

1 SB232  
2 108187-4  
3 By Senators Denton, Little (T), Little (Z), Bedford, Barron,  
4 Coleman, Benefield, Figures, Means, and Penn  
5 RFD: Governmental Affairs  
6 First Read: 03-FEB-09

1 SB232

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4 ENROLLED, An Act,

5 To amend Sections 5-25-2, 5-25-3, 5-25-5, 5-25-6,  
6 5-25-7, 5-25-8, 5-25-9, 5-25-11, and 5-25-12, Code of Alabama  
7 1975, relating to the Mortgage Brokers Licensing Act; to limit  
8 those excluded from the licensure requirement; to require  
9 certain applicants to have experience in the mortgage  
10 industry; to combine the initial license fee and investigation  
11 fee; to allow for surety bonds and background checks; to  
12 exclude exemptions from licensing fees; and to allow the  
13 licensee's principal place of business to be outside of the  
14 State of Alabama.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 5-25-2, 5-25-3, 5-25-5, 5-25-6,  
17 5-25-7, 5-25-8, 5-25-9, 5-25-11, and 5-25-12, Code of Alabama  
18 1975, are amended to read as follows:

19 "§5-25-2.

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

22 "(1) BORROWER. A natural person who submits an  
23 application for a loan secured by a first or subordinate  
24 mortgage or deed of trust on a single-family to four-family

1 home to be occupied by the borrower as the borrower's primary residence.

2 "(2) COMMITMENT. A written statement by a lender  
3 that sets forth the terms and conditions upon which the lender  
4 is willing to make a particular mortgage loan to a particular  
5 borrower. A good faith estimate provided under the Federal  
6 Real Estate Settlement Procedures Act is not a "commitment"  
7 for the purposes of this act.

8 "(3) CONTROL. The direct or indirect possession of  
9 the power to direct or cause the direction of the management  
10 and policies of a person, whether through the ownership of  
11 voting securities, by contract, or otherwise, and shall  
12 include the terms controlling, controlled by, and under common  
13 control with.

14 "(4) DEPARTMENT. The State Banking Department of  
15 Alabama.

16 "(5) EXECUTIVE OFFICER. The chief executive officer,  
17 the president, the principal financial officer, the principal  
18 operating officer, each vice president with responsibility  
19 involving policy-making functions for a significant aspect of  
20 a person's business, the secretary, the treasurer, or any  
21 other person performing similar managerial or supervisory  
22 functions with respect to any organization whether  
23 incorporated or unincorporated.

24 "(6) FINANCIAL STATEMENT. A financial statement  
25 prepared in accordance with standard accounting practices and

1 procedures under the supervision of a certified public  
2 accountant.

3 "(7) LICENSE. A license issued by the department  
4 under this chapter to act as a mortgage broker.

5 "(8) LICENSEE. A person who is licensed as a  
6 mortgage broker under this chapter.

7 "(9) MORTGAGE BROKER. Any person who directly or  
8 indirectly solicits, processes, places, or negotiates mortgage  
9 loans for a borrower, or offers to solicit, process, place, or  
10 negotiate mortgage loans for a borrower.

11 "(10) MORTGAGE LOAN. A loan or agreement to loan  
12 money made to a natural person, which loan is secured by a  
13 deed to secure debt, security deed, mortgage, security  
14 instrument, or other document representing a security interest  
15 or lien upon any interest in single-family to four-family  
16 residential real estate located in Alabama, regardless of  
17 where made, including the renewal or refinancing of any loan.  
18 Without limitation, a "mortgage loan" does not include any  
19 document which creates a lien or security interest in a  
20 fixture which is attached to residential real estate.

21 "(11) NATIONWIDE MORTGAGE LICENSING SYSTEM AND  
22 REGISTRY. A mortgage licensing system developed and maintained  
23 by the Conference of State Bank Supervisors and the American  
24 Association of Residential Mortgage Regulators for the  
25 licensing and registration of mortgage loan originators.

