

1 HB643
2 97684-2
3 By Representative Hill
4 RFD: Banking and Insurance
5 First Read: 06-MAR-08

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8 SYNOPSIS: This bill would establish the Alabama
9 Mortgage Act; would provide for the licensing of
10 mortgage lenders, mortgage brokers, mortgage
11 servicers, mortgage processors, loan originators,
12 and loan processors by the State Banking
13 Department; would provide for bonding requirements
14 and fees; would provide for certain exemptions;
15 would require annual reporting and license
16 displays; would prohibit certain acts by licensees;
17 would require certain records and a loan register
18 to be maintained by a licensee; would require that
19 licensees establish escrow accounts; would
20 establish procedures for the revocation,
21 suspension, or denial of a license and provide for
22 due process; would provide for a cease and desist
23 order and the assessment of civil penalties by the
24 department; and would provide for criminal
25 penalties for willful violations.

26 Amendment 621 of the Constitution of Alabama
27 of 1901, now appearing as Section 111.05 of the

1 Official ReCompilation of the Constitution of
2 Alabama of 1901, as amended, prohibits a general
3 law whose purpose or effect would be to require a
4 new or increased expenditure of local funds from
5 becoming effective with regard to a local
6 governmental entity without enactment by a 2/3 vote
7 unless: it comes within one of a number of
8 specified exceptions; it is approved by the
9 affected entity; or the Legislature appropriates
10 funds, or provides a local source of revenue, to
11 the entity for the purpose.

12 The purpose or effect of this bill would be
13 to require a new or increased expenditure of local
14 funds within the meaning of the amendment. However,
15 the bill does not require approval of a local
16 governmental entity or enactment by a 2/3 vote to
17 become effective because it comes within one of the
18 specified exceptions contained in the amendment.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To establish the Alabama Mortgage Act; to provide
25 for the licensing of mortgage lenders, mortgage brokers,
26 mortgage services, mortgage processors, loan originators, and
27 loan processors by the State Banking Department; to provide

1 for bonding requirements and fees; to provide for certain
2 exemptions; to require annual reporting and license displays;
3 to prohibit certain acts by licensees; to require certain
4 records and a loan register to be maintained by a licensee; to
5 require that licensees establish escrow accounts; to establish
6 procedures for the revocation, suspension, or denial of a
7 license and provide for due process; to provide for a cease
8 and desist order and the assessment of civil penalties by the
9 department; to provide for criminal penalties for willful
10 violations; to repeal Sections 5-25-1 to 5-25-18, inclusive,
11 Code of Alabama 1975; and in connection therewith would have
12 as its purpose or effect the requirement of a new or increased
13 expenditure of local funds within the meaning of Amendment 621
14 of the Constitution of Alabama of 1901, now appearing as
15 Section 111.05 of the Official ReCompilation of the
16 Constitution of Alabama of 1901, as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and cited as the
19 Alabama Mortgage Act.

20 Section 2. The activities of mortgage lenders,
21 mortgage brokers, mortgage servicers, and mortgage processors
22 and the offering of financing for residential real property
23 have a direct, valuable, and immediate impact upon this
24 state's consumers, this state's economy, the neighborhoods and
25 communities of this state, and the housing and real estate
26 industry. The Legislature finds that accessibility to mortgage
27 credit is vital to the state's citizens. The Legislature also

1 finds that it is essential for the protection of the citizens
2 of this state and the stability of the state's economy that
3 reasonable standards for licensing and regulation of business
4 practices of mortgage lenders, mortgage brokers, mortgage
5 servicers, mortgage processors, loan originators, and loan
6 processors be imposed. The Legislature further finds that the
7 obligations of mortgage lenders, mortgage brokers, mortgage
8 servicers, and mortgage processors to consumers in connection
9 with the making, brokering, and servicing of mortgage loans
10 are such as to warrant the regulation of the mortgage process,
11 including the making, brokering, and servicing of mortgage
12 loans. The purpose of this act is to protect consumers seeking
13 residential mortgage loans and to ensure that the mortgage
14 lending industry is operating without unfair, deceptive, and
15 fraudulent practices.

16 Section 3. For purposes of this act, the following
17 terms shall have the following meanings:

18 (1) APPLICATION. The submission of a borrower's
19 financial information in anticipation of a credit decision,
20 whether written or computer-generated. If the submission does
21 not state or identify a specific property, the submission is
22 for a prequalification and not an application.

23 (2) AFFILIATE. An entity that controls, is
24 controlled by or is under common control of a bank, savings
25 bank, savings and loan association, or credit union.

26 (3) BORROWER. A consumer who submits an application
27 for a loan secured by a first or subordinate mortgage on a

1 single- to four-family home to be occupied by a natural
2 person.

3 (4) BRANCH. A location of a company in or outside of
4 the state that conducts business as a mortgage broker,
5 mortgage lender, mortgage servicer, or mortgage processor. A
6 location shall be considered a branch in any of the following:

7 a. If the location is used on any type of
8 advertisement.

9 b. If any type of record, loan file, or application
10 of the company is located at the location, with the exception
11 of a facility used principally for the storage of records.

12 c. If a consumer is received at the location or is
13 directed to deliver any information by any means to the
14 location regarding Alabama residential property.

15 (5) COMMITMENT. A written statement by a lender
16 required to be licensed or exempt under this act that sets
17 forth the terms and conditions upon which the lender is
18 willing to make a particular mortgage loan to a particular
19 borrower.

20 (6) COMPANY. A licensed mortgage broker, mortgage
21 lender, mortgage servicer, or mortgage processor under this
22 act.

23 (7) CONTROL. The direct or indirect possession of
24 the power to direct or cause the direction of the management
25 and policies of a person, whether through the ownership of
26 voting securities, by contract or otherwise, and shall include

1 "controlling," "controlled by," and "under common control
2 with."

3 (8) DEPARTMENT. The State Banking Department.

4 (9) EXECUTIVE OFFICER. The chief executive officer,
5 the president, each vice president and any other person with
6 responsibility for policy-making functions for a significant
7 aspect of a company's business, whether the company is
8 incorporated or unincorporated.

9 (10) LICENSE. A license to act as a mortgage broker,
10 mortgage lender, mortgage servicer, mortgage processor, loan
11 originator, or loan processor issued by the department under
12 this act.

13 (11) LICENSEE. A person who is required to be
14 licensed as a mortgage broker, mortgage lender, mortgage
15 servicer, mortgage processor, loan originator, or loan
16 processor under this act.

17 (12) LOAN ORIGINATOR. An individual who:

18 a. Takes a residential mortgage loan application.

19 b. Assists a consumer in obtaining or applying to
20 obtain a residential mortgage loan.

21 c. Offers or negotiates terms of a residential
22 mortgage loan, for direct or indirect compensation or gain, or
23 in the expectation of direct or indirect compensation or gain.
24 The term includes any individual who represents to the public,
25 through advertising or other means of communicating or
26 providing information (including the use of business cards,
27 stationery, brochures, signs, rate lists, or other promotional

1 items), that such individual can or will provide or perform
2 any of the activities described in paragraph a. The term does
3 not include any individual who is not otherwise described in
4 paragraph a. or the preceding sentence and who performs purely
5 administrative or clerical tasks on behalf of a person who is
6 described in any such clause. The term does not include a
7 person or entity that only performs real estate brokerage
8 activities and is licensed or registered in accordance with
9 applicable state law, unless the person or entity is
10 compensated by a lender, a mortgage broker, or other loan
11 originator or by any agent of such lender, mortgage broker, or
12 other loan originator. This individual must work for a
13 licensed company and work from a licensed location. However,
14 an owner of a minimum of 10 percent of a licensed company or
15 the named principal officer on file with the department may
16 work from any licensed location of the licensed company on a
17 temporary basis, in the capacity of a loan originator as
18 described in this act.

