

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

House Bill NO. 1458

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting in
lieu thereof the following:**

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 shall**

14 **have the following meanings:**

15 **(a) "Borrower" means a person who submits an application**

16 **for a loan secured by a first or subordinate mortgage or deed of trust**

17 **on a single- to four-family home to be occupied by a natural person.**

18 **(b) "Commissioner" means the Commissioner of the**

19 **Mississippi Department of Banking and Consumer Finance.**

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

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

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

31 **(f) "Executive officer" means the chief executive officer, the**
32 **president, the principal financial officer, the principal operating officer,**
33 **each vice president with responsibility involving policy-making**

34 **functions for a significant aspect of a person's business, the secretary,**
35 **the treasurer, or any other person performing similar managerial or**
36 **supervisory functions with respect to any organization whether**
37 **incorporated or unincorporated.**

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

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

42 **(i) "Loan originator" means an individual who is an**
43 **employee of a single mortgage company whose conduct of the**
44 **mortgage business is the responsibility of the company, and whose**
45 **job responsibilities include direct contact with borrowers during the**
46 **loan origination process, which may include soliciting, negotiating,**
47 **acquiring, arranging or making mortgage loans for others, obtaining**
48 **personal or financial information, assisting with the preparation of loan**

49 applications or other documents, quoting loan rates or terms, or
50 providing required disclosures. The term does not include individuals
51 whose job responsibilities on behalf of a company are solely clerical in
52 nature or sales representatives of a licensed Mississippi manufactured
53 housing operation who transmits information concerning a sale via
54 mail, courier service, or electronically to a licensed mortgage company
55 or registered originator.

56 (j) "Make a mortgage loan" means to advance funds, offer
57 to advance funds or make a commitment to advance funds to a
58 borrower.

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

62 (l) "Mortgage company" means any person or entity who
63 directly, indirectly or by electronic activity, solicits, places or

64 **negotiates mortgage loans for others, or offers to solicit, place or**
65 **negotiate mortgage loans for others.**

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

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

76 **(o) "Principal" means a natural person who, directly or**
77 **indirectly, owns or controls an ownership interest of twenty-five**
78 **percent (25%) or more in a corporation or any other form of business**

79 **organization, regardless of whether the natural person owns or**
80 **controls the ownership interest through one or more natural persons**
81 **or one or more proxies, powers of attorney, nominees, corporations,**
82 **associations, limited liability companies, partnerships, trusts,**
83 **joint-stock companies, other entities or devises, or any combination**
84 **thereof.**

85 **(p) "Records" or "documents" means any item in hard copy**
86 **or produced in a format of storage commonly described as electronic,**
87 **imaged, magnetic, microphotographic or otherwise, and any**
88 **reproduction so made shall have the same force and effect as the**
89 **original thereof and be admitted in evidence equally with the original.**

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

92 **(r) "Residential property" means improved real property or**
93 **lot used or occupied, or intended to be used or occupied, as a**

94 **residence by a natural person.**

95 **(s) "Service a mortgage loan" means the collection or**
96 **remittance for another, or the right to collect or remit for another, of**
97 **payments of principal interest, trust items such as insurance and**
98 **taxes, and any other payments pursuant to a mortgage loan.**

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

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

105 **81-18-5. The following persons are not subject to the provisions**
106 **of this chapter, unless otherwise provided in this chapter:**

107 **(a) Any person authorized to engage in business as a bank**
108 **holding company or as a financial holding company, or any wholly**

109 **owned subsidiary thereof; however, the wholly owned subsidiary must**

110 **file a notification statement that includes the following information:**

111 **(i) The name or names under which business will be**

112 **conducted in Mississippi;**

113 **(ii) The name and address of the parent financial**

114 **institution;**

115 **(iii) The name, mailing address, telephone number,**

116 **and fax number of the person or persons responsible for handling**

117 **consumer inquiries and complaints;**

118 **(iv) The name and address of the registered agent for**

119 **service of process in Mississippi;**

120 **(v) A statement signed by the president or chief**

121 **executive officer of the entity stating that the entity will receive and**

122 **process consumer inquiries and complaints promptly, fairly, and in**

123 **compliance with all applicable laws; and**

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

125 **The notification statement must be filed before beginning to**
126 **conduct a mortgage business in this state and must be updated by the**
127 **entity as the information changes. Any entity that fails to file the**
128 **notification statement or keep the information current will be**
129 **immediately subject to the licensing requirements of Section 81-18-9.**
130 **This notification statement must be renewed annually as of September**
131 **30 of each year with a renewal fee of One Hundred Dollars (\$100.00).**

