AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "LOAN ORIGINATOR" AS USED IN THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO AMEND SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO REVISE THE EXEMPTIONS TO THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO AMEND SECTION 81-18-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT COURSES APPROVED BY THE MAGNOLIA MORTGAGE BROKERS AND EDUCATIONAL ASSOCIATION WILL BE ACCEPTABLE FOR CONTINUING EDUCATION REQUIREMENTS UNDER THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW; TO REQUIRE THE COMMISSIONER TO APPROVE CONTINUING EDUCATION COURSES IN ADVANCE ON A CASE-BY-CASE BASIS; TO AMEND SECTION 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE EXAMINATION FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE COMPANY; 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 of a single mortgage company whose conduct of the mortgage business is the responsibility of the licensee, and whose job responsibilities include direct contact with borrowers during the loan origination process, which may include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms, or providing required disclosures. The term does not include individuals whose job responsibilities on behalf of a company are solely clerical in nature or sales representatives of a licensed Mississippi manufactured housing operation who transmits information concerning a sale via mail, courier service, or electronically to a licensed mortgage company or registered originator.
(j) "Make a mortgage loan" means to advance funds, offer to advance funds or make a commitment to advance funds to a borrower.

(k) "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.

(l) "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.

(m) "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.

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

(o) "Principal" means a natural person who, directly or indirectly, owns or controls an ownership interest of twenty-five percent (25%) 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.

(p) "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.

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

(r) "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.

(s) "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.

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

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 as a financial holding company, or any wholly owned subsidiary thereof; however, the wholly owned subsidiary must file a notification statement that includes the following information:

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

(ii) The name and address of the parent financial institution;
(iii) The name, mailing address, telephone number, and fax number of the person or persons responsible for handling consumer inquiries and complaints;

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

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

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

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

(b) Any person authorized to engage in business as a 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, the deposits of which are federally insured, or any wholly owned subsidiary thereof.

(c) Any person who is a wholesale lender as defined in Section 81-18-3(t) or who is registered by or directly supervised or audited by the Federal National Mortgage Association, the United States Department of Veterans Affairs, or the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the United States Department of Housing and Urban Development; provided, however, that persons who qualify for an exemption under this paragraph shall be subject to Sections
81-18-35, 81-18-39 and 81-18-43. Upon the request of the
commissioner, such persons shall submit copies of any reports as
required by the aforementioned governmental entity to which the
person is subject for licensing, supervision or auditing. The
department shall have the authority to investigate all consumer
complaints concerning Mississippi residential property. To
quality for an exemption, the applicant shall register for an
exemption certificate with the department and pay an initial fee
of Three Hundred Dollars ($300.00). With each application for
renewal of the exemption certificate, the applicant shall pay a
renewal fee of One Hundred Fifty Dollars ($150.00) and provide the
department with evidence that the applicant is still licensed,
supervised or audited by the governmental entity. If the renewal
fee remains unpaid for thirty (30) days after August 31, the
registration 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 without paying the fees provided for in this
paragraph before commencing business or before the expiration of
the person's current registration, as the case may be, then the
person shall be liable for the full amount of the registration
fee, plus a penalty in an amount not to exceed Twenty-five Dollars
($25.00) for each day that the person has engaged in business
without an exemption certificate or after the expiration of an
exemption certificate. All registration fees and penalties shall
be paid into the Consumer Finance Fund of the department.

(d) 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) or
(b) of this section.

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

(h) Any person who is employed by and representing a
Mississippi manufactured housing operation and who makes a
mortgage loan for an investment or on a whole loan basis in not
more than twelve (12) Mississippi residential mortgage loans, or
who contracts for no more than twelve (12) Mississippi residential
loan transactions, over the licensing period provided in this
chapter, including those acting as originators. The twelve (12)
transactions are cumulative to any combination of operations owned
or controlled by any one individual, sole proprietorship,
corporation, limited liability company, partnership, trust or any
other group of individuals, however organized. However, within
thirty (30) days of loan closure, the person shall submit to the
commissioner a fee of Ten Dollars ($10.00), which is not
chargeable to the consumer, and written notification containing
such loan information as required by the commissioner, seeking
approval to engage in a residential mortgage transaction without
first complying with the licensing provisions of this chapter.

Any person who enters into more than twelve (12) of those
transactions in the licensing period provided in this chapter must
be licensed according to the procedures prescribed in this
chapter, unless otherwise exempted under paragraph (a) or
(b) of this section.
chapter. The fees paid for exemption during a licensing period will be deducted from the cost of an initial license.

(i) 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.

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

(k) 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.

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

(m) Loan originators for licensed mortgage companies as defined under Section 81-18-3 are exempt from the licensing requirements of this chapter except for Sections 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall register with the department as a loan originator. Any natural person required to register under this paragraph (m) shall register initially with the department and thereafter file an application for renewal of registration with the department on or before September 30 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 (m) 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
($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, the Magnolia Mortgage Brokers Educational Association, who shall submit to the department a listing of approved schools, courses, programs and special training sessions.

However, each application for licensing renewal or registration renewal of manufactured housing licensees or originators shall include evidence of the satisfactory completion of at least twelve (12) hours of continuing education, of which eight (8) hours must be approved by the Commissioner of Insurance and four (4) hours consisting of courses in primary and subordinated financing transactions must be approved by the Mississippi Manufactured Housing Association, which shall submit to the department a listing of those approved schools, courses, programs and special training sessions. A manufactured housing licensee or originator may submit evidence of completion of courses that have been approved by the Mississippi Mortgage Bankers Association, the Education Committee of the National
Association of Mortgage Brokers, the Mississippi Association of Mortgage Brokers or the Magnolia Mortgage Brokers and Educational Association to satisfy the four-hour requirement of courses in primary and subordinated financing transactions.

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

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

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

(2) To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside
the State of Mississippi. However, in no event shall a licensee
be examined more than once in a two-year period unless for cause
shown based upon consumer complaint and/or other exigent reasons
as determined by the commissioner.

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

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

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

(6) In the absence of malice, fraud, or bad faith a person
is not subject to civil liability arising from the filing of a
complaint with the department, furnishing other information
required by this chapter, information required by the department
under the authority granted in this chapter, or information
voluntarily given to the department related to allegations that a
licensee or prospective licensee has violated this chapter.
**SECTION 5.** This act shall take effect and be in force from July 1, 2003.