19 (13) LOAN PROCESSOR. An individual who performs
20 clerical or support duties at the direction of and subject to
21 the supervision and instruction of a state-licensed mortgage
22 broker, mortgage lender, or mortgage processor. For purposes
23 of this definition, the term clerical or support duties may
24 include:

25 a. The receipt, collection, distribution, and
26 analysis of information common for the processing or
27 underwriting of a residential mortgage loan.

1 b. Communicating with a consumer to obtain the
2 information necessary for the processing or underwriting of a
3 loan, to the extent that such communication does not include
4 offering or negotiating loan rates or terms, or counseling
5 consumers about residential mortgage loan rates or terms. A
6 loan processor may not perform any of the duties of an
7 originator enumerated in paragraphs a., b., and c. of
8 subdivision (12), but a loan originator may perform the duties
9 of a loan processor.

10 (14) LOCK-IN AGREEMENT. A written agreement stating
11 the terms of the lock-in fee.

12 (15) LOCK-IN FEE. A fee collected by a licensee to
13 be paid to a lender to guarantee an interest rate and/or a
14 certain number of points on a mortgage loan from the lender.

15 (16) MAKE A MORTGAGE LOAN. The advance funds, offer
16 to advance funds or make a commitment to advance funds to a
17 borrower.

18 (17) MISREPRESENT. To make a false statement of a
19 substantive fact or to engage in, with intent to deceive or
20 mislead, any conduct that leads to a false belief that is
21 material to the transaction.

22 (18) MORTGAGE BROKER. Any person who directly or
23 indirectly or by electronic activity originates, solicits,
24 places, or negotiates mortgage loans for others, or offers to
25 originate, solicit, place, or negotiate mortgage loans for
26 others that does not close mortgage loans in the company name,
27 does not use its own funds, or who closes mortgage loans in

1 the name of the company, and sells, assigns, or transfers the
2 loan to others within 14 days after the closing.

3 (19) MORTGAGE LENDER. Any person who directly or
4 indirectly or by electronic activity originates, makes, funds,
5 or purchases or offers to originate, make, fund, or purchase a
6 residential mortgage loan or who services mortgage loans.

7 (20) MORTGAGE LENDING PROCESS. The process through
8 which a person seeks or obtains a mortgage loan, including,
9 but not limited to, solicitation, application, origination,
10 negotiation of terms, third-party provider services,
11 underwriting, signing and closing, and funding of the loan.
12 Documents involved in the mortgage lending process include,
13 but are not limited to, uniform residential loan applications
14 or other loan applications, appraisal reports, HUD-1
15 settlement statements, supporting personal documentation for
16 loan applications such as W-2 forms, verifications of income
17 and employment, bank statements, tax returns, payroll stubs,
18 and any required disclosures.

19 (21) MORTGAGE LOAN. A loan or agreement to extend
20 credit made to a natural person, which loan is secured by a
21 mortgage or other document representing a security interest or
22 loan upon any interest in a lot intended for residential
23 purposes, or single- to four-family residential property
24 located in Alabama, regardless of where made, including the
25 renewal or refinancing of any loan.

1 (22) MORTGAGE PROCESSOR. Any person who acts in an
2 independent capacity to process mortgage loans for more than
3 one company.

4 (23) MORTGAGE SERVICER. Any person who fulfills the
5 definition of "service a mortgage loan" as defined in this
6 section and does not engage in the making or funding of
7 mortgage loans.

8 (24) MULTISTATE LICENSING SYSTEM. A system involving
9 one or more states, the District of Columbia, the Commonwealth
10 of Puerto Rico, or any United States territory, established to
11 facilitate the sharing of regulatory information and the
12 licensing and application processes, by electronic or other
13 means, for mortgage brokers, mortgage lenders, mortgage
14 servicers, mortgage processors, and mortgage loan originators.

15 (25) NATURAL PERSON. A human being, as distinguished
16 from an artificial person created by law.

17 (26) PERSON. Any individual, sole proprietorship,
18 corporation, limited liability company, partnership, trust, or
19 any other group of individuals, however organized.

20 (27) PRINCIPAL. A person who, directly or
21 indirectly, owns or controls an ownership interest of 10
22 percent or more in a corporation or any other form of business
23 organization, regardless of whether the person owns or
24 controls the ownership interest through one or more persons or
25 one or more proxies, powers of attorney, nominees,
26 corporations, associations, limited liability companies,

1 partnerships, trusts, joint-stock companies, other entities or
2 devises, or any combination thereof.

3 (28) OPERATIONS MANAGER. One owner or employee
4 designated by the licensee who submits documentation of two
5 years' experience directly related to mortgage lending, who is
6 licensed as a loan originator as defined in this act, and who
7 resides within 125 miles of the licensed main office of the
8 company.

9 (29) RECORDS or DOCUMENTS. Any item in hard copy or
10 produced in a format of storage commonly described as
11 electronic, imaged, magnetic, microphotographic or otherwise,
12 and any reproduction so made shall have the same force and
13 effect as the original thereof and be admitted in evidence
14 equally with the original.

15 (30) RESIDENTIAL PROPERTY. Improved real property or
16 lot used or occupied, or intended to be used or occupied, as a
17 residence by a natural person.

18 (31) SERVICE A MORTGAGE LOAN. The collection or
19 remittance for another, the right to collect or remit for
20 another, or the collection of the company's own loan
21 portfolio, whether or not the company originated, funded, or
22 purchased the loan in the secondary market, of payments of
23 principal and interest, trust items such as insurance and
24 taxes, and any other payments pursuant to a mortgage loan.

25 (32) SUPERVISOR. The Supervisor of the Bureau of
26 Loans or his or her designee at the State Banking Department.

1 Section 4. The following persons are exempt from the
2 licensing provisions of this act, unless otherwise provided:

3 (1) Any subsidiary or affiliate of a person exempt
4 from the provisions of this act as described in subsection
5 (12) below. However, the affiliate or subsidiary must register
6 with the department and provide a statement that includes the
7 following information:

8 a. The name and address of each location under which
9 business will be conducted in Alabama.

10 b. The name and address of the parent financial
11 institution.

12 c. The name, mailing address, telephone number, and
13 fax number of the person or persons responsible for handling
14 consumer inquiries and complaints.

15 d. A fee of two hundred dollars (\$200).

16 The registration statement must be filed before
17 beginning to conduct a mortgage business in this state and
18 must be updated by the entity as the information changes. Any
19 entity that fails to register or keep the information current
20 will be immediately subject to the licensing requirements of
21 Section 6. This registration statement must be renewed
22 annually as of December 31 of each year with a renewal fee of
23 two hundred dollars (\$200).

24 (2) Any attorney licensed to practice law in Alabama
25 who is not principally engaged in originating, soliciting,
26 placing, or negotiating mortgage loans and only provides

1 mortgage loan services incidental to the practice of law and
2 who is not a principal of a company as defined under this act.

3 (3) A real estate company or licensed real estate
4 salesperson or broker who is actively engaged in the real
5 estate business and who does not receive any fee, commission,
6 kickback, rebate, or other payment for directly or indirectly
7 negotiating, placing, or finding a mortgage for others.

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

10 (5) Any natural person who purchases not more than
11 five mortgage loans from a licensed or exempt mortgage broker
12 or mortgage lender solely as an investment and who is not in
13 the business of making or servicing mortgage loans.