132 **(b) Any person authorized to engage in business as a bank,**
133 **credit card bank, savings bank, savings institution, savings and loan**
134 **association, building and loan association, trust company or credit**
135 **union under the laws of the United States, any state or territory of the**
136 **United States, or the District of Columbia, the deposits of which are**
137 **federally insured, or any wholly owned subsidiary thereof.**

138 **(c) Any person who is a wholesale lender as defined in**

139 **Section 81-18-3(t) or who is registered by * * * the Federal National**
140 **Mortgage Association, * * * the Federal Home Loan Mortgage**
141 **Corporation, the Government National Mortgage Association or the**
142 **United States Department of Housing and Urban Development;**
143 **provided, however, that persons who qualify for an exemption under**
144 **this paragraph shall be subject to Sections 81-18-11, 81-18-13,**
145 **81-18-21, 81-18-25, 81-18-27, 81-18-31, 81-18-35, 81-18-39 and 81-18-43.**
146 **Upon the request of the commissioner, such persons shall submit**
147 **copies of any reports as required by the aforementioned governmental**
148 **entity to which the person is subject for licensing, supervision or**
149 **auditing. The department shall have the authority to investigate all**
150 **consumer complaints concerning Mississippi residential property. To**
151 **quality for an exemption, the applicant shall register for an exemption**
152 **certificate with the department and pay an initial fee of Three Hundred**
153 **Dollars (\$300.00). With each application for renewal of the exemption**

154 **certificate, the applicant shall pay a renewal fee of One Hundred Fifty**
155 **Dollars (\$150.00) and provide the department with evidence that the**
156 **applicant is still licensed, supervised or audited by the governmental**
157 **entity. If the renewal fee remains unpaid for thirty (30) days after**
158 **August 31, the registration shall expire, but not before September 30 of**
159 **any year for which the annual renewal fee has been paid. If any person**
160 **engages in business without paying the fees provided for in this**
161 **paragraph before commencing business or before the expiration of the**
162 **person's current registration, as the case may be, then the person shall**
163 **be liable for the full amount of the registration fee, plus a penalty in an**
164 **amount not to exceed Twenty-five Dollars (\$25.00) for each day that the**
165 **person has engaged in business without an exemption certificate or**
166 **after the expiration of an exemption certificate. All registration fees**
167 **and penalties shall be paid into the Consumer Finance Fund of the**
168 **department.**

169 (d) Any lender holding a license under the Small Loan

170 Regulatory Law (Section 75-67-101 et seq.) and the Small Loan

171 Privilege Tax Law (Section 75-67-201 et seq.) * * *

172 (e) Any attorney licensed to practice law in Mississippi who

173 provides mortgage loan services incidental to the practice of law and

174 who is not a principal of a mortgage company as defined under this

175 chapter.

176 (f) A real estate company or licensed real estate

177 salesperson or broker who is actively engaged in the real estate

178 business and who does not receive any fee, commission, kickback,

179 rebate or other payment for directly or indirectly negotiating, placing or

180 finding a mortgage for others.

181 (g) Any person performing any act relating to mortgage

182 loans under order of any court.

183 (h) Any person who is employed by and representing a

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

199 **who enters into more than twelve (12) of those transactions in the**
200 **licensing period provided in this chapter must be licensed according**
201 **to the procedures prescribed in this chapter. The fees paid for**
202 **exemption during a licensing period will be deducted from the cost of**
203 **an initial license.**

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

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

209 **(k) The United States of America, the State of Mississippi or**
210 **any other state, and any agency, division or corporate instrumentality**
211 **thereof including, but not limited to, the Mississippi Home Corporation,**
212 **Rural Economic Community Development (RECD), Habitat for**
213 **Humanity, the Federal National Mortgage Association (FNMA), the**

214 **Federal Home Loan Mortgage Company (FHLMC), the Government**
215 **National Mortgage Association (GNMA), the United States Department**
216 **of Housing and Urban Development (HUD), the Federal Housing**
217 **Administration (FHA), the Department of Veterans Affairs (VA), the**
218 **Farmers Home Administration (FmHA), and the Federal Land Banks**
219 **and Production Credit Associations.**

