

By: Representatives Guice, Wallace, West

To: Banks and Banking

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1458

1 AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "LOAN ORIGINATOR" AS USED IN THE
3 MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO AMEND SECTION
4 81-18-5, MISSISSIPPI CODE OF 1972, TO REVISE THE EXEMPTIONS TO THE
5 MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO AMEND SECTION
6 81-18-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT COURSES
7 APPROVED BY THE MAGNOLIA MORTGAGE BROKERS AND EDUCATIONAL
8 ASSOCIATION WILL BE ACCEPTABLE FOR CONTINUING EDUCATION
9 REQUIREMENTS UNDER THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION
10 LAW; TO REQUIRE THE COMMISSIONER TO APPROVE CONTINUING EDUCATION
11 COURSES IN ADVANCE ON A CASE-BY-CASE BASIS; TO AMEND SECTION
12 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE
13 EXAMINATION FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING
14 AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE
15 COMPANY; AND FOR RELATED PURPOSES.

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

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

19 81-18-3. For purposes of this chapter, the following terms
20 shall have the following meanings:

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

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

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

31 (d) "Control" means the direct or indirect possession
32 of the power to direct or cause the direction of the management
33 and policies of a person, whether through the ownership of voting



34 securities, by contract or otherwise, and shall include
35 "controlling," "controlled by," and "under common control with."

36 (e) "Department" means the Department of Banking and
37 Consumer Finance of the State of Mississippi.

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

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

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

50 (i) "Loan originator" means an individual who is an
51 employee of a single mortgage company whose conduct of the
52 mortgage business is the responsibility of the licensee, and whose
53 job responsibilities include direct contact with borrowers during
54 the loan origination process, which may include soliciting,
55 negotiating, acquiring, arranging or making mortgage loans for
56 others, obtaining personal or financial information, assisting
57 with the preparation of loan applications or other documents,
58 quoting loan rates or terms, or providing required disclosures.
59 The term does not include individuals whose job responsibilities
60 on behalf of a company are solely clerical in nature or sales
61 representatives of a licensed Mississippi manufactured housing
62 operation who transmits information concerning a sale via mail,
63 courier service, or electronically to a licensed mortgage company
64 or registered originator.



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

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

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

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

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

87 (o) "Principal" means a natural person who, directly or
88 indirectly, owns or controls an ownership interest of twenty-five
89 percent (25%) or more in a corporation or any other form of
90 business organization, regardless of whether the natural person
91 owns or controls the ownership interest through one or more
92 natural persons or one or more proxies, powers of attorney,
93 nominees, corporations, associations, limited liability companies,
94 partnerships, trusts, joint-stock companies, other entities or
95 devises, or any combination thereof.

96 (p) "Records" or "documents" means any item in hard
97 copy or produced in a format of storage commonly described as



98 electronic, imaged, magnetic, microphotographic or otherwise, and
99 any reproduction so made shall have the same force and effect as
100 the original thereof and be admitted in evidence equally with the
101 original.

102 (q) "Registrant" means any person required to register
103 under Section 81-18-5(m).

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

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

112 (t) "Wholesale lender" means any person or entity who
113 makes a mortgage loan, or purchases or services mortgage loans,
114 utilizing the services of a person exempted, licensed or
115 registered under this chapter.

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

118 81-18-5. The following persons are not subject to the
119 provisions of this chapter, unless otherwise provided in this
120 chapter:

121 (a) Any person authorized to engage in business as a
122 bank holding company or as a financial holding company, or any
123 wholly owned subsidiary thereof; however, the wholly owned
124 subsidiary must file a notification statement that includes the
125 following information:

126 (i) The name or names under which business will be
127 conducted in Mississippi;

128 (ii) The name and address of the parent financial
129 institution;



130 (iii) The name, mailing address, telephone number,
131 and fax number of the person or persons responsible for handling
132 consumer inquiries and complaints;

133 (iv) The name and address of the registered agent
134 for service of process in Mississippi;

135 (v) A statement signed by the president or chief
136 executive officer of the entity stating that the entity will
137 receive and process consumer inquiries and complaints promptly,
138 fairly, and in compliance with all applicable laws; and

139 (vi) A fee of One Hundred Dollars (\$100.00).