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

16 (7) The United States of America, the State of
17 Alabama or any other state, and any agency, division, or
18 corporate instrumentality thereof including, but not limited
19 to, Alabama Housing Finance Authority (AHFA), Fannie Mae,
20 Freddie Mac, The Government National Mortgage Association
21 (Ginnie Mae), the United States Department of Housing and
22 Urban Development (HUD), the Department of Veterans Affairs
23 (VA), the United States Department of Agriculture Rural
24 Development (USDA RD), and the Federal Land Banks and
25 Production Credit Associations.

26 (8) Nonprofit corporations exempt from federal
27 taxation under Section 501(c) of the Internal Revenue Code

1 making mortgage loans to promote home ownership or home
2 improvements for the disadvantaged.

3 (9) Licensed loan originators and licensed loan
4 processors do not have to obtain a mortgage lender, mortgage
5 broker, mortgage servicer, or mortgage processor license as
6 long as they are working for a licensed mortgage lender,
7 mortgage broker, mortgage servicer, or mortgage processor.

8 (10) Licensed mortgage lenders do not have to obtain
9 a mortgage broker, mortgage servicer, or mortgage processor
10 license to conduct those activities.

11 (11) Licensed mortgage brokers do not have to obtain
12 a mortgage processor's license to conduct those activities.

13 (12) Notwithstanding any provision to the contrary,
14 this act shall not apply to bank holding companies, financial
15 holding companies, banks chartered by this state or any other
16 state, banks chartered by the United States, trust companies,
17 savings or building and loan associations, savings banks and
18 other thrift institutions, credit unions, life insurance
19 companies, and federally constituted agencies.

20 Section 5. (a) On and after January 1, 2009, no
21 person shall transact business in this state, directly or
22 indirectly, as a mortgage broker, mortgage lender, mortgage
23 servicer, mortgage processor, loan originator, or loan
24 processor unless he or she is licensed by the department or is
25 a person exempted under Section 4.

26 (b) A violation of this section does not affect the
27 obligation of the borrower under the terms of the mortgage

1 loan. The department shall publish and provide for
2 distribution of information regarding approved or revoked
3 licenses.

4 (c) On and after January 1, 2009, every person who
5 directly or indirectly controls a person who violates this
6 section, including a general partner, executive officer, joint
7 venturer, contractor, or director of the person, violates this
8 section to the same extent as the person, unless the person
9 whose violation arises under this subsection shows by a
10 preponderance of evidence that he or she did not know and, in
11 the exercise of reasonable care, could not have known of the
12 existence of the facts by reason of which the original
13 violation is alleged to exist.

14 (d) For persons subject to licensing under this act
15 who currently hold a license under the Alabama Consumer Credit
16 Act, and only engage in activities covered by this act, then
17 their current Alabama Consumer Credit Act license shall not
18 expire until December 31, 2008.

19 Section 6. (a) An application for a license as a
20 mortgage lender, mortgage broker, mortgage servicer, or
21 mortgage processor under this act shall be made in writing and
22 in the form as the department may prescribe.

23 (b) The application shall include at least the
24 following:

25 (1) The legal name and address of the applicant and,
26 if applicable, the legal name, residence and business address

1 of every principal, together with the resume of the applicant
2 and of every principal of the applicant.

3 (2) The legal name and any fictitious name under
4 which the applicant will conduct business in the state, which
5 may not be already assigned to a licensee.

6 (3) A copy of the certificate of incorporation or
7 articles of organization.

8 (4) Documentation satisfactory to the department as
9 to provide evidence of authority to transact business lawfully
10 in Alabama.

11 (5) Documentation of a minimum of two years'
12 experience directly in mortgage lending by a person designated
13 as the operations manager of the company. This experience
14 shall have been within the previous four years from the date
15 of application. The operations manager of a mortgage lender,
16 mortgage broker, or mortgage servicer shall also be licensed
17 as a loan originator with the department. The operations
18 manager of a mortgage processor shall be licensed as a loan
19 processor with the department. Documentation may include,
20 where applicable:

21 a. Copies of business licenses issued by
22 governmental agencies.

23 b. Written letters of employment history of the
24 person filing the application for at least two years before
25 the date of the filing of an application including, but not
26 limited to, job descriptions, length of employment, names,
27 addresses, and phone numbers for past employers.

1 c. A listing of wholesale lenders, including current
2 contact information, with whom the applicant has done business
3 within the past two years either directly as a mortgage broker
4 or loan originator.

5 d. Any other data and pertinent information as the
6 department may require with respect to the applicant, its
7 directors, principals, trustees, officers, members,
8 contractors, or agents. A resume alone shall not be sufficient
9 proof of employment history.

10 (c) The application shall be filed together with the
11 following:

12 (1) The license fee specified in Section 10.

13 (2) A completed form signed by an owner, chief
14 executive officer, or designated principal officer authorizing
15 the department to obtain information from outside sources for
16 each person, executive officer, and employee.

17 (3) An original or certified copy of a surety bond
18 in the amount set forth in Section 8 in favor of the State of
19 Alabama for the use, benefit, and indemnity of any person who
20 suffers any damage or loss as a result of the company's breach
21 of contract or of any obligation arising therefrom or any
22 violation of law.

23 (4) A set of fingerprints from any local law
24 enforcement agency from the following applicants:

25 a. All persons operating as a sole proprietorship
26 that plan to conduct a mortgage brokering, mortgage lending,

1 mortgage servicing, and mortgage processing business in the
2 State of Alabama.

3 b. Partners in a partnership or principal owners of
4 a limited liability company who own at least 10 percent of the
5 voting shares of the company.

6 c. Any shareholders owning 10 percent or more of the
7 outstanding shares of the corporation.

8 d. All loan originators.

9 e. All loan processors.

10 (5) Applicants for licensure for all employed loan
11 originators and/or loan processors that will be acting as a
12 loan originator or loan processor on Alabama residential
13 property loans. Requirements for obtaining a loan originator
14 or loan processor license are in Section 7.

15 (d) No licensee shall open an office in this state
16 or an office outside the state from which the licensee has
17 direct contact with Alabama consumers regarding originating,
18 processing, funding, or servicing Alabama mortgage loans
19 without first obtaining a license for that location. An
20 application for a branch office shall be made in writing on a
21 form prescribed by the department, which shall include at
22 least the following information:

23 a. Evidence of compliance with Section 15.

24 b. A nonrefundable license fee of five hundred
25 dollars (\$500).

26 c. At least one loan originator or at least one loan
27 processor license application for that branch location.

1 Section 7. (a) An application for a loan originator
2 or loan processor license under this act shall be made in
3 writing and in the form as the department may prescribe.

4 (b) The application shall include at least the
5 following:

6 (1) The legal name, residence address, and business
7 address of the applicant.

8 (2) The legal name and, if applicable, the
9 fictitious name of the company for which the loan originator
10 or loan processor will be working.

11 (3) The phone number of the applicant that the
12 department or customers may use to contact the applicant.

13 (4) Proof of at least two years of experience
14 directly in mortgage lending within four years prior to the
15 date of application.

16 a. If the person does not meet the experience
17 requirement under subdivision (4), then the applicant must
18 complete a minimum of 24 hours of education and pass an
19 examination covering the course material as approved by the
20 Alabama Mortgage Brokers Association, Mortgage Bankers
21 Association of Alabama, National Association of Mortgage
22 Brokers, or the Alabama Bankers Association.

23 b. If the person does meet the experience
24 requirement in subdivision (4), then the applicant must
25 provide evidence of satisfactory completion of six hours of
26 education as approved by the Alabama Mortgage Brokers
27 Association, Mortgage Bankers Association of Alabama, National

1 Association of Mortgage Brokers, or the Alabama Bankers
2 Association.

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

5 (1) An initial license fee of one hundred dollars
6 (\$100) paid by the applicant.

7 (2) A completed form signed by the applicant
8 authorizing the department to obtain information from outside
9 sources concerning the applicant.

