SENATE BILL NO. 2559

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 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE EXAMINATION FEE WHICH 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 company, 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 81-18-11, 81-18-13, 81-18-21, 81-18-25, 81-18-27, 81-18-31, 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 under the Small Loan Privilege Tax Law (Section 75-67-201 et seq.). 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. 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(i) 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 81-18-21, 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 consisting of the actual expenses per examination of 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 4. This act shall take effect and be in force from and after July 1, 2003.