock-in fee agreement. This agreement shall contain at least the following:

(a) Identification of the property that is being purchased with the loan;

(b) The principal amount and term of the loan;

(c) The initial interest rate and/or points, whether the interest rate is fixed or variable, and if variable, the index and margin, or the method by which an interest rate change for the mortgage loan will be calculated;

(d) The amount of the lock-in fee, whether the fee is refundable or nonrefundable, the time by which the lock-in fee must be paid to the lender, and if the fee is refundable, the terms and conditions necessary to obtain the refund; and

(e) The length of the lock-in period that the agreement covers.

Sources: Laws, 2006, ch. 451, § 2; reenacted and amended, Laws, 2007, ch. 581, § 16, eff from and after July 1, 2007.

§ 81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2010].

The commissioner shall promulgate those rules and regulations, not inconsistent with law, necessary for the enforcement of this chapter.

Sources: Laws, 2000, ch. 579, § 15, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 16; reenacted without change, Laws, 2004, ch. 364, § 16; reenacted and amended, Laws, 2007, ch. 581, § 17, eff from and after July 1, 2007.

§ 81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2010].

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

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

(b) That all licensees shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in this state and shall attach to each advertisement documentation that provides

corroboration of the availability of the interest rate and terms of loans and names the specific media sources by which the advertisements were distributed;

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

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

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

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

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

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

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

Sources: Laws, 2000, ch. 579, § 16; Laws, 2009, ch. 544, § 16, eff from and after July 31, 2009.

§ 81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2010].

The individual borrower files of a licensee shall contain at least the following:

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

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

(ii) "As a borrower you are protected under the Mississippi S.A.F.E. Mortgage Licensing Act of 2009."

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

Mississippi Department of Banking and

Consumer Finance

P.O. Drawer 23729

Jackson, MS 39225-3729";

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

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

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

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

(f) A copy of a loan lock-in agreement, if any, provided by the licensee;

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

(h) A copy of the final signed Uniform Residential Loan Application.

Sources: Laws, 2000, ch. 579, § 17; Laws, 2009, ch. 544, § 17, eff from and after July 31, 2009.

§ 81-18-35. Journal of mortgage transactions [Repealed effective July 1, 2010].

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

(a) Name of applicant and co-applicant, if applicable;

(b) Date of application; and

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

Sources: Laws, 2000, ch. 579, § 18, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 19; reenacted without change, Laws, 2004, ch. 364, § 19; reenacted and amended, Laws, 2007, ch. 581, § 20, eff from and after July 1, 2007.

§ 81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2010].

(1) (a) All monies paid to a licensee for payment of taxes, loan commitment deposits, work completion deposits, appraisals, credit reports or insurance premiums on property that secures any loan made or serviced by the licensee shall be deposited in an account that is insured by the Federal Deposit Insurance

Corporation or the National Credit Union Administration and shall be kept separate, distinct, and apart from funds belonging to the licensee.

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

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

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

(4) Escrow accounts are not subject to execution or attachment on any claim against the licensee.

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

Sources: Laws, 2002, ch. 500, § 20; reenacted without change, Laws, 2004, ch. 364, § 20; reenacted and amended, Laws, 2007, ch. 581, § 21, eff from and after July 1, 2007.

§ 81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2010].

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

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

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

(2) Notice of the department's intention to enter an order denying an application for a license under this chapter or of an order suspending or revoking a license under this chapter shall be given to the applicant, licensee in writing, sent by registered or certified mail addressed to the principal place of business of the applicant or licensee. Within thirty (30) days of the date of the notice of intention to enter an order of denial, suspension or revocation under this chapter, the applicant, licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within thirty (30) days of the date of the notice of intention, the department shall enter a final order regarding the denial, suspension or revocation. Any final order of the department denying, suspending or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy of the final order shall be forwarded promptly by registered or certified mail addressed to the principal place of business of the applicant or licensee.

Sources: Laws, 2000, ch. 579, § 19; Laws, 2009, ch. 544, § 18, eff from and after July 31, 2009.

§ 81-18-39. Definition of "person"; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2010].

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

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

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

Sources: Laws, 2000, ch. 579, § 20, eff from and after July 1, 2000; reenacted and amended, Laws, 2002, ch. 500, § 22; reenacted without change, Laws, 2004, ch. 364, § 22; reenacted without change, Laws, 2007, ch. 581, § 23, eff from and after July 1, 2007.