1           "(12) PERSON. Any individual, sole proprietorship,  
2 corporation, limited liability company, partnership, estate,  
3 trust, or any other group of individuals, however organized.

4           "(13) PRINCIPAL. A natural person who, directly or  
5 indirectly, owns or controls an ownership interest of 10  
6 percent or more in a corporation or any other form of business  
7 organization, regardless of whether the natural person owns or  
8 controls the ownership interest through one or more natural  
9 persons or one or more proxies, powers of attorney, nominees,  
10 or other entities or devices, or any combination thereof.

11           "(14) RESIDENTIAL REAL ESTATE. Any real property  
12 located in Alabama upon which is constructed or intended to be  
13 constructed a dwelling.

14           "(15) SERVICE A MORTGAGE LOAN. The collection or  
15 remittance for another, or the right to collect or remit for  
16 another, of payments of principal, interest, trust items such  
17 as insurance and taxes, and any other payments pursuant to a  
18 mortgage loan.

19           "(16) SUPERVISOR. The Supervisor of the Bureau of  
20 Loans of the department.

21           "§5-25-3.

22           "The following persons are not subject to the  
23 provisions of this chapter:

24           "(1) Any depository institution as defined in  
25 Section 3 of the Federal Deposit Insurance Act, any subsidiary

1 institution that is owned and controlled by a depository  
2 institution, and employees of any of the foregoing. Bank  
3 holding companies and subsidiaries of bank holding companies,  
4 thrift holding companies and subsidiaries of thrift holding  
5 companies, trust companies, savings or building and loan  
6 associations, savings banks and other thrift institutions,  
7 credit unions, and all other affiliates of each of the above  
8 persons if more than 50 percent of the affiliate's shares or  
9 other ownership interests are owned or controlled by such  
10 person, and federally or state constituted agencies and  
11 employees of any of the foregoing.

12 "(2) Any person licensed under Section 5-19-22.

13 "(3) An attorney licensed to practice law in Alabama  
14 who is not principally engaged in negotiating mortgage loans  
15 when the attorney renders services in the course of his or her  
16 practice as an attorney.

17 "(4) Any person performing any act relating to  
18 mortgage loans under order of any court.

19 "(5) A natural person:

20 "a. Who is employed by a licensed mortgage broker or  
21 any person exempted from the licensing requirements of this  
22 chapter when acting within the scope of employment with the  
23 licensee or exempted person; however, mortgage loan  
24 originators must be licensed or registered in accordance with

1 the Alabama Secure and Fair Enforcement for Mortgage Licensing  
2 Act; or

3 "b. Who solicits mortgage loans exclusively on  
4 behalf of a licensed mortgage broker or any person exempted  
5 from the licensing requirements of this chapter when the  
6 natural person is acting within the scope of the agency of the  
7 licensee or exempted person; however, independent contractors  
8 that originate, process, or underwrite mortgage loans shall  
9 not originate, process, or underwrite mortgage loans unless  
10 they are licensed or registered in accordance with the Alabama  
11 Secure and Fair Enforcement for Mortgage Licensing Act.

12 "(6) Any licensed real estate salesperson or broker  
13 who provides mortgage loan assistance in the course of doing  
14 business unless the real estate salesperson or broker is  
15 compensated for providing mortgage loan assistance.

16 "§5-25-5.

17 "(a) An application for a license under this chapter  
18 shall be made in writing, under oath, and in the form as the  
19 department may prescribe.

20 "(b) The application shall include all of the  
21 following:

22 "(1) The legal name, business address, and telephone  
23 number of the applicant and, if the applicant is a  
24 partnership, association, corporation, or other group of  
25 individuals, however organized, the legal name, residence, and

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

3 "(2) The name under which the applicant will conduct  
4 business in the state.

5 "(3) The complete address of the applicant's initial  
6 registered office and any other locations at which the  
7 applicant will engage in any business activity covered by this  
8 chapter.

9 "(4) Any other data, financial statements, and  
10 pertinent information as the department may require with  
11 respect to the applicant, its directors, principals, trustees,  
12 officers, members, or agents.

