

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2559

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 WHICH MAY BE CHARGED BY THE COMMISSIONER OF
8 BANKING AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A
9 MORTGAGE 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 company, 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 under the Small Loan
185 Privilege Tax Law (Section 75-67-201 et seq.). However, those
186 lenders holding a license under the Small Loan Regulatory Law and
187 making real estate loans outside that law shall be subject to the
188 entire provisions of this chapter, unless otherwise exempted under
189 paragraph (a) or (b) of this section.

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



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

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

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

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



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

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

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

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

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



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

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

266 81-18-21. (1) Any person required to be licensed under this
267 chapter shall maintain in its offices, or such other location as
268 the department shall permit, the books, accounts and records
269 necessary for the department to determine whether or not the
270 person is complying with the provisions of this chapter and the
271 rules and regulations adopted by the department under this
272 chapter. These books, accounts and records shall be maintained
273 apart and separate from any other business in which the person is
274 involved and may represent historical data for two (2) years
275 preceding the date of the last license application date forward.
276 The books, accounts, and records shall be kept in a secure
277 location under conditions that will not lead to their damage or
278 destruction.

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



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

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

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

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

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

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