10 (3) A set of fingerprints for the applicant from any
11 local law enforcement agency.

12 (d) The loan originator and loan processor license
13 shall expire every year on December 31. Licensees shall file
14 an annual renewal in the form as prescribed by the department
15 by December 1. All licensees who file renewal applications on
16 or before December 1 shall be permitted to continue to operate
17 under their existing licenses until the application for
18 renewal is approved or rejected but shall not be released from
19 or otherwise indemnified for any act covered by this act for
20 any penalty incurred under this chapter as a result of any
21 violation of this chapter or regulations adopted under this
22 chapter, pending final approval or disapproval of the
23 application for the license renewal. The renewal application
24 shall be filed along with at least the following:

25 (1) A renewal fee of fifty dollars (\$50) paid by the
26 applicant.

1 (2) Evidence of satisfactory completion of at least
2 six hours of continuing education as approved by the Alabama
3 Mortgage Brokers Association, Mortgage Bankers Association of
4 Alabama, National Association of Mortgage Brokers, or the
5 Alabama Bankers Association.

6 (e) All license fees and penalties shall be paid
7 into the special fund of the department. If the application is
8 withdrawn or denied, the licensing fee is not refundable.

9 Section 8. (a) For purposes of Section 6, the
10 classes of companies and their respective minimum amounts of
11 surety bonds are as follows:

12 (1) The amount of the surety bond for mortgage
13 brokers as defined under Section 3(18) shall be at least fifty
14 thousand dollars (\$50,000).

15 (2) The amount of the surety bond for a mortgage
16 lender as defined under Section 3(19) shall be at least one
17 hundred fifty thousand dollars (\$150,000).

18 (3) The amount of the surety bond for a mortgage
19 servicer as defined under Section 3(23) shall be at least
20 seventy-five thousand dollars (\$75,000).

21 (4) The amount of the surety bond for a mortgage
22 processor as defined under Section 3(22) shall be at least
23 twenty-five thousand dollars (\$25,000).

24 (b) Loan originators and loan processors who work
25 for a licensed or exempt mortgage broker, mortgage lender,
26 mortgage servicer, or mortgage processor will not be required
27 to obtain a surety bond.

1 (c) All surety bonds shall be in favor, first, of
2 the State of Alabama for the use, benefit, and indemnity of
3 any person who suffers any damage or loss as a result of the
4 company's breach of contract or of any obligation arising from
5 contract or any violation of law, and, second, to the extent
6 of the amount of the surety bond, for the payment of any civil
7 penalties, criminal fines, or costs of investigation and/or
8 prosecution incurred by the State of Alabama, including local
9 law enforcement agencies.

10 Section 9. (a) Upon receipt of an application for
11 licensure, which shall include the required set of
12 fingerprints from any local law enforcement agency, the
13 department or designated third party shall conduct such an
14 investigation as it deems necessary to determine that the
15 applicant and its officers, directors, and principals are of
16 good character and ethical reputation; that the applicant
17 demonstrates reasonable financial responsibility; and that the
18 applicant has reasonable policies and procedures to receive
19 and process customer grievances and inquiries promptly and
20 fairly.

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

25 (c) The department may not license any mortgage
26 broker, mortgage lender, mortgage servicer, or mortgage

1 processor unless the applicant meets the requirements of
2 Section 8.

3 (d) The department may not issue a license if it
4 finds that the applicant, or any person who is a director,
5 officer, partner, or principal officer of the applicant, has
6 been convicted of any of the following:

7 (1) A felony in any jurisdiction.

8 (2) A crime that, if committed within this state,
9 would constitute a felony under the laws of this state.

10 (3) Any other crime or misdemeanor involving fraud,
11 theft, forgery, bribery, embezzlement, or making a fraudulent
12 or false statement in any jurisdiction. For the purposes of
13 this act, a person shall be deemed to have been convicted of a
14 crime if the person has pleaded guilty to a crime before a
15 court or federal magistrate, or plea of nolo contendere, or
16 has been found guilty of a crime by the decision or judgment
17 of a court or federal magistrate or by the verdict of a jury,
18 irrespective of the pronouncement of sentence or the
19 suspension of a sentence, unless the plea of guilty, or the
20 decision, judgment, or verdict has been set aside, reversed,
21 or otherwise abrogated by lawful judicial process, or unless
22 the person convicted of the crime has received a pardon from
23 the President of the United States or the Governor or other
24 pardoning authority in the jurisdiction where the conviction
25 was obtained.

26 (e) In order to determine the applicant's
27 suitability for a license, the supervisor or a designated

1 third party shall forward the fingerprints submitted with the
2 application to the FBI for a national criminal history record
3 check. All conviction data received by the department shall be
4 used by the department for the exclusive purpose of carrying
5 out the responsibilities of this act, may not be a public
6 record, shall be privileged, and may not be disclosed to any
7 other person or agency, except to any person or agency that
8 otherwise has a legal right to inspect the file. All records
9 shall be maintained by the department according to law, except
10 as provided in the uniform multistate administration of an
11 automated licensing system for mortgage brokers, mortgage
12 lenders, mortgage servicers, mortgage processors, and loan
13 originators. As used in this section "conviction data" means a
14 record of a finding or verdict of guilty or plea of guilty or
15 plea of nolo contendere with regard to any crime regardless of
16 whether an appeal of the conviction has been sought.

17 (f) The department shall deny a license or otherwise
18 restrict a license if it finds that the applicant, or any
19 person who is a director, officer, partner, affiliate,
20 contractor, or principal of the applicant, has had any
21 regulatory license denied, revoked, or suspended by any state
22 within five years of the date of the application.

23 (g) Within 90 days after receipt of a completed
24 application, final verification from the FBI, and payment of
25 licensing fees prescribed by this act, the department shall
26 either grant or deny the request for license.

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

8 Section 10. (a) Each license shall remain in full
9 force and effect until relinquished, suspended, revoked, or
10 expired. With each initial application for a license to
11 operate as a mortgage broker, mortgage lender, mortgage
12 servicer, or mortgage processor, the applicant shall pay to
13 the supervisor a license fee of the following amounts:

14 (1) Six hundred dollars (\$600) for mortgage lenders.

15 (2) Six hundred dollars (\$600) for mortgage brokers.

16 (3) Six hundred dollars (\$600) for mortgage
17 servicers.

18 (4) Six hundred dollars (\$600) for mortgage
19 processors.

20 (b) Each mortgage broker, mortgage lender, mortgage
21 servicer, and mortgage processor license shall expire on
22 December 31 of each year. Applications for renewal of these
23 licenses shall be due on December 1 of each year. The renewal
24 application shall be in the form as prescribed by the
25 department. It shall be filed along with an annual renewal fee
26 of five hundred dollars (\$500) for each licensed location. If
27 the annual renewal fee remains unpaid, the license shall

1 expire, but not before December 31 of any year for which the
2 annual renewal fee has been paid. If any person engages in
3 business as provided for in this act without paying the
4 license fee provided for in this subsection before commencing
5 business or before the expiration of the person's current
6 license, as the case may be, then the person shall be liable
7 for the full amount of the license fee, plus a penalty in an
8 amount not to exceed twenty-five dollars (\$25) for each day
9 that the person has engaged in such business without a license
10 or after the expiration of a license.

11 (c) Any mortgage broker, mortgage lender, mortgage
12 servicer, or mortgage processor licensee filing a renewal
13 application with the annual fee on or before December 1 shall
14 be permitted to continue to operate under its existing license
15 until its application is approved or rejected, but shall not
16 be released from or otherwise indemnified for any act covered
17 by this act or for any penalty incurred under this act as a
18 result of any violation of this act or regulations adopted
19 under this act, pending final approval or disapproval of the
20 application for the license renewal.