13 "(5) Evidence that at least one principal or  
14 executive officer has at least two years of experience in the  
15 mortgage industry. This experience shall have been within the  
16 previous four years from the date of application. Evidence  
17 should include the principal's resume' and contact numbers for  
18 the company for which the individual worked or is currently  
19 working. Each principal or executive officer that originates  
20 mortgage loans shall also obtain a mortgage loan originator's  
21 license under the Alabama Secure and Fair Enforcement for  
22 Mortgage Licensing Act.

23 "(c) The applications shall be filed together with  
24 the following:

1           "(1) A non-refundable fee of six hundred dollars  
2           (\$600).

3           "(2) A financial statement of the applicant,  
4           prepared within 90 days of the filing of the application and  
5           covering the most recent fiscal year preceding the date of  
6           application, which demonstrates that the applicant has a bona  
7           fide and verifiable tangible net worth capital of twenty-five  
8           thousand dollars (\$25,000). A consolidated Securities and  
9           Exchange Commission Annual Report Form 10-K shall meet the  
10          requirements of this chapter for the licensee if it shows a  
11          net worth or stockholder's equity of the licensee in an amount  
12          of at least twenty-five thousand dollars (\$25,000). The  
13          department may require the applicant or licensee to obtain a  
14          surety bond in lieu of the net worth requirement in order to  
15          fulfill the requirements of the Alabama Secure and Fair  
16          Enforcement for Mortgage Licensing Act. The amount of the  
17          surety bond will be determined by the department. The surety  
18          bond will be in favor of the State of Alabama for the use,  
19          benefit, and indemnity of any person who suffers damage or  
20          loss as a result of the company's breach of contract or of any  
21          obligation arising therefrom or any violation of the law.

22          "(3) A set of fingerprints from any local law  
23          enforcement agency for the following:

24                 "a. All persons acting as a sole proprietorship.

25                 "b. All partners in a partnership.

1 "c. All principals of a corporation.

2 "(d) The department may require applicants to apply  
3 through the Nationwide Mortgage Licensing System and Registry.  
4 In order to carry out this requirement, the supervisor is  
5 authorized to participate in the Nationwide Mortgage Licensing  
6 System and Registry. For this purpose, the supervisor may  
7 establish by rule or order requirements as necessary,  
8 including, but not limited to, the following:

9 "(1) Background checks that include any of the  
10 following:

11 "a. Criminal history through fingerprint or other  
12 database.

13 "b. Civil or administrative records.

14 "c. Credit history.

15 "d. Any other information deemed necessary by the  
16 Nationwide Mortgage Licensing System and Registry.

17 "(2) The payment of fees to apply for or renew  
18 licenses through the Nationwide Mortgage Licensing System and  
19 Registry.

20 "§5-25-6.

21 "(a) Upon receipt of a completed application for a  
22 license together with all items set forth in subsection (c) of  
23 Section 5-25-5, the department shall conduct such an  
24 investigation as it deems necessary to determine that the  
25 applicant and its officers, directors, and principals are of

1 good character and ethical reputation and will operate  
2 honestly and fairly within the purposes of this chapter; and  
3 that the applicant demonstrates reasonable financial  
4 responsibility.

5 "(b) The department may not license any applicant  
6 unless it is satisfied that the applicant may be expected to  
7 operate its mortgage brokerage activities in compliance with  
8 the laws of this state.

9 "(c) The department may not issue a license if it  
10 finds that the applicant, or any person who is a director,  
11 executive officer, partner, or principal of the applicant, has  
12 been convicted of a felony or offense which involves breach of  
13 trust, fraud, or dishonesty in any jurisdiction. For the  
14 purposes of this chapter, a person shall be deemed to have  
15 been convicted if the person has pled guilty to a crime before  
16 a domestic, foreign, or military court or federal magistrate,  
17 or has been found guilty of a crime by the decision or  
18 judgment of a domestic, foreign, or military court or federal  
19 magistrate or by the verdict of a jury, irrespective of the  
20 pronouncement of sentence or the suspension of a sentence.