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

224 **(m) Loan originators * * * as defined under Section**
225 **81-18-3(i) are exempt from the licensing requirements of this chapter**
226 **except for Sections 81-18-9(3)(d), 81-18-13 and 81-18-15(3), but shall**
227 **register with the department as a loan originator. Any natural person**
228 **required to register under this paragraph (m) shall register initially with**

229 **the department and thereafter file an application for renewal of**
230 **registration with the department on or before September 30 of each**
231 **year providing the department with such information as the**
232 **department may prescribe by regulation, including, but not limited to,**
233 **the business addresses where the person engages in any business**
234 **activities covered by this chapter and a telephone number that**
235 **customers may use to contact the person. This initial registration of a**
236 **loan originator shall be accompanied by a fee of One Hundred Dollars**
237 **(\$100.00). Annual renewals of this registration shall require a fee of**
238 **Fifty Dollars (\$50.00). No person required to register under this**
239 **paragraph (m) shall transact business in this state directly or indirectly**
240 **as a mortgage company or mortgage lender unless that person is**
241 **registered with the department.**

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

244 **81-18-21. (1) Any person required to be licensed under this**
245 **chapter shall maintain in its offices, or such other location as the**
246 **department shall permit, the books, accounts and records necessary**
247 **for the department to determine whether or not the person is**
248 **complying with the provisions of this chapter and the rules and**
249 **regulations adopted by the department under this chapter. These**
250 **books, accounts and records shall be maintained apart and separate**
251 **from any other business in which the person is involved and may**
252 **represent historical data for two (2) years preceding the date of the last**
253 **license application date forward. The books, accounts, and records**
254 **shall be kept in a secure location under conditions that will not lead to**
255 **their damage or destruction.**

256 **(2) To assure compliance with the provisions of this chapter, the**
257 **department may examine the books and records of any licensee**
258 **without notice during normal business hours. The commissioner shall**

259 charge the licensee an examination fee in an amount not less than
260 Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars
261 (\$600.00) for each office or location within the State of Mississippi,
262 plus any actual expenses incurred while examining the licensee's
263 records or books that are located outside the State of Mississippi.
264 However, in no event shall a licensee be examined more than once in a
265 two-year period unless for cause shown based upon consumer
266 complaint and/or other exigent reasons as determined by the
267 commissioner.

268 (3) The department, its designated officers and employees, or its
269 duly authorized representatives, for the purposes of discovering
270 violations of this chapter and for the purpose of determining whether
271 any person or individual reasonably suspected by the commissioner of
272 conducting business that requires a license or registration under this
273 chapter, may investigate those persons and individuals and examine

274 **all relevant books, records and papers employed by those persons or**
275 **individuals in the transaction of business, and may summon witnesses**
276 **and examine them under oath concerning matters as to the business**
277 **of those persons, or other such matters as may be relevant to the**
278 **discovery of violations of this chapter including, without limitation, the**
279 **conduct of business without a license or registration as required under**
280 **this chapter.**

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

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

289 **(6) In the absence of malice, fraud, or bad faith a person is not**
290 **subject to civil liability arising from the filing of a complaint with the**
291 **department, furnishing other information required by this chapter,**
292 **information required by the department under the authority granted in**
293 **this chapter, or information voluntarily given to the department related**
294 **to allegations that a licensee or prospective licensee has violated this**
295 **chapter.**

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

Further, amend by striking the title in its entirety and inserting in
lieu thereof the following:

1 **AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF**
2 **1972, TO REVISE THE DEFINITION OF THE TERM "LOAN**
3 **ORIGINATOR" AS USED IN THE MISSISSIPPI MORTGAGE CONSUMER**
4 **PROTECTION LAW; TO AMEND SECTION 81-18-5, MISSISSIPPI CODE**
5 **OF 1972, TO REVISE THE EXEMPTIONS TO THE MISSISSIPPI**
6 **MORTGAGE CONSUMER PROTECTION LAW; TO AMEND SECTION**
7 **81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF**

8 THE EXAMINATION FEE THAT MAY BE CHARGED BY THE
9 COMMISSIONER OF BANKING AND CONSUMER FINANCE FOR
10 EXAMINING THE RECORDS OF A MORTGAGE COMPANY; AND FOR
11 RELATED PURPOSES.