21 (d) Each renewal application for a mortgage broker,
22 mortgage lender, mortgage servicer, and mortgage processor
23 license shall include evidence of the satisfactory completion
24 of at least 12 hours of approved continuing education in
25 primary and subordinated financing transactions by the
26 operations manager on file with the department. For purposes
27 of this subsection, approved courses shall be those as

1 approved by the Alabama Mortgage Brokers Association, Mortgage
2 Bankers Association of Alabama, the National Association of
3 Mortgage Brokers, or the Alabama Bankers Association who shall
4 submit to the department a list of approved schools, courses,
5 programs, and special training sessions.

6 (e) All licensing fees and penalties shall be paid
7 into the special fund of the department. If the application is
8 withdrawn or denied, the licensing fee is not refundable.

9 Section 11. (a) Each mortgage broker, mortgage
10 lender, mortgage servicer, and mortgage processor license
11 issued under this act shall state the address of the
12 licensee's place of business, the legal and, if applicable,
13 the fictitious name of the licensee and the license number.

14 (b) Each loan originator and loan processor license
15 issued under this act shall state the individual's name, the
16 company that he or she is working for, the address for the
17 location that he or she is working from, and the license
18 number.

19 (c) A licensee shall post the license in a
20 conspicuous place in the assigned place of business of the
21 licensee.

22 (d) A license may not be transferred or assigned.

23 (e) No licensee or registrant shall transact
24 business under any name other than that designated in the
25 license or registration.

26 (f) Each licensee shall notify the department, in
27 writing on a form prescribed by the department, of any change

1 in the address of any of its licensed locations at least 15
2 days prior to such change. The fee to amend the address of a
3 licensed location will be twenty-five dollars (\$25).

4 (g) Each licensee shall notify the department, in
5 writing on a form prescribed by the department, of any change
6 in employment of any loan originator or loan processor within
7 15 days of the change.

8 (h) Each licensee shall notify the department in
9 writing of any change of officer, director, or principal
10 officer of the licensee within 30 days of the change except as
11 provided in Section 12.

12 (i) Licensed loan officers and loan processors may
13 amend their license to reflect a new employer. The cost of
14 amending the license shall be twenty-five dollars (\$25). Loan
15 originators and loan processors must file the amendment
16 individually and may not perform loan originating or loan
17 processing services for another company until the license has
18 been amended to reflect the new employer. The amendment shall
19 be on a form as prescribed by the department.

20 Section 12. (a) Any change in ownership, of more
21 than 10 percent, shall require the licensee to notify the
22 department, in writing on a form prescribed by the department,
23 within 30 days of the change.

24 (b) Upon the filing and investigation of an
25 application, the department shall permit the applicant to
26 acquire the interest in the licensee if it is satisfied and
27 finds that the applicant and its members, if applicable, its

1 directors and officers, if a corporation, and any proposed new
2 directors and officers have maintained its surety bond and
3 have the character, reputation, and experience to warrant
4 belief that the business will be operated fairly and in
5 accordance with the law. If the application is denied, the
6 department shall notify the applicant of the denial and the
7 reasons for the denial.

8 (c) A decision of the department denying a license
9 or registration, original or renewal, shall be conclusive,
10 except that the applicant may seek judicial review in the
11 Circuit Court of Montgomery County, Alabama.

12 Section 13. (a) Any person required to be licensed
13 under this act shall maintain in its offices, or such other
14 location as the department shall permit, the books, accounts,
15 and records necessary for the department to determine whether
16 or not the person is complying with the provisions of this act
17 and the rules and regulations adopted by the department under
18 this act. These books, accounts, and records shall be
19 maintained separate and apart from any other business in which
20 the person is involved and shall represent historical data for
21 three years preceding the date of the last license application
22 date forward. The books, accounts, and records shall be kept
23 in a secure location under conditions that will not lead to
24 their damage or destruction. If the licensee wishes to keep
25 the files in a location other than the location listed on the
26 license, then the licensee first must submit a written request

1 and obtain written approval from the supervisor before storing
2 the files at an off-site secure location.

3 (b) To assure compliance with the provisions of this
4 act, the department may examine the books and records of any
5 licensee without notice during normal business hours. The
6 supervisor shall charge the mortgage broker, mortgage lender,
7 mortgage servicer, and mortgage processor licensees an
8 examination fee in accordance with Section 5-2A-24, Code of
9 Alabama 1975, for each office or location within the State of
10 Alabama, plus any actual expenses incurred while examining the
11 licensee's records or books that are located outside the State
12 of Alabama. The department, by its designated officers and
13 employees, as often as it deems necessary, but at least once
14 every 24 months, may investigate and examine the affairs,
15 business, premises, and records of any person required to be
16 licensed under this act insofar as they pertain to any
17 business for which a license is required by this act.

18 (c) The department, its designated officers, and
19 employees, or its duly authorized representatives, for the
20 purposes of discovering violations of this act and for the
21 purpose of determining whether any person or individual
22 reasonably suspected by the supervisor of conducting business
23 that requires a license under this act, may investigate those
24 persons and individuals and examine all relevant books,
25 records, and papers employed by those persons or individuals
26 in the transaction of business, and may summon witnesses and
27 examine them under oath concerning matters as to the business

1 of those persons, or other such matters as may be relevant to
2 the discovery of violations of this act including, without
3 limitation, the conduct of business without a license as
4 required under this act.

5 (d) The department, in its discretion, may disclose
6 information concerning any violation of this act or any rule,
7 regulation, or order under this act, provided the information
8 is derived from a final order of the department.

9 (e) Examinations and investigations conducted under
10 this act and information obtained by the department, except as
11 provided in subsection (d), in the course of its duties under
12 this act are confidential. Examinations and investigations may
13 be provided to other regulatory or enforcement agencies as
14 deemed necessary by the supervisor.

15 (f) In the absence of malice, false or misleading
16 statements, or bad faith, a person is not subject to civil
17 liability arising from the filing of a complaint with the
18 department, furnishing other information required by this act,
19 information required by the department under the authority
20 granted in this act, or information voluntarily given to the
21 department related to allegations that a licensee or
22 prospective licensee has violated this act.

23 Section 14. (a) Each mortgage broker, mortgage
24 lender, mortgage servicer, and mortgage processor licensee
25 shall annually, on or before May 1, file a written report with
26 the department containing the information that the department
27 may reasonably require concerning the company's business and

1 operations during the preceding calendar year. The report
2 shall be made in the form prescribed by the department.

3 (b) Any licensee that fails to file with the
4 department by May 1 the report required by this section shall
5 be subject to a late penalty of twenty-five dollars (\$25) for
6 each day after May 1 the report is delinquent, but in no event
7 shall the aggregate of late penalties exceed five hundred
8 dollars (\$500).

9 (c) If a company fails to file an annual report or
10 pay a penalty, the department may revoke its license.

11 (d) Within 15 days of the occurrence of any of the
12 following events, a licensed mortgage broker, mortgage lender,
13 mortgage servicer, and mortgage processor shall file a written
14 report with the supervisor describing the event and its
15 expected impact on the activities of the company in this
16 state:

17 (1) The filing for bankruptcy or reorganization by
18 the company.

19 (2) The institution of revocation or suspension
20 proceedings against the company or any of its loan originators
21 or loan processors by any state or governmental authority.

22 (3) Any felony indictment of the company or any of
23 its directors, executive officers, principal officer, loan
24 originators, or loan processors.

25 (4) Any felony conviction of the company or any of
26 its directors, executive officers, principal officer, loan
27 originators, or loan processors.

1 (5) Any criminal conviction, in which fraud is an
2 essential element, of any of the company's directors,
3 executive officers, principal officer, loan originators, or
4 loan processors.