21 "(d) The department may deny a license or otherwise  
22 restrict a license if it finds that the applicant, or any  
23 person who is a director, executive officer, partner, or  
24 principal of the applicant, has had a license or registration

1 to conduct mortgage related activity denied, revoked, or  
2 suspended in any jurisdiction.

3 "(e) Within 90 days after receipt of a completed  
4 application together with all items set forth in subsection  
5 (c) of Section 5-25-5, the department shall either grant or  
6 deny the request for license.

7 "§5-25-7.

8 "(a) All licenses issued pursuant to this chapter  
9 shall expire on December 31 of each year. Application for  
10 renewal shall be made annually on or before December 1 of each  
11 year to be effective for the following year.

12 "(b) Any licensee making proper application,  
13 including all supporting documents and all applicable fees  
14 required by this chapter and any regulations promulgated by  
15 the department, for a license renewal to operate during the  
16 following calendar year, and filing the application December  
17 1, shall be permitted to continue to operate pending final  
18 approval or disapproval of the application for the license  
19 renewal for the following year if final approval or  
20 disapproval is not granted prior to February 1.

21 "(c) Each renewal application shall be accompanied  
22 by a five hundred dollar (\$500) annual license application  
23 fee, which fee will not be refunded or prorated .

24 "(d) Any person holding a license pursuant to this  
25 chapter who fails to file a proper application for a license

1 renewal for the following year, including the proper fee  
2 accompanying the application, on or before February 1, and who  
3 files an application after February 1, may be required to pay,  
4 in addition to the license fee, a penalty of 10 percent for  
5 each month or part thereof that the licensee is delinquent in  
6 the payment of such license fee.

7 "(e) The department may require a licensee to renew  
8 a license through the Nationwide Mortgage Licensing System and  
9 Registry.

10 "§5-25-8.

11 "(a) Each license issued under this chapter shall  
12 state the address of the licensee's principal place of  
13 business and the name of the licensee.

14 "(b) A licensee shall post the license in a  
15 conspicuous place in each place of business of the licensee.

16 "(c) A license may not be transferred or assigned.

17 "(d) No licensee shall transact business under any  
18 name other than that designated in the license.

19 "(e) Each licensee shall notify the department in  
20 writing of any change in the address of its principal place of  
21 business or of any change in the address of any licensed  
22 location 15 days prior to such change, and any change of  
23 officers, directors, or principal of the licensee, not later  
24 than 30 business days after the change is effective.

1           "(f) Within 15 days of the occurrence of any one of  
2 the following events, a licensee shall file a written report  
3 with the supervisor describing the event and its expected  
4 impact on the activities of the licensee in this state:

5           "(1) The filing for bankruptcy or reorganization by  
6 the licensee.

7           "(2) The institution of revocation or suspension  
8 proceedings against the licensee by any state or governmental  
9 authority.

10           "(3) Any felony indictment of the licensee or any of  
11 its directors, executive officers, or principals.

12           "(4) Any felony conviction of the licensee or any of  
13 its directors, executive officers, or principals.

14           "§5-25-9.

15           "(a) Any person required to be licensed under this  
16 chapter shall maintain in its offices or such other location  
17 as the department shall permit the books, accounts, and  
18 records as the department may reasonably require in order to  
19 determine whether the person is complying with this chapter  
20 and rules and regulations adopted pursuant to this chapter.  
21 These books, accounts, and records shall be maintained apart  
22 and separate from any other business in which the person is  
23 involved.

24           "(b) The department may, by its designated officers  
25 and employees, as often as it deems necessary, but at least

1 once every 24 months, investigate and examine the affairs,  
2 business, premises, and records of any person required to be  
3 licensed under this chapter insofar as they pertain to any  
4 business for which a license is required by this chapter.

5 "(c) The department, at its discretion, may:

6 "(1) Cause an examination to be made at the  
7 licensee's place of business of the records and transactions  
8 of such licensee.

9 "(2) Require the licensee to make his or her records  
10 and transactions available to the supervisor at the office of  
11 the supervisor.

