

By: Senator(s) Jordan, Jackson (11th),  
Dawkins

To: Business and Financial  
Institutions

SENATE BILL NO. 3039

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 81-18-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT COURSES  
7 APPROVED BY THE MAGNOLIA MORTGAGE BROKERS AND EDUCATIONAL  
8 ASSOCIATION WILL BE ACCEPTABLE FOR CONTINUING EDUCATION  
9 REQUIREMENTS UNDER THE MISSISSIPPI MORTGAGE CONSUMER PROTECTION  
10 LAW; TO REQUIRE THE COMMISSIONER TO APPROVE CONTINUING EDUCATION  
11 COURSES IN ADVANCE ON A CASE-BY-CASE BASIS; TO AMEND SECTION  
12 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF THE  
13 EXAMINATION FEE THAT MAY BE CHARGED BY THE COMMISSIONER OF BANKING  
14 AND CONSUMER FINANCE FOR EXAMINING THE RECORDS OF A MORTGAGE  
15 COMPANY; AND FOR RELATED PURPOSES.

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

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

19 81-18-3. For purposes of this chapter, the following terms  
20 shall have the following meanings:

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

25 (b) "Commissioner" means the Commissioner of the  
26 Mississippi Department of Banking and Consumer Finance.

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

31 (d) "Control" means the direct or indirect possession  
32 of the power to direct or cause the direction of the management  
33 and policies of a person, whether through the ownership of voting

34 securities, by contract or otherwise, and shall include  
35 "controlling," "controlled by," and "under common control with."

36 (e) "Department" means the Department of Banking and  
37 Consumer Finance of the State of Mississippi.

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

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

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

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

65           (j) "Make a mortgage loan" means to advance funds,  
66 offer to advance funds or make a commitment to advance funds to a  
67 borrower.

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

72           (l) "Mortgage company" means any person or entity who  
73 directly, indirectly or by electronic activity, solicits, places  
74 or negotiates mortgage loans for others, or offers to solicit,  
75 place or negotiate mortgage loans for others.

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

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

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

96           (p) "Records" or "documents" means any item in hard  
97 copy or produced in a format of storage commonly described as

98 electronic, imaged, magnetic, microphotographic or otherwise, and  
99 any reproduction so made shall have the same force and effect as  
100 the original thereof and be admitted in evidence equally with the  
101 original.

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

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

107 (s) "Service a mortgage loan" means the collection or  
108 remittance for another, or the right to collect or remit for  
109 another, of payments of principal interest, trust items such as  
110 insurance and taxes, and any other payments pursuant to a mortgage  
111 loan.

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

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

118 81-18-5. The following persons are not subject to the  
119 provisions of this chapter, unless otherwise provided in this  
120 chapter:

121 (a) Any person authorized to engage in business as a  
122 bank holding company or as a financial holding company, or any  
123 wholly-owned subsidiary thereof; however, the wholly-owned  
124 subsidiary must file a notification statement that includes the  
125 following information:

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

128 (ii) The name and address of the parent financial  
129 institution;

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

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

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

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

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

148 (b) Any person authorized to engage in business as a  
149 bank, credit card bank, savings bank, savings institution, savings  
150 and loan association, building and loan association, trust company  
151 or credit union under the laws of the United States, any state or  
152 territory of the United States, or the District of Columbia, the  
153 deposits of which are federally insured, or any wholly-owned  
154 subsidiary thereof.

155 (c) Any person who is a wholesale lender as defined in  
156 Section 81-18-3(t) or who is registered by or directly supervised  
157 or audited by the Federal National Mortgage Association, the  
158 United States Department of Veterans Affairs, or the Federal Home  
159 Loan Mortgage Corporation, the Government National Mortgage  
160 Association or the United States Department of Housing and Urban  
161 Development; provided, however, that persons who qualify for an  
162 exemption under this paragraph shall be subject to Sections