5 (e) Within 15 days of the occurrence of any of the
6 following events, a licensed loan originator or loan processor
7 shall file a written report with the supervisor describing the
8 event:

9 (1) Any felony indictment.

10 (2) Any felony conviction.

11 (3) Any misdemeanor conviction in which fraud is an
12 essential element.

13 (4) The institution of revocation or suspension
14 proceedings against the loan originator's or loan processor's
15 license by any other state or governmental authority.

16 (f) If the company, owner, principal officer of a
17 company, or licensed loan originator or loan processor is
18 involved in a civil action resulting in a final non-appealable
19 judgment against the company, owner, principal officer, or
20 registered loan originator, then the person shall notify the
21 supervisor in writing within 60 days after the entry of the
22 judgment.

23 Section 15. Each licensed office in the state shall
24 meet all of the following requirements:

25 (1) Be in compliance with local zoning ordinances
26 and have posted any licenses required by local government
27 agencies. It is the responsibility of the licensee to meet

1 local zoning ordinances and obtain the required occupational
2 licenses; however, zoning cannot be residential. If there is
3 no zoning in the area, then the person shall submit to the
4 department a letter stating that the location is not a
5 residence.

6 (2) Each mortgage broker, mortgage lender, mortgage
7 servicer, and mortgage processor licensee shall prominently
8 display the license at the place of business.

9 (3) Each loan originator and loan processor licensed
10 under this act shall prominently display his or her license in
11 the office where the person is employed.

12 Section 16. (a) Except as provided in Section 4(12),
13 no person required to be licensed, registered, or exempt from
14 licensure under this act shall:

15 (1) Misrepresent the material facts or make false
16 promises intended to influence, persuade, or induce an
17 applicant for a mortgage loan or mortgagor to take a mortgage
18 loan or cause or contribute to misrepresentation by its agents
19 or employees.

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

23 (3) Fail to disburse funds in accordance with a
24 written commitment or agreement to make a mortgage loan unless
25 the borrower is in default.

26 (4) Improperly refuse to issue a satisfaction of a
27 mortgage loan in accordance with applicable state law.

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

8 (6) Engage in any transaction, practice, or course
9 of business that operates a fraud upon any person in
10 connection with the making of or purchase or sale of any
11 mortgage loan.

12 (7) Engage in any fraudulent residential mortgage
13 underwriting practices.

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

20 (9) Make, directly or indirectly, any residential
21 mortgage loan with the intent to foreclose on the borrower's
22 property. For purposes of this subsection, there is a
23 rebuttable presumption that a person has made a residential
24 mortgage loan with the intent to foreclose on the borrower's
25 property if all of the following circumstances are proven by
26 clear and convincing evidence:

27 a. Lack of net tangible benefit to the borrower.

1 b. The probability that full payment of the loan
2 cannot be made by the borrower.

3 c. That more than 20 percent of the residential
4 mortgage loans the person has made under similar circumstances
5 have been foreclosed.

6 (10) Together or separately charge or collect any
7 direct or indirect payment, compensation, or advance fee
8 unless and until a mortgage loan is actually found, obtained,
9 and closed for the borrower, and in no event shall that direct
10 or indirect payment, compensation, or advance fee, including a
11 yield spread premium, exceed five percent of the original
12 principal amount of the loan, and any such direct or indirect
13 payments, compensation, or advance fees shall be included in
14 all annual percentage rate (APR) calculations as required
15 under Regulation Z of the federal Truth in Lending Act (TILA).
16 A direct payment, compensation, or advance fee as defined in
17 this section shall not include any direct payment,
18 compensation, or advance fee collected by a licensed mortgage
19 broker or mortgage lender to be paid to a nonrelated third
20 party for bona fide mortgage related services.

21 (11) Pay to any person not licensed under the
22 provisions of this act any commission, bonus, or fee in
23 connection with arranging for or originating a mortgage loan
24 for a borrower, except that a licensed loan originator or loan
25 processor may be paid a bonus, commission, or fee by his or
26 her licensed employer.

1 (12) Refuse to provide the loan payoff within three
2 business days of a written request from a borrower at no cost.
3 Proof of authorization of the borrower shall be submitted for
4 a third-party request.

5 (13) Knowingly withhold, extract, remove, mutilate,
6 destroy, or conceal any books, records, computer records, or
7 other information which is required by law to be disclosed.

8 (14) Shall fail to post a payment within two
9 business days of receiving the payment from a borrower.

10 (15) Finance single premium credit insurance.

11 (b) A licensed mortgage broker or mortgage lender
12 shall only broker a residential mortgage loan to a mortgage
13 broker or mortgage lender licensed under this act or to a
14 person exempt under Section 4.

15 (c) If a mortgage lender funds residential mortgage
16 loans originated by a mortgage broker, then he or she may only
17 fund residential mortgage loans from mortgage brokers who are
18 licensed or exempt under this act.

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

1 (e) No person shall use the name or logo of any
2 banking entity in connection with the sale, offering for sale,
3 or advertising of any financial product or service without the
4 express written consent of the banking entity unless the
5 person using the banking entity's name or logo conspicuously
6 discloses that it is not authorized by, in sponsorship with,
7 or otherwise affiliated with the banking entity, which shall
8 be identified by name. Such advertisement shall also state
9 that any loan information contained therein was not provided
10 by the named banking entity.

11 (f) All persons required to be licensed, registered,
12 or exempt from licensure under this act shall comply with all
13 applicable laws, rules, and regulations of this state and the
14 United States.

15 Section 17. The supervisor shall promulgate those
16 rules and regulations, not inconsistent with law, necessary
17 for the enforcement of this act.

18 (1) Prior to the adoption, amendment, or repeal of
19 any regulation, the supervisor shall give at least 35 days'
20 notice of its intended action by filing notice of intended
21 action with the Legislative Reference Service for publication
22 in the Alabama Administrative Monthly. The date of publication
23 in the Alabama Administrative Monthly shall constitute the
24 date of notice. The notice shall include a statement of either
25 the terms or substance of the intended action or a description
26 of the subject and issues involved, shall specify a notice
27 period ending not less than 35 days nor more than 90 days from

1 the date of the notice, during which period interested persons
2 may present their views thereon, and shall specify the place
3 where, and the manner in which, interested persons may present
4 their views thereon.

5 (2) All interested persons shall have a reasonable
6 opportunity to submit data, views, or arguments, orally or in
7 writing. The supervisor shall consider all written and oral
8 submissions respecting the proposed regulation. Upon adoption
9 of a regulation, the supervisor, if conflicting views are
10 submitted on the proposed regulation and if requested in
11 writing to do so by an interested person prior to adoption,
12 shall issue a concise statement of the principal reasons for
13 and against its adoption, incorporating therein his or her
14 reasons for overruling any considerations urged against its
15 adoption.

16 (3) Notwithstanding any other provision of this act
17 to the contrary, if the supervisor finds that an immediate
18 danger to the public health, safety, or welfare requires
19 adoption of a regulation upon fewer than 35 days' notice or
20 that action is required by or to comply with a federal statute
21 or regulation which requires adoption of a regulation upon
22 fewer than 35 days' notice and states in writing the
23 supervisor's reasons for that finding, the supervisor may
24 proceed without prior notice or hearing or upon any
25 abbreviated notice and hearing that he or she finds
26 practicable, to adopt an emergency regulation. The regulation
27 shall become effective immediately, unless otherwise stated

1 therein. The regulation may be effective for a period of not
2 longer than 120 days unless within such time the supervisor
3 complies with the procedures set forth in this act. The
4 adoption of the same or a substantially similar regulation
5 following the procedures set forth in this act at any time is
6 not limited by the adoption of a regulation following the
7 emergency regulation procedure set forth in this subdivision.

