

By: Senator(s) Kirby

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2744

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

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

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

14 81-18-3. For purposes of this chapter, the following terms
15 shall have the following meanings:

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

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

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

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

31 (e) "Department" means the Department of Banking and
32 Consumer Finance of the State of Mississippi.

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

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

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

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

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

53 (k) "Manufactured housing salesperson loan originator"
54 means any manufactured housing retail sales company or salesperson
55 holding a dealer's license under the Uniform Standards Code for
56 Factory-Built Homes Law or their employee who is actively engaged
57 in the sale of manufactured housing, who does not receive any fee,
58 commission, rebate or other payment for directly or indirectly
59 negotiating, placing or finding a mortgage for others. The words
60 "fee, commission, rebate or other payment" as used in this
61 definition does not mean the fee or commission which the
62 salesperson receives for the sale in the ordinary course of
63 business.

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

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

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

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

83 (p) "Principal" means a natural person who, directly or
84 indirectly, owns or controls an ownership interest of ten percent
85 (10%) or more in a corporation or any other form of business
86 organization, regardless of whether the natural person owns or
87 controls the ownership interest through one or more natural
88 persons or one or more proxies, powers of attorney, nominees,
89 corporations, associations, limited liability companies,
90 partnerships, trusts, joint-stock companies, other entities or
91 devises, or any combination thereof.

92 (q) "Records" or "documents" means any item in hard
93 copy or produced in a format of storage commonly described as
94 electronic, imaged, magnetic, microphotographic or otherwise, and
95 any reproduction so made shall have the same force and effect as

96 the original thereof and be admitted in evidence equally with the
97 original.

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

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

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

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

110 81-18-5. The following persons are not subject to the
111 provisions of this chapter, unless otherwise provided in this
112 chapter:

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

121 (b) Approved mortgagees, sellers, servicers or issuers
122 of the United States Department of Housing and Urban Development,
123 the Federal Housing Administration, the Veterans Administration,
124 the Federal National Mortgage Association (FNMA or "Fannie Mae"),
125 the Federal Home Mortgage Company (FHLMC or "Freddie Mac"), the
126 Government National Mortgage Association (GNMA or "Ginnie Mae"),
127 when the mortgagees have been approved as a seller, servicer,
128 mortgagee or issuer or when they have satisfied requirements to

129 qualify for automatic authority; however, if these
130 mortgagees/lenders close or fund any other type of mortgage loans
131 not subject to examination or review by any of the above agencies,
132 they will be subject to Sections 81-18-11, 81-18-21, 81-18-27,
133 81-18-35 and 81-18-43 as it pertains to those loans, unless
134 otherwise exempted under paragraph (a) of this section.

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

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

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

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

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

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

157 (f) Any real estate company or licensed real estate
158 salesperson or broker who is actively engaged in the real estate
159 business and who does not receive any fee, commission, kickback,
160 rebate or other payment for directly or indirectly negotiating,
161 placing or finding a mortgage for others.

162 (g) Manufactured housing salesperson loan originators
163 as defined under Section 81-18-3 are exempt from the licensing
164 requirements of this chapter but shall register with the
165 department as a loan originator in the manner provided in
166 paragraph (o).

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

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

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

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

183 (l) The United States of America, the State of
184 Mississippi or any other state, and any agency, division or
185 corporate instrumentality thereof including, but not limited to,
186 the Mississippi Home Corporation, Rural Economic Community
187 Development (RECD), Habitat for Humanity, the Federal National
188 Mortgage Association (FNMA), the Federal Home Loan Mortgage
189 Company (FHLMC), the Government National Mortgage Association
190 (GNMA), the United States Department of Housing and Urban
191 Development (HUD), the Federal Housing Administration (FHA), the
192 Department of Veterans Affairs (VA), the Farmers Home
193 Administration (FmHA), and the Federal Land Banks and Production
194 Credit Associations.

195 (m) Government sponsored nonprofit corporations making
196 mortgage loans to promote home ownership or home improvements for
197 the disadvantaged.

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

203 (o) Employees or exclusive agents serving as loan
204 originators for licensed mortgage companies as defined under
205 Section 81-18-3 are exempt from the licensing requirements of this
206 chapter but shall register with the department as a loan
207 originator. Any natural person required to register under this
208 paragraph (o) shall register initially with the department and
209 thereafter file an application for renewal of registration with
210 the department on or before August 31 of each year providing the
211 department with such information as the department may prescribe
212 by regulation, including, but not limited to, the business
213 addresses where the person engages in any business activities
214 covered by this chapter and a telephone number that customers may
215 use to contact the person. This initial registration of a loan
216 originator shall be accompanied by a fee of One Hundred Dollars
217 (\$100.00). Annual renewals of this registration shall require a
218 fee of Fifty Dollars (\$50.00). No person required to register
219 under this paragraph (o) shall transact business in this state
220 directly or indirectly as a mortgage company or mortgage lender
221 unless that person is registered with the department.

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

224 81-18-15. (1) Each license shall remain in full force and
225 effect until relinquished, suspended, revoked or expired. With
226 each initial application for a license, the applicant shall pay to
227 the commissioner a license fee of Seven Hundred Fifty Dollars

228 (\$750.00), and on or before August 31 of each year thereafter, an
229 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
230 If the annual renewal fee remains unpaid thirty (30) days after
231 August 31, the license shall expire, but not before September 30
232 of any year for which the annual renewal fee has been paid. If
233 any person engages in business as provided for in this chapter
234 without paying the license fee provided for in this subsection
235 before commencing business or before the expiration of the
236 person's current license, as the case may be, then the person
237 shall be liable for the full amount of the license fee, plus a
238 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
239 for each day that the person has engaged in such business without
240 a license or after the expiration of a license. All licensing
241 fees and penalties shall be paid into the Consumer Finance Fund of
242 the department.

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

251 (3) Each application for licensing renewal or registration
252 renewal shall include evidence of the satisfactory completion of
253 at least twelve (12) hours of approved continuing education in
254 primary and subordinated financing transactions by the officers
255 and principals who are or will be actively engaged in the daily
256 operation of a mortgage company in the State of Mississippi and
257 registered originators. For purposes of this subsection (3),
258 approved courses shall be those as approved by the Mississippi
259 Mortgage Bankers Association, the Education Committee of the
260 National Association of Mortgage Brokers or the Mississippi

261 Association of Mortgage Brokers, who shall submit to the
262 department a listing of approved schools, courses, programs and
263 special training sessions. However, each application for
264 registration renewal of manufactured housing salesperson loan
265 originators as defined in Section 81-18-3 shall include evidence
266 of the satisfactory completion of at least twelve (12) hours of
267 continuing education, of which eight (8) hours shall be approved
268 by the Commissioner of Insurance and four (4) hours shall be
269 approved by the Commissioner of Banking and Consumer Finance.

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