§ 81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2010].

(1) For the purpose of conducting investigations, examinations or other proceedings under this chapter, the commissioner or his designee may issue subpoenas to any individual, person or other entity for the production of all books, papers, records, files, documents or other things, and may subpoena and compel the attendance of witnesses to give testimony, and may administer oaths. Subpoenas as herein provided may be served either by personal process or by registered mail, and upon service shall command attendance of such witnesses, and/or production of such papers and documents, at the time and place so specified.

(2) Any person or entity who fails or refuses to comply with a subpoena issued hereunder may be assessed by the commissioner a civil penalty of not more than Five Hundred Dollars ($500.00) for each day of noncompliance, and any privileges or licenses issued by the commissioner to the person or entity may be suspended for not more than six (6) months. In addition to the civil penalty, the commissioner shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the commissioner or his designee, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance therewith, and assess attorneys' fees and costs, if deemed appropriate.

Sources: Laws, 2008, ch. 434, § 9, eff from and after passage (approved Apr. 7, 2008.)

§ 81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2010].

Nothing in this chapter shall preclude a person whose license has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

Sources: Laws, 2000, ch. 579, § 21, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 23; reenacted without change, Laws, 2004, ch. 364, § 23; reenacted and amended, Laws, 2007, ch. 581, § 24, eff from and after July 1, 2007.

§ 81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2010].

(1) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may:

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

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of Section 81-18-9(4) or 81-18-15(2), or withholds information or makes a material misstatement in an application for a license or renewal of a license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Any person assessed a penalty as provided in this section shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

Sources: Laws, 2000, ch. 579, § 22; Laws, 2009, ch. 544, § 19, eff from and after July 31, 2009.

§ 81-18-45. Commissioner authorized to hire additional full-time employees [Repealed effective

July 1, 2010].

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

Sources: Laws, 2000, ch. 579, § 23, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 25; reenacted without change, Laws, 2004, ch. 364, § 25; reenacted without change, Laws, 2007, ch. 581, § 26, eff from and after July 1, 2007.

§ 81-18-47. Immunity from liability [Repealed effective July 1, 2010].

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

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

Sources: Laws, 2000, ch. 579, § 24, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 26; reenacted without change, Laws, 2004, ch. 364, § 26; reenacted without change, Laws, 2007, ch. 581, § 27, eff from and after July 1, 2007.

§ 81-18-49. Grandfather provisions [Repealed effective July 1, 2010].

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

Sources: Laws, 2000, ch. 579, § 25, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 27; reenacted without change, Laws, 2004, ch. 364, § 27; reenacted without change, Laws, 2007, ch. 581, § 28, eff from and after July 1, 2007.

§ 81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2010].

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

Sources: Laws, 2000, ch. 579, § 27; Laws, 2002, ch. 500, § 28; Laws, 2004, ch. 364, § 28; Laws, 2007, ch. 581, § 29; Laws, 2009, ch. 544, § 20, eff from and after July 31, 2009.

§ 81-18-53. Applicability of chapter [Repealed effective July 1, 2010].

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

Sources: Laws, 2009, ch. 544, § 23, eff from and after July 31, 2009.

NATIONWIDE LICENSING SYSTEM

§ 81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2010].

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

(a) Background checks for:

(i) Criminal history through fingerprint or other databases;

(ii) Civil or administrative records;

(iii) Credit history; or

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

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing

System and Registry;

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

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

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

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

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

Sources: Laws, 2007, ch. 581, § 30; Laws, 2008, ch. 434, § 8; Laws, 2009, ch. 544, § 21, eff from and after July 31, 2009.

§ 81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2010].

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or applicable state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or applicable state law.

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

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

(a) Disclosure under any federal or state law governing the disclosure to the public of information held

by an officer or an agency of the federal government or the respective state; or

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

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

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public. SECTION 23. The provisions of this chapter shall apply to the activities of retail sellers of manufactured homes to the extent as determined by the United States Department of Housing and Urban Development through guidelines, rules, regulations or interpretive letters.

Sources: Laws, 2009, ch. 544, § 22, eff from and after July 31, 2009.