8 (4) A person who has exhausted all administrative
9 remedies available within the department, other than
10 rehearing, and who is aggrieved by a final decision of the
11 supervisor with respect to a regulation, is entitled to
12 judicial review under this act. All proceedings for review
13 shall be instituted by filing of notice of appeal or review
14 and a cost bond with the supervisor to cover the reasonable
15 costs of preparing the transcript of the proceeding under
16 review, unless waived by the supervisor or the court on a
17 showing of substantial hardship. The notice of appeal and cost
18 bond must be filed within 42 days after the date the
19 supervisor issued his or her final regulation. The appeal
20 shall be filed in the Circuit Court of Montgomery County. The
21 regulation will be in effect pending the outcome of any appeal
22 unless the supervisor stays the effective date of the
23 regulation.

24 Section 18. The department shall promulgate
25 regulations governing the advertising of mortgage loans,
26 including, but not limited to, the following requirements:

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

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

14 (3) That all published advertisements disseminated
15 primarily in this state by a licensee shall contain the
16 license number of the licensee, which shall be the same as on
17 record with the department.

18 (4) That an advertisement containing either a quoted
19 interest rate or monthly payment amount must include all of
20 the following:

21 a. The interest rate of the mortgage, a statement as
22 to whether the rate is fixed or adjustable, and the adjustment
23 index and frequency of adjustments.

24 b. The term in years or months to fully repay the
25 mortgage.

26 c. The APR as computed under federal guidelines.

1 (5) That no licensee shall advertise its services in
2 Alabama in any media disseminated primarily in this state,
3 whether print or electronic, without the license number.

4 Section 19. A licensee shall maintain in its offices
5 or such other location as the department shall permit the
6 books, accounts, and records as the department may reasonably
7 require in order to determine whether the licensee is
8 complying with this act and rules and regulations adopted
9 pursuant to this act. The individual borrower files of a
10 licensee shall contain at least all of the following:

11 (1) A mortgage origination disclosure provided to
12 the borrower containing at least the following statements:

13 a. As required by Alabama Law, (licensed company
14 name) has secured a bond issued by (name of insurance
15 company), a surety company authorized to do business in this
16 state. A certified copy of this bond is filed with the State
17 Banking Department.

18 b. As a borrower, you are protected under the
19 Alabama Mortgage Act.

20 c. Complaints against a licensee may be made by
21 contacting the:

22 State Banking Department

23 Bureau of Loans

24 P.O. Box 4600

25 Montgomery, Alabama 36103-4600.

26 (2) A copy of the initial loan application signed
27 and dated by the licensee.

1 (3) A copy of the signed closing statement as
2 required by HUD or documentation of denial or cancellation of
3 the loan application.

4 (4) A copy of all Good Faith Estimate(s) of costs
5 provided to the borrower.

6 (5) A copy of the appraisal, if required, or
7 statement of value if procured as a part of the loan
8 application process.

9 (6) A copy of a loan lock-in agreement, if any,
10 provided by the licensee.

11 (7) A copy of the disclosures required under
12 Regulation Z of the federal Truth In Lending Act and other
13 disclosures as required under federal regulations and evidence
14 that those disclosures have been properly and timely made to
15 the borrower.

16 (8) A copy of the final Uniform Residential Loan
17 Application signed and dated by the borrower.

18 (9) A copy of the recorded mortgage and deed.

19 (10) A copy of invoices for any appraisal or title
20 services charged.

21 (11) Any other information required by the
22 department pursuant to regulation.

23 Section 20. Each licensee shall maintain a loan
24 register of mortgage transactions at the place of business as
25 stated on its license, which shall include at least all of the
26 following information:

1 (1) Name of applicant and co-applicant, if
2 applicable.

3 (2) Loan amount.

4 (3) Date of application.

5 (4) Disposition of loan application, indicating date
6 of loan funding, loan denial, withdrawal, and name of lender
7 if applicable.

8 Section 21. (a) All monies paid to a licensee for
9 payment of taxes, loan commitment deposits, work completion
10 deposits, appraisals, credit reports, or insurance premiums on
11 property that secures any loan made or serviced by the
12 licensee shall be deposited in an account that is insured by
13 the Federal Deposit Insurance Corporation or the National
14 Credit Union Administration and shall be kept separate,
15 distinct, and apart from funds belonging to the licensee.

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

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

24 (d) The licensee shall, upon reasonable notice,
25 account to the supervisor for all funds in the company's
26 escrow account.

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

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

11 Section 22. (a) The department may suspend or revoke
12 any license for any reason that would have been grounds for
13 refusal to issue an original license or for any of the
14 following:

15 (1) A violation of any provision of this act or any
16 rule or regulation adopted under this act.

17 (2) Failure of the licensee to pay, within 30 days
18 after it becomes final and nonappealable, a judgment recovered
19 in any court within this state by a claimant or creditor in an
20 action arising out of the licensee's business in this state as
21 a mortgage broker, mortgage lender, mortgage servicer, or
22 mortgage processor.

23 (b) Notice of the department's intention to enter an
24 order denying an application for a license under this act or
25 of an order suspending or revoking a license under this act
26 shall be given to the applicant or licensee in writing, sent
27 by registered or certified or overnight mail addressed to the

1 place of business of the applicant or licensee. Within 30 days
2 of the date of the notice of intention to enter an order of
3 denial, suspension, or revocation under this act, the
4 applicant or licensee may request in writing a hearing to
5 contest the order. If a hearing is not requested in writing
6 within 30 days of the date of the notice of intention, the
7 department shall enter a final order regarding the denial,
8 suspension, or revocation. Any final order of the department
9 denying, suspending, or revoking a license shall state the
10 grounds upon which it is based and shall be effective on the
11 date of issuance. A copy of the final order shall be forwarded
12 promptly by registered or certified or overnight mail
13 addressed to the place of business of the applicant or
14 licensee.

15 Section 23. (a) For purposes of this section, the
16 term "person" shall be construed to include any officer,
17 director, employee, affiliate, or other person participating
18 in the conduct of the affairs of the person subject to the
19 orders issued under this section.

20 (b) If the department reasonably determines that a
21 person required to be licensed under this act has violated any
22 law of this state or applicable federal law or regulations or
23 any order or regulation of the department, the department may
24 issue a written order requiring the person to cease and desist
25 from unlawful or unauthorized practices.

26 (c) Any person required to be licensed under this
27 act who has been deemed by the supervisor, after notice and

1 hearing, to have violated the terms of any order properly
2 issued by the department under this section shall be liable
3 for a civil penalty not to exceed three thousand dollars
4 (\$3,000). The department, in determining the amount of the
5 penalty, shall take into account the appropriateness of the
6 penalty relative to the size of the financial resources of the
7 person, the good faith efforts of the person to comply with
8 the order, the gravity of the violation, the history of
9 previous violations by the person, and other factors or
10 circumstances that contributed to the violation. Any person
11 assessed a penalty as provided in this subsection shall have
12 the right to request a hearing on the amount of the penalty
13 within 20 days after receiving notification of the assessment.
14 If no hearing is requested within 20 days of the receipt of
15 the notice, the penalty shall be final except as to judicial
16 review in the Circuit Court of Montgomery County. Upon the
17 filing of a petition for judicial review, the court shall
18 issue an order to the licensee requiring the licensee to show
19 cause why it should not be entered. If the court determines,
20 after a hearing upon the merits or after failure of the person
21 to appear when so ordered, that the order of the department
22 was properly issued, it shall grant the penalty sought by the
23 department.