163 81-18-11, 81-18-13, 81-18-21, 81-18-25, 81-18-27, 81-18-31,  
164 81-18-35, 81-18-39 and 81-18-43. Upon the request of the  
165 commissioner, such persons shall submit copies of any reports as  
166 required by the aforementioned governmental entity to which the  
167 person is subject for licensing, supervision or auditing. The  
168 department shall have the authority to investigate all consumer  
169 complaints concerning Mississippi residential property. To  
170 qualify for an exemption, the applicant shall register for an  
171 exemption certificate with the department and pay an initial fee  
172 of Three Hundred Dollars (\$300.00). With each application for  
173 renewal of the exemption certificate, the applicant shall pay a  
174 renewal fee of One Hundred Fifty Dollars (\$150.00) and provide the  
175 department with evidence that the applicant is still licensed,  
176 supervised or audited by the governmental entity. If the renewal  
177 fee remains unpaid for thirty (30) days after August 31, the  
178 registration shall expire, but not before September 30 of any year  
179 for which the annual renewal fee has been paid. If any person  
180 engages in business without paying the fees provided for in this  
181 paragraph before commencing business or before the expiration of  
182 the person's current registration, as the case may be, then the  
183 person shall be liable for the full amount of the registration  
184 fee, plus a penalty in an amount not to exceed Twenty-five Dollars  
185 (\$25.00) for each day that the person has engaged in business  
186 without an exemption certificate or after the expiration of an  
187 exemption certificate. All registration fees and penalties shall  
188 be paid into the Consumer Finance Fund of the department.

189 (d) Any lender holding a license under the Small Loan  
190 Regulatory Law (Section 75-67-101 et seq.), or any subsidiary or  
191 affiliate thereof, and making real estate loans under that law are  
192 exempt from this chapter. However, those lenders holding a  
193 license under the Small Loan Regulatory Law and making real estate  
194 loans outside that law shall be subject to the entire provisions

195 of this chapter, unless otherwise exempted under paragraph (a) or  
196 (b) of this section.

197 (e) Any attorney licensed to practice law in  
198 Mississippi who provides mortgage loan services incidental to the  
199 practice of law and who is not a principal of a mortgage company  
200 as defined under this chapter.

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

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

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

228 chapter. The fees paid for exemption during a licensing period  
229 will be deducted from the cost of an initial license.

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

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

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

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

251 (m) Loan originators for licensed mortgage companies as  
252 defined under Section 81-18-3 are exempt from the licensing  
253 requirements of this chapter except for Sections 81-18-9(3)(d),  
254 81-18-13 and 81-18-15(3), but shall register with the department  
255 as a loan originator. Any natural person required to register  
256 under this paragraph (m) shall register initially with the  
257 department and thereafter file an application for renewal of  
258 registration with the department on or before September 30 of each  
259 year providing the department with such information as the  
260 department may prescribe by regulation, including, but not limited

261 to, the business addresses where the person engages in any  
262 business activities covered by this chapter and a telephone number  
263 that customers may use to contact the person. This initial  
264 registration of a loan originator shall be accompanied by a fee of  
265 One Hundred Dollars (\$100.00). Annual renewals of this  
266 registration shall require a fee of Fifty Dollars (\$50.00). No  
267 person required to register under this paragraph (m) shall  
268 transact business in this state directly or indirectly as a  
269 mortgage company or mortgage lender unless that person is  
270 registered with the department.

271 **SECTION 3.** Section 81-18-15, Mississippi Code of 1972, is  
272 amended as follows:

273 81-18-15. (1) Each license shall remain in full force and  
274 effect until relinquished, suspended, revoked or expired. With  
275 each initial application for a license, the applicant shall pay to  
276 the commissioner a license fee of Seven Hundred Fifty Dollars  
277 (\$750.00), and on or before August 31 of each year thereafter, an  
278 annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00).  
279 If the annual renewal fee remains unpaid thirty (30) days after  
280 August 31, the license shall expire, but not before September 30  
281 of any year for which the annual renewal fee has been paid. If  
282 any person engages in business as provided for in this chapter  
283 without paying the license fee provided for in this subsection  
284 before commencing business or before the expiration of the  
285 person's current license, as the case may be, then the person  
286 shall be liable for the full amount of the license fee, plus a  
287 penalty in an amount not to exceed Twenty-five Dollars (\$25.00)  
288 for each day that the person has engaged in such business without  
289 a license or after the expiration of a license. All licensing  
290 fees and penalties shall be paid into the Consumer Finance Fund of  
291 the department.