140 The notification statement must be filed before beginning to
141 conduct a mortgage business in this state and must be updated by
142 the entity as the information changes. Any entity that fails to
143 file the notification statement or keep the information current
144 will be immediately subject to the licensing requirements of
145 Section 81-18-9. This notification statement must be renewed
146 annually as of September 30 of each year with a renewal fee of One
147 Hundred Dollars (\$100.00).

148 (b) Any person authorized to engage in business as a
149 bank, credit card bank, savings bank, savings institution, savings
150 and loan association, building and loan association, trust company
151 or credit union under the laws of the United States, any state or
152 territory of the United States, or the District of Columbia, the
153 deposits of which are federally insured, or any wholly owned
154 subsidiary thereof.

155 (c) Any person who is a wholesale lender as defined in
156 Section 81-18-3(t) or who is registered by or directly supervised
157 or audited by the Federal National Mortgage Association, the
158 United States Department of Veterans Affairs, or the Federal Home
159 Loan Mortgage Corporation, the Government National Mortgage
160 Association or the United States Department of Housing and Urban
161 Development; provided, however, that persons who qualify for an
162 exemption under this paragraph shall be subject to Sections



163 81-18-11, 81-18-13, 81-18-21, 81-18-25, 81-18-27, 81-18-31,
164 81-18-35, 81-18-39 and 81-18-43. Upon the request of the
165 commissioner, such persons shall submit copies of any reports as
166 required by the aforementioned governmental entity to which the
167 person is subject for licensing, supervision or auditing. The
168 department shall have the authority to investigate all consumer
169 complaints concerning Mississippi residential property. To
170 qualify for an exemption, the applicant shall register for an
171 exemption certificate with the department and pay an initial fee
172 of Three Hundred Dollars (\$300.00). With each application for
173 renewal of the exemption certificate, the applicant shall pay a
174 renewal fee of One Hundred Fifty Dollars (\$150.00) and provide the
175 department with evidence that the applicant is still licensed,
176 supervised or audited by the governmental entity. If the renewal
177 fee remains unpaid for thirty (30) days after August 31, the
178 registration shall expire, but not before September 30 of any year
179 for which the annual renewal fee has been paid. If any person
180 engages in business without paying the fees provided for in this
181 paragraph before commencing business or before the expiration of
182 the person's current registration, as the case may be, then the
183 person shall be liable for the full amount of the registration
184 fee, plus a penalty in an amount not to exceed Twenty-five Dollars
185 (\$25.00) for each day that the person has engaged in business
186 without an exemption certificate or after the expiration of an
187 exemption certificate. All registration fees and penalties shall
188 be paid into the Consumer Finance Fund of the department.

189 (d) Any lender holding a license under the Small Loan
190 Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or
191 affiliate thereof, and making real estate loans under that law are
192 exempt from this chapter. However, those lenders holding a
193 license under the Small Loan Regulatory Law and making real estate
194 loans outside that law shall be subject to the entire provisions



195 of this chapter, unless otherwise exempted under paragraph (a) or
196 (b) of this section.

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

201 (f) A real estate company or licensed real estate
202 salesperson or broker who is actively engaged in the real estate
203 business and who does not receive any fee, commission, kickback,
204 rebate or other payment for directly or indirectly negotiating,
205 placing or finding a mortgage for others.