24 Section 24. Nothing in this act shall preclude a
25 person whose license has been suspended or revoked from
26 continuing to service mortgage loans pursuant to servicing
27 contracts in existence at the time of the suspension or

1 revocation for a reasonable transition period, as determined
2 by the supervisor, after the date of the entry of the final
3 decision in the case suspending or revoking the license.

4 Section 25. (a) In addition to any other penalty
5 that may be applicable, any licensee, person required to be
6 licensed, or employee who willfully violates any provision of
7 this act, or who willfully makes a false entry in any document
8 specifically required by this act, shall be guilty of a
9 misdemeanor and, upon conviction thereof, shall be punished by
10 a fine not in excess of one thousand dollars (\$1,000) per
11 violation or false entry.

12 (b) In addition to any other penalty that may be
13 applicable, any licensee, person required to be licensed, or
14 employee who fails to make a record of a mortgage transaction
15 and subsequently sells or disposes of the mortgage from that
16 transaction shall be punished as follows:

17 (1) For a first offense, the person shall be guilty
18 of a misdemeanor and, upon conviction thereof, shall be
19 punished by a fine not in excess of one thousand dollars
20 (\$1,000) or by imprisonment in the county jail for not more
21 than one year, or both fine and imprisonment.

22 (2) For a second or subsequent offense, the person
23 shall be guilty of a felony and, upon conviction thereof,
24 shall be punished by a fine not in excess of five thousand
25 dollars (\$5,000) or by imprisonment in the custody of the
26 State Department of Corrections for a term not less than one

1 year nor more than five years, or by both fine and
2 imprisonment.

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

7 (d) When the supervisor has reasonable cause to
8 believe that a person is violating any provision of this act,
9 the supervisor, in addition to and without prejudice to the
10 authority provided elsewhere in this act, may enter an order
11 requiring the person to cease and desist from the violation.
12 The supervisor may sue in any circuit court of the state
13 having jurisdiction and venue to enjoin the person from
14 engaging in or continuing the violation or from doing any act
15 in furtherance of the violation. In such an action, the court
16 may enter an order or judgment awarding a preliminary or
17 permanent injunction.

18 (e) The supervisor may, after notice and hearing,
19 impose a civil penalty against any licensee if the licensee or
20 employee is adjudged by the supervisor to be in violation of
21 the provisions of this act. The civil penalty shall not exceed
22 five hundred dollars (\$500) per violation and shall be
23 deposited into the special fund of the department.

24 (f) The supervisor may make public any final
25 administrative action imposed against a licensee for a
26 violation of this act, including cease and desist orders,

1 civil monetary penalties, license suspensions, revocations, or
2 application denials.

3 (g) The state may enforce its rights under the
4 surety bond as required in Sections 6 and 8 as an available
5 remedy for the collection of any civil penalties, criminal
6 fines, or costs of investigation and/or prosecution incurred.

7 Section 26. (a) A licensee under this act shall have
8 no liability for any act or practice done or omitted in
9 conformity with any rule or regulation of the supervisor, or
10 any rule, regulation, interpretation, or approval of any other
11 state or federal agency or any opinion of the Attorney
12 General, notwithstanding that after such act or omission has
13 occurred the rule, regulation, interpretation, approval, or
14 opinion is amended, rescinded, or determined by judicial or
15 other authority to be invalid for any reason.

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

24 Section 27. (a) In connection with the Alabama
25 Mortgage Act, the Legislature finds that a uniform multistate
26 administration of a multistate licensing system for mortgage
27 brokers, mortgage lenders, mortgage servicers, mortgage

1 processors, and mortgage loan originators is consistent with
2 both the public interest and the provisions of this act;
3 therefore, the department may participate in such a system
4 whereby each requirement is consistent with both the public
5 interest and the provisions of this act. These new
6 requirements shall include criminal background checks by the
7 FBI.

8 (b) Nothing in this section shall authorize the
9 supervisor to require any person exempt under Section 4 to
10 participate in the multistate licensing system.

11 (c) Except for the supervisor, or his or her
12 designee, no person shall be authorized to obtain information
13 from the multistate licensing database that could not
14 otherwise be obtained prior to the state's adoption of the
15 multistate licensing system under then existing state law. No
16 information obtained from the multistate licensing system
17 shall be admissible as evidence in, or used to initiate, a
18 civil proceeding in this state unless such information would
19 have been available prior to the state's adoption of the
20 multistate licensing system under then existing law.

21 (d) The supervisor shall notify the multistate
22 licensing system if the system adopts or intends to adopt a
23 notification policy regarding privacy, data security, and
24 security breach that is inconsistent with any applicable
25 Alabama laws.

26 (e) The supervisor may require a participating
27 licensee to submit a reasonable fee to the multistate

1 licensing system. Any such fee shall be in addition to any
2 licensing fee provided in this act.

3 Section 28. (a) A person commits the offense of
4 residential mortgage fraud when, with the intent to defraud,
5 he or she does any of the following:

6 (1) Knowingly makes any deliberate misstatement,
7 misrepresentation, or omission during the mortgage lending
8 process with the intention that it be relied on by a licensed
9 mortgage broker, mortgage lender, mortgage servicer, mortgage
10 processor, borrower, or any other party to the mortgage
11 lending process.

12 (2) Knowingly uses or facilitates the use of any
13 deliberate misstatement, misrepresentation, or omission,
14 knowing the same to contain a misstatement, misrepresentation,
15 or omission, during the mortgage lending process with the
16 intention that it be relied on by a company, borrower, or any
17 other party to the mortgage lending process.

18 (3) Receives any proceeds or any other funds in
19 connection with a residential mortgage closing that such
20 person knew resulted from a violation of subdivision (1) or
21 (2) of this subsection.

22 (4) Files or causes to be filed with any public
23 office any document that such person knows to contain a
24 deliberate misstatement, misrepresentation, or omission with
25 the intent to defraud or in furtherance of a residential
26 mortgage fraud.

1 (b) An offense of residential mortgage fraud shall
2 not be predicated solely upon information lawfully disclosed
3 under federal disclosure laws, regulations, and
4 interpretations related to the mortgage lending process.

5 (c) For the purposes of venue under this section,
6 any violation of this section shall be considered to have been
7 committed in any of the following instances:

8 (1) In the county in which the residential property
9 for which a mortgage loan is being sought is located.

10 (2) In any county in which any act was performed in
11 furtherance of this violation.

12 (3) In any county in which any person alleged to
13 have violated this act had control or possession of any
14 proceeds of this violation.

15 (4) If a closing occurred, in any county in which
16 the closing occurred.

17 (5) In any county in which a document containing a
18 deliberate misstatement, misrepresentation, or omission was
19 filed with a public official.

20 (d) District attorneys and the Attorney General
21 shall have the authority to conduct the criminal
22 investigations of all cases of residential mortgage fraud
23 under this section.

24 (e) (1) Any person violating this section shall be
25 guilty of a Class C felony.

26 (2) Each residential mortgage transaction subject to
27 a violation of this section shall constitute a separate

1 offense and shall not merge with any other crimes set forth in
2 this section.

3 (f) All real and personal property of every kind
4 used or intended for use in the course of, derived from, or
5 realized through, or used to facilitate a violation of this
6 section shall be subject to forfeiture. The procedure for
7 forfeiture of said property, including the distribution of the
8 proceeds of said forfeiture, shall be pursuant to Sections
9 20-2-93, et seq., Code of Alabama 1975.

10 Section 29. All laws or parts of laws which conflict
11 with this act are repealed. Chapter 25 of Title 5, Sections
12 5-25-1 to 5-25-18, inclusive, Code of Alabama 1975, is
13 repealed effective January 1, 2009.

14 Section 30. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 31. This act shall become effective on
23 January 1, 2009, following its passage and approval by the
24 Governor, or its otherwise becoming law.