MISSISSIPPI LEGISLATURE REGULAR SESSION 2013

By: Representative Snowden

To: Banking and Financial Services

HOUSE BILL NO. 1233

AN ACT TO AMEND SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A VIOLATION OF THE EXEMPTION FROM THE MISSISSIPPI S.A.F.E. MORTGAGE ACT FOR PERSONS WHO OWNER FINANCE NOT MORE THAN TEN RESIDENTIAL MORTGAGE LOANS IN ONE YEAR WILL NOT AFFECT THE TITLE OF THE PURCHASER/BORROWER OR THE OBLIGATION OF THE PURCHASER/BORROWER UNDER THE TERMS OF THE MORTGAGE LOAN; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 81-18-5, Mississippi Code of 1972, is reenacted and amended as follows:

81-18-5. The following are exempt from the provisions of this chapter:

(a) Registered mortgage loan originators, when acting for an entity described in Section 81-18-3(ii).

(b) Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any person, estate or trust who owner finances in one (1) calendar year no more than ten (10) residential mortgage loans or no more than twenty percent (20%) of his total

residential units sold, whichever is greater. A violation of this paragraph (c) shall not affect the title of the purchaser/borrower or the obligation of the purchaser/borrower under the terms of the mortgage loan.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.

(e) A depository institution, or a subsidiary that is owned and controlled by a depository institution, or an institution regulated by the Farm Credit Administration.

(f) Any mortgage lender who holds a valid license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., and whose mortgage lending activities are limited solely to the servicing of mortgage loans that were in such mortgage lender's own loan portfolio as of December 31, 2009. For the purposes of the exemption in this paragraph (f), "servicing of mortgage loans" shall mean and include the collection of payments of principal and interest, insurance premiums, taxes and other payments required under such mortgage loans, and shall also include activities related to the collection of such payments such as collection calls whether by phone, mail, electronic means or in

person, and enforcement remedies permitted by law or at equity. In no event shall the term "servicing of mortgage loans" include the renewal or reworking of the mortgage. If a mortgage loan is renewed or reworked, the lender shall be required to obtain a mortgage license in order to continue any mortgage activity described in this chapter.

(g) Any bona fide nonprofit organization and its employees who demonstrate to the satisfaction of the commissioner through the periodic examination of the books and activities of the organization as required in Section 81-18-21, Mississippi Code of 1972, that they continually meet the following requirements, at a minimum:

(i) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing or provides homeownership education, or similar services;

(iii) Conducts its activities in a manner that serves public or charitable purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;

(v) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its client; and

(vi) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(h) Any person who is an employee of a government agency or housing finance agency who acts as a mortgage loan originator in accordance with his duties as an employee of such agency.

(i) Any person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator or a registered loan originator. For purposes of this paragraph (i), the term "clerical or support duties" may include:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

SECTION 2. This act shall take effect and be in force from and after July 1, 2013.