12 "(d) As the cost of examination, the licensee shall  
13 pay the supervisor an examination fee as provided by Section  
14 5-2A-24, which shall be collected and paid into the special  
15 fund provided by Section 5-2A-20, and used in the supervision  
16 and examination of licensees. Each licensee shall preserve all  
17 relevant records for a period of at least three years after  
18 making the last entry on any transaction, and the supervisor  
19 shall have free access thereto at the licensee's place of  
20 business at all reasonable times. If the supervisor has  
21 probable cause to believe that a person has engaged in an  
22 activity which violates this chapter, the supervisor may  
23 compel the production of such books and records of the  
24 licensee as he or she has probable cause to believe are  
25 relevant to the alleged violation.

1           "(e) If the licensee's records are located outside  
2 this state, the licensee may either make them available to the  
3 supervisor at a convenient location within this state, or pay  
4 the reasonable and necessary expenses for the supervisor or a  
5 representative of the supervisor to examine them at the place  
6 where they are maintained. The supervisor may designate  
7 representatives, including comparable officials of the state  
8 in which the records are located, to inspect them on his or  
9 her behalf.

10           "(f) Reports of examinations and investigations, all  
11 working papers related thereto and the books and records of  
12 licensees, are to be held strictly confidential, and may not  
13 be produced, reproduced, or otherwise made available by the  
14 department to any persons other than those within the  
15 department, the licensee, other governmental agencies, and  
16 their respective counsel. This subsection does not apply to  
17 disclosures in proceedings brought by the supervisor pursuant  
18 to this chapter.

19           "(g) A licensee's books and records may be  
20 maintained, produced, and reproduced for examination by  
21 photostatic, photographic, microphotographic, optical imaging,  
22 or by any other generally recognized process for data storage  
23 and reproduction.

1           "(h) Nothing contained herein shall prohibit  
2           discovery of these materials by and through a lawfully issued  
3           subpoena from a court of competent jurisdiction.

4           "§5-25-11.

5           "A licensee may transact business from both a  
6           principal place of business and one or more branch offices  
7           provided each is licensed under this chapter. A principal  
8           place of business or branch office shall consist of at least  
9           one enclosed room or building of stationary construction in  
10          which negotiations of mortgage loan transactions may be  
11          conducted and carried on in privacy and in which all of the  
12          books, records, and files pertaining to mortgage loan  
13          transactions are maintained. Each principal place of business  
14          and branch office shall also be in compliance with local  
15          zoning ordinances and have posted any occupational licenses  
16          required by local government agencies. It is the  
17          responsibility of the licensee to meet local zoning ordinances  
18          and obtain the required occupational licenses; however, zoning  
19          for the principal place of business or the branch office shall  
20          not be residential.

21          "§5-25-12.

22          "(a) Licensees shall:

23                 "(1) Prior to the collection of a mortgage broker  
24                 fee from a borrower, disclose to the borrower in writing the  
25                 nature of the mortgage broker's relationship to the borrower

1 and the method by which the mortgage broker will be  
2 compensated for services.

3 "(2) Comply with applicable federal and state laws,  
4 rules, and regulations.

5 "(b) Licensees shall not:

6 "(1) Intentionally misrepresent or conceal a  
7 material fact, term, or condition of the transaction to which  
8 he or she is a party, pertinent to an application for a  
9 mortgage loan or a borrower.

10 "(2) Fail to use due diligence and make reasonable  
11 efforts to procure a mortgage loan on behalf of the borrower.

12 "(3) Fail to disburse funds in accordance with a  
13 written commitment to make a mortgage loan.

14 "(4) Delay closing of a mortgage loan for the  
15 purpose of increasing interest rate, costs, fees, or other  
16 charges payable by the borrower.

17 "(5) Collect any mortgage broker fees before a  
18 conditional commitment is obtained from the lender by the  
19 mortgage broker."

20 Section 2. This act shall become effective six  
21 months following its passage and approval by the Governor, or  
22 its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB232  
Senate 02-APR-09  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 14-MAY-09

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By: Senator Denton