MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001

By: Senator(s) Kirby
To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2744

AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO
DEFINE THE TERM "MANUFACTURED HOUSING SALESPERSON LOAN ORIGINATOR"; TO AMEND SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MANUFACTURED HOUSING SALESPERSON LOAN ORIGINATORS ARE EXEMPT FROM THE LICENSING REQUIREMENTS OF THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION ACT BUT SHALL REGISTER WITH THE DEPARTMENT OF BANKING AND CONSUMER FINANCE AS A LOAN ORIGINATOR; TO AMEND SECTION 81-18-15, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE CONTINUING EDUCATION REQUIREMENTS FOR MANUFACTURED HOUSING SALESPERSON LOAN ORIGINATORS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 81-18-3, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

(i) "Loan originator" means an individual who is an employee or exclusive agent of a licensed mortgage company and who directly or indirectly solicits, places or negotiates mortgage loans for others, or offers to solicit, place or negotiate mortgage loans for others.

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

(k) "Manufactured housing salesperson loan originator" means any manufactured housing retail sales company or salesperson holding a dealer's license under the Uniform Standards Code for Factory-Built Homes Law or their employee who is actively engaged in the sale of manufactured housing, who does not receive any fee, commission, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage for others. The words "fee, commission, rebate or other payment" as used in this definition does not mean the fee or commission which the salesperson receives for the sale in the ordinary course of business.
(l) "Misrepresent" means to make a false statement of a substantive fact or to engage in, with intent to deceive or mislead, any conduct that leads to a false belief that is material to the transaction.

(m) "Mortgage company" means any person or entity who directly, indirectly or by electronic activity, solicits, places or negotiates mortgage loans for others, or offers to solicit, place or negotiate mortgage loans for others.

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

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

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

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

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

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

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

SECTION 2. Section 81-18-5, Mississippi Code of 1972, is
amended as follows:

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

(a) Any person authorized to engage in business as a
bank holding company, or any subsidiary thereof; or any person
authorized to engage in business as a financial holding company,
bank, credit card bank, savings bank, savings institution, savings
and loan association, building and loan association, trust company
or credit union under the laws of the United States, any state or
territory of the United States, or the District of Columbia, or
any subsidiary or affiliate thereof.

(b) Approved mortgagees, sellers, servicers or issuers
of the United States Department of Housing and Urban Development,
the Federal Housing Administration, the Veterans Administration,
the Federal National Mortgage Association (FNMA or "Fannie Mae"),
the Federal Home Mortgage Company (FHLMC or "Freddie Mac"), the
Government National Mortgage Association (GNMA or "Ginnie Mae"),
when the mortgagees have been approved as a seller, servicer,
mortgagee or issuer or when they have satisfied requirements to
qualify for automatic authority; however, if these mortgagees/lenders close or fund any other type of mortgage loans not subject to examination or review by any of the above agencies, they will be subject to Sections 81-18-11, 81-18-21, 81-18-27, 81-18-35 and 81-18-43 as it pertains to those loans, unless otherwise exempted under paragraph (a) of this section.

(c) Any lender holding a license under the Small Loan Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or affiliate thereof, and making real estate loans under that law are exempt from this chapter. However, those lenders holding a license under the Small Loan Regulatory Law and making real estate loans outside that law shall be subject to the entire provisions of this chapter, unless otherwise exempted under paragraph (a) of this section.

(d) Any person who funds a mortgage loan which has been originated and processed by a licensee, by a mortgage company licensed under this chapter or by a person who is exempt under this section and who meets all of the following:

(i) Does not maintain a place of business in this state in connection with funding mortgage loans;

(ii) Does not directly solicit borrowers in this state for the purpose of making mortgage loans; and

(iii) Does not participate in the negotiation of mortgage loans.

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

(f) Any real estate company or licensed real estate salesperson or broker who is actively engaged in the real estate business and who does not receive any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage for others.
(g) Manufactured housing salesperson loan originators as defined under Section 81-18-3 are exempt from the licensing requirements of this chapter but shall register with the department as a loan originator in the manner provided in paragraph (o).

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

(i) Any natural person, or the estate of or trust created by a natural person, making a mortgage loan with his or her own funds for his or her own investment, including but not limited to, those natural persons, or the estates of or trusts created by the natural person, who makes a purchase money mortgage or financing sales of his or her own property. Any person who enters into more than five (5) such investments or sales in any twelve-month period is not exempt from being licensed under this chapter.

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

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

(l) The United States of America, the State of Mississippi or any other state, and any agency, division or corporate instrumentality thereof including, but not limited to, the Mississippi Home Corporation, Rural Economic Community Development (RECD), Habitat for Humanity, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Company (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Federal Land Banks and Production Credit Associations.
Government sponsored nonprofit corporations making mortgage loans to promote home ownership or home improvements for the disadvantaged.

A natural person who is an employee or an exclusive agent of a licensed mortgage company or any person exempted from the licensing requirements of this chapter when acting within the scope of employment or exclusive agency with the licensee or exempted person.

Employees or exclusive agents serving as loan originators for licensed mortgage companies as defined under Section 81-18-3 are exempt from the licensing requirements of this chapter but shall register with the department as a loan originator. Any natural person required to register under this paragraph (o) shall register initially with the department and thereafter file an application for renewal of registration with the department on or before August 31 of each year providing the department with such information as the department may prescribe by regulation, including, but not limited to, the business addresses where the person engages in any business activities covered by this chapter and a telephone number that customers may use to contact the person. This initial registration of a loan originator shall be accompanied by a fee of One Hundred Dollars ($100.00). Annual renewals of this registration shall require a fee of Fifty Dollars ($50.00). No person required to register under this paragraph (o) shall transact business in this state directly or indirectly as a mortgage company or mortgage lender unless that person is registered with the department.

SECTION 3. Section 81-18-15, Mississippi Code of 1972, is amended as follows:

81-18-15. (1) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars

S. B. No. 2744
01/SS02/R858CS.1
PAGE 7
($750.00), and on or before August 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00).

If the annual renewal fee remains unpaid thirty (30) days after August 31, the license shall expire, but not before September 30 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

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

(3) Each application for licensing renewal or registration renewal shall include evidence of the satisfactory completion of at least twelve (12) hours of approved continuing education in primary and subordinated financing transactions by the officers and principals who are or will be actively engaged in the daily operation of a mortgage company in the State of Mississippi and registered originators. For purposes of this subsection (3), approved courses shall be those as approved by the Mississippi Mortgage Bankers Association, the Education Committee of the National Association of Mortgage Brokers or the Mississippi
Association of Mortgage Brokers, who shall submit to the
department a listing of approved schools, courses, programs and
special training sessions. However, each application for
registration renewal of manufactured housing salesperson loan
originators as defined in Section 81-18-3 shall include evidence
of the satisfactory completion of at least twelve (12) hours of
continuing education, of which eight (8) hours shall be approved
by the Commissioner of Insurance and four (4) hours shall be
approved by the Commissioner of Banking and Consumer Finance.

SECTION 4. This act shall take effect and be in force from
and after July 1, 2001.