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

208 (h) Any person who is employed by and representing a
209 Mississippi manufactured housing operation and who makes a
210 mortgage loan for an investment or on a whole loan basis in not
211 more than twelve (12) Mississippi residential mortgage loans, or
212 who contracts for no more than twelve (12) Mississippi residential
213 loan transactions, over the licensing period provided in this
214 chapter, including those acting as originators. The twelve (12)
215 transactions are cumulative to any combination of operations owned
216 or controlled by any one individual, sole proprietorship,
217 corporation, limited liability company, partnership, trust or any
218 other group of individuals, however organized. However, within
219 thirty (30) days of loan closure, the person shall submit to the
220 commissioner a fee of Ten Dollars (\$10.00), which is not
221 chargeable to the consumer, and written notification containing
222 such loan information as required by the commissioner, seeking
223 approval to engage in a residential mortgage transaction without
224 first complying with the licensing provisions of this chapter.
225 Any person who enters into more than twelve (12) of those
226 transactions in the licensing period provided in this chapter must
227 be licensed according to the procedures prescribed in this



228 chapter. The fees paid for exemption during a licensing period
229 will be deducted from the cost of an initial license.

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

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

235 (k) The United States of America, the State of
236 Mississippi or any other state, and any agency, division or
237 corporate instrumentality thereof including, but not limited to,
238 the Mississippi Home Corporation, Rural Economic Community
239 Development (RECD), Habitat for Humanity, the Federal National
240 Mortgage Association (FNMA), the Federal Home Loan Mortgage
241 Company (FHLMC), the Government National Mortgage Association
242 (GNMA), the United States Department of Housing and Urban
243 Development (HUD), the Federal Housing Administration (FHA), the
244 Department of Veterans Affairs (VA), the Farmers Home
245 Administration (FmHA), and the Federal Land Banks and Production
246 Credit Associations.

247 (l) Nonprofit corporations exempt from federal taxation
248 under Section 501(c) of the Internal Revenue Code making mortgage
249 loans to promote home ownership or home improvements for the
250 disadvantaged.

251 (m) Loan originators for licensed mortgage companies as
252 defined under Section 81-18-3 are exempt from the licensing
253 requirements of this chapter except for Sections 81-18-9(3)(d),
254 81-18-13 and 81-18-15(3), but shall register with the department
255 as a loan originator. Any natural person required to register
256 under this paragraph (m) shall register initially with the
257 department and thereafter file an application for renewal of
258 registration with the department on or before September 30 of each
259 year providing the department with such information as the
260 department may prescribe by regulation, including, but not limited



261 to, the business addresses where the person engages in any
262 business activities covered by this chapter and a telephone number
263 that customers may use to contact the person. This initial
264 registration of a loan originator shall be accompanied by a fee of
265 One Hundred Dollars (\$100.00). Annual renewals of this
266 registration shall require a fee of Fifty Dollars (\$50.00). No
267 person required to register under this paragraph (m) shall
268 transact business in this state directly or indirectly as a
269 mortgage company or mortgage lender unless that person is
270 registered with the department.

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

273 81-18-15. (1) Each license shall remain in full force and
274 effect until relinquished, suspended, revoked or expired. With
275 each initial application for a license, the applicant shall pay to
276 the commissioner a license fee of Seven Hundred Fifty Dollars
277 (\$750.00), and on or before August 31 of each year thereafter, an
278 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).
279 If the annual renewal fee remains unpaid thirty (30) days after
280 August 31, the license shall expire, but not before September 30
281 of any year for which the annual renewal fee has been paid. If
282 any person engages in business as provided for in this chapter
283 without paying the license fee provided for in this subsection
284 before commencing business or before the expiration of the
285 person's current license, as the case may be, then the person
286 shall be liable for the full amount of the license fee, plus a
287 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)
288 for each day that the person has engaged in such business without
289 a license or after the expiration of a license. All licensing
290 fees and penalties shall be paid into the Consumer Finance Fund of
291 the department.

