

By: Representative Guice

To: Banks and Banking

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 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE  
 7 EXAMINATION FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING  
 8 AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE  
 9 COMPANY; AND FOR RELATED PURPOSES.

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

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

13 81-18-3. For purposes of this chapter, the following terms  
 14 shall have the following meanings:

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



94 the original thereof and be admitted in evidence equally with the  
95 original.

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

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

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

106 (t) "Wholesale lender" means any person or entity who  
107 makes a mortgage loan, or purchases or services mortgage loans,  
108 utilizing the services of a person exempted, licensed or  
109 registered under this chapter.

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

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

115 (a) Any person authorized to engage in business as a  
116 bank holding company or as a financial holding company, or any  
117 wholly owned subsidiary thereof; however, the wholly owned  
118 subsidiary must file a notification statement that includes the  
119 following information:

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

122 (ii) The name and address of the parent financial  
123 institution;

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



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

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

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

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

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

149 (c) Any person who is a wholesale lender as defined in  
150 Section 81-18-3(t) or who is registered by or directly supervised  
151 or audited by the Federal National Mortgage Association, the  
152 United States Department of Veterans Affairs, or the Federal Home  
153 Loan Mortgage Corporation, the Government National Mortgage  
154 Association or the United States Department of Housing and Urban  
155 Development; provided, however, that persons who qualify for an  
156 exemption under this paragraph shall be subject to Sections  
157 81-18-11, 81-18-13, 81-18-21, 81-18-25, 81-18-27, 81-18-31,  
158 81-18-35, 81-18-39 and 81-18-43. Upon the request of the  
159 commissioner, such persons shall submit copies of any reports as



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

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

191 (e) Any attorney licensed to practice law in  
192 Mississippi who provides mortgage loan services incidental to the



193 practice of law and who is not a principal of a mortgage company  
194 as defined under this chapter.

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

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

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



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

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

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

241 (l) Nonprofit corporations exempt from federal taxation  
242 under Section 501(c) of the Internal Revenue Code making mortgage  
243 loans to promote home ownership or home improvements for the  
244 disadvantaged.

245 (m) Loan originators for licensed mortgage companies as  
246 defined under Section 81-18-3 are exempt from the licensing  
247 requirements of this chapter except for Sections 81-18-9(3)(d),  
248 81-18-13 and 81-18-15(3), but shall register with the department  
249 as a loan originator. Any natural person required to register  
250 under this paragraph (m) shall register initially with the  
251 department and thereafter file an application for renewal of  
252 registration with the department on or before September 30 of each  
253 year providing the department with such information as the  
254 department may prescribe by regulation, including, but not limited  
255 to, the business addresses where the person engages in any  
256 business activities covered by this chapter and a telephone number





257 that customers may use to contact the person. This initial  
258 registration of a loan originator shall be accompanied by a fee of  
259 One Hundred Dollars (\$100.00). Annual renewals of this  
260 registration shall require a fee of Fifty Dollars (\$50.00). No  
261 person required to register under this paragraph (m) shall  
262 transact business in this state directly or indirectly as a  
263 mortgage company or mortgage lender unless that person is  
264 registered with the department.

265 **SECTION 3.** Section 81-18-21, Mississippi Code of 1972, is  
266 amended as follows:

267 81-18-21. (1) Any person required to be licensed under this  
268 chapter shall maintain in its offices, or such other location as  
269 the department shall permit, the books, accounts and records  
270 necessary for the department to determine whether or not the  
271 person is complying with the provisions of this chapter and the  
272 rules and regulations adopted by the department under this  
273 chapter. These books, accounts and records shall be maintained  
274 apart and separate from any other business in which the person is  
275 involved and may represent historical data for two (2) years  
276 preceding the date of the last license application date forward.  
277 The books, accounts, and records shall be kept in a secure  
278 location under conditions that will not lead to their damage or  
279 destruction.

280 (2) To assure compliance with the provisions of this  
281 chapter, the department may examine the books and records of any  
282 licensee without notice during normal business hours. The  
283 commissioner shall charge the licensee an examination fee  
284 consisting of the actual expenses per examination of each office  
285 or location within the State of Mississippi, plus any actual  
286 expenses incurred while examining the licensee's records or books  
287 that are located outside the State of Mississippi. However, in no  
288 event shall a licensee be examined more than once in a two-year



289 period unless for cause shown based upon consumer complaint and/or  
290 other exigent reasons as determined by the commissioner.

291 (3) The department, its designated officers and employees,  
292 or its duly authorized representatives, for the purposes of  
293 discovering violations of this chapter and for the purpose of  
294 determining whether any person or individual reasonably suspected  
295 by the commissioner of conducting business that requires a license  
296 or registration under this chapter, may investigate those persons  
297 and individuals and examine all relevant books, records and papers  
298 employed by those persons or individuals in the transaction of  
299 business, and may summon witnesses and examine them under oath  
300 concerning matters as to the business of those persons, or other  
301 such matters as may be relevant to the discovery of violations of  
302 this chapter including, without limitation, the conduct of  
303 business without a license or registration as required under this  
304 chapter.

305 (4) The department, in its discretion, may disclose  
306 information concerning any violation of this chapter or any rule,  
307 regulation, or order under this chapter, provided the information  
308 is derived from a final order of the department.

309 (5) Examinations and investigations conducted under this  
310 chapter and information obtained by the department, except as  
311 provided in subsection (4) of this section, in the course of its  
312 duties under this chapter are confidential.

313 (6) In the absence of malice, fraud, or bad faith a person  
314 is not subject to civil liability arising from the filing of a  
315 complaint with the department, furnishing other information  
316 required by this chapter, information required by the department  
317 under the authority granted in this chapter, or information  
318 voluntarily given to the department related to allegations that a  
319 licensee or prospective licensee has violated this chapter.

320 **SECTION 4.** This act shall take effect and be in force from  
321 and after July 1, 2003.