292 (2) Any licensee making timely and proper application for a  
293 license renewal shall be permitted to continue to operate under

294 its existing license until its application is approved or  
295 rejected, but shall not be released from or otherwise indemnified  
296 for any act covered by this chapter or for any penalty incurred  
297 under this chapter as a result of any violation of this chapter or  
298 regulations adopted under this chapter, pending final approval or  
299 disapproval of the application for the license renewal.

300 (3) Each application for licensing renewal or registration  
301 renewal shall include evidence of the satisfactory completion of  
302 at least twelve (12) hours of approved continuing education in  
303 primary and subordinated financing transactions by the officers  
304 and principals who are or will be actively engaged in the daily  
305 operation of a mortgage company in the State of Mississippi and  
306 registered originators. For purposes of this subsection (3),  
307 approved courses shall be those as approved by the Mississippi  
308 Mortgage Bankers Association, the Education Committee of the  
309 National Association of Mortgage Brokers, the Mississippi  
310 Association of Mortgage Brokers or the Magnolia Mortgage Brokers  
311 and Educational Association, who shall submit to the department a  
312 listing of approved schools, courses, programs and special  
313 training sessions. However, each application for licensing  
314 renewal or registration renewal of manufactured housing licensees  
315 or originators shall include evidence of the satisfactory  
316 completion of at least twelve (12) hours of continuing education,  
317 of which eight (8) hours must be approved by the Commissioner of  
318 Insurance and four (4) hours consisting of courses in primary and  
319 subordinated financing transactions must be approved by the  
320 Mississippi Manufactured Housing Association, which shall submit  
321 to the department a listing of those approved schools, courses,  
322 programs and special training sessions. A manufactured housing  
323 licensee or originator may submit evidence of completion of  
324 courses that have been approved by the Mississippi Mortgage  
325 Bankers Association, the Education Committee of the National  
326 Association of Mortgage Brokers, the Mississippi Association of

327 Mortgage Brokers or the Magnolia Mortgage Brokers and Educational  
328 Association to satisfy the four-hour requirement of courses in  
329 primary and subordinated financing transactions.

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

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

338 81-18-21. (1) Any person required to be licensed under this  
339 chapter shall maintain in its offices, or such other location as  
340 the department shall permit, the books, accounts and records  
341 necessary for the department to determine whether or not the  
342 person is complying with the provisions of this chapter and the  
343 rules and regulations adopted by the department under this  
344 chapter. These books, accounts and records shall be maintained  
345 apart and separate from any other business in which the person is  
346 involved and may represent historical data for two (2) years  
347 preceding the date of the last license application date forward.  
348 The books, accounts, and records shall be kept in a secure  
349 location under conditions that will not lead to their damage or  
350 destruction.

351 (2) To assure compliance with the provisions of this  
352 chapter, the department may examine the books and records of any  
353 licensee without notice during normal business hours. The  
354 commissioner shall charge the licensee an examination fee in an  
355 amount not less than Three Hundred Dollars (\$300.00) nor more than  
356 Six Hundred Dollars (\$600.00) for each office or location within  
357 the State of Mississippi, plus any actual expenses incurred while  
358 examining the licensee's records or books that are located outside  
359 the State of Mississippi. However, in no event shall a licensee

360 be examined more than once in a two-year period unless for cause  
361 shown based upon consumer complaint and/or other exigent reasons  
362 as determined by the commissioner.

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

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

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

385 (6) In the absence of malice, fraud, or bad faith a person  
386 is not subject to civil liability arising from the filing of a  
387 complaint with the department, furnishing other information  
388 required by this chapter, information required by the department  
389 under the authority granted in this chapter, or information  
390 voluntarily given to the department related to allegations that a  
391 licensee or prospective licensee has violated this chapter.

392           **SECTION 5.** This act shall take effect and be in force from  
393 and after July 1, 2004.