292 (2) Any licensee making timely and proper application for a
293 license renewal shall be permitted to continue to operate under



294 its existing license until its application is approved or
295 rejected, but shall not be released from or otherwise indemnified
296 for any act covered by this chapter or for any penalty incurred
297 under this chapter as a result of any violation of this chapter or
298 regulations adopted under this chapter, pending final approval or
299 disapproval of the application for the license renewal.

300 (3) Each application for licensing renewal or registration
301 renewal shall include evidence of the satisfactory completion of
302 at least twelve (12) hours of approved continuing education in
303 primary and subordinated financing transactions by the officers
304 and principals who are or will be actively engaged in the daily
305 operation of a mortgage company in the State of Mississippi and
306 registered originators. For purposes of this subsection (3),
307 approved courses shall be those as approved by the Mississippi
308 Mortgage Bankers Association, the Education Committee of the
309 National Association of Mortgage Brokers, the Mississippi
310 Association of Mortgage Brokers or the Magnolia Mortgage Brokers
311 and Educational Association, who shall submit to the department a
312 listing of approved schools, courses, programs and special
313 training sessions.

314 However, each application for licensing renewal or
315 registration renewal of manufactured housing licensees or
316 originators shall include evidence of the satisfactory completion
317 of at least twelve (12) hours of continuing education, of which
318 eight (8) hours must be approved by the Commissioner of Insurance
319 and four (4) hours consisting of courses in primary and
320 subordinated financing transactions must be approved by the
321 Mississippi Manufactured Housing Association, which shall submit
322 to the department a listing of those approved schools, courses,
323 programs and special training sessions. A manufactured housing
324 licensee or originator may submit evidence of completion of
325 courses that have been approved by the Mississippi Mortgage
326 Bankers Association, the Education Committee of the National



327 Association of Mortgage Brokers, the Mississippi Association of
328 Mortgage Brokers or the Magnolia Mortgage Brokers and Educational
329 Association to satisfy the four-hour requirement of courses in
330 primary and subordinated financing transactions.

331 In order for a continuing education course to be considered
332 an approved course under this subsection (3), the commissioner
333 must approve each course in advance. The commissioner shall
334 approve courses on a case-by-case basis, and approval of a course
335 is valid only for that particular offering of the course, not for
336 any future offerings of the course.

337 **SECTION 4.** Section 81-18-21, Mississippi Code of 1972, is
338 amended as follows:

339 81-18-21. (1) Any person required to be licensed under this
340 chapter shall maintain in its offices, or such other location as
341 the department shall permit, the books, accounts and records
342 necessary for the department to determine whether or not the
343 person is complying with the provisions of this chapter and the
344 rules and regulations adopted by the department under this
345 chapter. These books, accounts and records shall be maintained
346 apart and separate from any other business in which the person is
347 involved and may represent historical data for two (2) years
348 preceding the date of the last license application date forward.
349 The books, accounts, and records shall be kept in a secure
350 location under conditions that will not lead to their damage or
351 destruction.

352 (2) To assure compliance with the provisions of this
353 chapter, the department may examine the books and records of any
354 licensee without notice during normal business hours. The
355 commissioner shall charge the licensee an examination fee in an
356 amount not less than Three Hundred Dollars (\$300.00) nor more than
357 Six Hundred Dollars (\$600.00) for each office or location within
358 the State of Mississippi, plus any actual expenses incurred while
359 examining the licensee's records or books that are located outside



360 the State of Mississippi. However, in no event shall a licensee
361 be examined more than once in a two-year period unless for cause
362 shown based upon consumer complaint and/or other exigent reasons
363 as determined by the commissioner.

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

378 (4) The department, in its discretion, may disclose
379 information concerning any violation of this chapter or any rule,
380 regulation, or order under this chapter, provided the information
381 is derived from a final order of the department.

382 (5) Examinations and investigations conducted under this
383 chapter and information obtained by the department, except as
384 provided in subsection (4) of this section, in the course of its
385 duties under this chapter are confidential.

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



393 **SECTION 5.** This act shall take effect and be in force from
394 and after July 1, 2003.

